

JUVENILE INTERROGATION MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: Todd D. Weiler

LONG TITLE**General Description:**

This bill addresses the interrogation of a child.

Highlighted Provisions:

This bill:

- clarifies the requirements for an interrogation of a child;
- requires a law enforcement agency to make an audio or visual recording of an interrogation of a child;
- addresses the admissibility of a recorded or unrecorded interrogation of a child;
- addresses the admissibility of an admission, confession, or statement by a child as a result of an interrogation; 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 last amended by Laws of Utah 2023, Chapter 436

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 -- Prohibition on false information or unauthorized statement -- Admissibility of admission, confession, or statement by child.

(1) As used in this section:

(a) "Custodial interrogation" means any interrogation of a ~~[minor]~~ child 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) (a) If a child is subject to a custodial interrogation for an offense, the child has the right to have:

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

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

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

~~[(ii)]~~ (B) 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.

(b) A child's parent or guardian, or a friendly adult, is present at a custodial interrogation if ~~it~~ :

(i) ~~the~~ the parent, guardian, or friendly adult attends the custodial interrogation in person or by video ~~it~~ ; and

(ii) an interpreter is provided to the child and the parent, guardian, or friendly adult if the child or the parent, guardian, or friendly adult is unable to speak or understand English. ~~it~~

(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, in accordance with Subsection (4), of:
- (i) the child's constitutional rights; and
 - (ii) if the child has a right to have a parent, guardian, or friendly adult present during the interrogation under this section, 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 (6), the child's parent or guardian, or the friendly adult if applicable under Subsection (2)(b);]~~ if the child has a right to have a parent, guardian, or friendly adult present during the interrogation under this section, the child's parent or guardian, or a friendly adult, 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 being held in a detention facility or a secure care facility, the child has had a meaningful opportunity to consult with the child's appointed or retained attorney and the child's appointed or retained attorney is present for the interrogation; and
- ~~[(d)]~~ (e) 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) Before the custodial interrogation of a child by a peace officer or a juvenile probation officer, the peace officer or juvenile probation officer shall disclose the following to the child:
- (a) You have the right to remain silent.
 - (b) If you do not want to talk to me, you do not have to talk to me.
 - (c) If you decide to talk to me, you have the right to stop answering my questions or talking to me at any time.
 - (d) Anything you say can and will be used against you in court.
 - (e) If you talk to me, I can tell a judge and everyone else in court everything that you tell me.
 - (f) You have the right to have a parent or guardian, or a friendly adult if applicable, with you while I ask you questions.
 - (g) You have the right to a lawyer.
 - (h) You can talk to a lawyer before I ask you any questions and you can have that

lawyer with you while I ask you questions.

(i) If you want to talk to a lawyer, a lawyer will be provided to you for free.

(j) These are your rights.

(k) Do you understand the rights that I have just told you?

(l) Do you want to talk to me?

(5) (a) A peace officer's, or a juvenile probation officer's, compliance with Subsection (4) is determined by examining the entirety of the officer's disclosures to the child.

(b) A peace officer's, or a juvenile probation officer's, failure to strictly comply with, or state the exact language of, Subsection (4) is not grounds by itself for finding the officer has not complied with Subsection (4).

(6) ~~[A]~~ Notwithstanding Subsection (2), 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)]~~ as described in Subsection (3)(c) or to give permission to the custodial 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 or a juvenile probation officer has relied on that misrepresentation in good faith; ~~[or]~~

(c) a peace officer, a juvenile probation 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 temporary custody~~[-]; or~~

(d) the child is being held in a detention facility or a secure care facility and the child's appointed or retained attorney is required to be present for the interrogation as described in Subsection (7).

(7) (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 under Section 80-6-507, and the individual]~~ If a child is being held in a detention facility or a secure care facility and the child is subject to a custodial interrogation for an offense, the ~~[individual]~~ child may not be interrogated unless:

121 (i) the ~~[individual]~~ child has had a meaningful opportunity to consult with the
122 ~~[individual's]~~ child's appointed or retained attorney;

123 (ii) the ~~[individual]~~ child waives the individual's constitutional rights after consultation
124 with the ~~[individual's]~~ child's appointed or retained attorney; and

125 (iii) the ~~[individual's]~~ child's appointed or retained attorney is present for the
126 interrogation.

127 (b) Subsection (7)(a) does not apply to a juvenile probation officer or a staff member of
128 a detention facility, unless the juvenile probation officer or the staff member is interrogating
129 the ~~[individual]~~ child on behalf of a peace officer or a law enforcement agency.

130 (c) A child's appointed or retained attorney is present at a custodial interrogation as
131 described in this Subsection (7) if the attorney attends the custodial interrogation in person or
132 by video.

133 (8) If a child is subject to a custodial interrogation for an offense, a peace officer, or an
134 individual interrogating a child on behalf of a peace officer or a law enforcement agency, may
135 not knowingly:

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

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

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

141 (10) (a) If a peace officer or juvenile probation officer intentionally, knowingly,
142 ~~H→ [recklessly, or negligently]~~ or recklessly ←H fails to comply with the requirements for a
142a custodial interrogation of
143 a child as described in this section, any admission, confession, or statement made by the child
144 as a result of the custodial interrogation is presumed:

145 (i) to not be voluntarily, knowingly, and intelligently made; and

146 (ii) to not be admissible as evidence against the child.

147 (b) A prosecuting attorney may only overcome the presumption described in
148 Subsection (10)(a) by a preponderance of the evidence showing that the child had the ability to
149 comprehend and waive:

150 (i) the child's constitutional rights; and

151 (ii) if the child has a right to have a parent, guardian, or friendly adult present under

152 this section, the child's right to have a parent or guardian, or a friendly adult, present during the
153 custodial interrogation.

154 (c) When a custodial interrogation of a child is not accurately recorded as described in
155 Subsection (9), a court shall determine whether a statement made by the child in the custodial
156 interrogation is admissible in accordance with Rule 616 of the Utah Rules of Evidence.

157 [~~(9)~~] (11) A minor may only waive the minor's right to be represented by counsel at all
158 stages of court proceedings as described in Section [78B-22-204](#).

159 Section 2. **Effective date.**

160 This bill takes effect on May 1, 2024.