



Testimony for the Senate Judicial Proceedings Committee

February 13, 2024

SB 120 - Juvenile Law - Custodial Interrogation - Parent Consultation

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The ACLU of Maryland (ACLU) opposes SB 120, which seeks to eliminate the legal protections guaranteed to children under the Child Interrogation Protection Act (CIPA) by authorizing 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.

The Child Interrogation Protection Act, which was passed by the General Assembly in 2022, already ensures that law enforcement makes a reasonable effort to contact the parent or guardian of a child who is taken into police custody. Further, CIPA also requires that law enforcement contact an attorney when a child is taken into custody for interrogation, to ensure that the child understands their Miranda rights in age and development-appropriate terms. The Office of the Public Defender (OPD) established a hotline that is open every day throughout the day and night so that an attorney can be contacted at any time.

Parents and guardians are not a substitute for a trained lawyer. One study showed that well over 90% of adults were not fully aware of their own Miranda rights¹. And for those who could recall their Miranda rights, most showed misconceptions about its meaning. Allowing law enforcement to skirt the requirement of ensuring legal consultation for a child taken into custody, essentially removes an indispensable layer of protection for that child. Further, immigrant children would experience a disproportionate burden of risk due to their immigrant status, real or perceived.

¹ General Knowledge and Misknowledge of Miranda Rights: Are Effective Miranda Advisements Still Necessary? *Psychology, Public Policy, and Law*, 2013, Vol. 19, No. 4, 432-442.
<https://concept.paloaltou.edu/resources/translating-research-into-practice-blog/most-americans-do-not-have-a-complete-understanding-of-their-miranda-rights/>

SB 120 would also likely increase the rate of false confessions given to law enforcement during an interrogation. Law enforcement is known to use confusing tactics and threats during interrogations, which puts a significant amount of stress and anxiety on children. One study showed that children are three times more likely to falsely confess than adults during a custodial interrogation.²

Most importantly, the ACLU contends that a child has the right to legal consultation prior to a custodial interrogation, as an individual, independent of a parent or guardian's opinion or desire. In his opinion on CIPA's constitutionality, Attorney General Anthony Brown, wrote, "we see no basis to conclude that [CIPA's] attorney-consultation requirement violates the constitutional rights of children or their parents."³ The opinion also reported that while the Supreme Court has not directly addressed the issue of parental rights in decisions related to custodial interrogations, there have been many related cases that have "focused on the individual liberty interests of the child, implying that these rights are paramount and, thus, prevail over a parent's interest in the care, custody, and control of their child."

Lastly, CIPA already guarantees that law enforcement has the tools that it needs to address public safety concerns. If there is a reasonable belief that a child has information about a serious threat to public safety, then the police can ask the child questions without first notifying the child's parent, guardian, or custodian, and without first allowing the child to consult with an attorney. Based on recent legislative briefings, law enforcement has expressed trepidation about using this provision to avoid the risk of legal violations. In response, the ACLU recommends that state lawmakers, states attorneys, and law enforcement develop clear guidance and training on how the police can effectively utilize this provision instead of working to gut the protections afforded to children under CIPA.

For the foregoing reasons, the ACLU asks for an unfavorable report on SB 120.

² What's Best for Kids is Best for Everyone. January 2024. Maryland Youth Justice Coalition. https://www.md youthjustice.org/_files/ugd/42b2a9_db7a00a63fe74865a401276619ec705b.pdf

³ 2024 Op. Atty. Gen. Md. 109.

https://www.marylandattorneygeneral.gov/Pages/Opinions/recent%20requests/110823_EE_Letter.pdf