



Legislation Text

File #: CB 119840, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE named in honor of MiChance Dunlap-Gittens and relating to the Seattle Police Department; prohibiting law enforcement officers from questioning, except in limited circumstances, persons 18 years of age or younger where a Miranda warning is administered unless legal counsel is provided; prohibiting law enforcement officers from requesting permission from a person under 18 years of age to conduct a search of the person or property, dwellings, or vehicles under that person's control unless legal counsel is provided for that person; and adding a new Section 3.28.147 to the Seattle Municipal Code.

WHEREAS, 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” (see Richard J. Bonnie, et al., Reforming

Juvenile Justice: A Developmental Approach, National Research Council (2013), p. 96, and Ch. 4); and

WHEREAS, as recognized by the United States Supreme Court, children “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 “characteristically lack the capacity to exercise mature judgment and possess

only an incomplete ability to understand the world around them.” *J.D.B. v. North Carolina*, 564 U.S.

261, 272 (2011). As stated in *Graham v. Florida*, 560 U.S. 48, 78 (2010), children “have limited

understandings of the criminal justice system and the roles of the institutional actors within it.”; and

WHEREAS, pursuant to the Fifth Amendment of the United States Constitution, custodial interrogation of an

individual by law enforcement requires that the individual be advised of their rights and make a

knowing, intelligent, and voluntary waiver of those rights before the interrogation proceeds. *Miranda v.*

Arizona, 384 U.S. 436 (1966). The individual must have “full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (citation omitted); and

WHEREAS, Article 1, Section 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution govern when an individual’s person or belongings may be searched by law enforcement. “It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is per se unreasonable...subject only to a few specifically established and well-delineated exceptions.” *Shneckcloth v. Bustamonte*, 412 U.S. 218, 219 (1973); and

WHEREAS, it is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent. *Davis v. United States*, 328 U.S. 582, 593-94 (1946); *Zap v. United States*, 328 U.S. 624, 630 (1946, vacated, 330 U.S. 800 (1947)); *Florida v. Royer*, 460 U.S. 491, 497, 103 S. Ct. 1319, 1323-24, 75 L. Ed. 2d 229 (1983); and

WHEREAS, if law enforcement asks for a person’s consent to search, the government has the burden of demonstrating the voluntariness of the consent. *State v. Shoemaker*, 85 Wn.2d 207, 210 (1975) (citation omitted). To be valid, the consent must be voluntary and the search must not exceed the scope of consent. *State v. Hastings*, 119 Wn.2d 229, 234 (1992). Whether consent is freely given is a question of fact dependent upon the totality of the circumstances, which includes “(1) whether Miranda warnings had been given prior to obtaining consent; (2) the degree of education and intelligence of the consenting person; and (3) whether the consenting person had been advised of his right to consent.” *Shoemaker*, 85 Wn.2d at 211-12 (citations omitted); and

WHEREAS, a large body of research has established that adolescent thinking tends to either ignore or discount future outcomes and implications, and disregard long-term consequences of important decisions (see, e.g., 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); and

WHEREAS, an extensive body of literature demonstrates that 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 (*See J.D.B.*, 564 U.S. 261, 269, 272-273 (2012)). Recent research has shown that more than one-third (35 percent) of proven false confessions were obtained from suspects under the age of 18. (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); and

WHEREAS, 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. (Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 *American University Law Review* 1513 (June, 2018); and

WHEREAS, in 2019, approximately 20 percent of the youth referred to the King County Prosecuting Attorney’s Office, Juvenile Division, were referred by the Seattle Police Department (SPD) and 22 percent of the filings were from SPD referrals. In 2018, approximately 22 percent of the youth referred to the King County Prosecuting Attorney’s Office, Juvenile Division, were referred by SPD and 24 percent of the filings were from SPD referrals, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 3.28.147 of the Seattle Municipal Code is added to Subchapter I of Chapter 3.28 as follows:

3.28.147 Youth right to legal counsel

A. This Section 3.28.147 may be known and cited as the “MiChance Dunlap-Gittens Ordinance” in honor of MiChance Dunlap-Gittens, who dreamed of one day going to law school and championing the rights of young people.

B. As used in this Section 3.28.147:

1. “Miranda warning” means verbal warnings given by law enforcement advising the individual that the individual has the right to remain silent, the right to consult with legal counsel and have counsel present during questioning, and the right to have legal counsel appointed if the individual cannot afford legal counsel.

2. “Officer” means an officer of the Seattle Police Department.

3. “Youth” means any person younger than 18 years of age.

C.

1. Except as provided in subsection 3.28.147.D, no officer may, unless legal counsel is provided for the youth: ask questions of a youth after administering a Miranda warning that are only permissible after administering a warning; or request required consent or authorization from a youth to search the youth or persons, property, dwellings, or vehicles under the youth’s control. The youth’s consultation may be in person, by telephone, or by video conference and may not be waived, regardless of custody status. Nothing in this Section 3.28.147 affects the youth’s right to waive counsel after consultation.

2. After the youth has consulted with legal counsel, the youth may advise, have a parent or guardian advise, or direct legal counsel to advise, the officer as to whether the youth chooses to assert a constitutional right. Any assertion of rights by the youth via legal counsel shall be treated by an officer as though it came from the youth.

D. The provisions of subsection 3.28.147.C do not apply to questioning after an officer issues a Miranda warning, if:

1. The officer who issued the warning reasonably believes the information sought is necessary to protect life from an imminent threat;
2. Delay to allow legal consultation by phone would hamper the protection of life from an imminent threat; and
3. The questioning is limited to matters reasonably expected to obtain information necessary to protect life from an imminent threat.

E. Officers shall prepare a written record for each incident invoking subsection 3.28.147.D. The record shall document:

1. The time the youth was given a Miranda warning;
2. The time the youth was questioned without legal consultation;
3. The reasons that justified questioning the youth without legal consultation;
4. The questions posed to the youth;
5. The youth's name, age, and race; and
6. The name and badge number of the officer(s) involved in the incident.

F. On a quarterly basis, the Seattle Police Department shall provide copies of the records required by subsection 3.28.147.E, with the youth's name redacted and replaced with initials, to the Seattle Inspector General, the Seattle City Attorney's Office, the King County Prosecuting Attorney, and the Director of the King County Department of Public Defense.

G. Failure to comply with this Section 3.28.147 does not affect the admissibility of any evidence in court.

Section 2. The provisions of this ordinance are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the application thereof to

any landlord, prospective occupant, tenant, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)