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# A BILL FOR AN ACT

RELATING TO CHILDREN.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that developmental and  
2 neurological science concludes that the process of cognitive  
3 brain development continues into adulthood, and that the human  
4 brain undergoes dynamic changes throughout adolescence and well  
5 into young adulthood.

6           The legislature recognizes that the Supreme Court of the  
7 United States has found that "[c]hildren generally are less  
8 mature and responsible than adults, they often lack the  
9 experience, perspective, and judgment to recognize and avoid  
10 choices that could be detrimental to them, and they are more  
11 vulnerable or susceptible to . . . outside pressures than  
12 adults". *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011)  
13 (internal quotation marks and citations omitted). Essentially,  
14 "children characteristically lack the capacity to exercise  
15 mature judgment and possess only an incomplete ability to  
16 understand the world around them". *J.D.B.*, 564 U.S. at 273.  
17 The Supreme Court has also found that juveniles "have limited



1 understandings of the criminal justice system and the roles of  
2 the institutional actors within it". *Graham v. Florida*, 560  
3 U.S. 48, 78 (2010).

4 The legislature notes that custodial interrogation of an  
5 individual by the State requires that the individual be advised  
6 of the individual's rights to make a knowing, intelligent, and  
7 voluntary waiver of those rights before the interrogation  
8 proceeds. However, the legislature believes that children under  
9 eighteen years of age, unlike adults, cannot sufficiently  
10 comprehend the meaning of their rights and the consequences of a  
11 waiver.

12 The purpose of this Act is to require that when an officer  
13 has custody of a child under eighteen years of age for an  
14 alleged violation of law, the child shall have contact with  
15 legal counsel and, to the extent practicable, a parent or legal  
16 guardian before the child waives any constitutional rights and  
17 before any custodial interrogation.

18 SECTION 2. Chapter 571, Hawaii Revised Statutes, is  
19 amended by adding a new section to part IV to be appropriately  
20 designated and to read as follows:



1           "§571-       Contact with counsel; parent or legal guardian;  
2 consultation.   (a) Before the waiver of any right against self-  
3 incrimination by and before a custodial interrogation of a child  
4 under eighteen years of age, the child shall have contact with  
5 legal counsel in person, by telephone, or by video conference,  
6 and shall also, to the extent practicable, have contact with a  
7 parent or legal guardian in person, by telephone, or by video  
8 conference. The contact may not be waived.

9           (b) The court, in determining the admissibility of  
10 statements of a child under eighteen years of age made during or  
11 after the waiver of any right against self-incrimination or  
12 during or after a custodial interrogation, shall consider the  
13 effect of any failure of the officer who had custody of the  
14 child to take steps to comply with subsection (a).

15           (c) Any officer who has arrested a child under eighteen  
16 years of age shall notify the child's parent, guardian, or legal  
17 custodian that the child has been arrested and shall provide the  
18 location of the child's detention.

19           (d) This section shall not apply to the admissibility of  
20 statements of a child under eighteen years of age if:



- 1       (1) The officer who questioned the child reasonably  
2           believed that the information the officer sought was  
3           necessary to protect life or property from an imminent  
4           threat; and  
5       (2) The officer's questions were limited to those  
6           questions that were reasonably necessary to obtain the  
7           information sought in paragraph (1)."

8           SECTION 3. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11           SECTION 4. New statutory material is underscored.

12           SECTION 5. This Act shall take effect on June 30, 3000.

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# H.B. NO. 781 H.D. 1

**Report Title:**

Children; Custody; Constitutional Rights

**Description:**

Requires that when an officer has custody of a child under the age of eighteen for an alleged violation of law, the child shall have contact with legal counsel and, to the extent practicable, a parent or legal guardian before the child waives any constitutional rights and before any custodial interrogation. Effective 6/30/3000. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

