

SENATE BILL REPORT

SB 5266

As of January 24, 2007

Title: An act relating to juveniles in the custody of law enforcement officers.

Brief Description: Concerning juveniles in the custody of law enforcement officers.

Sponsors: Senators McAuliffe, Hargrove, Stevens, Regala, Fairley, Franklin and Shin.

Brief History:

Committee Activity: Human Services & Corrections: 1/23/07.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Kiki Keizer (786-7430)

Background: In order to ensure the integrity of statements that are to be used as evidence against an accused person at trial, the law imposes certain safeguards. For example, interrogations of a person who is in custody but not charged, cannot go on indefinitely. Persons who are taken into custody must also be informed of their rights to remain silent and to consult counsel before being interrogated by police. Notice to persons taken into custody of their rights to remain silent and to consult with counsel are commonly called Miranda warnings.

Waivers of the rights that are stated in Miranda warnings are only acceptable if they are voluntary and knowing. A waiver would not be considered voluntary, nor would it be effective, if it were obtained through the use of brute force. Neither is just hearing the words of the Miranda warning enough for an effective waiver, if the person hearing the words do not have the functional ability to process information or know what the words mean. A court determines if a Miranda warning is validly waived by examining the totality of the circumstances in a particular case. In other words, the court would examine the facts surrounding a particular interrogation and the characteristics of the person who is the subject of the interrogation.

Empirical studies have shown that most juveniles who are 14 years old or younger, and many who are aged 15 to 17, do not understand Miranda warnings, as well as the average adult offender. For this reason, some states have put additional safeguards in place when the subject of a police interrogation is a juvenile.

Summary of Bill: Law enforcement officers taking a juvenile into custody must make reasonable attempts to notify a parent, guardian, or custodian that the juvenile is in custody and where the juvenile is being held.

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.

When a parent, guardian, or custodian of a child who is in custody requests to consult with the child and makes himself or herself immediately available, he or she must be permitted to consult with the child upon request unless the child objects to the consultation in the parent's presence or the parent is a codefendant or a victim of the child.

The child must get a Miranda warning before he or she is questioned in custody, along with notice that the child has a right to consult with his or her parent, guardian, or custodian.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Many other states have enacted similar laws, allowing parents the opportunity to speak to their children when they are taken into police custody. Parents want to be able to help their children when they are in trouble and offer them the benefit of their wisdom. Children may have difficulty understanding the consequences of a police interview, particularly if they have learning disabilities or a different cultural background.

In addition to benefitting parents and children, this bill would benefit the wider community because it would reduce the chances of false confessions, which might delay or stop the timely investigation leading to the real perpetrator.

Even if a court ultimately throws a child's confession out, that may take a long time and involve extensive legal fees that a family should not have to pay.

CON: Unless a very serious crime is involved, law enforcement wants to turn a child over to his parent, but if a major crime is involved, we need to get to the truth. Juveniles may be involved in major crimes, and we do not want to hinder the process of getting to the truth in those cases. It is important to keep in mind that there are very real victims in these cases, and we do a disservice to them if we create additional barriers to doing a thorough investigation. Getting at the truth in a serious criminal investigation also protects public safety. Allowing a parent to cut an interview short gets in the way of the ability to investigate effectively. Even in states which have enacted this type of legislation, police have found it to be an extra hurdle, costing more energy and time in dealing with crimes, criminals, and innocent people.

Having a parent involved in the interrogation process is likely to reduce the chances of obtaining any confession, not just false confessions. As a matter of public policy, we should not be eliminating confessions but, rather, encouraging accountability.

There are safeguards to sending an innocent person to jail. For example, an investigation does not stop with a confession. Investigators must look for corroborating evidence. Also, investigators are required to give persons who are being interrogated Miranda warnings and often videotape those warnings so that a court can do an independent assessment later about whether a person understood those rights. The court's role is a significant check on the system, and judicial oversight is a process that works.

How far must law enforcement go to reach families? Kids may be disconnected from their families, or their families may, in fact, be a source of their problems. There's also a lack of control when a third party is in the room; a parent may browbeat the child or keep interjecting.

OTHER: The legislation, as written, may have some unintended consequences. For example, the word "custody" could be interpreted as the juvenile detention center, which would not necessarily be an appropriate place for parents to show up, expecting to speak to their child.

Many youth may not realize that they could be charged with adult crimes and subject to adult sanctions. It may be advisable to communicate this at the time a youth is given Miranda warnings.

Persons Testifying: PRO: Senator Rosemary McAuliffe, prime sponsor; Bob Boruchowitz, Washington Defender Association and the Washington Association of Criminal Defense Lawyers; Dave Wood, Washington Families United.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs; Sheriff Larry Taylor, Benton County Sheriff's Office; Detective Carlotta Jarratt, Bellingham Police; Chief Randy Carroll, Bellingham Police; Tom McBride, Washington Association of Prosecutors.

OTHER: Dave McGovern, Pierce County Juvenile Court.