The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL:	SB 668
INTRODUCER:	Senator Cruz
SUBJECT:	Custodial Interrogations of Minors
DATE:	January 10, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Pre-meeting**
2.			CF	
3.			RC	

I. Summary:

SB 668 creates s. 900.06, F.S., to prohibit deceptive tactics by a law enforcement officer or a juvenile officer during a custodial interrogation of a minor occurring at a place of detention. As an enforcement mechanism, the bill deems a resulting confession inadmissible in evidence unless the inadmissibility is overcome by the state attorney, by the preponderance of the evidence considering the totality of the circumstances.

The bill defines the terms "custodial interrogation," "deception," and "place of detention."

There is no reported fiscal impact associated with the bill.

The bill becomes effective July 1, 2022.

II. Present Situation:

Custodial Interrogation Legal Requirements

The Fifth Amendment to the United States Constitution states that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself."[1] Similarly, the Florida Constitution extends the same protection.[2]

Whether a person, adult or minor, is in custody and under interrogation are the threshold questions that determine the need for a law enforcement officer to advise the person of his or her *Miranda* rights.[3] If the person is being questioned in a custodial interrogation situation, he or she

[1] U.S. Const. amend. V.
[2] "No person shall be . . . compelled in any criminal matter to be a witness against himself." FLA. CONST. article I, s. 9.
[3] In *Miranda v. Arizona,* 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

"must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."[4]

The test to determine if a person is *in custody* for the purposes of his or her *Miranda* rights is whether "a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest."[5]

An *interrogation* occurs "when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response."[6]

Courts use a "reasonable person" standard in making the determination of whether a defendant was in custody at the time he or she made a statement.[7] The court considers, given the totality of the circumstances, whether a reasonable person in the defendant's position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.[8] Among the circumstances or factors the courts consider are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt;
- Whether the suspect is informed that he or she is free to leave the place of questioning;[9] and
- Whether any promises or misrepresentations were made by the interrogating officers.[10]

Admissibility of a Defendant's Statement as Evidence

The admissibility of a defendant's statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.[11]

For a defendant's statement, obtained during custodial interrogation, to become evidence in a criminal trial, the judge must first determine whether the statement was given after a free and voluntary waiver of rights. Perhaps the defendant gave a statement during custodial interrogation without being informed of his or her rights at all. Here too the court looks to the totality of the circumstances surrounding the statement to make the admissibility determination.[12] For example,

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[4] *Id*. at 444. *See also Traylor v. State*, 596 So.2d 957, 965-66 (Fla. 1992).

[5] *Traylor v. State,* 596 So.2d 957, n. 16; "Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." *J.D.B. v. North Carolina*, 546 U.S.261 (2011), quoting *Thompson v. Keohane*, 516 U.S. 99 (1995).

[6] *Traylor v. State,* 596 So.2d 957n. 17.

[7] *Id*., n. 16.

[8] *Voorhees v. State*, 699 So.2d 602, 608 (Fla. 1997).

[9] *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999).

[10] *Frazier v. Cupp,* 394 U.S. 731, 739 (1969).

[11] *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).

[12] To determine if a waiver is valid a court must make two inquiries. First, the court must determine if the waiver was voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception.

the court may consider issues surrounding the timing and manner in which the defendant was informed of his or her *Miranda* rights.

Specifically, the court may hear testimony from the defendant and any law enforcement officers involved, and review law enforcement officer's reports, and additional evidence such as audio or video recordings of the custodial interrogation. It is the State's burden to show by a preponderance of the evidence that there was no violation of the defendant's constitutional rights in obtaining the statement, and there was a free and voluntary waiver of rights.[13] A preponderance of evidence means that a party has shown that its version of facts is more likely than not the correct version.[14]

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify at trial and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that a law enforcement officer coerced the statement in some way, or that the defendant did not freely and voluntarily waive his or her rights.

Juvenile (Delinquency) – Specific Florida and Federal Law

Section 985.03(7), F.S., defines a "child," "juvenile," or "youth" as any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. A child is "taken into custody" immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.[15]

The Florida Supreme Court has declined to adopt an exclusionary rule that would automatically exclude all confessions given by those who are still under the jurisdiction of the juvenile delinquency court.[16] The U.S. Supreme Court has held that the admissibility of a juvenile's confession is based on the totality of the circumstances of the advisement of his or her rights and waiver of those rights, just as with adults.[17]

Fare v. Michael C., 442 U.S. 707, 725 (1979); *see also State v. Mallory*, 670 So.2d 103, 106 (Fla. 1st DCA 1996). Second, the court must determine whether the waiver was executed with a full awareness of the nature of the rights being abandoned and the consequences of their abandonment. *Fare*, 442 U.S. at 725; *Mallory*, 670 So.2d at 106. A court must use a totality of the circumstances analysis to determine whether a waiver of *Miranda* rights meets these criteria and is thus valid.

[13] *Colorado v. Connelly*, 479 U.S. 157 (1986), stating "[w]henever the State bears the burden of proof in a motion to suppress a statement that the defendant claims was obtained in violation of our *Miranda* doctrine, the State need prove waiver only by a preponderance of the evidence. *See Nix v. Williams*, 467 U.S. 431, 444, (1984); *United States v. Matlock*, 415 U.S. (1974). ("[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence ...")."

[14] The concept of "preponderance of the evidence" can be visualized as a scale representing the burden of proof, with the totality of evidence presented by each side resting on the respective trays on either side of the scale. If the scale tips ever so slightly to one side or the other, the weightier side will prevail. If the scale does not tip toward the side of the party bearing the burden of proof, that party cannot prevail. US Legal, available at https://courts.uslegal.com/burden-of-proof/preponderance-of-the-evidence/ (last viewed December 17, 2021).

[15] Section 985.03(48), F.S.

[16] *State v. Francois*, 197 So.2d 492 (Fla. 1967).

[17] *Gallegos v. Colorado*, 370 U.S. 49 (1962).

There is no statutory requirement that a law enforcement officer notify a juvenile's parent before interrogating the juvenile.[18] Once a juvenile has told a law enforcement officer that he or she does not want to speak with the officer until a parent arrives, however, all questioning must end.[19]

In cases of a juvenile's custodial interrogation, courts have considered the following objective factors when evaluating the totality of the circumstances:

- The point in time when the *Miranda* warnings were given and the waiver of rights, including right to counsel, obtained;[20]
- The suspect's age,[21] experience, education, background and intelligence;[22] and
- Despite the fact that it is not required, courts should consider whether the suspect's parents were contacted by law enforcement and whether the suspect was able to consult with them before questioning, if he or she desired.[23]

Deception by a law enforcement officer during custodial interrogation does not render a confession involuntary per se, but such deception should be made part of a court's totality of the circumstances analysis in judging the voluntariness and admissibility of a confession.[24]

Other States' Laws

Oregon enacted a law in 2021 prohibiting law enforcement officers from intentionally using information known by the officer to be false to elicit a statement from a juvenile suspect during custodial interrogation.[25] In the Oregon law such a statement made by the juvenile suspect is presumed to be involuntary. The presumption may be overcome by the state proving, by clear and convincing evidence that the statement was voluntary and not made in response to the false information. It means that the evidence is highly and substantially more likely to be true than untrue or that the fact finder must be convinced that the contention is highly probable.[26] In other

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[18] Section 985.101(3), F.S., requires law enforcement to try to notify a juvenile's parent or guardian when the juvenile is taken into custody, but the failure to comply with this section or the inability to contact the parent or guardian does not render a confession involuntary. *Neely v. State*, 126 So.3d 342 (Fla. 2013). *See also Frances v. State*, 857 So.2d 1002, 1003–04 (Fla. 5th DCA 2003) citing *Brancaccio v. State*, 773 So.2d at 583–84 (Fla. 4th DCA 2000); and *McIntosh v. State*, 37 So.3d 914 (Fla. 3d DCA 2010) regarding the juvenile being unable to confer with a parent or guardian.

[19] *B.P. v. State*, 815 So.2d 728 (Fla. 5th DCA 2002).

[20] *See Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999) where "police began questioning Ramirez at the police station after failing to first administer the *Miranda* warnings. When the police finally administered the *Miranda* warnings, the administration was not careful and thorough. To the contrary, there was a concerted effort to minimize and downplay the significance of the *Miranda* rights."

[21] [W]e hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative or even a significant, factor in every case...it is, however, a reality that courts cannot simply ignore. *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), (footnotes and citations omitted).

[22] *See Doerr v. State*, 348 So.2d 398 (Fla. 2d DCA 1977) where the suspect indicated that he had confessed because he "didn't want to hear [the detective's] mouth," and that "he was familiar with the *Miranda* warnings because he had heard them when the police had interrogated him on other occasions."

[23] *Doerr v. State*, 383 So.2d 905, 907 (Fla. 1980).

[24] *Frazier v. Cupp*, 394 U.S. 731, 738 (1969).

[25] 2021 Oregon Senate Bill 418A, signed by the Governor, July 14, 2021.

[26] *Colorado v. New Mexico*, 467 U.S. 310 (1984); Legal Information Institute, available at https://www.law.cornell.edu/wex/clear_and_convincing_evidence (last viewed December 17, 2021).

words, the party alleging the contention must prove that the contention is substantially more likely than not, true.

Illinois enacted S.B. 2122 (P.A. 102-101), effective January 1, 2022,[27] which is virtually identical to the Oregon law. The Illinois law has a slightly different definition of the term "place of detention," and requires that the presumption of inadmissibility of the confession be overcome by the preponderance of the evidence which is a lower standard than the Oregon law.[28]

Taking a different approach in Washington, new legislation taking effect in January 2022 will require an attorney to consult with a juvenile suspect before he or she can be questioned by law enforcement. With few exceptions, the juvenile's statement made prior to consulting the attorney is inadmissible.[29]

III. Effect of Proposed Changes:

The bill creates s. 900.06, F.S., which prohibits methods of juvenile "custodial interrogations" held at a "place of detention" which include the use of "deception."

The term "custodial interrogation" is defined by the bill as questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

"Deception" is defined as the knowing communication by a law enforcement officer or juvenile officer to a subject of a custodial interrogation of false facts about evidence or unauthorized statements regarding leniency. The term "juvenile officer" is not defined in the bill and the term does not occur in current law.[30]

The bill defines "place of detention" as a police station, sheriff's office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where a minor may be held in connection with a criminal charge or a petition for delinquency that has been or may be filed against the minor.[31]

The bill declares that an oral, written, or sign language confession of an individual who, at the time of the commission of the offense, was younger than 18 years of age, which is made as a result of a custodial interrogation conducted at a place of detention is presumed to be inadmissible as evidence against the minor making the confession in any criminal proceeding or any juvenile court proceeding if, during the custodial interrogation, a law enforcement officer or juvenile officer engages in deception.

[27] 705 ILCS 405/5-401.6.
[28] 725 ILCS 5/5-103-2.2.
[29] Engrossed Substitute House Bill 1140, Chapter 328, Laws of 2021, RCW 13.40.
[30] Section 985.03(27), F.S. defines "juvenile probation officer" as the authorized agent of the department who performs the intake, case management, or supervision functions. The department is the Department of Juvenile Justice.
[31] Section 1.01(13), F.S., defines "minor" as including any person who has not attained the age of 18 years.

The presumption of inadmissibility of the confession may be overcome by the state attorney by a preponderance of the evidence, based on the totality of the circumstances, that the confession was voluntarily made. If there is any objection by the minor that the state failed to call all material witnesses on the issue of the voluntariness of the confession, it must be made at the trial court level, not the appellate level.

The bill has an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill refers to a “juvenile officer” on lines 28 and 43. This term does not occur in the Florida Statutes.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 900.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.