



1212 New York Ave. NW
Suite 900
Washington, D.C. 20005
202-525-5717

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Testimony from:
Maya Szilak, Resident Fellow, Criminal Justice and Civil Liberties, R Street Institute

In SUPPORT of SB 53/HB 169

January 27, 2022

Senate Judicial Proceedings Committee

Chairman Smith, Vice Chairman Waldstreicher and Honorable Members of the Committee,

R Street Institute (RSI) is a nonprofit, nonpartisan public policy research organization focused on advancing limited government and effective free-market policy at the state and federal level. As part of this mission, the Criminal Justice and Civil Liberties team at RSI evaluates policies related to the justice system and proposes changes to law that would improve outcomes for criminal justice stakeholders and the public. Because SB 53/ HB 169 would prevent false youth confessions and extend due process protection to ensure that youth understand and can exercise their constitutional rights to request counsel and to remain silent during custodial interrogation, RSI encourages its **favorable report**.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that statements made by an adult during custodial interrogation are inadmissible unless law enforcement officers first administer warnings before questioning and the adult validly waives those rights. Pursuant to the Fifth and Sixth Amendments, Miranda warnings must inform individuals of: (1) the right to remain silent; (2) that any statement can be used against them; (3) the right to obtain an attorney and to have counsel present during questioning; and (4) the right to be appointed an attorney. To waive these rights, a person must make a voluntary, knowing and intelligent waiver based on the totality of the circumstances. The Supreme Court subsequently held in *In re Gault*, 387 U.S. 1, 44-55 (1967) that the constitutional safeguards outlined in *Miranda* apply to children as well.

Since the time of *Miranda* and *Gault*, studies have established that most youth under the age of 18 do not understand Miranda warnings or how to invoke their rights, and thus are unable to waive their constitutional protections voluntarily.¹ Research also shows that 94 percent of youth do not realize the serious consequences of waiving their rights; Black youth may be at even greater risk of waiving their rights than white youth because they may not believe that the police are going to respect their rights, even if they do choose to exercise them.² Lack of understanding of Miranda warnings, coupled with developmental and psychological immaturity, vulnerability to coercive interrogation, and a desire to please and comply with authority figures make juveniles highly susceptible to giving false confessions. To illustrate, in a study of 340 exonerations, researchers found that 42 percent of juveniles had falsely confessed, compared with only 13 percent of adults.³

SB 53/HB 169 will help to prevent false confessions and ensure that youth understand and can invoke their constitutional rights in interrogations by: (1) requiring law enforcement to make good-faith efforts



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to notify parents or guardians that their child will be subject to interrogation; (2) allowing youth to consult with an attorney prior to being interrogated; and (3) encouraging Maryland courts to adopt age-appropriate language for children to understand their rights. In doing so, it will safeguard the fundamental due process rights of youth; ensure the outcomes of interrogations are just and lawful; foster greater accountability and public trust in the justice system; and prevent gross miscarriages of justice from the wrongful conviction of innocent youth based on false youth confessions.

Absent the additional protections provided by SB 53/HB 169, youth's rights to remain silent and to consult with counsel in interrogation, guaranteed under the Fifth and Sixth Amendments will remain merely illusory. To honor and uphold the sanctity of the Constitution and the rights of youth thereunder, RSI resolutely supports passage of SB 53/HB 169.

Respectfully submitted,

Maya Szilak
Criminal Justice and Civil Liberties Fellow
R Street Institute
(773) 368-2412
mszilak@rstreet.org

¹Jean Pierce, "Juvenile Miranda Waivers: A Reasonable Alternative to the Totality of the Circumstances Approach," *BYU Law Review* 2017:1 (February 2017). <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3085&context=lawreview>; Jason Mandelbaum, PhD, and Angela Crossman, PhD, "No illusions: Developmental considerations in adolescent false confessions," American Psychological Association, December 2014. <https://www.apa.org/pi/families/resources/newsletter/2014/12/adolescent-false-confessions>.

² Karen Savage, "New York Youth Need Attorney Before Interrogation, Coalition Tells State Lawmakers," Juvenile Justice Information Exchange, March 5, 2021. <https://jjiie.org/2021/03/05/new-york-youth-need-attorney-before-interrogation-coalition-tells-state-lawmakers>.

³ Megan Crane et al., "The Truth About Juvenile False Confessions," American Bar Association Insights on Law and Society, Winter 2016. https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf.