
Education Committee

ESSB 6065

Brief Description: Adopting policy and procedures on student interviews and interrogations.

Sponsors: Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Wellman, Hunt and Hasegawa).

Brief Summary of Engrossed Substitute Bill

- Requires school districts to adopt a policy and procedures for interviews and interrogations of students on school premises that meets minimum requirements.
- Requires school districts to notify law enforcement officers within their boundaries of the adopted interview and interrogation policy and procedures.

Hearing Date: 2/19/18

Staff: Megan Wargacki (786-7194).

Background:

Rights of the Accused.

The federal and state constitutions protect the right against self-incrimination and the right to counsel. In 1966, in *Miranda v. Arizona*, the Supreme Court of the United States (SCOTUS) adopted a set of prophylactic measures designed to safeguard the constitutional right against self-incrimination. Thus, prior to a law enforcement interrogation, a suspect must be warned that he or she has a right to remain silent, that any statement made may be used as evidence, and that he or she has a right to an attorney. Law enforcement officers are able to speak to suspects without providing *Miranda* warnings as long as the person is not in custody, that is the person is free to leave if he or she refuses to cooperate.

In 2011 the SCOTUS held, by a vote of five to four, that so long as a child's age is known to the law enforcement officer at the time of the interview, or would have been objectively apparent to any reasonable officer, age must be included as part of the custody analysis. The case involved a 13 year old, suspected of home break-ins, who was removed from his classroom by a uniformed

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officer and escorted to a closed-door conference room. The child was questioned by two police officers, with two administrators present, for at least thirty minutes and the child's guardian was not contacted. The child confessed to the break-ins after learning of the prospect of juvenile detention. The SCOTUS found that a reasonable child subjected to law enforcement interrogation would sometimes feel pressured to submit when a reasonable adult would feel free to leave.

State law provides that a child who is 12 years old or older may waive his or her constitutional rights after being fully informed of the rights being waived, but the waiver must be express and intelligently made. State law also provides that a child under 12 years old cannot waive his or her rights, though the child's rights may be waived by the child's parent or guardian.

Model Policy and Procedures on Student Interviews and Interrogations.

In July of 2013, the Washington State School Directors' Association (WSSDA) developed a model policy and procedure on interviews and interrogations of students on school premises. Under the model policy, a school district encourages interviews and interrogations of students by law enforcement, or state or local health departments to take place off school premises in order to minimize interruption to the instructional program. The model procedure for interviews and interrogations of students addresses child abuse and neglect investigations, criminal investigations, and health department communicable disease investigations. Regarding investigations not involving child abuse or neglect, the model procedure includes: notification of a student's parent or guardian unless law enforcement indicates that child abuse or neglect is alleged; specifies different protocols for students of different ages; and allows for interview or interrogation of a student without a parent or guardian in some circumstances, such as if the student consents or if further delay would impair the handling of an emergency.

Part of the WSSDA model policy was developed in response to a legislative directive requiring WSSDA to create a model policy addressing protocols when a child welfare interview is conducted on school premises. In developing this part of the model policy, the WSSDA was required to consult with the Washington Association of Sheriffs and Police Chiefs and the Department of Social and Health Services.

Summary of Bill:

By August 1, 2018, school districts must adopt a policy and procedures for interviews and interrogations of students on school premises, that at a minimum, incorporates the model policy and procedures on this topic revised by the WSSDA in July of 2013.

The policy and procedures must also include the following for law enforcement interviews and interrogations of students not involving child abuse or neglect investigations:

- If a student is under 12 years old, parents, guardians, or designated adults must be notified and give permission before any interview or interrogation takes place unless the law enforcement officer has a warrant, court order, or indicates that exigent circumstances exist;
- If a student is 12-18 years old, the principal or designee will make a reasonable effort to contact the parents or guardians prior to the interview or as soon as possible thereafter. If a parent or guardian cannot be contacted, the principal or designee will contact the designated adults noted on the student's emergency contact card for their consent. Parent

contact is not required when the law enforcement officer has a warrant, court order, or indicates that exigent circumstances exist;

- If a student is 18-21 years old, the principal or designee is not required to contact the parents or guardians before an interview or interrogation; and
- Except when exigent circumstances apply, law enforcement officers must recognize the potential time delay for parents or guardians to be contacted and a reasonable time for parents or guardians to arrive at the school. "Exigent circumstances" means circumstances that include, but are not limited to, serious threats to the health and safety of students and staff.

Districts must notify law enforcement officers within their boundaries of the adopted interview and interrogation policy and procedures. The notification may occur by electronic means.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.