



POSITION ON PROPOSED LEGISLATION

BILL: SB 593 - Juvenile Law - Child Interrogation Protection Act
POSITION: SUPPORT
DATE: February 19, 2020

According to the National Registry of Exonerations, 36% of crimes allegedly committed by youth involved false confessions, triple the estimated rate of false confessions overall. The U.S. Supreme Court has recognized that police interrogation “can induce a frighteningly high percentage” of false confessions, and that this risk is multiplied when a child is the subject of an interrogation. Children are two to three times more likely to falsely confess than are adults. In fact, children account for approximately one-third of all false confessions. In a study that analyzed 340 exonerations, forty-two percent of children were found to have given false confessions, in comparison to thirteen percent of adults. The “reasonable juvenile standard” was created in 2011 in the context of custodial interrogations. The test for determining whether a youth was in custody for Miranda to apply is that of a reasonable juvenile.

Attorney Consultation Prior to Interrogation

Requiring an attorney consultation is not the creation of a new Constitutional right. It is necessary to ensure that the current Constitutional rights to remain silent and right to have an attorney present during interrogation are in fact understood by the youth subject to interrogation.

To ensure compliance with constitutional mandates, and limit the likelihood of a false confession, Maryland should explicitly require that all children consult with an attorney before any interrogation takes place. The only way to ensure that the waiver of a youth’s constitutional rights is in fact a knowing, intelligent and voluntary waiver is to have an attorney consultation before any interrogation.

The U.S. Supreme Court recognizes that a lawyer is uniquely positioned in the context of an interrogation to protect the Fifth Amendment rights of the accused. “[T]he lawyer occupies a critical position in our legal system because of his unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation. Because of this special ability of the lawyer to help the client preserve his Fifth Amendment rights once the client becomes enmeshed in the adversary process, the Court found that ‘the right to have counsel present as the interrogation is indispensable

to the protection of the Fifth Amendment privilege under the system' established by the Court.”

Even before the Miranda rights were formally established, the U.S. Supreme Court made clear that, in the context of police interrogation, events that “would leave a man cold and unimpressed can overawe and overwhelm a lad ...” The Supreme Court has since stressed what “any parent knows”—indeed, what any person knows— that “children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”³ Adolescents lack the experience, perspective, developmental maturity, and judgment to recognize and avoid choices that could be detrimental to them.

Current research demonstrates that all children, even 16 and 17 year-olds, are highly susceptible to pressure, have poor impulse control, incomplete brain development, and limited understanding of long-term consequences. The American Bar Association (ABA) resolved more than 17 years ago that “youth should not be permitted to waive the right to counsel without consultation with a lawyer and without a full inquiry into the youth's comprehension of the right and their capacity to make the choice intelligently, voluntarily and understandingly.” Maryland should make the same resolution via passage of HB 624.

Parent Notification of Arrest

Parents or guardians should be notified expeditiously that their child was taken into police custody, why they were taken into custody and where their child is located. While current law states that a parent should be notified, this language must be strengthened to ensure that parents are actually informed of their child's whereabouts. Since not every arrest will result in an interrogation, and a child needs a parent or guardian to be released from police custody, these measures will help secure the presence of a parent or guardian.

However, a parent or guardian's presence is insufficient for purposes of interrogation. The American Academy of Child and Adolescent Psychiatry (AACAP) has declared “that juveniles should have an attorney present during questioning by police or other law enforcement agencies.” While noting that youth should also be able to consult with a parent, the AACAP recognized that “parental presence alone may not be sufficient to protect juvenile suspects.” Parents generally lack the competency about police interrogation techniques and the risks of providing a statement, even a truthful one, to properly advise their child and ensure that any statement is knowing, intelligent and voluntary.

Also, because there is no legally recognized confidentiality of communications between a parent and their child, a parent could be compelled to testify against their child if they are present or partake in the child's interrogation.

Age Appropriate Miranda Warnings

The standard Miranda warning requires a tenth-grade level of reading comprehension.

Adolescents are more likely than their adult peers to assert they understand material to avoid embarrassment and to appear intelligent. When a law enforcement officer simply asks “do you understand” many children will respond in the affirmative even though they do not actually understand. To ensure that a waiver is knowing, intelligent, and voluntary, Miranda warnings for children must be provided at a third-grade reading level, police officers must read each warning slowly, and the interrogator must stop after each one to ask the child to explain the warning back in his or her own words.

Studies show that of the Miranda policies in 122 police departments across the country, “[e]ven under the best circumstance, preteen suspects are likely to find Miranda vocabulary and reading levels are far beyond their understanding.”

The International Association of Chiefs of Police (IACP) has recognized that “juveniles are more vulnerable than adults during interrogation – a vulnerability that is categorically shared by every juvenile, no matter how intelligent or mature.” In recognition of the research establishing the heightened risks of youth interrogations, in 2006, the IACP in conjunction with the U.S. Department of Justice Office of Juvenile Justice Delinquency Prevention (OJJDP) developed a training curriculum for law enforcement and a set of model policies for juvenile interrogation. In their extensive report *Reducing Risks: The Executives Guide to Effective Juvenile Interview and Interrogation*, the IACP acknowledged that standard law enforcement interrogation techniques are unreliable when used with children.

In light of all this, HB 624 would codify the requirement for an age-appropriate Miranda warning for youth in custody.

Lastly, as to implementation, OPD is committed to provide representation related to interrogations of youth in person, by phone or by video conference.

For all these reasons, OPD would ask for a favorable report on HB 624.

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