

HB0171S01 compared with HB0171

~~text~~ shows text that was in HB0171 but was deleted in HB0171S01.

text shows text that was not in HB0171 but was inserted into HB0171S01.

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Representative Ryan D. Wilcox proposes the following substitute bill:

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~~ false information about evidence 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:

HB0171S01 compared with HB0171

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}~~false information.

(1) As used in this section:

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

~~{~~ (b) "Deception" means to knowingly:

~~_____~~ (i) communicate false facts about evidence; or

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

~~†~~ [~~(a)~~] (~~{c}~~b) (i) "Friendly adult" means an adult:

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

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

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

[~~(b)~~] (~~{d}~~c) (i) ~~{}~~ "Interrogation" ~~{}~~ Except as provided in Subsection (1)(d)(ii), "interrogation"; means any express questioning or any words or actions that are reasonably likely to elicit an incriminating response.

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

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

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

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

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

HB0171S01 compared with HB0171

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

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

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

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

(c) except as provided in Subsection (4), the child's parent or guardian, or the friendly adult if applicable under Subsection (2)(b), was present during the child's waiver under Subsection (3)(b) and has given permission for the child to be interrogated; and

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

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

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

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

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

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

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

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

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

HB0171S01 compared with HB0171

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

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

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

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

~~(7) (a) If a child is subject to a custodial interrogation for an offense, a peace officer, or an individual interrogating a child on behalf of a peace officer or a law enforcement agency, may not engage in deception.~~

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

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

knowingly provide false information about evidence that is reasonably likely to elicit an incriminating response from the child.