

August 17, 2020

## MEMORANDUM

**To:** Seattle City Council  
**From:** Greg Doss, Analyst  
**Subject:** CB 119840 – MiChance Dunlap-Gittens Bill

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On Monday, August 17, 2020, the City Council is scheduled to consider and vote on Council Bill (CB) 119840, which would require Seattle Police Department (SPD) officers to make available legal counsel for any youth that would be questioned or searched in certain situations. This memo provides background and summarizes the bill. The City Attorney's Office (CAO) has provided legal review of this legislation, which has been provided to Councilmembers in a separate memo.

### Summary of Proposed Bill

CB 119840 would require that after an SPD officer administers Miranda warnings to a youth (someone under the age of 18) the youth must consult with legal counsel remotely or in-person before any further questioning of the youth may occur. The bill provides an exception to this requirement if an officer reasonably believes the information sought is necessary to protect life from an imminent threat; even in such a circumstance, the officer must limit questioning to that purpose.

The bill would also require that the youth consult with legal counsel remotely or in-person before an SPD officer asks a youth to consent to a search of the youth or any property, abode, or vehicles belonging to the youth.

In each instance when an SPD officer invokes the allowable exception (i.e., protecting life from an imminent threat), the officer would be required to record the circumstances for inclusion in a quarterly report that would be provided to the Seattle Inspector General, the Seattle City Attorney's Office (CAO), the King County Prosecuting Attorney (KCPAO), and the Director of the King County Department of Public Defense (DPD). Finally, the bill notes that any failure to comply with bill provisions would not affect the admissibility of any evidence in court.

### Background

In February 2019, the San Francisco Board of Supervisors unanimously adopted an ordinance requiring that youth age 17 and under consult with legal counsel before waiving Miranda rights. The ordinance was named the "Jeff Adachi Youth Rights" ordinance in honor of the late San Francisco Public Defender.

King County DPD has recommended that King County and the City of Seattle adopt a similar measure to ensure that youth understand their constitutional rights when law enforcement administers the Miranda warning or asks the youth to consent to a search.

Similar King County measures: In 2017, King County adopted Ordinance 18503, which prohibits the King County Department of Adult and Juvenile Detention from allowing custodial interrogation and the waiver of any Miranda rights until after a juvenile consult with an attorney. It also prohibits DAJD from releasing a juvenile in its custody to law enforcement without a court order. The King County Council is currently considering Proposed Ordinance 2020-0253, which mirrors many of the substantive provisions of CB 119840.

Seattle Police Department Policies: The Seattle Police Department (SPD) Policy Manual contains specific rules that govern how an officer may investigate, arrest and mirandize youth (See Attachment 1). These rules:

- a. note that a juvenile's age is a consideration in determining whether the juvenile would not feel free to leave;
- b. require additional warnings when a youth is mirandized; and
- c. require that only a parent or guardian may waive the rights of a juvenile under the age of 12.

Prosecution of Youth: Prosecution of juveniles is handled by the King County Superior Court. According to the KCPAO's Office, the Juvenile Division of the King County Prosecutor's Office is tasked with carrying out the duties of the prosecutor in a manner consistent with the purposes of the Juvenile Justice Act (JJA) which include providing for:

- a. punishment commensurate with the age, crime, and criminal history of the juvenile offender;
- b. rehabilitation and reintegration of juvenile offenders; and
- c. handling of juvenile offenders by the communities whenever consistent with community safety.

## **Analysis**

Numerous studies have shown that youths' brains differ from adults' brains and have highlighted that youths may not possess the same mental capacity to make decisions that can have serious, long-term consequences. Additionally, youths are more likely to be intimidated by authority figures and to answer questions in a manner that contradicts their own interests. The bill's recitals note several studies that support this conclusion:

1. Developmental and neurological science concludes that the process of cognitive brain development continues into adulthood, and that the human brain undergoes “dynamic changes throughout adolescence and well into young adulthood.”<sup>1</sup>
2. Adolescent thinking tends to either ignore or discount future outcomes and implications, and disregard long-term consequences of important decisions.<sup>2</sup>
3. Youth are more suggestible than adults, may easily be influenced by questioning from authority figures, and may provide inaccurate reports when questioned in a leading, repeated, and suggestive fashion.<sup>3</sup>
4. More than one-third (35 percent) of proven false confessions were obtained from suspects under the age of 18.<sup>4</sup>
5. Black children commonly feel a great deal of fear and distrust when interacting with law enforcement, as a result of their own experiences and those of their friends, family, and community members, especially those who have been verbally or physically abused by the police.<sup>5</sup>

Over the past decade, developmental brain science has influenced court decisions and led law enforcement to re-examine the way juveniles are informed of their constitutional rights. As is noted in the bill recitals, the Supreme Court has recognized that youth are “generally are less mature and responsible than adults;” “they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them;” “they are more vulnerable or susceptible to ... outside pressures than adults;” and they “characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”<sup>6</sup> In 2017, the King County Sheriff’s Office (KCSO) implemented a new Miranda warning that may be easier for a youth to understand (see Attachment 2). As noted earlier, SPD requires additional Miranda warnings be given to youth (see Attachment 1).

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<sup>1</sup> Richard J. Bonnie, et al., *Reforming Juvenile Justice: A Developmental Approach*, National Research Council (2013), p. 96, and Ch. 4)

<sup>2</sup> Steinberg et al., “Age Differences in Future Orientation and Delay Discounting,” *Child Development*, vol. 80 (2009), pp. 28-44; William Gardner and Janna Herman, “Adolescents’ AIDS Risk Taking: A Rational Choice Perspective,” in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al. (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer, “Recognizing the Child in the Delinquent,” *Kentucky Children’s Rights Journal*, vol. 7 (Summer 1999), pp. 16-17; National Juvenile Justice Network, “Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates,” September 2012, pp. 1-2; Catherine C. Lewis, “How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications,” *Child Development*, vol. 52 (1981), pp. 538, 541-42)

<sup>3</sup> J.D.B., 564 U.S. 261, 269, 272-273 (2012)

<sup>4</sup> Drizen & Leo, *The Problem of False Confession in the Post-DNA World* (2004) 82 N.C.L. 11 Rev. 891, 902, 944-945. fn 5

<sup>5</sup> Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 *American University Law Review* 1513 (June, 2018)

<sup>6</sup> J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011). As stated in *Graham v. Florida*, 560 U.S. 48, 78 (2010)

While KCSO and SPD recognize the necessity of treating youth differently than adults, both agencies have in the past indicated that questioning of youth is essential to investigations and that an attorney is likely to advise a youth to assert his or her right to remain silent. Both agencies have also indicated that such a change would interfere with enforcement of serious crimes and may prohibit the youth from offering exculpatory information. On July 13, 2020 the PAO, KCSO, and the Seattle Executive sent to Councilmembers a joint memorandum that expressed these positions on an earlier draft of the bill<sup>7</sup>. While significant changes were made to the version that was ultimately introduced, the Seattle Executive has affirmed that the concerns have not been alleviated in CB 119840:

1. there exist multiple constitutionally tested safeguards in place to assess the voluntary nature of the juvenile's confession;
2. the proposal will further erode trust between juveniles and law enforcement and will lead to more arrests of juveniles and increased danger to the community; and
3. the proposed ordinance is impractical and will lead to unjust and potentially dangerous results.

The Seattle Executive has indicated that it may provide to the Council a memo that expresses these and potentially other concerns with CB 119840. Upon receipt, Central Staff will forward this memo to Councilmembers.

On the issue of exculpatory statements, DPD staff have indicated that its defense attorneys have seen police reports where a youth offered exculpatory information or denied committing an offense and that information was either not believed or was disregarded by the investigating officer or detective. Additionally, DPD indicates that the legislation would not prevent a youth from offering exculpatory information to an investigating officer. Rather, the Council Bill would require that a youth subject to custodial interrogation consult with an attorney regarding their Constitutional rights before deciding whether it is in their legal interest to respond to an officer's questions.

Central Staff was not able to obtain from DPD or SPD any data on the number of youths that are mirandized and then provide either exculpatory statements or incriminating statements.

Admissibility of statements or searches that are not compliant with the provisions of CB 119840: CB 119840 would not bind King County prosecuting attorneys or other agencies, so it is possible that an SPD officer's failure to comply with CB 119840 would not impact a prosecution by a prosecuting attorney in King County Superior Court (where the City is not a party). However, an SPD officer's failure to follow the ordinance may result in the affirmative decision by a prosecutor to voluntarily dismiss a juvenile prosecution resulting from that arrest. Finally, a defense attorney could move to suppress evidence if an SPD officer failed to comply with City

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<sup>7</sup> Before introduction of CB 119840, the DPD had circulated to some Councilmembers a bill draft that might have required an attorney for pre-Miranda questioning and before any search could be performed.

law (and likely SPD policy). If this scenario occurs, the court has discretion to determine the appropriate remedy for violation of CB 119840, which may include dismissal or suppression.

**Next Steps**

As noted above, CB 119840 is scheduled for a vote at the City Council meeting on August 17.

**Attachments:**

1. Seattle Police Department (SPD) Policy Manual 6.150 - Advising Persons of Right to Counsel and Miranda and 6.290 - Juvenile Investigations and Arrests.
2. King County Sheriff's Office Juvenile Miranda Warning

cc: Kirstan Arestad, Executive Director  
Dan Eder, Deputy

# **6.150 - Advising Persons of Right to Counsel and Miranda**

Effective Date: 01/01/2015

## **6.150-POL**

This policy applies to all sworn employees.

### **1. Officers Shall Advise All Arrestees of Their Full Miranda Rights**

Officers shall give this advisement to all persons taken into custody, regardless of interview, as soon as practical.

### **2. Miranda Warnings Must Precede Custodial Interview**

Officers must give Miranda warnings before questioning a person who is in custody. (i.e., custodial interview)

- A juvenile's age is a consideration in determining whether the juvenile would not feel free to leave. A child may be in custody for purposes of the Miranda rule when an adult in the same circumstances would not.

If the arresting officer is awaiting the arrival of a follow up detective, the officer may postpone the reading of Miranda and the interview.

### **3. Officers Must Include All Elements of Miranda and Establish Understanding**

When advising a person of Miranda, officers will include the following statements:

- "You have the right to remain silent."
- "Anything you say can be used against you in a court of law."
- "You have the right at this time to talk to a lawyer and have your lawyer present with you while you are being questioned."
- "If you cannot afford to hire a lawyer, one will be appointed to represent you before questioning, if you wish."

Officers will establish that the suspect understands in one of two ways:

- By asking "Do you understand" after each of the four Miranda warnings, or
- By asking "Do you understand each of these rights?" after reading all of the warnings.

**Attachment 1 - Seattle Police Department (SPD) Policy Manual 6.150 - Advising Persons of Right to Counsel and Miranda and 6.290 - Juvenile Investigations and Arrests**

Officers may then begin asking questions.

If the arrestee makes a comment that causes the officer to believe that the arrestee might be requesting an attorney, officers will ask the arrestee to confirm, with a “yes” or “no” answer, whether the arrestee is requesting an attorney.

**4. Officers Shall Read Additional Warning for Juveniles**

When reading Miranda to a juvenile, officers shall include the following warning:

- “If you are under the age of 18, anything you say can be used against you in a juvenile court prosecution for a juvenile offense and can also be used against you in an adult court criminal prosecution if you are to be tried as an adult.”

A parent or guardian must waive the rights of a juvenile under the age of 12 and has the right to be present during the interview.

**5. Officers Shall Include Additional Warning for the Hearing-Impaired**

When advising a person who is hearing-impaired of Miranda, officers shall include the following warning:

- “If you are hearing-impaired, the Seattle Police Department has the obligation to offer you an interpreter without cost and will defer interviews pending the appearance of the interpreter.”

**6. Officers Shall Provide Miranda in Appropriate Language**

When advising a person who speaks limited English of Miranda, officers shall give Miranda warnings in an appropriate language to establish understanding.

**7. Officers Shall Document the Advising of Miranda**

Officers may document the Miranda advisement in at least one of the following ways:

- Explanation of Rights Form (English/ Spanish)
- Officer statement
- Department-approved recording device (This includes In-Car Video)

If officers are recording a custodial interview, the Miranda warnings must also be recorded, even if they

**Attachment 1** - Seattle Police Department (SPD) Policy Manual 6.150 - Advising Persons of Right to Counsel and Miranda and 6.290 - Juvenile Investigations and Arrests

## **8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer**

Once an arrestee invokes the right to counsel, officers shall stop questioning unless the suspect reinitiates contact. Though officers may not ask further questions, they may document anything the arrestee says that is unsolicited.

**Exception:** Officers may continue questioning related to locating a kidnapped or missing person, or evidence, such as a gun, for public safety reasons.

## **9. Should an Arrestee Clearly Invoke the Right to Remain Silent, Officers Must Read Miranda Again if They Later Re-Initiate Contact**

# **6.290 - Juvenile Investigations and Arrests**

Effective Date: 01/01/19

## **6.290 – POL**

This policy applies to the investigations and arrests of juveniles.

### **1. Definitions**

Juvenile: someone under 18 years of age not previously transferred to the jurisdiction of adult court.

Guardian: A person designated by the court as being responsible for the child in the same manner as a parent (e.g. foster parent).

When a particular juvenile's jurisdiction has been transferred from juvenile court to adult court, the juvenile is considered to have been declined.

### **2. Officers Will Exercise Reasonable Discretion when Determining the Disposition of Juveniles**

When choosing between different alternatives, officers will consider the following factors:

- The nature of the offense
- The age and circumstance of the offender
- The mental health of the offender



**Attachment 1** - Seattle Police Department (SPD) Policy Manual 6.150 - Advising Persons of Right to Counsel and Miranda and 6.290 - Juvenile Investigations and Arrests

- The prior record of the offender
- The availability of community-based rehabilitation programs
- The likelihood that the choice will satisfactorily resolve the problem

### **3. Officers Will Have Juveniles Transported to Children's Hospital for Involuntary Commitments**

When an officer determines that a juvenile meets the criteria for an involuntary commitment, the juvenile will be sent to Children's Hospital.

### **4. Officers Will Notify Parents of Arrest as soon as Possible**

Officers will make reasonable attempts to contact the parents/guardians of arrested juveniles to advise them of the juvenile's status and location. This will be documented in the Report.

- Officers will document the name, date of birth, address and telephone number of the parent/guardian contacted.

### **5. Officers Will Use the Juvenile Miranda Language (See: [6.150 - Advising Persons of Right to Counsel and Miranda](#))**

When taking a written suspect statement, officers will use the Explanation of Rights (JUVENILE) (Form 9.28.2).

- In order to ensure that rights are understood, an officer may ask a juvenile to explain each warning in his or her own words.

### **6. Parents Must be Present for Juveniles Under 12 to Waive Their Rights**

A parent or guardian will be present and must waive the rights of a juvenile under the age of 12.

### **7. Patrol Officers Will Obtain Statements for Juvenile Criminal Cases**

- Officer statements
- Victim statements
- Witness statements

If the officer cannot obtain the above statements, the reason will be documented in the Report narrative.

**Attachment 1** - Seattle Police Department (SPD) Policy Manual 6.150 - Advising Persons of Right to Counsel and Miranda and 6.290 - Juvenile Investigations and Arrests

## **8. SPD Employees May Share Juvenile Records with Outside Juvenile Justice Agencies that are Actively Investigating the Juvenile**

The Department will not release juvenile records to outside agencies for any purpose other than assistance with an active investigation.

- Per [RCW 13.50.010\(1\)\(a\)](#), “juvenile justice or care agency” means any of the following: police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the Legislative Children’s Oversight Committee, the Office of the Family and Children’s Ombudsman, the Department of Social and Health Services and its contracting agencies, schools, persons or public or private agencies having children committed to their custody, and any placement oversight committee created under [RCW 72.05.415](#)

(Read "RIGHTS" on other side first)

**Now explain that you will read a version for juveniles:**

1. You have the right to remain silent, which means that you don't have to say anything.
2. It's OK if you don't want to talk to me.
3. If you do want to talk to me, I can tell the juvenile court judge or adult court judge and Probation Officer what you tell me.
4. You have the right to talk to a free lawyer right now. That free lawyer works for you and is available at any time – even late at night. That lawyer does not tell anyone what you tell them. That free lawyer helps you decide if it's a good idea to answer questions. That free lawyer can be with you if you want to talk with me.
5. If you start to answer my questions, you can change your mind and stop at any time. I won't ask you any more questions.

**Juvenile Waiver of Rights:**

1. Do you understand? (If yes, then continue to number 2)
2. Do you want to have a lawyer? (If no, then continue to number 3)
3. Do you want to talk with me? (If yes, then proceed with questioning)

KCSO C-160 (Side B) 09/17 Previous editions obsolete