WEST virginia legislature

2021 regular session

Introduced

House Bill 3204

By Delegates Steele, Graves, Smith and Nestor

[Introduced March 16, 2021; Referred to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new section designated §62-1A-12; relating to custodial interrogation of a child; requiring the child have contact with legal counsel by certain means; requiring the child have contact with a parent, guardian, legal custodian, or other legally recognized equivalent by certain means; permitting a law-enforcement officer to ask questions reasonably believed to be necessary to protect life or property without requiring contact with counsel, parents, guardians, or other recognized persons; and requiring questions of a child be limited to obtaining such information reasonably believed to be necessary to protect life or property.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-12. Custodial interrogation of a child; consultation with legal counsel; admissibility of statements.

(a) For purposes of this section, “custodial interrogation” means any interview conducted by a law-enforcement officer in such circumstances that would lead a reasonable person to consider himself to be in custody associated with arrest and during which the law-enforcement officer takes actions or asks questions that are reasonably likely to elicit response from the person that could incriminate him.

(b) Prior to the custodial interrogation of a child, the child shall:

(1) Consult with legal counsel in person, by telephone, or by video conference, and;

(2) Have contact with his or her parent, guardian, legal custodian, or other person standing in loco parentis in person, by telephone, or by video conference.

(c) Any statement made by a child during or after a custodial interrogation that does not comply with the provisions of this section shall be inadmissible as evidence unless:

(1) The law-enforcement officer who conducted the custodial interrogation of the child reasonably believed the information sought was necessary to protect life or property from an imminent threat, and;

(2) The law-enforcement officer’s questions were limited to those that were reasonably necessary to obtain such information.

NOTE: The purpose of this bill is to establish limitation on law-enforcement officers conducting custodial interrogations of a child with certain exceptions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.