

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 136

(Senator Carter)

Judicial Proceedings

Juvenile Law - Juvenile Interrogation Protection Act

This bill prohibits a law enforcement officer from conducting a custodial interrogation of a child until the child has consulted with an attorney and the law enforcement officer has notified, or caused to be notified, the parent, guardian, or custodian of the child in a manner reasonably calculated to provide actual notice that the child will be interrogated.

Fiscal Summary

State Effect: The bill does not materially affect State expenditures, as discussed below. Revenues are not affected.

Local Effect: Potential increase in expenditures for local law enforcement agencies, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that if a law enforcement officer takes a child into custody, the officer must immediately notify, or cause to be notified, the child's parents, guardian, or custodian *in a manner reasonably calculated to give actual notice* of the action. The notice must include the child's location, provide the reason for the child being taken into custody, and instruct the parent, guardian, or custodian on how to make immediate in-person contact with the child.

The Maryland Police Training and Standards Commission (MPTSC) must adopt rules concerning age-appropriate language to be used to advise a child who is taken into custody of (1) the child's rights, including the right to remain silent and be represented by an attorney and (2) the requirement for the child's parent, guardian, or custodian to be notified, as specified.

The attorney with whom the child must consult may be an attorney who is retained by the parent, guardian, or custodian or provided by the Office of the Public Defender (OPD). Consultation with an attorney must be confidential and may be in person or by telephone or video conference. To the extent practicable and consistent with the Maryland Rules of Professional Conduct, an attorney providing consultation must communicate and coordinate with the parent, guardian, or custodian of the child in custody. The requirement of consultation with an attorney may not be waived and applies whether the child is proceeded against as a child or is charged as an adult.

A law enforcement agency conducting an interrogation must maintain a record of the notification or attempted notification, including (1) a signed statement by a duly authorized law enforcement officer employed by the agency that an attempt to notify a parent, guardian, or custodian was made; (2) the name of the person sought to be notified; and (3) the method of attempted notification.

The bill specifies that regardless of the above requirements, statements made by a child are admissible as evidence if (1) the law enforcement officer who conducted the custodial interrogation of the child reasonably believed that the information sought was necessary to protect an individual from an imminent threat to the life of the individual and (2) the questions posed to the child by the law enforcement officer were limited to those questions reasonably necessary to obtain the information.

The bill alters related provisions in the Criminal Procedure Article regarding requirements for law enforcement officers who take a minor into custody. The bill specifies that a law enforcement officer who charges a minor with a criminal offense must make a reasonable attempt to *provide actual notice* to the parent or guardian of the minor. The bill repeals a requirement for a law enforcement officer (or designee) taking a minor into custody to make a reasonable attempt to notify the parent or guardian of the minor *within 48 hours of the minor's arrest*. Instead, notification is required pursuant to the bill's provisions as described above.

Current Law: If a law enforcement officer takes a child into custody, the officer must immediately notify, or cause to be notified, the child's parents, guardian, or custodian of the action. After making every reasonable effort to give notice, the officer must with all reasonable speed (1) deliver the child to the court or a place of detention or shelter care

designated by the court or (2) release the child to the child's parents, guardian, or custodian or to any other person designated by the court, under specified circumstances.

A law enforcement officer who charges a minor with a criminal offense must make a reasonable attempt to notify the parent or guardian of the minor of the charge. If an officer takes a minor into custody, the law enforcement officer or the officer's designee must make a reasonable attempt to notify the parent or guardian of the minor within 48 hours of the arrest.

State Expenditures: The Department of Public Safety and Correctional Services advises that researching and developing rules regarding age-appropriate language to advise a child of applicable rights under the bill has a fiscal impact on MPTSC as it does not currently have staffing resources available for this task. However, the Department of Legislative Services advises that given the amount of material likely available on this topic and the limited scope of the required recommendations, it is assumed that any potential minimal expenditures to meet this requirement do not materially affect State finances.

The bill does not materially impact the workload of OPD.

Local Expenditures: Depending on current practice and case volume, local expenditures in some jurisdictions may increase due to the more stringent requirements established under the bill for interrogations of individuals younger than age 18.

Anne Arundel County advises that because the bill's requirements are not significantly different from current policy and practice, no material effect on county finances or operations is anticipated. Charles County law enforcement agencies provided a similar response, and Frederick County also did not anticipate a significant fiscal impact.

However, the City of Havre de Grace, and Baltimore and Montgomery counties advised that the bill's provisions generally increase costs for police investigations, such as those associated with training and overtime budgets. A specific estimate of anticipated costs resulting from the bill is not available.

Additional Information

Prior Introductions: HB 624 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 593, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken.

Designated Cross File: HB 315 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:

(410) 946-5510

(301) 970-5510