

HB0404S01 compared with HB0404

~~deleted text~~ shows text that was in HB0404 but was deleted in HB0404S01.

inserted text shows text that was not in HB0404 but was inserted into HB0404S01.

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Representative Marsha Judkins proposes the following substitute bill:

JUVENILE INTERROGATION MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the interrogation of a child.

Highlighted Provisions:

This bill:

- ▶ addresses the presence of a parent, guardian, or friendly adult in the interrogation of a child;
- ▶ requires a law enforcement agency to make an audio or visual recording of an interrogation of a child;
- ▶ addresses admissibility of a recorded or unrecorded custodial interrogation of a child; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-6-206, as last amended by Laws of Utah 2022, Chapters 155, 312 and 335 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 155

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 false information or unauthorized statement.

(1) As used in this section:

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

(b) (i) "Friendly adult" means an adult:

(A) 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.

(c) (i) "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 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

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(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 subject to 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 80-2-705.

(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 at which the child is taken into custody.

(5) A child's parent or guardian, or a friendly adult if applicable under Subsection (2)(b), is present at a custodial interrogation if the parent, guardian, or friendly adult attends the custodial interrogation in person or by video.

~~[(5)]~~ (6) (a) If an individual is admitted to a detention facility under Section 80-6-205, committed to a secure care facility under Section 80-6-705, or housed in a secure care facility

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under Section 80-6-507, and the individual is subject to a custodial interrogation for an offense, the individual may not be interrogated unless:

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

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

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

(b) Subsection ~~[(5)(a)]~~ (6)(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 individual on behalf of a peace officer or a law enforcement agency.

~~[(6)]~~ (7) 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)]~~ (8) 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 knowingly:

(a) provide false information about evidence that is reasonably likely to elicit an incriminating response from the child; or

(b) make an unauthorized statement about leniency for the offense.

(9) (a) A law enforcement agency shall make an audio ~~recording~~ or ~~visual~~ an audio-video recording ~~of any~~ that accurately records a custodial interrogation of a child.

(b) A court shall determine whether a recorded or unrecorded custodial interrogation of a child is admissible in a prosecution of the child in accordance with Rule 616 of the Utah Rules of Evidence.