

ACT 180

H.B. NO. 781

A Bill for an Act Relating to Children.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known and may be cited as “James’s Act”.

SECTION 2. The legislature finds that developmental and neurological science concludes that the process of cognitive brain development continues into

adulthood, and that the human brain undergoes dynamic changes throughout adolescence and well into young adulthood.

The legislature recognizes that the Supreme Court of the United States has found that “[c]hildren generally are less mature and responsible than adults, they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them, and they are more vulnerable or susceptible to . . . outside pressures than adults”. *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (internal quotation marks and citations omitted). Essentially, “children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them”. *J.D.B.*, 564 U.S. at 273. The Supreme Court has also found that juveniles “have limited understandings of the criminal justice system and the roles of the institutional actors within it”. *Graham v. Florida*, 560 U.S. 48, 78 (2010).

The legislature notes that custodial interrogation of an individual by the State requires that the individual be advised of the individual’s rights to make a knowing, intelligent, and voluntary waiver of those rights before the interrogation proceeds. However, the legislature believes that children under eighteen years of age, unlike adults, cannot sufficiently comprehend the meaning of their rights and the consequences of a waiver. The legislature therefore finds that children under the age of eighteen lack the requisite mental capacity necessary to waive the assistance of legal counsel prior to speaking to an attorney regarding their legal rights. The legislature additionally finds that parents of children who have been detained by a law enforcement officer should be notified as to where their child is detained.

The legislature notes that according to Human Rights for Kids, in 2023, fifty-three bills were introduced in legislatures throughout the country that require a child to have contact with a parent or legal guardian, as well as legal consultation, prior to waiving their constitutional rights or being subject to a custodial interrogation. California, Maryland, Utah, and Washington have already passed laws implementing similar protections.

The purpose of this Act is to require that when an officer has custody of a child under eighteen years of age for an alleged violation of law, the child shall have contact with legal counsel and, to the extent practicable, a parent, guardian, or legal custodian before the child waives any constitutional rights and before any custodial interrogation.

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

“§571- Contact with counsel; parent, guardian, or legal custodian; consultation. (a) Before the waiver of any right against self-incrimination by and before a custodial interrogation of a child under eighteen years of age, the child shall have contact with legal counsel in person, by telephone, or by video conference, and shall also, to the extent practicable, have contact with a parent, guardian, or legal custodian in person, by telephone, or by video conference. The contact may not be waived.

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

(c) Any officer who has arrested a child under eighteen years of age shall notify the child’s parent, guardian, or legal custodian that the child has been arrested and shall provide the location of the child’s detainment.”

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

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.
(Approved July 3, 2023.)

Note

1. Edited pursuant to HRS §23G-16.5.