King County

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

Ordinance 19148

Proposed No. 2020-0253.2

Sponsors Zahilay, Kohl-Welles, Dembowski and Balducci

AN ORDINANCE prohibiting law enforcement personnel from questioning, except in limited circumstances, persons under the age of eighteen when Miranda rights are administered and prohibiting law enforcement personnel from requesting permission from a person under the age of eighteen to conduct a search of the person or property, abodes or vehicles under that persons control unless legal counsel is provided for that person; and adding a new chapter to K.C.C. Title 2.

STATEMENT OF FACTS:

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." Regarding this, see Richard J. Bonnie, et al., Reforming Juvenile Justice: A Developmental Approach, National Research Council (2013), p. 96 and Ch. 4.

2. As recognized by the United States Supreme Court in *J.D.B. v. North Carolina,* 564 U.S. 261 (2011), children are "generally are less mature and

responsible than adults," "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," "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." As stated in *Graham v. Florida*, 560 U.S. 48 (2010), children "have limited understandings of the criminal justice system and the roles of the institutional actors within it."

3. Under the Fifth Amendment to the United States Constitution, according to *Miranda v. Arizona*, 384 U.S. 436 (1966), 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 The individual must have "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.," according to *Moran v. Burbine*, 475 U.S. 412 (1986).

4. 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. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973), states: "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.'"

5. 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 under consent, as provided in *Davis v. United States,* 328 U.S. 582, 593-594 (1947, and *Zap v. United States,* 328 U.S. 624 (1946).

6. If law enforcement asks for a person's consent, the government has the burden of demonstrating the voluntariness of the consent, according to *State v. Shoemaker,* 85 Wn.2d 207, 2710 (1975), To be valid, the consent must be voluntary and the search must not exceed the scope of consent, according to *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," according to *Shoemaker*, 85 Wn.2d at 211-12.

7. A large body of research has established that adolescent thinking tends to either ignore or discount future outcomes and implications and to disregard long-term consequences of important decisions. See examples in 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; and 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).

8. An extensive body of literature demonstrates that juveniles 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. For examples, see *J.D.B.*, 564 U.S. 261. Recent research has shown that more than one-third of proven false confessions were obtained from suspects under the age of eighteen. See examples in 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.

9. 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. This is discussed in Kristin Henning, The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment, 67 American University Law Review 1513 (June, 2018).

10. In 2018 and 2019, the King County sheriff's office was responsible for approximately twenty percent of the all filings in the King County superior court's juvenile division.

BE IT ORDAINED THE COUNCIL OF KING COUNTY:

SECTION 1. Sections 2 through 4 of this ordinance should constitute a new chapter in K.C.C. Title 2.

NEW SECTION. SECTION 2. The county finds this chapter necessary in order to ensure that, as provided in this chapter, youth shall neither be subject to questioning by law enforcement personnel nor be asked by law enforcement personnel to consent to or authorize the search of the youth or any property, abodes or vehicles, under the control of the youth until after legal representation has been provided for the youth. This chapter is intended to honor the life of MiChance Dunlap-Gittens, who dreamed of one day going to law school and championing the rights of young people.

NEW SECTION. SECTION 3. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Imminent threat" means an objectively reasonable need to protect persons from an immediate danger consistent with the public safety exception to the Miranda rule first announced in the United States Supreme Court case *New York v. Quarles,* 467 U.S. 656, 81 L. Ed. 2d 550, 104 S. Ct. 2626 (1984).

B. "Law enforcement personnel" means any King County sheriff's employee or volunteer having as a primary function the enforcement of criminal laws in general, including, but not limited to, commissioned sheriff deputies, and includes such employees performing law enforcement services on behalf of a city pursuant to an

interlocal agreement. For the purposes of this subsection, "primary function" means that function to which the greater allocation of resources is made.

C. "Miranda warnings" means verbal warnings given by law enforcement advising the individual that the individual has the right to remain silent, the right to consult with an attorney and have the attorney present during questioning and the right to have legal counsel if the individual cannot afford legal counsel.

D. "Youth" means any person under the age of eighteen.

NEW SECTION. SECTION 4.

A. Except as otherwise provided in subsection D. of this section, after law enforcement personnel administers Miranda warnings to a youth and before any further questioning of the youth may occur, the youth must consult with legal counsel in person, by telephone or by video conference. The consultation may not be waived.

B. Before law enforcement personnel requesting any required consent or authorization from a youth to search the youth or any property, abodes or vehicles under the control of the youth, the youth shall consult with legal counsel in person, by telephone or by video conference. The consultation may not be waived and is required regardless of the youth's custody status.

C. After the youth has consulted with legal counsel, the youth may choose to either advise, have a parent or guardian advise or direct the legal counsel to advise the law enforcement personnel whether the youth chooses to assert a constitutional right. Except in the circumstances when the youth chooses to advise or have a parent or guardian advise the law enforcement personnel, any statement by legal counsel regarding the assertion of the youth's constitutional rights shall be treated by law enforcement

personnel the same as if it came from the youth.

D. Under the following limited circumstances, the prohibition in subsection A. of this section shall not apply to questioning after Miranda warnings are administered, if each of following criteria are met:

1. Law enforcement personnel reasonably believes the information sought is necessary to protect life from an imminent threat;

2. Reasonable delay to allow legal counsel consultation by phone would hamper the protection of life from an imminent threat; and

3. The questioning is limited to those matters that are reasonably necessary to obtain information necessary to protect life from an imminent threat.

E. Law enforcement personnel shall prepare a written record for each instance when subsection D. of this section is invoked. The record shall document the following:

1. The time the youth was advised of the Miranda warnings;

2. The time the youth was questioned without legal consultation;

3. The reasons that justified questioning the youth without prior legal counsel consultation;

4. The questions posed to the youth;

5. Information related to the youth, including name, age and race;

6. Information related to the law enforcement personnel questioning the youth, including the name and badge number of each of the law enforcement personnel.

F. Twice each year, the sheriff's office shall transmit copies of the records required by subsection E. of this section to the prosecuting attorney and the director of the King County department of public defense. The sheriff and these agencies will

collaborate on the protocols that the sheriff shall follow to transmit copies of the records. Each quarter, the sheriff's office shall transmit copies of the records required by subsection E. of this section electronically to the clerk of the council. The clerk shall provide the electronic copy to all councilmembers, the council chief of staff and the lead staff for the law and justice committee or its successor. The sheriff's office shall redact the name of the youth and replace it with initials in the records transmitted under this section.

SECTION 5.

A. On January 4 of each year, through 2023, the sheriff's office shall report on:

1. The number of youth arrests, by month, compared to the three years before the effective date of this ordinance;

2. The number of times youth were administered their Miranda warnings;

3. The number of times Miranda rights were waived;

4. The number of times law enforcement requested permission from a youth to conduct a search of the youth, their property, abodes or vehicles under the youth's control;

5. The number of times youth consented to a search;

6. The number of times legal counsel were provided to youth; and

7. Whether this ordinance has resulted in any systemic problems in securing safety in emergency situations or impaired investigations.

B. In preparing the report, the sheriff's office is requested to seek input from the department of public defense and the prosecuting attorney regarding impacts, whether perceived as positive or negative, from implementation of this ordinance. The sheriff's

office must file the report in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff to the law and justice committee, or its successor.

SECTION 6. If any provision of this ordinance or its application to any person or

circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Ordinance 19148 was introduced on 7/21/2020 and passed as amended by the Metropolitan King County Council on 8/18/2020, by the following vote:

Yes: 9 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Ms. Kohl-Welles, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer and Mr. Zahilay

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:
Claudia Balducci
F8830816F1C4427...

Claudia Balducci, Chair

ATTEST:

DocuSigned by:
Melani Pedroza
8DE1BB375AD3422...

Melani Pedroza, Clerk of the Council

APPROVED this _____ day of 9/1/2020, _____.

DocuSigned by:
Dow Constantine
4FBCAB8196AE4C6...

Dow Constantine, County Executive

Attachments: None