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POSITION ON PROPOSED LEGISLATION

BILL: SB 326 - Questioning of a Juvenile – Crime of Violence or Crime Involving a Firearm

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 12, 2024

The Maryland Office of the Public Defender strongly urges the Committee to issue an unfavorable report on Senate Bill 326.

In 2022, Maryland passed the Child Interrogation Protection Act (“CIPA”). After the passage of that bill the Maryland Office of the Public Defender created the Youth Access to Counsel Hotline, which allows children across the State of Maryland to speak to attorneys prior to a custodial interrogation and to be advised of their rights. In passing CIPA, the Maryland Legislature recognized that the indisputable and fundamental differences between children and adults justify treating children differently than we do adults.

By carving out crimes of violence and offenses involving firearms, the proposed legislation seeks to repeal CIPA and once again put vulnerable and impressionable children at risk of involuntarily waiving their rights or making false confessions. The protections are arguably more important for more serious crimes, because those are the situations that carry the highest penalties, and that a child becomes most vulnerable to the harms that custodial interrogations have been shown to cause.

The Supreme Court has long recognized that police interrogation tactics “can induce a frighteningly high percentage of people to confess to crimes that they never committed.”¹ The risk of false confessions is multiplied when a child is the subject of an interrogation: children are much more likely than adults to falsely confess,² and children account for more than one-third of all false confessions.³ Further, *In re Gault* the Supreme Court cautioned against the inevitable

¹ *Corley v. United States*, 556 U.S. 303, 320-21 (2009).

² See American Bar Association Insights on Law & Society 16.2 available at https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf (“Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults.”).

³ National Registry of Exonerations, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess (April 10, 2022).

risk of obtaining a false confession from a child in noting that “*authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of confessions by children.*”

In 2011, the Supreme Court again recognized the differences between children and adults when they ruled that age is a relevant factor for purposes of giving Miranda warnings.⁴ There the Court found, “A child's age is far “more than a chronological fact.” It is a fact that “generates commonsense conclusions about behavior and perception.” Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.”⁵ Research has also shown that children and adolescents think and act differently from adults. They are more vulnerable to the pressures of their environments, and have a tendency to comply with demands of authority figures and because the parts of their brain that assist with judgment, decision making, and future planning are not fully developed.⁶

The Child Interrogation Protection Act was a monumental step forward for the children of Maryland, who because of this Act, are now given the tools to understand their constitutional rights when accused of a crime or delinquent act. At its inception, this law put Maryland at the forefront of progress by recognizing children should be afforded protections prior to a custodial interrogation. The legislation is sound, effective, and has already had a considerable impact throughout the State, with over 300 consultations by attorneys since it took effect on October 1, 2023.

Accordingly, the Maryland Office of the Public Defender strongly urges the Committee to issue an unfavorable report on Senate Bill 326.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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⁴ *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

⁵ *Id.* at 272.

⁶ Steinberg, L. (2007). Risk Taking in Adolescence: New Perspectives From Brain and Behavioral Science. *Current Directions in Psychological Science*, 16(2), 55-59. <https://doi.org/10.1111/j.1467-8721.2007.00475.x>