

**Department of Legislative Services**  
Maryland General Assembly  
2023 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 22

(Senator Sydnor)

Judicial Proceedings

---

**Criminal Procedure - Custodial Interrogation - Codification**

---

This bill (1) explicitly defines “custodial interrogation”; (2) specifies that a statement made during a custodial interrogation is not admissible unless the person is advised of specified rights; and (3) prohibits a statement made by a person who is arrested from being admissible in a criminal proceeding unless specified conditions are satisfied. The bill may not be construed to nullify any protection afforded by any other law or the Maryland Rules.

---

**Fiscal Summary**

**State Effect:** The bill is generally procedural in nature and does not directly affect State finances or operations, as discussed below.

**Local Effect:** The bill is generally procedural in nature and does not directly affect local finances or operations, as discussed below.

**Small Business Effect:** None.

---

**Analysis**

**Bill Summary/Current Law:** Under current law, “custodial interrogation” is defined in § 2-401 of the Criminal Procedure Article as “retaining its judicially determined meaning.” The judicially determined meaning of a custodial interrogation can be summarized as follows: “questioning initiated by law enforcement officers, or ‘any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect,’ after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” (See, e.g., *Gupta v. State*, 452 Md. 103, 129-30 (2017)).

The bill defines “custodial interrogation” as questioning, by a law enforcement officer, of a person who is detained, arrested, or has a reasonable belief that the person is not free to leave the encounter with the officer.

The bill further specifies that a statement made by a person during a custodial interrogation is not admissible in a criminal proceeding unless the person who made the statement is advised that: (1) the person has the right to remain silent; (2) any statement made by the person during custodial interrogation may be used against the person in a criminal proceeding for the purpose of proving the commission of a crime; and (3) the person has the right to speak to an attorney before any questioning. These rights, as specified in the bill, codify rights first established by the U.S. Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), and that have further evolved by case law.

Finally, the bill prohibits a statement made by a person who is arrested from being admissible in a criminal proceeding unless (1) the person has signed a written notice of the aforementioned required advice or (2) the person refuses to sign the written notice and the advice and refusal are documented by video or audio recording.

**State/Local Fiscal Effect:** The bill is procedural in nature and, in part, codifies rights regarding custodial interrogations that are already afforded to individuals while establishing additional standards regarding the admissibility of certain statements. While it is assumed that most law enforcement entities routinely record custodial interrogations (including the advice of the rights specified above) and have an individual sign an acknowledgment of the advice, it is not expressly required by statute or case law. Furthermore, a signed written notice of advice (or otherwise documented advice or refusal) is not currently required in order for a statement to be admitted.

---

### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Howard and Prince George’s counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2023  
km/jkb

---

Analysis by: Brandon Stouffer

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510