Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 76 (Delegate Acevero)
Judiciary

Custodial Interrogation of Minors - Admissibility of Statements

This bill establishes a rebuttable presumption that a statement made by a minor during a custodial interrogation is involuntary and is inadmissible in a juvenile or criminal proceeding against the minor if the law enforcement officer intentionally used information known by the officer to be false in order to elicit the statement. The presumption may be rebutted by clear and convincing evidence that the statement was voluntary and not made in response to the false information used by the officer to elicit the statement.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly impact State finances or operations.

Local Effect: None. The bill is procedural in nature and does not directly impact local finances or operations.

Small Business Effect: None.

Analysis

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 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 custodial interrogation of a child by a law enforcement officer is prohibited until the child has consulted with an attorney, and the law enforcement officer has made an effort reasonably calculated to give actual notice to the parent, guardian, or custodian that the child will be interrogated. A child's attorney consultation must be confidential and conducted in a manner consistent with the Maryland Rules of Professional Conduct and may be conducted 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.

An exception to the notice and consultation requirements specified above authorizes a law enforcement officer to conduct an otherwise lawful custodial interrogation of a child if (1) the law enforcement officer reasonably believes that the information sought is necessary to protect against a threat to public safety and (2) the questions posed to the child by the law enforcement officer are limited to those questions reasonably necessary to obtain the information necessary to protect against the threat of public safety. Unless impossible, impracticable, or unsafe, an interrogation conducted under such circumstances must be recorded. A child being interrogated under such circumstances must be informed if the interrogation is being recorded.

There is a rebuttable presumption that a statement made by a child during a custodial interrogation is inadmissible in a delinquency proceeding or a criminal prosecution against that child if a law enforcement officer willfully failed to comply with statutorily mandated custodial interrogation requirements. The State may overcome the presumption by showing, by clear and convincing evidence, that the statement was made knowingly, intelligently, and voluntarily. These provisions may not be construed to render a statement by that child inadmissible in a proceeding against another individual.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1374 of 2022.

Designated Cross File: None.

Information Source(s): Montgomery and Worcester counties; City of Salisbury; Department of Juvenile Services; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Juvenile Services; Department of State Police; Department of Legislative Services

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