
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 "[c]hildren generally are less
8 mature and responsible than adults, they often lack the
9 experience, perspective, and judgment to recognize and avoid
10 choices that could be detrimental to them, and they are more
11 vulnerable or susceptible to . . . outside pressures than
12 adults". *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011)
13 (internal quotation marks and citations omitted). Essentially,
14 "children characteristically lack the capacity to exercise
15 mature judgment and possess only an incomplete ability to
16 understand the world around them". *J.D.B.*, 564 U.S. at 273.
17 The Supreme Court has also found that juveniles "have limited



1 understandings of the criminal justice system and the roles of
2 the institutional actors within it". *Graham v. Florida*, 560
3 U.S. 48, 78 (2010).

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

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

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



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

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

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

16 (1) The officer who questioned the child reasonably
17 believed that the information the officer sought was
18 necessary to protect life or property from an imminent
19 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)."

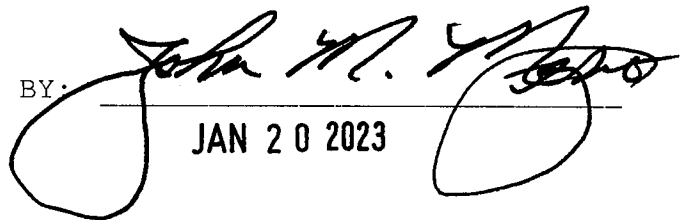
4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 4. New statutory material is underscored.

8 SECTION 5. This Act shall take effect on July 1, 2023.

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INTRODUCED BY:


JAN 20 2023



H.B. NO. 781

Report Title:

Children; Custody; Constitutional Rights

Description:

Requires that when an officer has custody of a child under the age of sixteen 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.

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