

CUSTODIAL INTERROGATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the custodial interrogation of a child.

Highlighted Provisions:

This bill:

- ▶ addresses the use of deception in a custodial interrogation of a child; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-6-206, as enacted by Laws of Utah 2021, Chapter 261 and last amended by
Coordination Clause, Laws of Utah 2021, Chapter 261

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **80-6-206** is amended to read:

80-6-206. Interrogation of a child -- Presence of a parent, legal guardian, or other adult -- Interrogation of a minor in a facility -- Prohibition on the use of deception.

(1) As used in this section:



28 (a) "Custodial interrogation" means any interrogation of a minor while the minor is in
29 custody.

30 (b) "Deception" means to knowingly:

31 (i) communicate false facts about evidence; or

32 (ii) make an unauthorized statement about leniency for an offense.

33 [(a)] (c) (i) "Friendly adult" means an adult:

34 (A) [that] who has an established relationship with the child to the extent that the adult
35 can provide meaningful advice and concerned help to the child should the need arise; and

36 (B) who is not hostile or adverse to the child's interest.

37 (ii) "Friendly adult" does not include a parent or guardian of the child.

38 [(b)] (d) (i) [~~"Interrogation"~~] Except as provided in Subsection (1)(d)(ii),

39 "interrogation" means any express questioning or any words or actions that are reasonably
40 likely to elicit an incriminating response.

41 (ii) "Interrogation" does not include words or actions normally attendant to arrest and
42 custody.

43 (2) If a child is [~~in custody and~~] subject to a custodial interrogation for an offense, the
44 child has the right:

45 (a) to have the child's parent or guardian present during an interrogation of the child; or

46 (b) to have a friendly adult present during an interrogation of the child if:

47 (i) there is reason to believe that the child's parent or guardian has abused or threatened
48 the child; or

49 (ii) the child's parent's or guardian's interest is adverse to the child's interest, including
50 that the parent or guardian is a victim or a codefendant of the offense alleged to have been
51 committed by the child.

52 (3) If a child is [~~in custody and~~] subject to [~~interrogation of~~] a custodial interrogation
53 for an offense, the child may not be interrogated unless:

54 (a) the child has been advised of the child's constitutional rights and the child's right to
55 have a parent or guardian, or a friendly adult if applicable under Subsection (2)(b), present
56 during the interrogation;

57 (b) the child has waived the child's constitutional rights;

58 (c) except as provided in Subsection (4), the child's parent or guardian, or the friendly

59 adult if applicable under Subsection (2)(b), was present during the child's waiver under
60 Subsection (3)(b) and has given permission for the child to be interrogated; and

61 (d) if the child is in the custody of the Division of Child and Family Services and a
62 guardian ad litem has been appointed for the child, the child's guardian ad litem has given
63 consent to an interview of the child as described in Section 62A-4a-415.

64 (4) A child's parent or guardian, or a friendly adult if applicable under Subsection
65 (2)(b), is not required to be present during the child's waiver under Subsection (3) or to give
66 permission to the interrogation of the child if:

67 (a) the child is emancipated as described in Section 80-7-105;

68 (b) the child has misrepresented the child's age as being 18 years old or older and a
69 peace officer has relied on that misrepresentation in good faith; or

70 (c) a peace officer or a law enforcement agency:

71 (i) has made reasonable efforts to contact the child's parent or legal guardian, or a
72 friendly adult if applicable under Subsection (2)(b); and

73 (ii) has been unable to make contact within one hour after the time [in] at which the
74 child is [in] taken into custody.

75 (5) (a) If a minor is admitted to a detention facility under Section 80-6-205, or the
76 minor is committed to secure care or a correctional facility, and is subject to interrogation for
77 an offense, the minor may not be interrogated unless:

78 (i) the minor has had a meaningful opportunity to consult with the minor's appointed or
79 retained attorney;

80 (ii) the minor waives the minor's constitutional rights after consultation with the
81 minor's appointed or retained attorney; and

82 (iii) the minor's appointed or retained attorney is present for the interrogation.

83 (b) Subsection (5)(a) does not apply to a juvenile probation officer, or a staff member
84 of a detention facility, unless the juvenile probation officer or the staff member is interrogating
85 the minor on behalf of a peace officer or a law enforcement agency.

86 (6) A minor may only waive the minor's right to be represented by counsel at all stages
87 of court proceedings as described in Section 78B-22-204.

88 (7) (a) If a child is subject to a custodial interrogation for an offense, a peace officer, or
89 an individual interrogating a child on behalf of a peace officer or a law enforcement agency,

90 may not engage in deception.

91 (b) Any oral, written, or sign language statement made by a child during a custodial
92 interrogation is presumed to be involuntary if the peace officer, or an individual interrogating
93 the child on behalf of a peace officer or law enforcement agency, engages in deception.

94 (c) The presumption described in Subsection (7)(b) may be rebutted if a prosecuting
95 attorney proves, by a preponderance of the evidence, that the statement was voluntarily given,
96 based on the totality of the circumstances.