

Department of Legislative Services  
 Maryland General Assembly  
 2024 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 727 (Delegate Conaway)  
 Judiciary

Juvenile Law - Custodial Interrogation - In-Person Attorney Consultation Requirement

This bill requires consultations between a child and their attorney prior to a custodial interrogation to be conducted in person. The bill repeals statutory provisions authorizing these consultations to be conducted by telephone or video conference.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$1.6 million in FY 2025 for the Office of the Public Defender (OPD) to implement the bill, as discussed below. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,636,900	1,985,900	2,073,200	2,163,100	2,257,100
Net Effect	(\$1,636,900)	(\$1,985,900)	(\$2,073,200)	(\$2,163,100)	(\$2,257,100)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill does not materially affect local government operations or finances.

**Small Business Effect:** None.

Analysis

**Current Law:** If a law enforcement officer takes a child into custody, the officer must immediately notify, or cause to be notified, the child’s parents, guardian, or custodian in a manner reasonably calculated to give actual notice of the action. The notice must include the child’s location, provide the reason for the child being taken into custody, and instruct

the parent, guardian, or custodian on how to make immediate in-person contact with the child.

The custodial interrogation of a child by a law enforcement officer is prohibited until the child has consulted with an attorney, and the law enforcement officer has made an effort reasonably calculated to give actual notice to the parent, guardian, or custodian that the child will be interrogated. A child's attorney consultation must be confidential and conducted in a manner consistent with the Maryland Rules of Professional Conduct and *may be conducted in person or by telephone or video conference*. To the extent practicable and consistent with the Maryland Rules of Professional Conduct, an attorney providing consultation must communicate and coordinate with the parent, guardian, or custodian of the child in custody. The requirement of consultation with an attorney may not be waived and applies whether the child is proceeded against as a child or is charged as an adult.

An exception to the notice and consultation requirements specified above authorizes a law enforcement officer to conduct an otherwise lawful custodial interrogation of a child if (1) the law enforcement officer reasonably believes that the information sought is necessary to protect against a threat to public safety and (2) the questions posed to the child by the law enforcement officer are limited to those questions reasonably necessary to obtain the information necessary to protect against the threat of public safety. Unless impossible, impracticable, or unsafe, an interrogation conducted under such circumstances must be recorded. A child being interrogated under such circumstances must be informed if the interrogation is being recorded.

There is a rebuttable presumption that a statement made by a child during a custodial interrogation is inadmissible in a delinquency proceeding or a criminal prosecution against that child if a law enforcement officer willfully failed to comply with statutorily mandated custodial interrogation requirements. The State may overcome the presumption by showing, by clear and convincing evidence, that the statement was made knowingly, intelligently, and voluntarily. These provisions may not be construed to render a statement by that child inadmissible in a proceeding against another individual.

**State Fiscal Effect:** OPD currently provides the consultations affected by the bill exclusively through a telephone hotline, which is operated by existing staff in exchange for a modest stipend. OPD advises that its current staff, including those who staff the hotline, cannot accommodate the bill's in-person consultation requirement. Given the 24/7 availability required by the bill and traveling costs, OPD estimates the need for 16 additional attorneys, at a cost of \$1.6 million in fiscal 2025, including travel expenses and payments for panel attorneys.

Positions	16
Salaries and Fringe Benefits	\$1,506,887
Travel and Panel Attorneys	13,950
Operating Expenses	<u>116,096</u>
<b>FY 2025 State Expenditures</b>	<b>\$1,636,933</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Baltimore City; Howard and Prince George’s counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of State Police; Department of Transportation; Maryland Municipal League; Department of Legislative Services

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km/aad

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