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SB 1052: Miranda Rights for Minors

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Welfare and Institutions

SB 1052: *Miranda* Rights for Minors

*Albert G. Mendoza**

Code Sections Affected

Welfare and Institutions Code § 625.6 (new).
SB 1052 (Lara and Mitchell); Vetoed.

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I. INTRODUCTION

At the age of ten, Joseph shot and killed his father while he slept on the couch.¹ Joseph suffered physical and sexual abuse, neglect, and exposure to “heroin, methamphetamine, LSD, marijuana and alcohol” in the womb.² He also suffered from attention deficit hyperactivity disorder and exhibited a lower than average intelligence.³ Law enforcement later interrogated Joseph with his stepmother sitting beside him.⁴ During the custodial interview, officers advised Joseph of his *Miranda* rights,⁵ and he purportedly waived these rights.⁶ During his interrogation, law enforcement instructed Joseph that he had the right to remain silent, and when asked whether he understood what this meant, he answered, “Yes, that means that I have the right to stay calm.”⁷ Joseph failed to accurately state the legal significance of remaining silent⁸ and subsequently confessed to shooting and killing his father.⁹ The juvenile court found that Joseph understood the wrongfulness of his conduct and found Joseph guilty of second-degree murder.¹⁰ In doing so, the court held that the prosecutor overcome a statutory presumption of incapacitation.¹¹ Joseph was sentenced to a maximum confinement time of 40 years to life, and the court adjudicated him a ward.¹²

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1. *In re Joseph H.*, 238 Cal.App.4th, 517, 522, 188 Cal.Rptr.3d 171, 176 (4th Dist. 2015).
2. *Id.*
3. *Id.* at 517, 523.
4. *In re Joseph H.*, 200 Cal.Rptr.3d. 1, 1, 367 P.3d 1, 1 (Cal. 2015).
5. *Miranda v. Ariz.*, 384 U.S. 436, 467 (1966) (stating that the Fifth Amendment provides a suspect with the privilege against compelled self-incrimination and the right to consult with counsel or have counsel present prior to or during police questioning).
6. *In re Joseph H.*, 200 Cal. Rptr.3d. at 1, 367 P.3d at 1.
7. *Id.* at 3.
8. *Id.*
9. *Id.* at 1.
10. *In re Joseph H.*, 238 Cal.App.4th 517, 539, 188 Cal.Rptr.3d 171, 190 (4th Dist. 2015).
11. CAL. PENAL CODE §26 (West 2016) (stating that “children under the age of 14” are presumed to not be capable of committing crimes unless “clear proof [exists] that at the time of committing the act,” they knew of its wrongfulness); *In re Joseph H.*, 188 Cal.Rptr.3d at 189–91.
12. *In Re Joseph H.*, 238 Cal.App.4th 517, 529, 188 Cal.Rptr.3d 171, 189–91 (4th Dist. 2015).; *Ward*, BLACK’S LAW DICTIONARY (10th ed. 2014), Westlaw (defining *ward* as “[s]omeone who is housed by, and receives protection and necessities from, the government”).

Joseph is one of the 613 minors in California under the age of 12 who were arrested for a felony in 2011.¹³ In 2014, California reported that 87,000 minors were arrested, which accounted for a large number of the total arrests.¹⁴ Interrogations are understood to naturally create a coercive effect and may even produce false confessions.¹⁵ Suspects are read their *Miranda* rights before an interrogation begins to protect a suspect from making self-incriminating statements and false confessions.¹⁶ Even with such warnings given at the beginning of an interrogation, interrogations still produce false confessions,¹⁷ and minors account for 35 percent of these false confessions.¹⁸

Joseph petitioned the Supreme Court of California to review his case and contended that, in light of developmental and cognitive science and “what any person knows about children generally,” it was doubtful that Joseph understood his *Miranda* rights and the consequences that come with waiving those rights.¹⁹ Although a majority of the Supreme Court of California denied the petition, Justice Goodwin Liu dissented and argued that a ten-year-old being capable of waiving his rights merited the court’s review.²⁰ Justice Liu stated that Joseph’s case raised the question of whether “there is an age below which the concept of a voluntary, knowing, and intelligent waiver has no meaningful application” and questioned the manner in which the *Miranda* warnings can be effectively conveyed to young minors.²¹

Because the Supreme Court of California declined to address a minor’s ability to waive his *Miranda* rights, Justice Liu indicated that the California Legislature may wish to address this issue.²² Senator Lara responded to Justice Liu’s dissent by drafting SB 1052.²³ SB 1052 sought to protect minors from waiving constitutional rights they do not fully understand by recognizing emerging developmental and cognitive science indicating that minors are different than adults.²⁴ However, SB 1052 failed to protect minors who were

13. Kamala D. Harris, *Juvenile Justice in California*, CAL. DEPT. OF JUST. REP. 56 (2011), available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj11/preface.pdf> (on file with *The University of the Pacific Law Review*).

14. *Id.* at 1.

15. *Miranda v. Ariz.*, 384 U.S. 436, 467 (1966).

16. *Id.*

17. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N. C. L. REV. 891, 907–08 (2004).

18. *Id.* at 945 (indicating that the false confessors in the study, under the age of 18, consisted of 35% of those who falsely confessed).

19. *In re Joseph H.*, 200 Cal.Rptr.3d 1, 4, 367 P.3d 1, 3 (Cal. 2015).

20. *Id.* at 1.

21. *Id.* at 3.

22. *Id.* at 4–5.

23. SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1052, at 4 (May 16, 2016).

24. *See infra* Part IV.A–B (discussing that SB 1052 sought to protect minors from unknowingly waiving their constitutional rights).

developmentally incapable of unambiguously asserting their constitutional rights.²⁵

In recognizing emerging cognitive and developmental science regarding minors,²⁶ SB 1052 would have placed procedures on law enforcement to ensure that a minor meaningfully understands his *Miranda* rights before being presented with the opportunity to waive them.²⁷ Part I of this Article introduces the legal context before the drafting of SB 1052.²⁸ Part II discusses the legal background that existed before SB 1052.²⁹ Part III explains the changes SB 1052 would have created.³⁰ Part IV analyzes the benefits and shortcomings of SB 1052.³¹

II. LEGAL BACKGROUND

California law permits an officer to take into custody a minor without a warrant.³² A minor is generally treated the same as an adult when he or she is arrested and interrogated.³³ A minor must be advised of certain constitutional rights if he³⁴ is taken into custody, commonly known as the *Miranda* warnings.³⁵ For a minor to invoke his constitutional rights, the minor must unambiguously communicate this to law enforcement with such clarity that a reasonable officer under the circumstances would understand his request.³⁶ Like an adult, a minor can waive his constitutional rights either expressly or implicitly.³⁷ However, a

25. See *infra* Part IV.E (explaining that SB 1052 would not protect minors who are developmentally incapable of unambiguously asserting their constitutional rights).

26. This article refers to all individuals under the age of 18 as minors.

27. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

28. *Supra* Part I.

29. *Infra* Part II.

30. *Infra* Part III.

31. *Infra* Part IV.

32. CAL. WELF. & INST. CODE § 625 (West 2016).

33. *In re Joseph H.*, 200 Cal.Rptr.3d 1, 1, 367 P.3d 1, 1 (Cal. 2015).

34. The rest of this comment will use “he” to mean either a male or female gender.

35. Compare CAL. WELF. & INST. CODE § 625 (requiring that “the officer shall advise such minor that anything he says can be used against him and shall advise him of his constitutional rights, including his right to remain silent, his right to have counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel”), with *Miranda v. Ariz.*, 384 U.S. 436, 479 (1966) (requiring that “[h]e must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.”).

36. *Davis v. U.S.*, 512 U.S. 452, 459 (1994).

37. See *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010) (failing to differentiate a separate standard for a suspect to waive their rights depending on their age); See *N.C. v. Butler*, 441 U.S. 369, 373 (1979) (finding a defendant with an 11th grade education is held to the voluntary, knowing, and intelligent standard); *People v. Whitson*, 17 Cal.4th 229, 248, 949 P.2d 18, 28 (Cal. 1998).

minor's waiver must be voluntarily, knowingly, and intelligently made for the waiver to be valid and the statements admissible in court.³⁸

A. Federal Law and State Law

The Supreme Court of the United States interprets the United States Constitution and establishes the essential constitutional requirements that a state must follow.³⁹ Under the exclusionary rule, the Supreme Court declared all evidence obtained by searches or seizures in violation of the Fourth Amendment of the United States Constitution as inadmissible in a state court.⁴⁰ “The purpose of the exclusionary rule is to deter [and] to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it” by making evidence acquired in violation of the Fourth Amendment inadmissible in state or federal court.⁴¹ The Supreme Court evaluates whether a minor makes a voluntary, knowing, and intelligent waiver by using the same standard for adults and also considering the minor's age, intelligence, education, experience, and ability to comprehend the meaning and effect of making a statement.⁴² The Supreme Court of California last used an identical standard in *People v. Lara*.⁴³

Additionally, the Supreme Court of the United States generally requires that *Miranda* warnings, or an equivalent notification, be provided to a suspect in order for statements taken in an in-custody interrogation to be admissible.⁴⁴ However, the Supreme Court sets out the minimum requirements, and each individual state may choose to require additional requirements or safeguards, so long as they provide the baseline notice mandated by the Supreme Court.⁴⁵

B. Miranda Warnings

For law enforcement to conduct a custodial interrogation of a minor, or any individual, the minor generally must be notified of his rights, commonly referred

38. *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

39. *Miranda*, 384 U.S. at 478–79.

40. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

41. *Id.* at 656.

42. *Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979) (using a totality of the circumstances standard); *People v. Lara*, 67 Cal.2d 365, 389 (Cal. 1967).

43. 67 Cal.2d 365, 389 (using the totality of the circumstances standard for a minor).

44. *Miranda v. Ariz.*, 384 U.S. 436, 479 (1966).

45. *Id.* at 467 (encouraging “Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws”); *in re Patrick W.*, 104 Cal.App.3d 615, 618 (2nd Dist. 1980) (stating that “although a California court must give to a defendant at least as full rights as the Constitution of the United States . . . a California court may, in applying our own state constitutional requirements, afford to a defendant rights greater than those required by the federal Constitution”).

to as *Miranda* warnings.⁴⁶ The *Miranda* warnings consist of warning a minor in “clear and unequivocal terms” that he has the following rights: (1) to remain silent; (2) that anything he says can be used against him; (3) the right to an attorney; and (4) that if he cannot afford an attorney, one will be appointed to him.⁴⁷ There are no specific words to make a *Miranda* warning legally sufficient, rather it is only necessary that the minor be fully and unambiguously advised of his constitutional rights.⁴⁸ For example, in *People v. Bradford*, a California court found a confession inadmissible because of the officer’s failure to give one of the four requirements of a *Miranda* warning.⁴⁹ Any evidence that results from an unwarned, in-custody interrogation of a minor cannot be used against him in a criminal proceeding.⁵⁰

In addition to the *Miranda* warnings, California law requires that a minor, who is taken into a place of confinement, be advised of his right to make at least two telephone calls: one to a parent, guardian, responsible adult, or employer and one to an attorney.⁵¹ California courts are currently split regarding whether an officer must advise a minor that a parent is present and wishes to speak to him.⁵² However, an officer does not need to obtain a parent’s consent before he can interrogate a minor.⁵³

C. Exceptions to *Miranda*

Currently, a public safety exception exists to the requirement that a minor be advised of the *Miranda* warnings when he is in custody, and the exception encompasses a variety of conduct.⁵⁴ First, when a minor voluntarily answers questions asked by an officer, who is concerned with rescuing a victim, and the officer wishes to not impede his efforts to save the victim by giving the minor

46. *Miranda*, 384 U.S. at 478–79 (1966).

47. *Id.* at 479–79.

48. *People v. Bradford*, 86 Cal.Rptr.3d 866, 871–73 (1st Dist. 2008).

49. *Id.* at 873.

50. *Miranda*, 384 U.S. at 479. *But see* *People v. Peevy*, 17 Cal.4th 1184, 1187 (Cal. 1998) (finding voluntary statements admissible to “impeach the defendant’s credibility as a witness”); *People v. Neal*, 31 Cal.4th 63, 78 (Cal. 2003) (finding a defendant’s statement “inadmissible for any purpose because” it was made involuntarily).

51. CAL. WELF. & INST. CODE § 627 (West 2016).

52. *Compare In re Patrick W.*, 104 Cal.App.3d 615, 617–18 (2nd Dist. 1980) (finding that extending *Miranda* to include a right to consult with a parent is not federally impermissible and holding that when the minor’s grandparents were at a nearby motel and available to speak to the minor, the police had a duty to inform the minor of his right to see them and to afford him the opportunity to do so before any interrogation occurred), *with In re John S.*, 199 Cal.App.3d 441, 446 (6th Dist. 1988) (declining to follow *In re Patrick W.* because its holding departed from the holding in *People v. Lara*, where the “failure of police to seek the additional consent of a parent would not invalidate an otherwise valid waiver by a minor”).

53. *In re John S.*, 199 Cal.App.3d at 446.

54. *People v. Davis*, 46 Cal.4th 539, 592, 208 P.3d 78, 121 (Cal. 2009); *People v. Coffman*, 96 P.3d 30, 76 (Cal. 2004); *N.Y. v. Quarles*, 467 U.S. 649, 655–56 (1984); *People v. Simpson*, 65 Cal.App.4th 854, 841, 76 Cal.Rptr.2d 851, 856 (4th Dist. 1998); *People v. Cressy*, 55 Cal.Rptr.2d 237, 240 (1st Dist. 1996).

Miranda warnings, the minor's responses are admissible in court.⁵⁵ Secondly, no warnings are required when an officer asks questions during an interrogation devoted to locate an abandoned deadly weapon out of concern for public safety.⁵⁶ Also, an officer may ask questions relating to the officer's health or safety during an interrogation without giving *Miranda* warnings; for example, when an officer asks a suspect if he has any needles in his possession.⁵⁷

D. Assertion of Rights

For a minor to invoke his constitutional rights, he is required to communicate this request in the same way an adult must do so.⁵⁸ A minor must unambiguously request an attorney or communicate his desire to remain silent with such clarity that a reasonable officer under the circumstances would understand the minor's request.⁵⁹ Although words or conduct that show an unwillingness to communicate with law enforcement may invoke the right to remain silent,⁶⁰ complete silence alone is insufficient to invoke a minor's right to remain silent.⁶¹

The Supreme Court of California in *People v. Villasenor* found that a 17-year-old invoked his right to remain silent after he repeatedly stated, "Just take me home."⁶² In contrast, in *People v. Roquemore*, the same Court held that an 18-year-old did not invoke his right to remain silent when he asked the arresting officer, "Can I call a lawyer or my mom to talk to you?"⁶³ Additionally, in *Fare v. Michael C.*, a minor requested the presence of his probation officer during any questioning, and the Supreme Court of the United States found that he insufficiently invoked his right to an attorney.⁶⁴ These cases illustrate that minors, who are still developing cognitively, may lack the necessary communication skills to effectively invoke their rights or may lack the developmental maturity to understand the benefits associated with invoking these rights.⁶⁵

55. *Davis*, 208 P.3d at 121; *Coffman*, 96 P.3d at 76.

56. *Quarles*, 467 U.S. at 655–57; *Simpson*, 76 Cal. Rptr. 2d at 856.

57. *Cressy*, 55 Cal.Rptr.2d at 240.

58. *People v. Lessie*, 47 Cal.4th 1152, 1156, 223 P.3d 3, 5 (Cal. 2010).

59. *Davis v. U.S.*, 512 U.S. 452, 459 (1994); *People v. Soto*, 204 Cal.Rptr. 204, 213 (2nd Dist. 1984).

60. *Soto*, 204 Cal.Rptr. at 213.

61. *People v. Nelson*, 266 P.3d 1008, 1016 (Cal. 2012); *Berghuis*, 560 U.S. at 384.

62. 194 Cal.Rptr.3d 796, 808 (3rd Dist. 2015).

63. 31 Cal.Rptr.3d 214, 219 (2nd Dist. 2005).

64. 442 U.S. 707, 723–24 (1979).

65. See Marty Beyer, *Recognizing the Child in the Delinquent*, KY. CHILD. RTS. 16 (1999) (stating the importance of conducting on a minor "[a]ssessments of cognitive, moral and identity development and childhood trauma, including an evaluation of the impact of immaturity on competence, can be useful" in determining the waiver of rights).

E. Sufficient Waiver

The standard for a minor to waive his *Miranda* rights is the same standard applied to adults.⁶⁶ A minor who wishes to waive his *Miranda* rights must waive them voluntarily, knowingly, and intelligently for his waiver to be valid.⁶⁷ Generally, voluntariness depends on external factors, whereas both knowingly and intelligently depend on mental capacity.⁶⁸ A court evaluating a minor's waiver additionally considers factors such as the minor's age, "intelligence, education, experience, and ability to comprehend the meaning and effect" of making a statement.⁶⁹ Also, a minor may invoke his *Miranda* rights after previously waiving them.⁷⁰

The prosecution⁷¹ carries the burden of establishing that a minor made a voluntary, knowing, and intelligent waiver by a preponderance of the evidence.⁷² A minor does not need to explicitly communicate to law enforcement that he wishes to waive his *Miranda* rights, but rather a minor can either expressly or implicitly waive these rights.⁷³ A minor may make an implied waiver after he is fully advised and acknowledges his rights and decides to freely submit to questioning or makes a subsequent, un-coerced statement.⁷⁴ Even if a minor fails to understand these rights and requests clarification, this does not amount to an invocation of his *Miranda* rights; instead, such a request can be used as evidence that the minor understood his rights and made a knowing and intelligent waiver.⁷⁵

In sum, without SB 1052, the procedure for a minor to invoke and waive his *Miranda* rights is essentially identical to adults.⁷⁶ SB 1052 would have placed procedures on law enforcement designed to ensure that a minor meaningfully

66. *Fare*, 442 U.S. at 724–25.

67. *Moran*, 475 U.S. at 421.

68. *Cox v. Del Papa*, 542 F.3d 669, 675 (9th Cir. 2008).

69. *People v. Lara*, 67 Cal.2d 365, 383, 432 P.2d 202, 215 (Cal. 1967); *In re John S.*, 199 Cal.App.3d at 445.

70. *Miranda v. Ariz.*, 384 U.S. 436, 444–45 (1966).

71. *Prosecution*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining *prosecution* as "[o]ne or more government attorneys who initiate and maintain a criminal action against an accused defendant").

72. *Berghuis*, 560 U.S. at 384; *Preponderance of the Evidence*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining *preponderance of the evidence* as "the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be").

73. *See Berghuis*, 560 U.S. at 384 (failing to specify a certain age where an implicit waiver is not applicable to a suspect); *See Butler*, 441 U.S. at 373 (finding a defendant with an 11th grade education can implicitly waive their rights); *Whitson*, 949 P.2d at 28.

74. *See id.*; *see also, e.g., People v. Edwards*, 193 Cal.Rptr.3d 696, 731 (6th Dist. 2015) (finding a 17-year-old minor to have "implicitly waived his rights" by voluntarily answering questions from law enforcement).

75. *People v. Bestmeyer*, 212 Cal.Rptr. 605, 609 (2nd Dist. 1985); *People v. Maynarich*, 147 Cal.Rptr. 823, 826 (2nd Dist. 1978).

76. *Supra* Part II.A–D.

understood and comprehended his constitutional rights before he either invoked or waived them.⁷⁷

III. SB 1052

First, SB 1052 sought to make legislative declarations and findings regarding developmental and neurological science in terms of the interrogation of a minor.⁷⁸ Second, SB 1052 attempted to add Section 625.6(a) to the Welfare and Institutions Code, requiring a minor to consult with legal counsel prior to a custodial interrogation and before the waiver of any *Miranda* rights.⁷⁹ Finally, SB 1052 sought to provide that a court determining the admissibility of a minor's statement must consider law enforcement's failure to comply with the Section 625.6(a) requirement and provided an exception to the Section 625.5(a) requirement.⁸⁰

A. *Legislative Declarations and Findings*

SB 1052 attempted to adopt findings from several Supreme Court cases⁸¹ by declaring that minors “often lack the experience, perspective, and judgment to recognize and avoid [detrimental] choices[,] . . . lack[ing] the capacity to exercise mature judgment.”⁸² Regarding police interrogations, SB 1052 further declared that minors “are more vulnerable or susceptible to . . . outside pressures” and to psychologically coercive interrogations than adults.⁸³ By citing various studies, SB 1052 concluded that a minor's thinking “tends to either ignore or discount future outcomes and implications, and disregard long-term consequences of important decisions,” resulting in a diminished ability to understand their rights and a waiver of those rights.⁸⁴

77. *Infra* Part III.B.

78. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

79. *Id.*

80. *Id.*

81. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (citing *J.D.B. v. N. C.*, 564 U.S. 261 (2011); *Graham v. Fla.*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); *Eddings v. Okla.*, 455 U.S. 104 (1982); *Fare v. Michael C.*, 442 U.S. 707 (1979); *Bellotti v. Baird*, 443 U.S. 622 (1979); *Miranda v. Ariz.*, 384 U.S. 436 (1966); *Gallegos v. Colo.*, 370 U.S. 49 (1962); *Haley v. Ohio*, 332 U.S. 596 (1948)).

82. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (quoting *J.D.B.*, 564 U.S. at 262).

83. *Id.*

84. *See* SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (relying on, *e.g.*, Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 *CHILD DEV.* 28, 28–44 (2009); William Gardner & Janna Herman, *Adolescent's AIDS Risk Taking: A Rational Choice Perspective*, 1990 *NEW DIRECTIONS FOR CHILD AND DEV.* 17, 25–26 (1990); Beyer, *supra* note 65, at 16; *Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice*

B. Mandatory Legal Consultation Before a Custodial Interrogation of a Minor

SB 1052 would have enacted Section 625.6(a) of the Welfare and Institution Code⁸⁵ requiring a minor to consult with legal counsel prior to a custodial interrogation and before the waiver of any *Miranda* rights.⁸⁶ A minor cannot waive such a consultation.⁸⁷ Law enforcement may provide a minor with legal consultation either in person, by telephone, or by video conference.⁸⁸ SB 1052, however, would not have applied to probation officers acting within their normal scope of duties.⁸⁹

SB 1052 further provided that a court determining the admissibility of a minor's statement must consider law enforcement's failure to comply with the Section 625.6(a) requirement when law enforcement conducts a custodial interrogation of a minor under 18-years-old prior to the minor consulting with legal counsel.⁹⁰ Although law enforcement would have generally had to abide by the Section 625.6(a) requirement, exceptions applied.⁹¹ Section 625.6(c) would have exempted officers who reasonably believed the information he sought was necessary to protect life or property from a substantial threat if the questions he asked were limited to those necessary to obtain that information.⁹² Under such circumstances, a minor would have been unable to benefit from the assistance of counsel prior to an interrogation or before waiving his rights.⁹³

IV. ANALYSIS

The Supreme Court of California last addressed *Miranda* waivers by minors half a century ago, prior to emerging developmental and cognitive science.⁹⁴ Taking into account new developmental and cognitive science, SB 1052 would have changed the procedures for interrogating a minor to ensure the minor

Advocates, NAT'L JUV. JUST. NETWORK (Sept. 2012), http://www.njjn.org/uploads/digital-library/Brain-Development-Policy-Paper_Updated_FINAL-9-27-12.pdf [hereinafter *Guide for Juvenile Justice Advocates*] (on file with *The University of the Pacific Law Review*); Catherine C. Lewis, *How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications*, 52 CHILD DEV. 538, 541–42 (1981).

85. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *In re Joseph H.*, 367 P.3d at 4 (denying certiorari for a case regarding a ten-year-old minor waiving his *Miranda* rights).

comprehends his constitutional rights and the consequences of waiving those rights before being presented with the opportunity to invoke or waive them.⁹⁵

Part A of this section discusses how the Section 625.6(a) requirement would have afforded additional protections to minors to account for their developmental immaturity.⁹⁶ Part B discusses the practicability of SB 1052's new procedural requirements.⁹⁷ Part C indicates how SB 1052 would have failed to add any new factors for courts to consider when determining if a minor made a knowing and intelligent statement and failed to provide significant guidance to courts addressing a minor's unique developmental characteristics.⁹⁸ Part D discusses how SB 1052 would have failed to assist minors in invoking their constitutional rights.⁹⁹ Part E explains how SB 1052 would have granted a minor a new right without any remedy when violated.¹⁰⁰ Part F provides an explanation of SB 1052's ultimate veto by Governor Brown.¹⁰¹

A. *SB 1052 Would Have Allowed Emerging Developmental and Cognitive Science to Influence Legal Standards*

Developmental studies show that a minor thinks in a fundamentally different manner than an adult.¹⁰² A minor's frontal lobe, which regulates decision-making, planning, judgement, and impulse control, drastically changes during his adolescent years and is the last part of the brain to fully develop.¹⁰³ Additionally, minors fail to recognize alternative possibilities under stressful circumstances and tend to see only one way out of a problem, and are even willing to violate their own moral values as a result of their poor judgment.¹⁰⁴ These characteristics, coupled with the environment of a coercive interrogation, may influence a minor to allegedly waive his constitutional rights when he do not meaningfully understand them, or worse, could result in a minor making a false confession.¹⁰⁵

95. *Infra* Part IV.A, C–D.

96. *Infra* Part IV.A.

97. *Infra* Part IV.B.

98. *Infra* Part IV.C.

99. *Infra* Part IV.D.

100. *Infra* Part IV.E.

101. *Infra* Part IV.F.

102. Beyer, *supra* note 65, at 17.

103. *Guide for Juvenile Justice Advocates*, *supra* note 84.

104. Beyer, *supra* note 65, at 17.

105. Compare *In re Joseph H.*, 367 P.3d 1, 3 (Cal. 2015) (denying certiorari for a case regarding a ten-year-old minor waiving his *Miranda* rights), with *Drizin*, *supra* note 17, at 919 (stating that “some individuals—particularly. . . juveniles—are more vulnerable to the pressures of interrogation and therefore less likely to possess or be able to muster the physiological resources or perspective necessary to withstand accusatorial police questioning”), and *In re Patrick W.*, 104 Cal. App. at 619 (Jefferson, J., concurring) (stating that it was an “erroneous assumption to couch a principle of law in terms that such a minor is capable of understanding the

For example, in 1980, a published study evaluated minors' understanding of their *Miranda* rights.¹⁰⁶ When asked to paraphrase their *Miranda* rights, only 20.9 percent of minors demonstrated an adequate understanding, compared to 42.3 percent of adults.¹⁰⁷ Not only did 55.3 percent of the minors demonstrate a lack of understanding of at least one of the *Miranda* warnings, when assessed on their understanding of the vocabulary used in the *Miranda* warnings, only 33.2 percent of the minors adequately understood the key words used, while 60.1 percent of adults did.¹⁰⁸ Also, 44.8 percent of the minors misunderstood their right to consult with an attorney prior to an interrogation or to have an attorney present during the interrogation, while only 14.6 percent of adults misunderstood this.¹⁰⁹ Another study in 2011 found that age and intelligence predict a minor's comprehension of the *Miranda* warnings, and that the younger minors with lower intelligence were the least likely to comprehend their *Miranda* rights and were the most likely to be overcome by law enforcement using negative feedback and pressure.¹¹⁰ This study found that 42.5 percent of the minors¹¹¹ did not comprehend one of the *Miranda* warnings, and 44.7 percent failed to understand some of the vocabulary used in the *Miranda* warnings.¹¹²

Despite this research, California courts regularly find minors, as young as 12-years-old,¹¹³ capable of waiving their *Miranda* rights.¹¹⁴ At ten years old, Joseph was found to be capable of waiving his rights even though his understanding of his constitutional right to remain silent consisted of him being aware that he had the right to "remain calm."¹¹⁵ However, in 1983, one California District court found a waiver invalid by a nine-year-old minor who purportedly waived his rights because the minor developmentally lacked the capability of legally waiving his rights.¹¹⁶

constitutional rights involved in the *Miranda* warnings and in holding that he has the capacity to intelligently and knowingly waive such rights").

106. Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1152 (1980).

107. *Id.*

108. *Id.*

109. *Id.*

110. Kaitlyn McLachlan, Ronald Roesch & Kevin S. Douglas, *Examining the Role of Interrogative Suggestibility in Miranda Rights Comprehension in Adolescents*, 35 L. & HUM. BEHAV. 165, 170–71 (2011).

111. This study consisted of 12–19 year olds.

112. McLachlan et al., *supra* note 108, at 170–71.

113. *Nelson*, 266 P.3d at 1019–20 (finding minors 15 years or older capable of waiving their *Miranda* rights); *In re Anthony J.*, 166 Cal.Rptr. 238, 246 (1st Dist. 1980).

114. *In re Jessie L.*, 182 Cal.Rptr. 396, 404 (2nd Dist. 1982) (finding minors as young as 12 years old having the capabilities to understand their *Miranda* rights and the legal consequences of waiving them); *In re Abdul Y.*, 183 Cal.Rptr. 146, 158 (3rd Dist. 1982); *People v. Lewis*, 28 P.3d 34, 69–70 (Cal. 2001); *In re Charles P.*, 184 Cal.Rptr. 707, 709 (2nd Dist. 1982).

115. *In re Joseph H.*, 367 P.3d at 3.

116. *In re Michael B.*, 197 Cal. Rptr. 379, 389 (5th Dist. 1983).

The Supreme Court of the United States treats minors different than adults in other aspects of the law due to developmental and cognitive research.¹¹⁷ For example, in *Roper v. Simmons*, the Court found it unconstitutional to sentence a minor to the death penalty.¹¹⁸ Additionally, in *Graham v. Florida*, the Court determined that sentencing a minor to life in prison without the possibility of parole, for committing a non-homicidal offense was unconstitutional.¹¹⁹ In *Miller v. Alabama*, by examining brain science, the Court found the mandatory sentence of life without the possibility of parole for a minor to be unconstitutional.¹²⁰

These cases demonstrate how new science and research can change how courts apply legal concepts to minors.¹²¹ SB 1052 would have facilitated this same kind of change by evaluating emerging science.¹²² Thus, by recognizing new research on a minor's cognitive and developmental abilities, SB 1052 sought to protect minors from making unknowing or unintelligent statements when they do not understand their constitutional rights by giving them an opportunity to discuss these rights with an attorney prior to the interrogation of law enforcement.¹²³

B. SB 1052 Would Have Ensured a Minor Meaningfully Understands His Miranda Rights While Allowing Law Enforcement to Effectively Respond to Substantial Threats

The California District Attorneys Association (CDA) opposed SB 1052 and argued that the bill would frustrate criminal investigations.¹²⁴ Prior to SB 1052, law enforcement was required to advise a minor of his *Miranda* rights and his right to make at least two phone calls.¹²⁵ Even under SB 1052, law enforcement was permitted to take a minor into custody without a warrant.¹²⁶ However, SB

117. *Simmons*, 543 U.S. at 568–69; *Graham*, 560 U.S. at 68; *Miller v. Ala.*, 132 S. Ct. 2455, 2460 (2012); *J.B.D. v. N.C.*, 564 U.S. 261, 272–73 (2011).

118. 543 U.S. at 568–69.

119. 560 U.S. at 74.

120. 32 S. Ct. at 2460

121. *Simmons*, 543 U.S. at 568–69; *Graham*, 560 U.S. at 68; *Miller*, 132 S. Ct. at 2460.

122. Compare SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (“People under 18 years of age have a lesser ability as compared to adults to comprehend the meaning of their rights and the consequences of waiver.”), with *Simmons*, 543 U.S. at 568–69 (finding that “scientific and sociological studies... tend to confirm ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults’”), and *Graham*, 560 U.S. at 68 (finding that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”), and *Miller*, 132 S. Ct. at 2464 (stating that “children are constitutionally different from adults”).

123. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 6 (June 28, 2016).

124. *Id.*

125. CAL. WELF. & INST. CODE § 627 (West 2016); *Miranda*, 384 U.S. at 467.

126. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

1052 would have established a new procedure for law enforcement if they wish to interrogate a minor.¹²⁷

Under SB 1052, law enforcement would have been required to provide a minor a consultation with an attorney before a custodial interrogation or a waiver of his rights.¹²⁸ Law enforcement may provide legal consultation either “in person, by telephone, or by video conference.”¹²⁹ Such a requirement sought to prevent the *Miranda* warnings from becoming “merely a ritualistic recitation” and ensuring that a minor meaningfully understands his rights before having an opportunity to waive them.¹³⁰ However, some states find the assistance of a minor’s parents is an adequate substitute for an attorney.¹³¹ Although a parent assisting a child may help with a minor’s understanding of his rights, the Supreme Court held that a parent cannot substitute the assistance of an attorney—who is the “one person to whom society as a whole looks as the protector of the [minor’s] legal rights.”¹³² Unlike a parent, an attorney is better suited to explain the constitutional rights a minor is entitled to and what types of legal consequences may accompany a waiver of these rights.¹³³

It is not entirely clear whether SB 1052’s Section 625.6(a) requirement would have slowed down the process to interrogate a minor, and it is unclear how such a requirement would have been efficiently implemented.¹³⁴ Although SB 1052 provided law enforcement with flexibility by allowing the consultation to be either “in person, by telephone or via video conference,”¹³⁵ CDAA argued that SB 1052 would have required that every officer have a defense attorney with

127. *Id.*

128. *Id.*

129. *Id.*

130. *Compare Guide for Juvenile Justice Advocates supra* note 84 (“The frontal lobe... is [the] ‘executive’ part of the brain that regulates decision making, planning, judgment, expression of emotions, and impulse control.”), with ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 5 (June 28, 2016) (“These procedures will prevent *Miranda* ‘warnings from becoming a merely ritualistic recitation wherein the effect of actual comprehension by the juvenile is ignored.’”).

131. WASH. REV. CODE ANN. § 13.40.140(11) (West 2016) (stating that a minor 12 years old or younger must have their parent waive their rights); COLO. REV. STAT. ANN. § 19-2-511 (West 2016) (stating that a minor’s parent or attorney must be present and informed of the minor’s rights for any custodial statement to be admissible but the minor and parent may waive parental presence in writing); CONN. GEN. STAT. ANN. § 46b-137 (West 2016) (stating that a minor’s statement made during custodial interrogation is inadmissible in juvenile court unless a parent is present and advised of the minor’s rights); IND. CODE ANN. § 31-32-5-1 (West 2016) (stating that a minor’s rights can be waived only by a parent or counsel unless the minor has been emancipated); N.C. GEN. STAT. ANN. § 7B-2101 (West 2016) (stating that a minor under 16 years old cannot waive their *Miranda* rights unless a parent or attorney is present); OKLA. STAT. ANN. tit. 10A, § 2-2-301 (West 2016) (stating that the advisement of rights to a minor of 16 years or younger during a custodial interrogation must occur in the presence of a parent, guardian, or an attorney).

132. *Fare v. Michael C.*, 442 U.S. 707, 719 (1979)

133. *Id.* (finding that a probation officer is not an adequate substitute for an attorney).

134. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

135. *Id.*

them to comply with SB 1052.¹³⁶ To support its position, CDAA states that a minor may make incriminating statements or give a confession when he is being transported to the police station, which would require an attorney to be present during this transportation for the officer to comply with SB 1052; even when the arresting officer planned to provide a consultation with an attorney.¹³⁷

An earlier version of SB 1052 could have potentially been interpreted to require an attorney to be readily available at all local police stations or an area designated to hold a juvenile awaiting an attorney.¹³⁸ However, SB 1052 would have allowed law enforcement to provide legal counsel also by telephone or via video conference.¹³⁹ Such alternatives to an in-person requirement provides law enforcement with the flexibility needed to adequately comply with Section 625.6(a).¹⁴⁰ Other state legislatures enacted similar legislation to SB 1052, illustrating that SB 1052's consultation can practically be implemented.¹⁴¹ For example, the state of Indiana allows for the waiver of a minor's rights only by a parent or counsel unless the minor has been emancipated.¹⁴² Even though SB 1052 would have failed to address how its requirements would be specifically

136. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 7 (June 28, 2016).

137. *Id.*

138. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 7 (June 28, 2016).

139. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

140. *Id.*

141. 705 ILL. COMP. STAT. ANN. 405/5-170 (West 2016) (stating that a minor under 13 years old suspected of serious crimes must be read their *Miranda* rights and be represented by an attorney throughout the entire custodial process); IOWA CODE ANN. § 232.11 (West 2016) (stating that a minor under 16 years old cannot waive their right to an attorney “without the written consent” of a parent); MONT. CODE ANN. § 41-5-331 (West 2016) (stating that a minor under 16 years old can waive their rights only with the agreement of their parents and if their parent does not agree, the minor must consult with an attorney before they can waive their rights); N.M. STAT. ANN. § 32A-2-14(F) (West 2016) (prohibiting the admission of a statement by a minor under 13 years old and presuming that a 13 or 14 year old minor is incapable of making a valid *Miranda* waiver); WASH. REV. CODE ANN. § 13.40.140(11) (West 2016) (stating that a minor 12 years old or younger must have their parent waive their rights); COLO. REV. STAT. ANN. § 19-2-511 (West 2016) (stating that a minor's parent or attorney must be present and informed of the minor's rights for any custodial statement to be admissible but the minor and parent may waive parental presence in writing); CONN. GEN. STAT. ANN. § 46b-137 (West 2016) (stating that a minor's statement made during custodial interrogation is inadmissible in juvenile court unless a parent is present and advised of the minor's rights); IND. CODE ANN. § 31-32-5-1 (West 2016) (stating that a minor's rights can be waived only by a parent or counsel unless the minor has been emancipated); N.C. GEN. STAT. ANN. § 7B-2101 (West 2016) (stating that a minor under 16 years old cannot waive their *Miranda* rights unless a parent or attorney is present); OKLA. STAT. ANN. tit. 10A, § 2-2-301 (West 2016) (stating that the advisement of rights to a minor of 16 years or younger during a custodial interrogation must occur in the presence of a parent, guardian, or an attorney).

142. IND. CODE ANN. § 31-32-5-1 (West 2016) (stating that a minor's rights can be waived only by a parent or counsel unless the minor has been emancipated).

implemented,¹⁴³ other states show the ability of law enforcement to implement similar requirements and provide different procedural safeguards for minors.¹⁴⁴

Additionally, law enforcement would not be impeded by such a requirement under circumstances where a minor's statement is "necessary to protect life or property from a substantial threat."¹⁴⁵ SB 1052 would have allowed law enforcement to forego the Section 625.6(a) requirement when the questioning of a minor is necessary to protect a person's life or property from a substantial threat.¹⁴⁶ Under these circumstances, law enforcement would not be required to provide a minor with a consultation with an attorney, nor would law enforcement even be required to advise the minor of his *Miranda* rights.¹⁴⁷ By allowing law enforcement to ignore the Section 625.6(a) requirement, SB 1052 would have allowed the needs of society to overcome the needs of a minor when a minor's statement may mitigate a substantial threat to society.¹⁴⁸ SB 1052 attempted to craft a fair balance between the developmental needs of a minor and the need of law enforcement to quickly respond to an imminent threat.¹⁴⁹

C. *SB 1052 Would Have Failed to Provide Guidance to a Court Determining Whether a Statement was Voluntarily, Knowingly, and Intelligently Made*

SB 1052 would not have provided guidance to a court determining whether a minor's statements were voluntarily, knowingly, and intelligently made; however, the original version of SB 1052 would have expressed to courts the type of factors to consider in making its determination.¹⁵⁰ Section 1 discusses the original version of SB 1052, which included additional factors that courts were required to consider when determining whether a minor's made a voluntary, knowing, and intelligent statement.¹⁵¹ Section 2 discusses how SB 1052 would have left the currently vague framework in place when courts determined a minor's waiver.¹⁵²

143. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

144. § 31-32-5-1 (stating that a minor's rights can be waived only by a parent or counsel unless the minor has been emancipated).

145. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

146. *Id.*

147. *Id.*; *Davis*, 208 P.3d at 121; *Coffman*, 96 P.3d at 76; *Quarles*, 467 U.S. at 655–56; *Simpson*, 76 Cal. Rptr. 2d at 856; *see also Cressy*, 55 Cal. Rptr. 2d at 240 (stating that "the Supreme Court indicated that the safety of officers was a valid consideration under the "public safety" exception").

148. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

149. *Id.*

150. *Compare id.* (listing no factors for the court to consider), with SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted) (listing 13 factors for the court to consider).

151. *Infra* Part IV C.1

152. *Infra* Part IV.C.2.

1. *SB 1052s Original Version Provided Guidance to Courts*

A prior version of SB 1052 required a court to consider the failure of law enforcement to comply with Section 625.6(a), as well as several other additional factors, when determining if a minor's admission, statement, or confession were voluntarily, knowingly, and intelligently made under SB 1052.¹⁵³ These included, but were not limited to, the following types of factors: (1) the minor's personal, physical, and cognitive characteristics; (2) the capacity of the minor to understand the complexities of his *Miranda* rights; (3) the manner the minor was advised of his *Miranda* rights; (4) the procedures taken and behavior of law enforcement prior to and during the interrogation; (5) the manner in which the interrogation occurred; (6) the minor's criminal history; (7) whether the minor made an express or implied waiver; and (8) the minor's behavior and requests made during the interrogation.¹⁵⁴

2. *Subsequent Amendments to SB 1052 Leave the Vague Framework Courts Have when Determining when a Statement is Voluntarily, Knowingly, and Intelligently Made*

When law enforcement fails to provide a minor with a consultation prior to interrogating them, a court must determine whether the minor's subsequent statement were voluntarily, knowingly, and intelligently made.¹⁵⁵ Prior to SB 1052, a court evaluated the totality of the circumstances to determine if a statement was voluntarily, knowingly, and intelligently made, including the details of the interrogation and the characteristics of the minor.¹⁵⁶ These characteristics included the minor's age, intelligence, education, and experience.¹⁵⁷ SB 1052 would not have changed what factors a court evaluates and failed to provide courts specific guidance when tasked with the responsibility of determining the admissibility of a minor's statements.¹⁵⁸ A prior version of SB 1052 provided courts with the necessary guidance to evaluate a waiver of a minor's rights, even though courts retained the discretion to evaluate other factors and assign the weight of each in its determination.¹⁵⁹

First, SB 1052's prior version provided clearer and more specific factors than case law in terms of a minor's age by requiring a court to consider the minor's

153. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

154. *Id.*

155. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

156. *People v. Lara*, 67 Cal.2d 365, 383, 432 P.2d 202, 215 (Cal. 1967); *In re John S.*, 199 Cal.App.3d at 445.

157. *Lara*, 67 Cal.2d at 383, 432 P.2d at 215; *In re John S.*, 199 Cal.App.3d at 445.

158. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

159. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

maturity, physical, mental, and emotional health.¹⁶⁰ Such clarity indicates to a court that it must look to all of the circumstances of the minor's life to determine the minor's level of maturity and cognitive health when he made statements, rather than relying on an over-generalization of a person's age.¹⁶¹ For example, cognitive and developmental research shows that two minors at the same age can be in completely different developmental stages, resulting in varying levels of maturity.¹⁶² These factors required a court to conduct an individual, specific evaluation of the minor in light of the fact that brain development, especially the "frontal lobes, responsible for mature thought, reasoning and judgement," continues early in a minor's life and into adulthood.¹⁶³

Second, SB 1052's prior version provided factors that required a court to not only determine the general intelligence of a minor, but also to determine the minor's level of intelligence in association with the *Miranda* rights.¹⁶⁴ This is a significant inquiry if a minor is found to meaningfully waive his rights, given new cognitive scientific research "show[ing] that the capacity of youth to grasp legal rights is less than that of an adult" and also since minors "frequently lack the ability to appreciate the consequences of their actions."¹⁶⁵

Third, SB 1052's prior version presented factors to evaluate the type of behavior and procedures used by law enforcement, which could produce an involuntary statement when a minor is placed in certain circumstances.¹⁶⁶ These included the number of officers present, the amount of time the interrogation took, and the tone and manner of the questioning, all which are known to induce a minor into providing a false confession.¹⁶⁷ Another factor included whether an officer prevented a parent from speaking to a minor prior to an interrogation or whether an officer made promises, such as promising that the minor could leave or that he would receive leniency.¹⁶⁸ These are important factors to be considered when evaluating a minor's waiver since cognitive research indicates that minors are more susceptible than adults to pressure from authority figures.¹⁶⁹

The additional factors that SB 1052's prior version introduced were previously available for examination by a court and are currently still available; however, by explicitly requiring a court to consider them, SB 1052 would have provided systemic guidance to courts determining if a minor meaningfully

160. *Id.*

161. *Id.*

162. Beyer, *supra* note 65, at 16.

163. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 4 (June 28, 2016).

164. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

165. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 3–4 (June 28, 2016).

166. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

167. Drizin, *supra* note 17, at 919.

168. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

169. Beyer, *supra* note 65, at 16.

waived his *Miranda* rights by considering the internalities and externalities unique to minors in the interrogation room.¹⁷⁰ By removing such guidance, SB 1052 would have created the risk that courts would continue to use the vague legal framework and failed to consider the unique susceptibility of minors in interrogation rooms.¹⁷¹

D. SB 1052 Would Have Failed to Assist a Minor in Meeting the Stringent Requirement to Adequately Invoke His Rights

Minors are required to invoke their *Miranda* rights in the same manner as an adult,¹⁷² and even when law enforcement fails to provide a minor a consultation with an attorney, the minor's statements may still be admissible in court.¹⁷³ However, an early version of SB 1052 would have required the court to provide the jury with an instruction that advised them to view any statements made by a minor with caution when law enforcement failed to provide a consultation with an attorney.¹⁷⁴ CDAA argued that this requirement "cast[ed] doubt upon voluntary confessions introduced at trial," and that additional protections already exist to prevent the use of unlawfully obtained confessions.¹⁷⁵ However, SB 1052 and the CDAA do not address the concern that minors, who lack the same experience, knowledge, and resources as an adult, are held by courts to the same standard required to invoke their rights as an adult.¹⁷⁶ A minor must invoke his rights unambiguously with such clarity that a reasonable officer under the circumstances would understand the minor's request to exercise his rights.¹⁷⁷ Requests made by minors to either talk to their mom, dad, or probation officer are insufficiently unambiguous to invoke their right to remain silent.¹⁷⁸ In light of emerging developmental and cognitive science, this language may have been the only communication skills the minor developmentally possessed capable of stating that he wanted the assistance of an attorney or an authority figure.¹⁷⁹ A

170. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

171. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 6 (June 28, 2016).

172. *People v. Lessie*, 47 Cal.4th 1152, 1156, 223 P.3d 3, 5 (Cal. 2010).

173. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

174. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

175. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1052, at 6 (June 28, 2016).

176. *Lessie*, 47 Cal.4th 1152, 1156, 223 P.3d at 5.

177. *Davis v. U.S.*, 512 U.S. 452, 459 (1994); *People v. Soto*, 204 Cal.Rptr. 204, 213; *Lessie*, 223 P.3d at 5, 14.

178. *People v. Roquemore*, 31 Cal.Rptr.3d 214, 219 (2d Dist. 2005); *Fare v. Michael C.*, 442 U.S. 707, 723–24 (1979).

179. *Compare* Beyer, *supra* note 65, at 16 (stating the importance of conducting on a minor "[a]ssessments of cognitive, moral and identity development and childhood trauma, including an evaluation of the impact of immaturity on competence, can be useful" in determining the waiver of rights), *with* *Roquemore*, 31 Cal. Rptr. 3d at 224 (holding that "[d]efendant's subsequent statement that he was confused and "[C]an I call

jury instruction would have warned the jury to find that a minor did, in fact, desire to remain silent or to consult with counsel at a time when case law holds a stringent requirement that may run contrary to the developmental capabilities of minors.¹⁸⁰

Cautioning a jury that a minor may lack the sophisticated communication skills necessary to request the assistance of counsel or that a minor demonstrated an unwillingness to speak puts the jury in a position to determine if any subsequent statements were unreliable or involuntary.¹⁸¹ Such an additional safeguard could have helped reduce the amount of convictions due to false confessions made by minors.¹⁸² Even prior to *Miranda*, the Supreme Court of the United States previously stated that an “admission and confession of [a minor] require[s] special caution” because a minor can be an “easy victim of the law.”¹⁸³ In sum, although SB 1052 would have addressed the concern of whether a minor meaningfully understood his *Miranda* rights, SB 1052 would have failed to address case law decisions holding that minors must invoke their rights to the same “unambiguous” standard as adults.¹⁸⁴ Providing a jury instruction to the jury to view un-consulted statements with caution could have provided an additional safeguard.¹⁸⁵

a lawyer or my mom to talk to you?” did not constitute an unequivocal request for counsel to be present”), and *Fare*, 442 U.S. at 723–24 (declining “to find that the request for the probation officer is tantamount to a request for an attorney”). See *In re Patrick W.*, 104 Cal. App. 3d at 619 (Jefferson, J., concurring) (stating that the California Constitution should be interpreted to preclude the application of a *Miranda* waiver to any minor who is not more than 13 years of age).

180. See *Davis*, 512 U.S. at 459–60 (rejecting to require interrogations to cease when an ambiguous request of counsel is made and finding the *Miranda* warnings to be the primary protection in a custodial interrogation).

181. See SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted) (advising the jury to view statements made in a custodial interrogation with caution).

182. Compare *id.* (listing one of the factors as “[w]hether the youth asked to speak with a parent or other adult at any time while in law enforcement custody”), with *Drizin*, *supra* note 17, at 919 (stating that “some individuals—particularly... juveniles—are more vulnerable to the pressures of interrogation and therefore less likely to possess or be able to muster the physiological resources or perspective necessary to withstand accusatorial police questioning”).

183. Application of *Gault*, 387 U.S. 1, 45 (1967).

184. Compare SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (containing no language that would require the fact finder to consider the statements made by the minor), with *Roquemore*, 31 Cal.Rptr.3d at 224 (holding that “[d]efendant’s subsequent statement that he was confused and “[C]an I call a lawyer or my mom to talk to you?” did not constitute an unequivocal request for counsel to be present”), and *Fare*, 442 U.S. at 723–24 (declining “to find that the request for the probation officer is tantamount to a request for an attorney”).

185. Compare SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted) (stating that jury instructions shall advise that “statements made in custodial interrogation in violation” §625.6(a) “shall be viewed with caution”), with *Lara*, 432 P.2d at 219 (holding “that a minor, even of subnormal mentality, does not lack the capacity as a matter of law to make a voluntary confession without the presence or consent of counsel or other responsible adult, or to make a knowing and intelligent waiver of his right to counsel at trial”).

E. SB 1052 Grants Minors a New Right, While Failing to Provide a Remedy

SB 1052 would have required law enforcement to provide a minor a consultation with legal counsel before a custodial interrogation or a waiver of rights.¹⁸⁶ If law enforcement failed to provide such a consultation, a court determining the admissibility of the minor's statement would have had to consider the failure to comply with Section 625.6(a) requirement.¹⁸⁷ Even if law enforcement completely failed to comply with the Section 625.6(a), the minor's statement could still be admissible in court if made knowingly, intelligently, and voluntarily.¹⁸⁸

Unlike SB 1052, when an officer fails to provide a minor with the *Miranda* warnings, absent any exception, any subsequent statements made during an in-custody interrogation are inadmissible in court.¹⁸⁹ Additionally, under the exclusionary rule,¹⁹⁰ when law enforcement obtains evidence by conducting searches or seizures in violation of the Fourth Amendment, such evidence is inadmissible in court.¹⁹¹ The exclusionary rule and *Miranda* deters law enforcement from failing to follow the Fourth and Fifth Amendment by "remov[ing] the incentive to disregard it" by not allowing the use of evidence obtained in violation of them.¹⁹²

The exclusionary rule would not have applied to SB 1052.¹⁹³ SB 1052 would have failed to require the inadmissibility of a minor's statement made in violation of Section 625.6(a), but rather stated that it would only be a factor considered by courts.¹⁹⁴ SB 1052 would have created no incentive for law enforcement to comply with the Section 625.6(a) requirement.¹⁹⁵ By doing so, SB 1052 would

186. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

187. *Id.*

188. *Compare id.* ("The court shall in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply" with §625.6(a).), with *Moran*, 475 U.S. at 421 (finding "[t]he defendant may waive effectuation" of the rights conveyed in the warnings "provided the waiver is made voluntarily, knowingly and intelligently"), and *Lara*, 432 P.2d at 215 (holding "that a minor, even of subnormal mentality, does not lack the capacity as a matter of law to make a voluntary confession without the presence or consent of counsel or other responsible adult, or to make a knowing and intelligent waiver of his right to counsel at trial").

189. *Miranda v. Ariz.*, 384 U.S. 436, 476 (1966)

190. *Exclusionary Rule*, BLACK'S LAW DICTIONARY (10th ed. 2014), Westlaw (defining *exclusionary rule* as "a rule that excludes or suppresses evidence obtained in violation of an accused person's constitutional rights").

191. *Mapp v. Ohio*, 367 U.S. 643, 634 (1961)

192. *Id.* at 656.

193. *See id.* at 657 (stating that the exclusionary rule applies to a violation of the Fourth Amendment to the United States Constitution).

194. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

195. *Compare id.* ("The court shall in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply" with

have granted minors a new procedural right, but would have failed to provide a remedy.¹⁹⁶ Law enforcement could have completely ignored the Section 625.6(a) requirement, absent the exception, and statements made by a minor would have potentially still been admissible in court.¹⁹⁷ To prevent abuse from law enforcement, SB 1052 should have required that any statement obtained in violation of Section 625.6(a), absent the exception, be inadmissible in court, thus “remov[ing] the incentive to disregard it”.¹⁹⁸

F. *SB 1052’s Veto*

As of September 30, 2016, SB 1052 passed both houses of the California Legislature.¹⁹⁹ However, Governor Brown returned SB 1052 without his signature, preventing SB 1052 from becoming law.²⁰⁰ Although recognizing that minors “are more vulnerable than adults and easily succumb to police pressure to talk instead of remaining silent,” Governor Brown found the potential effects on law enforcement efforts required further investigation before the imposition of the Section 625.6(a) requirement.²⁰¹ As a consensus, emerging cognitive and developmental research illustrates the inequality of imposing an adult standard on minors when they are interrogated.²⁰² Although Governor Brown was unprepared to accept SB 1052’s attempt to balance the needs of minors and the needs of law enforcement, California, through its Legislature, expressed its willingness to follow the path of other states.²⁰³

V. CONCLUSION

SB 1052 is a direct result of the judicial system’s unwillingness to address a minor’s ability to meaningfully waive his constitutional rights.²⁰⁴ The Supreme

§625.6(a.), with *Mapp*, 367 U.S. at 657 (stating that the exclusionary rule applies to a violation of the Fourth Amendment to the United States Constitution).

196. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

197. *Id.*

198. *Compare id.* (“The court shall in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply” with § 625.6(a.), with *Mapp*, 367 U.S. at 656-57 (stating that the exclusionary rule applies to a violation of the Fourth Amendment to the United States Constitution), and *Miranda v. Ariz.*, 384 U.S. 436, 476 (1966) (“The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant.”).

199. Hearing on SB 1052 Before the Senate Rules Committee, Leg., 2015-2016 Sess., 4 (Cal. 2016).

200. *Id.*

201. *Id.*

202. *See infra* Part IV.A.

203. *See* Hearing on SB 1052 Before the Senate Rules Committee, Leg., 2015-2016 Sess., 4 (Cal. 2016).

204. *Compare* SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted) (“In the determination of whether a child or youth has knowingly, intelligently, and voluntarily

Court of California addressed this issue almost a half a century ago before emerging research in developmental and cognitive science.²⁰⁵ Senator Lara drafted SB 1052 to answer Justice Liu's call for the Legislature to act when the Supreme Court of California decided to not address Joseph's ability to effectively waive his rights.²⁰⁶ SB 1052 sought to ensure that a minor actually comprehends his constitutional rights, while striking a fair balance to provide law enforcement with the ability to prevent substantial harm to a person or property.²⁰⁷

Although the Section 625.6(a) requirement may have inconvenienced law enforcement, a waiver is still only valid if voluntarily, intelligently, and knowingly made.²⁰⁸ SB 1052 would have ensured that this legal concept is meaningfully applied to a minor by requiring that he consult with an attorney before he can invoke or waive his rights.²⁰⁹ Other state legislatures enacting similar legislation demonstrate the ability to effectively implement SB 1052's consultation requirement.²¹⁰ SB 1052, however, would have failed to protect a minor lacking the communication skills to effectively invoke his constitutional rights.²¹¹ For a minor in this circumstance, who is not provided a consultation

waived his or her rights under *Miranda*... a court must take into account the special concerns that are present when a young person is involved, including a child or youth's limited experience, education and immature judgment."), with *In re Joseph H.*, 367 P.3d at 4-5 ("Many states have found the issue worthy of legislative action").

205. *In re Joseph H.*, 367 P.3d at 4-5.

206. SB 1052, 2016 Leg., 2015-2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

207. SB 1052, Leg. 2016, 2015-2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

208. *Moran*, 475 U.S. at 421.

209. SB 1052, Leg. 2016, 2015-2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

210. 705 ILL. COMP. STAT. ANN. 405/5-170 (West 2016) (stating that a minor under 13 years old suspected of serious crimes must be read their *Miranda* rights and represented by an attorney throughout the entire custodial process); IOWA CODE ANN. § 232.11 (West 2016) (stating that a minor under 16 years old cannot waive their right to an attorney "without the written consent" of a parent); MONT. CODE ANN. § 41-5-331 (West 2016) (stating that a minor under 16 years old can waive their rights only with the agreement of their parents and if their parent does not agree, the minor must consult with an attorney before they can waive their rights); N.M. Stat. Ann. § 32A-2-14(F) (West 2016) (prohibiting the admission of a statement by a minor under 13 years old and presumes that a 13 or 14 year old minor is incapable of making [14] a valid *Miranda* waiver); WASH. REV. CODE ANN. § 13.40.140(11) (West 2016) (stating that a minor 12 years old or younger must have their parent waive their rights); REV. STAT. ANN. § 19-2-511 (West 2016) (stating that a minor's parent or attorney must be present and informed of the minor's rights for any custodial statement to be admissible but the minor and parent may waive parental presence in writing); CONN. GEN. STAT. ANN. § 46b-137 (West 2016) (stating that a minor's statement made during custodial interrogation is inadmissible in juvenile court unless a parent is present and advised of the minor's rights); IND. CODE ANN. § 31-32-5-1 (West 2016) (stating that a minor's rights can be waived only by a parent or counsel unless the minor has been emancipated); N.C. GEN. STAT. ANN. § 7B-2101 (West 2016) (stating that a minor under 16 years old cannot waive their *Miranda* rights unless a parent or attorney is present); OKLA. STAT. ANN. tit. 10A, § 2-2-301 (West 2016) (stating that the advisement of rights to a minor of 16 years or younger during a custodial interrogation must occur in the presence of a parent, guardian, or an attorney).

211. Compare SB 1052, Leg. 2016, 2015-2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (listing no factors for the court to consider), with SB 1052, 2016 Leg., 2015-2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted) (listing 13 factors for the court to consider).

with an attorney, SB 1052 would have added no further factors for a court evaluating his statement and failed to provide guidance to a court considering the minor's unique developmental and cognitive ability.²¹² Such guidance would have supplemented the currently vague legal framework to determine whether a minor made a valid waiver.²¹³ Additionally, SB 1052 would have failed to provide any significant remedy when law enforcement failed to comply with the Section 625.6(a) requirement.²¹⁴ Requiring the inadmissibility of any statements made in violation of Section 625.6, SB 1052 would have provided law enforcement with the incentive to abide by it.²¹⁵ As indicated by Governor Brown, "[t]here is much to be done."²¹⁶

212. SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016).

213. SB 1052, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as amended on March 28, 2016, but not enacted).

214. *See* SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (stating that a failure to comply with § 625(a) will be considered when determining the admissibility of a minor's statement).

215. *Compare* SB 1052, Leg. 2016, 2015–2016 Sess. (Cal. 2016) (as enrolled on Sept. 2, 2016, but vetoed on Sept. 30, 2016) (“The court shall in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply” with §625.6(a).), *with Miranda*, *Miranda v. Ariz.*, 384 U.S. 436, 476 (1966) (“The warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant.”), *and Mapp v. Ohio*, 367 U.S. 643 (1961) (stating that the exclusionary rule applies to a violation of the Fourth Amendment to the United States Constitution).

216. Hearing on SB 1052 Before the Senate Rules Committee, Leg., 2015-2016 Sess., 4 (Cal. 2016).