CaliforniaCivilLiberties.org

California Civil Liberties Advocacy
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Monday, March 6, 2017

Senator Ricardo Lara
State Capitol
Room 5050
Sacramento, CA 95814-4900

Senator Holly Mitchell
State Capitol
Room 5080
Sacramento, CA 95814-4900

RE: Senate Bill 395 — Support

Dear Senators Lara and Mitchell,

The California Civil Liberties Advocacy (CCLA) is writing to express strong **SUPPORT** for SB 395 and the author's proposed amendments.

As previously stated, the CCLA strongly believes that law enforcement must be able to do their job effectively and have the tools that enable them to be most efficient. At the same time, the rights of the accused must be respected at all times. Despite the existence of a distinction between the Constitutional rights of adults and those of juveniles, children and adolescents should be afforded greater protections than are extended to adults for the same reason that they should not be subject to the same punishments as adults — their inexperience and underdeveloped nature render them less culpable than adults and more responsive to restorative treatments.

Recent neurological research has revealed that the prefrontal cortex—part of the human brain that controls judgment, problem-solving, decision-making, and impulsive behavior—is not fully developed until a person reaches their early to mid-20s. (Crane, et. al., The Truth About Juvenile False Confessions, Insights on Law and Society, American Bar Assocaition (Winter 2016) [http://www.americanbar.org/content/dam/aba/images/public_education/insights/Juvenile_confessions.pdf <Accessed Mar. 19, 2017>].) No doubt, this lack of ability to coordinate one's thoughts and act appropriately can not only lead to legal trouble, but it also stymies a youth's ability to grasp the legal ramifications the come with waiving their rights against self-incrimination.

All available data on false convictions and exonerations tends to reveal that defendants under 18 are more likely to admit to an offense they did not commit than are adults. According to the National Registry of Exonerations, "27 exonerations in 2015 were for convictions based on false confessions . . . mostly by defendants who were under 18 or mentally handicapped or both." (Exonerations in 2015, The National Registry of Exonerations (Feb. 3, 2016) [http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2015.pdf <Accessed Mar. 19, 2017>].) Obviously, something is very wrong if most false confessions are made by juvenile defendants. Leaving such youth alone to face police questioning without ensuring that they fully understand the negative consequences that waiving their rights will have on the rest of their life presents an ethical quandary for society.

The CCLA strongly disagrees with the reasoning in Governor Brown's veto message regarding SB 1052 last year, in which he stated that "in countless cases, police investigators solve very serious crimes through questioning and the resulting admissions or statements that follow." While these sentiments may be true, can society afford to weigh a youth's entire life in the balance as a question of statistics? Are wrongly convicted youth to be interpreted as a mere outlier — an inconvenient dot on a statistician's scatterplot? Lawmakers and law enforcement personnel should take care to ensure that such ethical dilemmas are avoided. Ruining a young person's life before it even begins should never be debated as a light matter. To them the CCLA asks if they believe in the maxim formulated by Sir William Blackstone in the 1760's, reiterated by Benjamin Franklin, and traceable in principle to the Hebrew law of Biblical times that "[I]t is better that ten guilty persons escape, than that one innocent suffer?" (Volokh, *n Guilty Men* in Univ. of Penn. L. Rev. (1997) 146, pp. 173-216.)

Whether or not a defendant is actually guilty, our nation's founders instituted special protections to ensure that the government cannot simply convict at will. As noted by Chief Justice Roberts in *Riley v. California* (2014) 134 S. Ct. 2473, 2493 "[prior] cases have historically recognized that the warrant requirement is 'an important working part of our machinery of government,' not merely 'an inconvenience to be somehow 'weighed' against the claims of police efficiency.' " ((*Riley, supra*, at pg. 2493, citing *Coolidge v. New Hampshire* (1971) 403 U. S. 443, 481.) Though writing about Fourth Amendment protections, this line of reasoning is easily applicable to the Fifth Amendment right against self-incrimination, since this right too is not merely an inconvenience to be somehow weighed against the claims of police proficiency. After all, if "police proficiency" results in a wrongful conviction, or tricking a young person into destroying their life, then there really is nothing proficient about that.

For all of the foregoing reasons, the CCLA strongly **SUPPORTS** SB 395 and the proposed amendments.

Respectfully,

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Cc:

Senate Committee on Public Safety
State Capitol
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