
A BILL FOR AN ACT

RELATING TO CHILDREN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that developmental and
2 neurological science concludes that the process of cognitive
3 brain development continues into adulthood, and that the human
4 brain undergoes dynamic changes throughout adolescence and well
5 into young adulthood.

6 The legislature recognizes that the Supreme Court of the
7 United States has found that children "generally are less mature
8 and responsible than adults." *J.D.B. v. North Carolina*, 564
9 U.S. 261, 272 (2011) (quoting *Eddings v. Oklahoma*, 455 U.S. 104,
10 115-116 (1982)). They "often lack the experience, perspective,
11 and judgment to recognize and avoid choices that could be
12 detrimental to them." *J.D.B.*, 564 U.S. at 272 (quoting *Bellotti*
13 *v. Baird*, 443 U.S. 622, 635 (1979)). Children "'are more
14 vulnerable or susceptible to . . . outside pressures' than
15 adults." *J.D.B.*, 564 U.S. at 272 (quoting *Roper v. Simmons*, 543
16 U.S. 551, 569 (2005)). They also "have limited understandings
17 of the criminal justice system and the roles of the



1 institutional actors within it." *Graham v. Florida*, 560 U.S.
2 48, 78 (2010). Further, "children characteristically lack the
3 capacity to exercise mature judgment and possess only an
4 incomplete ability to understand the world around them."
5 *J.D.B.*, 564 U.S. at 273.

6 The legislature notes that custodial interrogation of an
7 individual by the State requires that the individual be advised
8 of the individual's rights to make a knowing, intelligent, and
9 voluntary waiver of those rights before the interrogation
10 proceeds. However, the legislature believes that children under
11 sixteen years of age, unlike adults, cannot sufficiently
12 comprehend the meaning of their rights and the consequences of a
13 waiver.

14 The purpose of this Act is to require that when an officer
15 has custody of a child under sixteen years of age for an alleged
16 violation of law, the child shall have contact with legal
17 counsel or a parent or legal guardian before the child waives
18 any constitutional rights and before any custodial
19 interrogation.



1 SECTION 2. Chapter 571, Hawaii Revised Statutes, is
2 amended by adding a new section to part IV to be appropriately
3 designated and to read as follows:

4 "§571- Contact with counsel; parent or legal guardian;
5 consultation. (a) Before a custodial interrogation of and
6 before the waiver of any right against self-incrimination by a
7 child under the age of sixteen, the child shall have contact
8 with legal counsel or a parent or legal guardian in person, by
9 telephone, or by video conference. The contact may not be
10 waived.

11 (b) The court, in determining the admissibility of
12 statements of a child under the age of sixteen made during or
13 after a custodial interrogation, shall consider the effect of
14 any failure of the officer who had custody of the child to take
15 steps to comply with subsection (a).

16 (c) This section shall not apply to the admissibility of
17 statements of a child under the age of sixteen if:

18 (1) The officer who questioned the youth reasonably
19 believed that the information the officer sought was
20 necessary to protect life or property from an imminent
21 threat; and



1 (2) The officer's questions were limited to those
2 questions that were reasonably necessary to obtain the
3 information sought in paragraph (1)."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 4. New statutory material is underscored.

8 SECTION 5. This Act shall take effect on January 28, 2081.



Report Title:

Children; Custody; Constitutional Rights

Description:

Requires that when an officer has custody of a child under the age of 16 for an alleged violation of law, the child shall have contact with legal counsel or a parent or legal guardian before the child waives any constitutional rights and before any custodial interrogation. Effective 1/28/2081. (SD1)

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