

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 53

(Senator Carter, *et al.*)

Judicial Proceedings

Judiciary

Juvenile Law - Child Interrogation Protection Act

This bill, subject to a limited exception, prohibits a law enforcement officer from conducting a custodial interrogation of a child 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 of the child that the child will be interrogated. The bill establishes related requirements for custodial interrogations of a child and establishes a rebuttable presumption that a statement made by a child during a custodial interrogation is inadmissible in specified proceedings against that child if a law enforcement officer willfully failed to comply with the bill's requirements. A law enforcement officer may conduct an otherwise lawful custodial interrogation of a child if (1) the 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 are limited in scope, as specified.

Fiscal Summary

State Effect: The bill does not materially affect State expenditures and operations, as discussed below. Revenues are not affected.

Local Effect: Potential increase in expenditures and operational impacts for local law enforcement agencies, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that 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 Court of Appeals may adopt rules concerning age-appropriate language to be used to advise a child who is taken into custody of the child's rights.

The attorney with whom the child must consult may be an attorney who is retained by the parent, guardian, or custodian or provided by the Office of the Public Defender (OPD). Consultation with an attorney must be confidential and conducted in a manner consistent with the Maryland Rules of Professional Conduct and may be 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.

A law enforcement agency conducting an interrogation must maintain a record of the notification or attempted notification, including (1) a signed statement by a duly authorized law enforcement officer employed by the agency that an attempt to notify a parent, guardian, or custodian was made; (2) the name of the person sought to be notified; and (3) the method of attempted notification. A law enforcement agency must also maintain a record of the name of the attorney contacted and the county or counties in which the attorney provided the consultation. An attorney contacted to provide legal consultation to a child must provide to a law enforcement officer the information required for such records to be maintained.

The bill specifies that regardless of the above requirements, a law enforcement officer may 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 to public safety. Unless it is impossible, impracticable, or unsafe to do so, interrogations under these circumstances must be recorded. In a jurisdiction that has adopted the use of body-worn digital recording devices by law enforcement officers, the interrogation may be recorded using such a device in a manner consistent with applicable policies. In a jurisdiction that has not adopted the use of

body-worn digital recording devices, the interrogation may be recorded using other video and audio recording technology, consistent with any applicable policies. 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 the bill's requirements regarding custodial interrogation. 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.

OPD must develop and implement policies to provide guidance and instruction to attorneys to meet the bill's requirements. By October 1, 2022, OPD must publish on its website or provide to law enforcement, on request, information on attorneys available to act as counsel to a child in accordance with the bill.

The bill alters related provisions in the Criminal Procedure Article regarding requirements for law enforcement officers who take a minor into custody. The bill specifies that a law enforcement officer who charges a minor with a criminal offense must make a reasonable attempt to *provide actual notice* to the parent or guardian of the minor. The bill repeals a requirement for a law enforcement officer (or designee) taking a minor into custody to make a reasonable attempt to notify the parent or guardian of the minor *within 48 hours of the minor's arrest*. Instead, notification is required pursuant to the bill's provisions as described above.

Finally, the bill includes uncodified language expressing the intent of the General Assembly that the term "threat to public safety," as referenced above, be construed in a manner consistent with the judicially recognized exception to the requirements of *Miranda v. Arizona*, 384 U.S. 436 (1966).

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 of the action. After making every reasonable effort to give notice, the officer must with all reasonable speed (1) deliver the child to the court or a place of detention or shelter care designated by the court or (2) release the child to the child's parents, guardian, or custodian or to any other person designated by the court, under specified circumstances.

A law enforcement officer who charges a minor with a criminal offense must make a reasonable attempt to notify the parent or guardian of the minor of the charge. If an officer takes a minor into custody, the law enforcement officer or the officer's designee must make

a reasonable attempt to notify the parent or guardian of the minor within 48 hours of the arrest.

State Expenditures: The Department of State Police advises that although the bill necessitates minor operational changes, it does not materially affect operations or finances. OPD can use existing resources to meet the bill's requirements.

Local Expenditures: Depending on current practice and case volume, law enforcement agencies may experience an operational impact and increased expenditures due to the more stringent requirements established under the bill for interrogations of individuals younger than age 18.

Some jurisdictions, including Baltimore City and Harford County, advise that no fiscal impact is anticipated.

Additional Information

Prior Introductions: HB 315 of 2021, a similar bill, passed the House with amendments and was referred to the Senate Judicial Proceedings Committee. No further action was taken. Its cross file, SB 136, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken. HB 624 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 593, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken.

Designated Cross File: HB 269 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Baltimore City; Harford and Montgomery counties; City of College Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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