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# 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 consult with legal counsel  
17 before the child waives any constitutional rights and before any  
18 custodial interrogation.

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



1           "§571- Consultation with counsel. (a) Before a  
2 custodial interrogation of and before the waiver of any right  
3 against self-incrimination by a child under the age of sixteen,  
4 the child shall consult with legal counsel in person, by  
5 telephone, or by video conference. The consultation may not be  
6 waived.

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

12           (c) This section does not apply to the admissibility of  
13 statements of a child under the age of sixteen if:

14           (1) The officer who questioned the youth reasonably  
15 believed that the information the officer sought was  
16 necessary to protect life or property from an imminent  
17 threat; and

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



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

4 SECTION 4. New statutory material is underscored.

5 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 consult with legal counsel before the child waives any constitutional rights and before any custodial interrogation.  
(HB217 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

