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POSITION ON PROPOSED LEGISLATION

BILL: HB 727 - Custodial Interrogation - In-Person Attorney Consultation Requirement

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 6, 2024

The Maryland Office of the Public Defender strongly urges the Committee to issue an unfavorable report on House Bill 727.

In 2022, Maryland passed Senate Bill 53, 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. Requiring in person advisements will reduce the efficacy of the Youth Access to Counsel Hotline, prolong the detention of children, and create an added burden for law enforcement.

Prior to the rollout of the Maryland Youth Access to Counsel Hotline (“YAC Hotline”), public defenders from all over the State of Maryland worked diligently to implement guidelines and training on how to properly advise children of their most fundamental constitutional rights. Prior to staffing hotline shifts, OPD attorneys are trained, using the latest science and peer reviewed studies, about adolescent brain development, speaking to young clients, identifying key differences between children and adults for advisements, and, importantly, how to assess whether to advise a child via a hotline telephone, video conference, or in person.

The Maryland YAC Hotline was not the first of its kind. For example, Washington State also utilizes a phone hotline to advise children. According to the Washington State Office of Public Defense, “The Youth Access to Counsel (YAC) Program launched in 2022 to provide youth with attorney consultations when required by RCW 13.40.740. Under the law, youth have the right to consult with an attorney during many phases of criminal investigations, including prior to custodial interrogations. The Youth Access to Counsel is a 24/7 phone consultation program that serves youth statewide.”¹

¹ Washington State Office of Public Defense, Youth Access to Counsel Hotline (<https://opd.wa.gov/find-legal-help-and-information/youth-access-counsel#:~:text=The%20Youth%20Access%20to%20Counsel,including%20prior%20to%20custodial%20interrogations.>)

The technology utilized to conduct telephone or video conference advisements is a quick, appropriate, and effective way to advise most youth of their rights. During a typical call to the Youth Access to Counsel Hotline, law enforcement informs an attorney that they have a child in custody, intend to interrogate that child, and are calling for an advisement. Law enforcement are able to quickly place the child in a private room where they can speak to the attorney via telephone or video conference while the child is still visually monitored by an officer standing outside of the room. On average, advisement calls - from start to finish - take about 30 minutes to an hour.

Certainly, as with any interaction with children, there may be circumstances that warrant an attorney responding in-person to complete an advisement. As attorneys are trained to assess whether it is necessary to conduct an in-person advisement, they are able to analyze each child's needs on an individualized basis, and should continue to be trusted with this ethical and professional responsibility as defenders of youth. Although the need for in-person advisements has been rare, it has been - and will continue to be - utilized when appropriate.

At any given time, one to three attorneys statewide are staffing the YAC Hotline with calls coming in from all over the State of Maryland. For example, as an Anne Arundel County attorney who routinely staffs the Hotline, I have received calls from counties such as Frederick County, Montgomery County, Allegheny County, and Harford County. By requiring in person advisements, attorneys may have to commute significant distances in order to conduct an in-person advisement. The practical result of this proposed legislation would be to delay the timeliness of children in custody being advised of their rights, and would cause longer wait times for both detained children and the law enforcement agencies who are holding them.

Overall, the YAC Hotline allows for attorneys to provide quick and effective telephone or video conference advisements to children all across the State. Requiring in person advisements does nothing to benefit the children of Maryland. Rather, it would strip qualified attorneys of their professional discretion, would cause unnecessary delays to the detriment of children, would further burden law enforcement with waiting periods, and would cause an undue hardship to the attorneys that staff the YAC hotline.

Therefore the Maryland Office of the Public Defender strongly urges the Committee to issue an unfavorable report on House Bill 727.

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

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