

CLINICAL LAW PROGRAM

**Testimony in *Opposition* of Senate Bill 120  
Juvenile Law – Custodial Interrogation - Parental Consultation**

To: Senator William J. Smith, Jr., and Members of the Judicial Proceedings Committee

From: Jamie Polinsky and Jordyn Garcia, Student Attorneys, Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law, 500 W. Baltimore Street, Baltimore, MD 21201 (admitted to practice pursuant to Rule 19-220 of the Maryland Rules Governing Admission to the Bar)

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We are student attorneys in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, and other means, as well as individuals who are serving life sentences for crimes they committed when they were children or young adults.

We write in opposition to Senate Bill 120, which seeks to eliminate some recent legal protections provided to children before and during a custodial interrogation. SB 120, upon initial review, may seem to transfer decision-making authority regarding a child's legal rights during custodial interrogations from a lawyer to the parent. However, that is not so. The current law, enacted in 2022, requires that a child consult with an attorney<sup>1</sup> *and* that the police officer “ma[k]e an effort reasonably calculated to give actual notice to the parent, . . . that the child will be interrogated.”<sup>2</sup> To be clear, the attorney does not make decisions on behalf of the child client; rather, the attorney informs the client of their rights and advises accordingly. The proposed amendments set forth in SB 120 repeal the requirement that a child in a custodial interrogation setting consult with an attorney. In its place, SB 120 allows parents or guardians to decide – on their own – that such consultation is not necessary. In essence, SB 120 removes the attorney and substitutes the parent as the adviser. Unlike the attorney, however, SB 120 makes it clear that the parent is also the decider.

The concerns here are twofold. First, while parents often understand their children deeply and strive to act in their best interests, they – and their children – benefit from professional expertise and input when necessary. For instance, parents seek medical care

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<sup>1</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-8A-14.2 (b)(1) (West 2022)

<sup>2</sup> *Id.* at §3-8A-14.2(b)(2).

for their sick children and educational guidance from teachers. Consulting professionals helps ensure the safety, health, development, and best interests of their children. Likewise, in cases involving custodial interrogations, children need – and deserve – legal counsel, as attorneys are uniquely positioned to provide advice that accounts for their short- and long- term interests.

Second, even for adults, law enforcement interrogation is inherently intimidating, and frightening. Coercive and deceptive law enforcement techniques have caused adults to confess falsely.<sup>3</sup> For children in police custody, the intimidation, fear, and confusion are exponentially worse. Children are “particularly vulnerable to external influence;...they experience a heightened reaction to stress;...they tend to focus on immediate rewards rather than long-term consequences, such as the idea that a kid can go home if he confesses; and struggle to accurately assess risks,” and do not understand the long-term consequences of their actions or decisions, putting them at even greater risk of confessing falsely.<sup>4</sup> Therefore, children are uniquely susceptible in custodial interrogation settings.<sup>5</sup>

When their children are in custodial interrogation settings, parents also feel immense pressure and stress. Considering these pressures, along with the reality that many adults do not fully understand or appreciate the nuances of their rights, parents are not best suited to advise children in custodial settings of their rights and, as SB 120 would allow, decide to waive the child’s need to consult with an attorney before the interrogation. Parents may believe (or be persuaded) that bringing an attorney into a custodial interrogation will cause their child to become more involved with the juvenile justice system than if their child were to simply answer the police officer’s questions and comply. Accordingly, parents may be pressured or incentivized to waive their child’s right to consult with an attorney without fully understanding, appreciating, and assessing the possible short- and long-term harms to their child. While SB 120 purports to support parents’ rights to decide that their child need not consult with an attorney, in practice it would take advantage of the reality that police interrogation is inherently intimidating, frightening, and confusing to all – adults and children alike.

Custodial interrogations are moments of immense pressures and potentially severe legal consequences that can last lifetimes and have generational impact. Two years ago, Maryland’s General Assembly declared that, considering these potential consequences, children subjected to custodial interrogations need to consult with an attorney. Parents simply are not an adequate substitute for a trained, objective lawyer who is positioned to

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<sup>3</sup> See generally Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 49 (2009),

<https://web.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20online%20%2809%29.pdf>.

<sup>4</sup> Megan Crane et al., *The Truth About Juvenile False Confessions*, 16;2 INSIGHTS ON L. & SOC’Y 10, 14 (2016), [https://www.prisonpolicy.org/scans/aba/Juvenile\\_confessions.pdf](https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf).

<sup>5</sup> For example, a “study of 340 exonerations found that 42% of juveniles had falsely confessed, as compared with only 13% of adults.” *Id.* at 12.

assess and advise consistent with the best interests of the child and, in the end, justice. For these reasons, the Clinic asks for an unfavorable report on SB 120.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.