

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 120

(Senator Watson, *et al.*)

Judicial Proceedings

Juvenile Law - Custodial Interrogation - Parental Consultation

This bill authorizes a child to consult with the child’s parent, guardian, or custodian instead of an attorney before a law enforcement officer may conduct a custodial interrogation of the child. A law enforcement officer may proceed with a custodial interrogation of a child if (1) the child consults with their parent, guardian, or custodian; (2) the child and the child’s parent, guardian, or custodian jointly decide that the child should participate in the custodial interrogation; and (3) the child’s parent, guardian, or custodian decide that the child does not need to consult with an attorney before the interrogation. A consultation between the child and the child’s parent, guardian, or custodian may be conducted in person or by telephone or video conference. The bill specifies that language used to advise a child of their rights when taken into custody must include a statement that the child has the right to consult with their parent, guardian, or custodian instead of an attorney before a custodial interrogation. The bill makes corresponding changes to incorporate this authorization into existing statutory provisions.

Fiscal Summary

State Effect: While the bill affects operations of the Office of the Public Defender (OPD), as described below, the bill is not expected to materially affect State finances or the operations of other State agencies.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

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.

State Expenditures: While it does not cite any specific data or projections, OPD advises that the bill requires one additional attorney to handle an increased level of effort in juvenile cases generated by the option for a child to consult with their parent, guardian, or custodian

instead of an attorney before a custodial interrogation. OPD estimates costs for this position at \$89,686 in fiscal 2025 and increasing to \$122,681 by fiscal 2029.

The Department of Legislative Services (DLS) advises that while the bill increases OPD workloads, the magnitude of this increase depends on (1) the number of children who participate in a custodial interrogation without an attorney consultation after consulting with their parent, guardian, or custodian (who has to agree to the interrogation); (2) the level of effort needed to challenge statements made during those interrogations; and (3) new cases created where a child is charged based *solely* on a statement elicited without advisement of counsel.

OPD did not provide data on the number of consultations it has conducted. However, in its 2023 *Annual Report* OPD indicated that since October 1, 2022, (when the attorney consultation requirement went into effect), OPD has responded to more than 290 calls on its consultation hotline across the State. The report did not specify the date range for this data, and OPD conducts consultations exclusively through its telephone hotline, which it will continue to staff under the bill. Thus, DLS advises that OPD can likely handle workload generated *solely* by the bill with existing budgeted resources. Should actual workloads experienced under the bill require additional personnel, OPD may request those resources through the annual budget process.

Other affected agencies, including the Judiciary and the Department of State Police, can implement the bill with existing budgeted resources.

Additional Information

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

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Dorchester, Garrett, and Howard Counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of General Services; Department of Juvenile Services; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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