



Testimony for the House Judiciary Committee

February 8, 2024

HB 727 - Juvenile Law – Custodial Interrogation – In-Person Attorney Consultation Requirement

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UNFAVORABLE

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The ACLU of Maryland urges an unfavorable report on SB 71, which seeks to require that an attorney meet in person when consulting with a child in police custody. This would place an additional and unnecessary responsibility on the Office of the Public Defender and the logistics of ensuring that an attorney is on site may lead to children waiting long periods of time in custody.

Passed by the Maryland General Assembly in 2022, the Child Interrogation Protection Act (CIPA) ensures that law enforcement makes a reasonable effort to contact the parent or guardian of a child who is taken into police custody. CIPA also requires that law enforcement contact an attorney when a child is taken into custody for interrogation, and 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. The attorney's job is to help the child understand their Miranda rights in age and development-appropriate terms.

SB 71 would place an unnecessary additional responsibility on OPD, by requiring that an attorney be in-person when a child is taken into custody. In the first year of implementation (October 1, 2022 to September 30, 2023), OPD responded to nearly 300 calls for children taken into custody throughout Maryland and nearly 11% of these calls involve children under the age of 14. All of the communications were managed through phone calls. Requiring OPD to be in-person for consultations with children is unfeasible.

Further, sometimes children are taken into custody in the late hours of the day or early hours of the morning. It might not be possible for an OPD attorney to be available to visit a child in custody at night, depending on the personal circumstances of the attorney. Depending on the location of the station where a child is being held, it might take hours for an OPD attorney to travel to do the consultation in-person.

Lastly, in addition to lengthening the amount of time spent on providing consultation to children due to the logistics of having to be in-person, there are also higher costs associated with attorneys having to travel — another negative impact of SB 71. Given the state's structural budget deficit, any new state funding for OPD should be provided to help hire additional attorneys to better manage its overwhelming caseload.

CIPA is working as it should. Children now have guaranteed access to counsel to ensure that they understand their rights before acting. Any actions to undermine CIPA will likely increase the risk of children unwittingly waiving their Miranda rights and providing false confessions, which they are three times more likely to do than their adult counterparts.¹

For the foregoing reasons, the ACLU urges you to vote unfavorably for SB 727.

¹ What's Best for Kids is Best for Everyone. January 2024. Maryland Youth Justice Coalition.

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