SENATE BILL REPORT
SB 5288

As Reported By Senate Committee On:
Human Services & Corrections, February 24, 2005

Title: An act relating to juveniles in the custody of law enforcement officers.

Brief Description: Specifying how custodial interrogations of juveniles may be conducted.

Sponsors: Senators McAuliffe, Hargrove, Stevens, Regala, Thibaudeau and Carrell.

Brief History:
Committee Activity: Human Services & Corrections: 2/7/05, 2/24/05 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5288 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Brandland, Carrell, McAuliffe and Thibaudeau.

Staff: Kiki Keizer (786-7430)

Background: In order to ensure the integrity of statements that are to be used as evidence against an accused person at trial, the law imposes certain safeguards. For example, interrogations of a person, who is in custody but not charged, cannot go on indefinitely. Persons who are taken into custody must also be informed of their rights to remain silent and to consult counsel before being interrogated by police. Notice to persons taken into custody of their rights to remain silent and to consult with counsel are commonly called *Miranda* warnings.

Waivers of the rights that are stated in *Miranda* warnings are only acceptable if they are voluntary and knowing. A waiver would not be considered voluntary, nor would it be effective, if it were obtained through the use of brute force. Neither is just hearing the words of the *Miranda* warning enough for an effective waiver, if the person hearing the words does not have the functional ability to process information or know what the words mean. A court determines if a *Miranda* warning is validly waived by examining the totality of the circumstances in a particular case. In other words, the court would examine the facts surrounding a particular interrogation and the characteristics of the person who is the subject of the interrogation.

Empirical studies have shown that most juveniles who are 14 years old or younger, and many who are aged 15 to 17, do not understand *Miranda* warnings as well as the average adult offender. For this reason, some states have put additional safeguards in place when the subject of a police interrogation is a juvenile.

Summary of Substitute Bill: Law enforcement officers taking a juvenile into custody must immediately make reasonable attempts to notify a parent, guardian, or custodian that the juvenile is in custody and where the juvenile is being held.

When a parent, guardian, or custodian of a child who is in custody requests to consult with the child and makes himself or herself immediately available, he or she must be permitted to consult with the child upon request unless the child objects to the consultation in the parent's presence or the parent is a codefendant or a victim of the child.

The child must get a *Miranda* warning before he or she is questioned in custody.

Substitute Bill Compared to Original Bill: When a parent, guardian, or custodian of a child who is in custody requests to consult with the child and makes himself or herself immediately available, he or she must be permitted to consult with the child upon request unless the child objects to the consultation in the parent's presence or the parent is a codefendant or a victim of the child. The child must get a *Miranda* warning before he or she is questioned in custody. A legislative intent section is added.

The provisions making statements inadmissible unless certain conditions are met are eliminated.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Even bright juveniles are relatively immature and vulnerable in pressured situations. They may not have the judgment or ability to withstand the pressure of peer influence or the pressure of a custodial interrogation. The best single way to prevent impulsive statements and false confessions by juveniles is to have the parent present when the juvenile is confronted. This gives the juvenile the opportunity to consult with the one person he depends on for guidance. The juvenile may then speak in consideration of his choices, not out of desperation. It also gives parents the opportunity to guide their children at a moment of crisis. Often parents will advise a child to talk to the police.

Current law alienates the parent from the process. Parents may be in a position to explain to law enforcement that the child has mental health issues or is developmentally delayed. Parents may be able to get their children medical help, such as drug treatment, if they are aware of certain behaviors and involvement with law enforcement at an early stage. Sometimes children's futures are destroyed because their parents were unaware that they were in trouble and, therefore, failed to take action. Legally challenging a coerced or false confession after the fact can also be a painful and expensive process. It is critical for parents to know what is going on with their children and to get involved from the beginning. Parents should be able to communicate with their children without fearing that their communication can later be used against their children.

Children need to know that police can be trusted and that they are there to help. Children who believe that they are treated fairly are less likely to re-offend.

Testimony Against: Courts are already required to determine whether a statement was voluntarily obtained. Courts are in the best position to determine whether a statement should be suppressed.

Some juveniles are very sophisticated and know their rights.

Police need the tools to investigate what happened in a particular case. What if a parent doesn't want a child talking to the police, and the child is guilty?

Police may have limited staff and resources when they question a juvenile on-site. As a practical matter, waiting for a parent to show up may be difficult, particularly when police are needed to respond to other incidents. It may be difficult to implement a rule that a reasonable effort to notify parents is required.

Who Testified: PRO: Rev. Paul A. Stoot, Sr., Greater Trinity Baptist Church; Dr. Gloria Mitchell, elementary school principal; Susan Goolsbee, parent; Paul Holland, Seattle University School of Law, Ronald Peterson Law Clinic; Kathy Prunty, Skagit County Public Defender; V. Wayne Elliott, citizen; Delton Young, Ph.D., psychologist.

CON: Tom McBride, Washington Association of Prosecuting Attorneys; Chuck Lind, King County DPA; Mike Vandiver, Chief of Police, City of Tumwater.