

APPENDIX 1

California Criminal Procedure
December 2020 Update
Laurie L. Levensona and Alex Ricciardullia
Chapter 7. Confessions and Admissions
§ 7:17. Interrogation requirement—Questioning juveniles

The mere fact that a defendant is a minor does not establish that his or her confession is involuntary.¹ The test for the voluntariness of a minor’s confession is whether, under all the circumstances, considering age, intelligence, and education, the minor can comprehend the meaning and effect of a confession.² In determining whether a juvenile was in “custody” at the time of an interrogation, the test is not whether a reasonable adult would not feel free to leave, but whether a reasonable person with the defendant’s age and experience would not feel free to leave.³

A minor must be given Miranda warnings, even if not questioned, when he or she is taken into temporary custody on the ground that there is reasonable cause to believe that he or she is a person described in Welfare and Institutions Code § 601 (habitual truancy) or 602 (criminal behavior of minor).⁴ Although it is a preferable practice, there is no requirement that the police obtain a parent’s consent before questioning a minor.⁵ Nor must the police advise a minor of his or her right to speak with a parent or have them present during questioning.⁶

However, prior to custodial interrogation, and before the waiver of any Miranda rights, a youth 17 year or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.⁷

Although prior cases suggested otherwise,⁸ the California Supreme Court held in 2010, that there is no special rule that a minor’s request to see a parent prior to interrogation must be construed as an invocation of the minor’s Fifth Amendment right.⁹ The federal “totality of the circumstances” test should be used to determine whether a minor has asserted his or her Miranda rights.¹⁰ A minor’s request to speak to a parent is only one factor to be considered and does not create a presumption that the minor has asserted his or her Miranda rights.

In 2013, Penal Code § 859.5 was passed that requires the electronic recordation of the entire custodial interrogation of a minor who is in a fixed place of detention and is suspected of or accused of committing murder.¹¹ However, the new law has exceptions if the law enforcement officer conducting the interrogation reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of the officer or another individual.¹²

Footnotes

1 *People v. Davis*, 29 Cal. 3d 814, 825, 176 Cal. Rptr. 521, 633 P.2d 186 (1981).

2 *In re John S.*, 199 Cal. App. 3d 441, 445, 245 Cal. Rptr. 17 (6th Dist. 1988).

3 See *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002), as amended on denial of reh’g and reh’g en banc, (Feb. 11, 2003) and rev’d on other grounds, 541 U.S. 652, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004).

4 Welfare and Institutions Code § 625.

5 *People v. Davis*, 29 Cal. 3d 814, 825, 176 Cal. Rptr. 521, 633 P.2d 186 (1981).

6 *In re Aven S.*, 1 Cal. App. 4th 69, 76, 1 Cal. Rptr. 2d 655 (1st Dist. 1991); *In re John S.*, 199 Cal. App. 3d 441, 445–446, 245 Cal. Rptr. 17 (6th Dist. 1988).

7 Welf. & Inst. Code, § 625.6(a).

8 See *People v. Rivera*, 41 Cal. 3d 388, 221 Cal. Rptr. 562, 710 P.2d 362 (1985) (disapproved of by, *People v. Lessie*, 47 Cal. 4th 1152, 104 Cal. Rptr. 3d 131, 223 P.3d 3 (2010)); *People v. Burton*, 6 Cal. 3d 375, 99 Cal. Rptr. 1, 491 P.2d 793 (1971) (disapproved of by, *People v. Lessie*, 47 Cal. 4th 1152, 104 Cal. Rptr. 3d 131, 223 P.3d 3 (2010)); *In re Aven S.*, 1 Cal. App. 4th 69, 76, 1 Cal. Rptr. 2d 655 (1st Dist. 1991).

9 *People v. Lessie*, 47 Cal. 4th 1152, 104 Cal. Rptr. 3d 131, 223 P.3d 3 (2010).

10 *People v. Lessie*, 47 Cal. 4th 1152, 104 Cal. Rptr. 3d 131, 223 P.3d 3 (2010).

11 Penal Code § 859.5(a); Welfare & Institutions Code § 626.8.

12 Penal Code § 859.5(b).

California Criminal Procedure
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Chapter 5. Searches and Search Warrants
§ 5:66. Administrative searches—Searches of students

Although the Fourth Amendment applies to searches of students conducted by school authorities, a search may be conducted without a warrant and without full probable cause.¹ There must be “reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school” and the search must be reasonable in scope.² The measures adopted must be “reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”³ The Court in *New Jersey v. T.L.O.* did not resolve issues concerning whether individualized suspicion is necessary, whether students have a reasonable expectation of privacy in their lockers or desks, and whether a higher standard is necessary if the search is conducted at the behest of law enforcement officials.⁴ However, in *Safford Unified School Dist. v. Redding*,⁵ the Supreme Court held that school officials violated a seventh grade girl’s Fourth Amendment rights when they strip-searched her on suspicion that she had prescription-strength ibuprofen.

A California court applied the same reasoning in upholding the search of a group of five or six students by a school dean who had information that someone in the group had a gun or other weapon. Given the potential danger to students and staff, a weapons search of each member of the group was reasonable.⁶ Similarly, a California court has held that a report that a student has used a gun after school provides reasonable grounds to search the lockers of other students if the suspected shooter had access to those lockers and they could hold a weapon.⁷

In *In re Latasha W.*,⁸ a California court held that random metal detector weapon searches of students do not violate the Fourth Amendment. The court based its holding on the rationale that schools have a substantial need to keep weapons out of schools, metal detector searches are minimally intrusive, and a system requiring individual suspicion would be impractical and unworkable.⁹

The California Supreme Court has held that school officials, including school security officers, may stop a minor student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion of criminal activity or a violation of a school rule, so long as this authority is not exercised in an arbitrary, capricious, or harassing manner.¹⁰ However, unless there is suspicion that the student has a dangerous weapon,¹¹ disruptive behavior alone does not authorize school officials to search through a student’s personal belongings.¹²

A school employee may not conduct a body cavity search of a student, nor a visual inspection of the underclothing, breast, buttocks, or genitalia of a student.¹³

Comment:

The “special needs” doctrine permits school officials to conduct suspicionless drug testing if it is not in connection with a criminal investigation. In *Veronica School Dist. 47J v. Acton*,¹⁴ the Court upheld suspicionless drug testing of school athletes. In *Board of Education v. Earls*,¹⁵ the Court expanded suspicionless drug testing to students participating in any extracurricular activities. In *Earls*, the Court emphasized that the test results had not been turned over to any law enforcement authority, nor did they lead to imposition of discipline. Accordingly, the decision in *Earls* does not reverse the requirement of reasonable suspicion when searches are conducted for law enforcement purposes.

Footnotes

1 *New Jersey v. T.L.O.*, 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985) (search of high school student’s purse).

2 *New Jersey v. T.L.O.*, 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985).

3 *New Jersey v. T.L.O.*, 469 U.S. 325, 342, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985).

4 *New Jersey v. T.L.O.*, 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720, 21 Ed. Law Rep. 1122 (1985).

5 *Safford Unified School Dist. No. 1 v. Redding*, 557 U.S. 364, 129 S. Ct. 2633, 174 L. Ed. 2d 354, 245 Ed. Law Rep. 626 (2009).

6 *In re Alexander B.*, 220 Cal. App. 3d 1572, 1576, 270 Cal. Rptr. 342, 60 Ed. Law Rep. 855 (2d Dist. 1990) (disapproved of by, *In re Randy G.*, 26 Cal. 4th 556, 110 Cal. Rptr. 2d 516, 28 P.3d 239, 155 Ed. Law Rep. 1292 (2001)).

7 *In re J.D.*, 225 Cal. App. 4th 709, 170 Cal. Rptr. 3d 464, 303 Ed. Law Rep. 416 (1st Dist. 2014), as modified on denial of reh’g, (May 14, 2014) and review denied, (Aug. 13, 2014).

8 *In re Latasha W.*, 60 Cal. App. 4th 1524, 70 Cal. Rptr. 2d 886, 123 Ed. Law Rep. 277 (2d Dist. 1998).

9 *In re Latasha W.*, 60 Cal. App. 4th 1524, 1525–1527, 70 Cal. Rptr. 2d 886, 123 Ed. Law Rep. 277 (2d Dist. 1998).

10 *In re Randy G.*, 26 Cal. 4th 556, 110 Cal. Rptr. 2d 516, 28 P.3d 239, 155 Ed. Law Rep. 1292 (2001) (officers properly detained student and obtained consent to search his bag and conduct a patdown search).

11 See *In re K.J.*, 18 Cal. App. 5th 1123, 227 Cal. Rptr. 3d 380, 350 Ed. Law Rep. 827 (1st Dist. 2018), review denied, (Apr. 11, 2018).

12 *In re Lisa G.*, 125 Cal. App. 4th 801, 23 Cal. Rptr. 3d 163 (4th Dist. 2004), as modified, (Jan. 10, 2005).

13 Education Code § 49050.

14 *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 115 S. Ct. 2386, 132 L. Ed. 2d 564, 101 Ed. Law Rep. 37 (1995).

15 *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822, 122 S. Ct. 2559, 153 L. Ed. 2d 735, 166 Ed. Law Rep. 79 (2002).

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SEARCHES OF STUDENTS



Do I have the right to refuse to be searched?

YES. You always have a right to refuse a search and you should make clear that a search is taking place over your objection. But you should not use physical resistance to stop a search.

Can my school search me without my consent?

YES, but only under certain circumstances. First, your school must have a “reasonable suspicion” that searching you will turn up evidence that you violated a school rule or law. Second, the way your school does its search should be “reasonable” based on what is being searched for and your age.

What is “reasonable suspicion”?

Unfortunately, there is no exact definition. But a reasonable suspicion should be based on facts specific to you or your situation. It cannot be based on a rumor, hunch, or curiosity. For example, a teacher cannot ask to search a bag that looks weird and bulgy for drugs based only on the look of the bag.

Can my school conduct a random search of students in my school?

YES. But these random searches must be based on special, school-wide needs such as ensuring school safety and should be truly random. A random search cannot be used to target any individual student.

Can my school strip search me?

NO.¹

Can my school search my locker?

SOMETIMES. If your locker is considered personal property, then your school may not search your locker unless it has a “reasonable suspicion” that it may find something against the law or school rules.

But if your locker is considered school property, then your locker can be searched. Your school must give you notice that your locker is school property, such as in student handbooks or posted signs on campus.

Can my school use drug-sniffing dogs in my school?

YES, but there are limits. Your school may use dogs to search for drugs on school campus, including unattended belongings like backpacks. But it must have a “reasonable suspicion” to search those belongings.

If someone at your school tells you to leave the classroom while drug-sniffing dogs conduct a search, you should try to bring your things with you.

Can my school conduct general metal detector searches?

YES, so long as the students searched are picked randomly. For example, your school may put a metal detector at the front door to make all students pass through.

But if your school wants to single you out for a metal detector search, it must have a “reasonable suspicion” that it will find something against the law or school rules.

¹ California Education Code § 49050

SEARCHES OF STUDENTS



Can my school make me take a random drug test?

USUALLY NOT. Your school may only conduct random drug testing of students who participate in extracurricular activities. Your school cannot force you to take a drug test under other circumstances.

Do I have the right to refuse a search conducted by a police officer in my school?

YES, you have the right to refuse a search just as you have that right with school officials.

Do regular police officers have to follow the same rules as school officials?

At a minimum, police officers must have “reasonable suspicion” to search you. And, under some circumstances, they need even more than that.

Can my school use evidence it finds in an illegal search against me in court?

NO. If school officials or police officers illegally search you, they cannot use what they find against you in court. But your school can use evidence from an illegal search in school disciplinary proceedings.



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INSPECCIÓN DE LOS ESTUDIANTES



¿Puede mi escuela registrarme sin mi consentimiento?

SÍ, pero solo bajo ciertas circunstancias. Tu escuela usualmente debe cumplir con dos requisitos:

Primero, tu escuela debe tener la “sospecha razonable” de que al registrarte encontrarán pruebas de que violaste las reglas de la escuela o la ley. Segundo, la forma como la escuela te registra debe estar “razonablemente” basada en lo que están buscando y en tu edad.

¿Qué es “sospecha razonable”?

Desafortunadamente no existe una definición concreta. Pero, una “sospecha razonable” debería estar basada en información específica de tu persona o situación. No puede basarse en rumores, sospechas o curiosidad. Por ejemplo, un maestro no puede registrar una bolsa que luce extraña y abultada porque sospecha que tiene drogas solo por la apariencia de la bolsa.

¿Tengo derecho a negarme a ser registrado?

SÍ. Siempre tienes derecho a negarte a ser registrado y debes dejar claro que te están registrando sin tu consentimiento. Pero no debes oponer resistencia física.

¿Puede mi escuela registrar al azar a los estudiantes de la escuela?

SÍ. Pero estas inspecciones al azar deben estar basadas en necesidades especiales y generales de la escuela, tales como garantizar la seguridad escolar, y deben ser realmente al azar. Una inspección al azar no puede ser usada para registrar a un estudiante en particular.

¿Puede mi escuela registrarme desnudo?

NO.

¿Puede mi escuela registrar mi casillero?

DEPENDENDE. Si tu casillero se considera propiedad personal, tu escuela no puede registrarlo a menos que tengan la “sospecha razonable” de que encontrarán algo que viola la ley o las reglas escolares.

Pero si tu casillero se considera propiedad escolar puede ser registrado. Tu escuela debe notificarte que el casillero se considera propiedad escolar a través, por ejemplo, del manual del estudiante o a través de letreros desplegados en el campus.

¿Puede mi escuela usar perros rastreadores de drogas?

SÍ, pero existen límites. Tu escuela puede usar perros para olfatear drogas en el campus escolar, incluyendo pertenencias desatendidas, tales como mochilas. Pero deben tener una “sospecha razonable” para registrar estas pertenencias.

Si alguien en tu escuela te dice que salgas del aula mientras los perros rastreadores de drogas inspeccionan el salón, debes tratar de llevar contigo tus pertenencias.

INSPECCIÓN DE LOS ESTUDIANTES



CONTINUACIÓN

¿Puede mi escuela realizar inspecciones generales con detectores de metales?

SÍ, siempre y cuando los estudiantes sean registrados al azar. Por ejemplo, tu escuela puede instalar un detector de metales en la entrada principal para que todos los estudiantes pasen por él. Pero si tu escuela solo te pide a ti que pases por el detector de metales, deben tener una “sospecha razonable” de que encontrarán algo que viola la ley o las reglas escolares.

¿Puede mi escuela obligarme a tomar una prueba aleatoria para detectar drogas?

USUALMENTE NO. Tu escuela solo puede realizar pruebas aleatorias para detectar drogas si los estudiantes participan en actividades extracurriculares. Tu escuela no puede obligarte a tomar un examen para detectar drogas bajo ninguna otra circunstancia.

¿Deben los oficiales de policía obedecer las mismas reglas que los funcionarios escolares?

ES COMPLICADO. Aplican reglas distintas si el oficial está asignado al campus permanentemente o si trabaja con los funcionarios escolares.

Pero como mínimo, los oficiales de policía deben tener una “sospecha razonable” para registrarte. Bajo ciertas circunstancias necesitan incluso más que eso.

¿Tengo derecho a negarme a ser registrado por un oficial de policía en mi escuela?

SÍ, tienes el mismo derecho a negarte a ser registrado que tienes con los funcionarios escolares.

¿Puede mi escuela usar la evidencia encontrada durante una inspección ilegal en mi contra en los tribunales?

NO. Si los funcionarios escolares u oficiales de policía te registran ilegalmente, no pueden usar lo que encuentran en tu contra en los tribunales. Pero tu escuela puede usar la evidencia encontrada durante una inspección ilegal en sus procesos disciplinarios.



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ⁱ Código de Educación de California § 49050