



**Testimony in Support of Maryland Senate Bill 136:  
An Act Concerning Juvenile Law – Juvenile Interrogation Protection Act**

*Submitted by Fair and Just Prosecution Executive Director Miriam Krinsky  
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Fair and Just Prosecution (FJP) is a national non-partisan, nonprofit organization that works with elected prosecutors around the nation promoting a vision for the justice system grounded in fairness, equity, fiscal responsibility, and compassion. FJP assists these leaders in implementing smart evidence-based strategies that advance the safety and well being of our communities.

I offer the comments below based on the work of our organization, as well as my decades in the criminal justice arena. Prior to serving as FJP’s Executive Director, I spent 15 years as a federal prosecutor and over a decade working on juvenile justice and law enforcement issues, including as the Special Advisor to the Los Angeles County Sheriff, as an advisor to the California Supreme Court during its creation of the Statewide Child Welfare Council, and five years as the Executive Director of the Children’s Law Center of Los Angeles – a 200-plus person legal services organization representing over 20,000 abused and neglected foster children. I am also a member-advisor on the American Law Institute’s project on the Restatement of Children and the Law.

What has become abundantly clear to me throughout my years working on issues involving law enforcement, prosecution, juvenile justice reform, and children’s welfare, is that children are different and their unique needs and vulnerabilities must be considered when we craft policies and practices that serve these young people as well as our community. The way young people perceive rewards and are influenced by peers is distinct from older individuals and young people are not fully aware of the consequences of the choices they make. As a result, the Supreme Court has recognized that young people must be treated differently from adults by the criminal legal system.

With this starting point in mind, I would like to offer my support, on behalf of FJP, for Senate Bill 136. The testimony below explains in greater detail the basis for our support for these proposed reforms. And it also proposes areas for potential policy build out that go beyond the bill.

**1. Protections are Needed for Children Subjected to Law Enforcement Interrogations**

Without proper protections, interrogations of children can have serious and harmful ramifications and result in adverse consequences including *Miranda* waivers that are not truly knowing and voluntary, false confessions, wrongful convictions, trauma to young people, evidence obtained

through improper interrogations being deemed inadmissible, expensive lawsuits, and, ultimately, diminished public confidence in the justice system.<sup>1</sup>

The brains of young people are still developing in ways that make them think and behave differently from adults,<sup>2</sup> including during an interrogation.<sup>3</sup> Of particular concern, 90% of children, often without any parents or an attorney present, waive *Miranda* rights<sup>4</sup> – a decision that can have severe, lasting repercussions – but most do not understand the meaning or import of these protections.<sup>5</sup> *Miranda* rights are intended to safeguard against false confessions, which the Supreme Court has found to be “frighteningly” common even among adults.<sup>6</sup> Yet children are especially likely to falsely confess.<sup>7</sup> False confessions can also contribute to ongoing racial disparities that have included the arrest and charging of a disproportionate number of Black children; indeed, a disproportionate percentage of those exonerated after falsely confessing are Black.<sup>8</sup>

Children are also particularly vulnerable to pressures inherent in an interrogation setting.<sup>9</sup> The prefrontal cortex, the portion of the brain responsible for judgment and decision-making, is not fully developed until the mid-twenties. As a result, in the context of an interrogation young

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<sup>1</sup> International Association of Chiefs of Police (IACP) (2012), *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation*, <https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>.

<sup>2</sup> The Center for Law, Brain & Behavior, *Juvenile Justice & the Adolescent Brain*, Massachusetts General Hospital and Harvard Medical School, <https://clbb.mgh.harvard.edu/juvenilejustice/>.

<sup>3</sup> *J.D.B v. North Carolina*, 564 U.S. 261 (2011), <https://www.supremecourt.gov/opinions/10pdf/09-11121.pdf>.

<sup>4</sup> Laird, L. (2016), *Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them?*, American Bar Association, [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/).

<sup>5</sup> 58% of 11 to 13 year-olds, one-third of 14 and 15 year-olds, and 8% of 16 and 17 year-olds do not understand what the *Miranda* warning means. Even more alarmingly, 78% of 11-13 year-olds, 63% of 14 and 15 year-olds, and 35% of 16-17 year-olds do not understand why these rights matter. Viljoen, J.L., Zapf, P.A., and Roesch, R. (2006), *Adjudicative competence and comprehension of Miranda Rights in adolescent defendants: A comparison of legal standards*, Behavioral Sciences and the Law, 25(1), 1-19,

[https://www.researchgate.net/publication/6518371\\_Adjudicative\\_competence\\_and\\_comprehension\\_of\\_Miranda\\_Rights\\_in\\_adolescent\\_defendants\\_A\\_comparison\\_of\\_legal\\_standards](https://www.researchgate.net/publication/6518371_Adjudicative_competence_and_comprehension_of_Miranda_Rights_in_adolescent_defendants_A_comparison_of_legal_standards).

<sup>6</sup> *J.D.B v. North Carolina*, 564 U.S. 261 (2011), <https://www.supremecourt.gov/opinions/10pdf/09-11121.pdf>. This is in part due to coercive interrogation practices. Starr, D. (2019), *This psychologist explains why people confess to crimes they didn’t commit*, Science,

<https://www.sciencemag.org/news/2019/06/psychologist-explains-why-people-confess-crimes-they-didn-t-commit>.

<sup>7</sup> 36% of individuals who were exonerated for crimes committed while they were children, and 86% exonerated for crimes that occurred before they turned 14, had falsely confessed, compared to only 10% of exonerated adults. National Registry of Exonerations (2020), *Age and Mental Status of Exonerated Defendants Who Confessed*, <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf>.

<sup>8</sup> Najdowski, C. (2018), *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects are at Risk for Confessing Falsely*, Psychology, Public Policy, and Law, 2011, Vol. 17, No. 4, 562–591, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3198878](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3198878).

<sup>9</sup> Gately, G. (2013), *Why Do So Many Juvenile Suspects Confess to Crimes They Didn’t Commit?*, Juvenile Justice Information Exchange, <https://jjiie.org/2013/09/23/why-do-so-many-juvenile-suspects-confess-to-crimes-they-didnt-commit/>.

people are less likely to fully consider long-term implications of confessing to something they did not do, and more likely to prioritize their desire to go home and extricate themselves from the interrogation setting. They are also especially likely to be influenced by external pressure, have typically been taught to comply with authority figures, and are more likely to be intimidated by police officers. Even when interrogations do not result in a false confession, they may still cause or exacerbate trauma.<sup>10</sup>

Parental involvement offers limited, but important, protection from coerced and uninformed waiver of rights and false confessions. As the Supreme Court recognized, parents have a fundamental constitutional right to make decisions about the care and custody of their children.<sup>11</sup> Minors are regularly prohibited from making a range of decisions without parental consent. *Miranda* waivers and interrogations are among the most impactful choices that children can face – parents should be entitled to a voice in those decisions.

Parents alone, however, are not a sufficient safeguard given the complexity and stakes involved in interrogations, and are no substitute for legal counsel.<sup>12</sup> Parents may themselves not fully comprehend the ramifications of a *Miranda* waiver, and may encourage a child to cooperate with the police based on a false expectation that this cooperation will be rewarded and result in a better outcome for the child. They also may want to know more about their child’s involvement in the incident at issue and may view an interrogation as a route to gaining this insight, or may be upset with the child and want the child to “learn a lesson,” but fail to appreciate how serious the situation is and the level of consequences that the child could face. It is therefore imperative that children receive the support of legal counsel to ensure that any decisions they make are truly knowing, voluntary, and intelligent.

As such, *both* a parent or legal guardian and an attorney should be present for the entire *Miranda* and interrogation process, and the child should be able to consult with them in private. In rare situations in which the parent/guardian is either a complainant or is suspected of being an accomplice in the offense under investigation, or is actively hostile towards the youth, the youth should be given the opportunity to have another supportive adult present. The presence of legal counsel should be nonwaivable.

Senate Bill 136 is an important step towards furthering these objectives and protecting children in interrogation settings. Providing meaningful notice to parents will help ensure that children have parental support in navigating this stressful and impactful situation, while a non-waivable right to counsel will ensure that young people’s rights are protected. Moreover, lawyers will be

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<sup>10</sup> While little scholarship has focused on the trauma of interrogations, interrogations can cause children to feel frightened and helpless, which can lead to trauma responses. See The National Child Traumatic Stress Network, *About Childhood Trauma*, <https://www.nctsn.org/what-is-child-trauma/about-child-trauma>.

<sup>11</sup> *Troxel v. Granville* (2000), 530 U.S. 57.

<sup>12</sup> American Academy of Child and Adolescent Psychiatry (AACAP) (2013), *Policy Statement: Interviewing and Interrogating Juvenile Suspects*, [https://www.aacap.org/AACAP/Policy\\_Statements/2013/Interviewing\\_and\\_Interrogating\\_Juvenile\\_Suspects.aspx](https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx); Farber, H.B. (2004), *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, *American Criminal Law Review*, 41, 1277-1312, [https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1060&context=fac\\_pubs](https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1060&context=fac_pubs).

able to advocate for the children they represent throughout the interrogation, which also has the potential to mitigate some of the other harms discussed above. And the bill's requirement that the Police Training and Standards Commission adopt rules to require age-appropriate language to be used in advising children of their rights is also vitally important.

For all of these reasons, I support and urge the Maryland Legislature to promptly pass this essential measure.

## 2. Further Best Practices for Interrogating Children<sup>13</sup>

Beyond the protections and requirements set forth in this legislation, including the essential involvement of both parents and counsel in any interrogation, other practices can protect children, justice, and the community by preventing false confessions. Some of these elements and best practices are noted below (and we would urge policy makers and criminal justice leaders in Maryland to advocate for their implementation):

- The entire *Miranda* and interrogation process should be video and audio recorded;<sup>14</sup>
- Interrogators should administer *Miranda* warnings to youth using developmentally-appropriate language;
- Deception by law enforcement during the interrogation process should be prohibited;
- Interrogations should occur at a time when the young person would normally be awake and alert;
- Interrogation sessions should be limited to two hours (with breaks every hour), and should not be allowed to go longer without approval by the prosecutor's office, and in no instance should they go longer than 4 hours;
- Interrogators should not make statements suggesting benefits to the young person if they confess or suggest negative consequences if the young person does not confess;
- Interrogators should use open-ended, rather than leading questions, and should avoid providing the youth with information about the crime, crime scene, or other evidence;

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<sup>13</sup> This guidance incorporates recommendations from numerous experts and organizations, including the American Academy of Child and Adolescent Psychiatry, the International Association of Chiefs of Police, the American Bar Association, and the American Law Institute. American Academy of Child and Adolescent Psychiatry (AACAP) (2013), *Policy Statement: Interviewing and Interrogating Juvenile Suspects*, [https://www.aacap.org/AACAP/Policy\\_Statements/2013/Interviewing\\_and\\_Interrogating\\_Juvenile\\_Suspects.aspx](https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx); International Association of Chiefs of Police (IACP) (2012), *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, <https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>; American Bar Association (ABA) (2019), *Index of Criminal Justice Policies: 102B: Juvenile Miranda rights*, Midyear Meeting 2010; 8A, Midyear 2004; American Law Institute (2018), *Section 14-2. Interrogation and the Admissibility of Statements*, in *Restatement of the Law: Children and the Law, Tentative Draft No. 1*, <https://texasscorecard.com/wp-content/uploads/2019/07/ALI-Restatement.pdf>. The draft was approved by the membership at the 2018 Annual Meeting, subject to the discussion at the Meeting and to the usual editorial prerogative. This material may be cited as representing the Institute's position until the official text of the entire project is published, <https://www.ali.org/publications/show/children-and-law/>.

<sup>14</sup> Kassin, S. and Thompson, D. (2019), *Videotape All Police Interrogations*, The New York Times, <https://www.nytimes.com/2019/08/01/opinion/police-interrogations-confessions-record.html>.

- Interrogators should not make determinations about whether a young person is lying based on non-verbal information or body language; and
- If a young person provides a confession, follow-up steps should be taken to ensure the reliability of the confession.<sup>15</sup>

While Senate Bill 136 does not include these elements, I hope the Maryland Legislature and local law enforcement and prosecution leaders will consider separately implementing these well-advised practices.

Meanwhile, Senate Bill 136 is a critical first step towards protecting children, justice, and public safety, and I urge the Legislature to ensure its prompt passage.

Thank you for considering my views. If I can provide further insights that might be useful, please feel free to contact me at the address noted below or, via email, at [mkrinsky@fairandjustprosecution.org](mailto:mkrinsky@fairandjustprosecution.org).

Respectfully,



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<sup>15</sup> International Association of Chiefs of Police (IACP) (2012), *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, 13, <https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>