

HOUSE BILL REPORT

ESSB 6065

As Reported by House Committee On:
Education

Title: An act relating to school district policy and procedures for interviews and interrogations of students on school premises.

Brief Description: Adopting policy and procedures on student interviews and interrogations.

Sponsors: Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Wellman, Hunt and Hasegawa).

Brief History:

Committee Activity:

Education: 2/19/18, 2/22/18 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Requires the Washington State School Directors' Association (WSSDA) to convene a work group to update its model policy and procedure for interviews and interrogations of students on school premises in consideration of necessary accommodations for certain students.
- Requires the WSSDA to submit the updated model policy and procedures to the Legislature by December 15, 2018.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 18 members: Representatives Santos, Chair; Dolan, Vice Chair; Stonier, Vice Chair; Harris, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Bergquist, Caldier, Hargrove, Johnson, Kilduff, Lovick, McCaslin, Ortiz-Self, Senn, Slatter, Steele, Stokesbary and Valdez.

Staff: Megan Wargacki (786-7194).

Background:

Model Policy and Procedures on Student Interviews and Interrogations.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In July of 2013 the Washington State School Directors' Association (WSSDA) developed a model policy and procedure on interviews and interrogations of students on school premises. Under the model policy, a school district encourages interviews and interrogations of students by law enforcement, or state or local health departments, to take place off school premises in order to minimize interruption to the instructional program.

The model procedure addresses child abuse and neglect investigations, criminal investigations, and health department communicable disease investigations. The procedure includes provisions related to student data, student consent to be interviewed, notification of students' parents or guardians, and observation of interview by third parties, among other things. Some procedures differ depending on the students' age or whether he or she has a disability.

The part of the WSSDA model policy and procedure addressing child welfare interviews on school premises was legislatively directed to be developed in consultation with the Washington Association of Sheriffs and Police Chiefs (WASPC) and the Department of Social and Health Services (DSHS).

Rights of the Accused.

The federal and state constitutions protect the right against self-incrimination and the right to counsel. In 1966, in *Miranda v. Arizona*, the Supreme Court of the United States (SCOTUS) adopted a set of prophylactic measures designed to safeguard the constitutional right against self-incrimination. Thus, prior to a law enforcement interrogation, a suspect must be warned that he or she has a right to remain silent, that any statement made may be used as evidence, and that he or she has a right to an attorney. Law enforcement officers are able to speak to suspects without providing *Miranda* warnings as long as the person is not in custody, that is, the person is free to leave if he or she refuses to cooperate.

In 2011 the SCOTUS held, by a vote of five to four, that so long as a child's age is known to the law enforcement officer at the time of the interview, or would have been objectively apparent to any reasonable officer, age must be included as part of the custody analysis. The case involved a 13 year old, suspected of home break-ins, who was removed from his classroom by a uniformed officer and escorted to a closed-door conference room. The child was questioned by two police officers, with two administrators present, for at least 30 minutes and the child's guardian was not contacted. The child confessed to the break-ins after learning of the prospect of juvenile detention. The SCOTUS found that a reasonable child subjected to law enforcement interrogation would sometimes feel pressured to submit when a reasonable adult would feel free to leave.

State law provides that a child who is 12 years old or older may waive his or her constitutional rights after being fully informed of the rights being waived, but the waiver must be express and intelligently made. State law also provides that a child under 12 years old cannot waive his or her rights, though the child's rights may be waived by the child's parent or guardian.

In addition, state law provides that, when conducting a child welfare interview, the preferred practice is for the DSHS or law enforcement agency to request permission from a parent or guardian before interviewing a child, unless doing so would compromise the safety of the

child or the integrity of the assessment. Prior to starting the interview the DSHS or law enforcement agency must determine whether the child wishes a third party to be present for the interview and, if so, must make reasonable efforts to accommodate the child's wishes. Unless the child objects, the DSHS or law enforcement agency must make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

Summary of Amended Bill:

The WSSDA must convene a work group of interested stakeholders to update its model policy and procedure for interviews and interrogations of students on school premises in consideration of necessary accommodations for students who:

- are homeless, or otherwise, without a legal guardian to notify;
- are undocumented;
- are in foster care, extended foster care, or aged out of foster care; and
- have intellectual or developmental disabilities or are otherwise unable to make age appropriate decisions when engaging with school administrators, law enforcement, or other authorities.

The WSSDA must submit its updated model policy and procedure for interviews and interrogations of students on school premises to the Legislature by December 15, 2018.

Amended Bill Compared to Engrossed Substitute Bill:

The amendment removes provisions requiring school districts to adopt a policy and procedure for interviews and interrogations of students on school premises that meets certain requirements. Instead, the amendment requires the WSSDA to convene a work group to update its model policy and procedure for interviews and interrogations of students on school premises in consideration of necessary accommodations for certain students, and to submit the updated model policy and procedures to the Legislature by December 15, 2018.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 22, 2018.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

(Other) If a student is being interrogated by law enforcement, the parents or guardians should be notified. This is consistent with the WSSDA and WASPC model policies. It is important for the student and the parent, and the underlying case that law enforcement is investigating, that the parents are notified. The two words that trigger the requirements of the bill are "interview" and "interrogation." Inclusion of the term "interview" in the bill may have unintended consequences. School resource officers, and law enforcement officers responding to incidents at schools, should be able to interview, interact with, and speak with students at the school without contacting the students parents.

Persons Testifying: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.