

Testimony in Support of Senate Bill 136
Juvenile Law – Juvenile Interrogation Protection Act

To: Senator William J. Smith, Jr., and Members of the Judicial Proceedings Committee

From: Jayne Touati and Maya Habash, Student Attorneys, Youth, Education and Justice Clinic, University of Maryland Francis King Carey School of Law, 500 W. Baltimore Street, Baltimore, MD 21201 (admitted to practice pursuant to Rule 19-220 of the Maryland Rules Governing Admission to the Bar)

Date: February 2, 2021

We are student attorneys in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, and other means, as well as individuals who are serving life sentences for crimes they committed when they were children (“juvenile lifers”) and who are now eligible to be considered for parole. We write in support of Senate Bill 136, which seeks to enhance legal protections for children before, during, and after a custodial interrogation.

Police interrogation is inherently intimidating, frightening, and confusing to adults. False confessions are a major contributor to wrongful convictions. The coercive tactics law enforcement officers often use during interrogations have caused adults to testify falsely.¹ However, for children in police custody, the intimidation, fear, and confusion is exponentially worse. Children are “particularly vulnerable to external influence . . . experience a heightened reaction to stress . . . struggle to accurately assess risks,” and do not understand the long-term consequences of their actions or decisions, putting them at even greater risk of confessing falsely.² Therefore, children are uniquely susceptible in custodial interrogation settings.³

Senate Bill 136 takes the urgent and necessary step to protect children and their rights in custodial interrogation settings by prohibiting police officers from interrogating a child until, and after, an attorney has consulted with the child. Importantly, this bill prohibits waiver of the attorney consultation, lessening the opportunity for coercion. Thus, this bill ensures that a child, and his or her guardians, will be provided full explanation and counsel on how to proceed in custodial

¹ See generally Saul M. Kassir et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 49 (2009), <https://web.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20online%20%2809%29.pdf>.

² Megan Crane et al., *The Truth About Juvenile False Confessions*, 16 INSIGHTS ON L. & SOC’Y 2, 14 (2016), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/109353#:~:text=It%20is%20estimated%20that%20false,commit%20than%20their%20adult%20counterparts>.

³ For example, a “study of 340 exonerations found that 42% of juveniles had falsely confessed, as compared with only 13% of adults.” *Id.* at 12.

interrogation settings by an attorney whose sole purpose is to advocate zealously on the child's behalf.

However, as Senate Bill 136 recognizes, it is not enough that a child consult with an attorney, given the life-lasting stakes involved in any custodial interrogation. As has been documented thoroughly, children often do not understand the traditional *Miranda* warnings police officers must give prior to custodial interrogations.⁴ Despite this lack of understanding, several studies have found that children “waive” these rights approximately 90% of the time.⁵ The United States Supreme Court has held that a child's age is relevant for a court when determining whether the child believed they were free to leave when subjected to police interrogation, which is a critical component of the *Miranda* analysis.⁶ Thus, implementing and requiring age-appropriate *Miranda* warnings, as Senate Bill 136 requires, is not only a positive step, but a necessary measure to minimize unjust outcomes.

Senate Bill 136 is also a necessary measure for racial justice in Maryland. The requirements and protections set forth in the bill understand the reality that Black children and other children of color are substantially more likely than White children to have negative interactions with police officers and the juvenile and criminal justice systems as a whole.⁷ In 2018, children of color made up 45% of Maryland's youth population (ages 11 to 17), but comprised over 70% of youth who were referred to the Maryland Department of Juvenile Services for intake.⁸ This same year, 62% of Black youth were referred to intake, more than doubling the 29.4% of White youth who were referred.⁹

Many Black children are taught at young ages to comply with police officers, out of fear for their physical safety and their lives. Thus, for Black children who are criminalized in every walk of life and understand deeply the physical risk of law enforcement interaction, the custodial atmosphere is especially intense. Out of sheer fear for their safety and their lives, Black children, as well as children from other racially marginalized groups, are pressured to tell police officers what they

⁴ See Kristen Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 ARIZ. ST. L.J. 883, 898 (2020) (youth often misunderstand the right to silence and “the role of attorneys,” and “researchers [have] found that the majority of youth aged fourteen and younger did not comprehend at least one of their *Miranda* rights”).

⁵ Lorelei Laird, *Police Routinely Read Juveniles Their Miranda Rights, But Do Kids Really Understand Them?*, A.B.A., Aug. 1, 2016,

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/.

⁶ *J. D. B. v. North Carolina*, 564 U.S. 261, 271-277 (2011).

⁷ In October 2015, the incarceration rate for children in Maryland per 100,000 was 30 for White children and 238 for Black children. THE SENTENCING PROJECT, BLACK DISPARITIES IN YOUTH INCARCERATION (2017), <https://www.sentencingproject.org/wp-content/uploads/2017/09/Black-Disparities-in-Youth-Incarceration.pdf>.

⁸ GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION, MARYLAND'S ANNUAL DISPROPORTIONATE MINORITY CONTACT PLAN FY 2019: STATEWIDE AND JURISDICTION DATA 3 (May 14, 2019), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/MD-FY18-DMC-PLAN_508.pdf.

⁹ *Id.* at 4.

believe the officers want to hear. This reality further emphasizes the importance of prohibiting Maryland police officers from interrogating a child until they have the protections that only an attorney can afford.

In sum, Maryland's children need the protections (and rights) of parental notification, attorney consultation, and age-appropriate *Miranda* warnings. Indeed, these protections are interrelated. Each is necessary to protect children. For these reasons, we ask for a favorable report on this bill.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.