



HUMAN RIGHTS *for* KIDS

TESTIMONY IN SUPPORT OF SB 136 BEFORE THE MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE

February 4, 2021

Dear Chairman Smith and Members of the Maryland Senate Judicial Proceedings Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our support for SB 136. We are grateful to Senator Carter for her leadership in introducing this bill and appreciate the Maryland Legislature's willingness to address the important issue of protecting children's Constitutional and human rights when they come into contact with the criminal justice system.

Over the years too little attention has been paid to the most vulnerable casualties of mass incarceration in America — children. From the point of entry and arrest to sentencing and incarceration our treatment of children in the justice system is long overdue for re-examination and reform.

Human Rights for Kids is a Washington, D.C.-based non-profit organization dedicated to the promotion and protection of the human rights of children. We work to inform the way the nation understands Adverse Childhood Experiences (ACEs) from a human rights perspective, to better educate the public and policymaker's understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & strategic litigation to advance critical human rights on behalf of children in the United States.

Human Rights for Kids supports SB 136 because, if it is signed into law, it will ensure that children consult with legal counsel before they are able to waive their Miranda Rights or are interrogated by law enforcement. Protecting these children's rights will reduce incidents of false confessions by youth and better align Maryland's policies with juvenile brain and behavioral development science.

High Rates of False Confessions

Children are particularly susceptible to giving false confessions because they are not as sophisticated as adults when interacting with the criminal justice system and being interrogated by law enforcement.

Children rarely have an understanding of the consequences and implications of law enforcement interrogations on their due process rights and the impact they may have during trial. The chart below, from the National Registry of Exonerations at the University of Michigan, highlights the incredibly high rates of false confessions that children gave during police interrogations.

**AGE AND MENTAL STATUS OF EXONERATED
DEFENDANTS WHO CONFESSED**
NATIONAL REGISTRY OF EXONERATIONS
3/17/2020; N = 2,400

AGE AND MENTAL STATUS OF THE EXONERATED DEFENDANTS	PROPORTION WHO FALSELY CONFESSED
Under 18 Years Old at Time of Crime (76/211)	36%
<i>16 and 17 year olds (46/162)</i>	<i>28%</i>
<i>14 and 15 years old (24/42)</i>	<i>57%</i>
<i>Under 14 years old (6/7)</i>	<i>86%</i>
18 Years or Older at time of Crime (216/2,189)	10%

As you can see, nearly all children under 14 who were later exonerated of having committed a crime had falsely confessed. Similarly, nearly 60 percent of 14 and 15-year-old children in the same situation gave a false confession.

One important aspect of SB 136 is safe-guarding children’s rights to ensure that no child in Maryland falsely confesses to a crime he or she did not commit because they don’t fully understand how the justice system works or their Constitutional Rights.

Juvenile Brain & Behavioral Development Science

Studies have shown that children’s brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, being heavily influenced by their surrounding environment, and being more easily manipulated, brainwashed, or deceived.

Children’s underdeveloped brains, proclivity for irrational decision-making, and inability to understand the gravity of their decisions is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities until they’ve reach adulthood. It is for these same reasons that we also have policies in place to protect children everywhere – except in the criminal justice system. SB 136 will put in place greater protections for young children at the point of entry, to ensure they speak with legal counsel before they waive their Miranda Rights or are subject to interrogation.

National Perspective

As new evidence surrounding child brain development has emerged, American society has begun to recognize the need to enhance due process protections for children to safeguard their rights and ensure they do not falsely confess to crimes.

In 2013, the American Academy of Child and Adolescent Psychiatry adopted the recommendation that children have an attorney present during questioning by police or other law enforcement agencies. The Academy also recommended that children should have a right to consult with parents prior to and during questioning.¹ The following year, the American Psychological Association adopted a resolution on criminal interrogations, recommending that “vulnerable suspect populations, including youth, be provided special and professional protection during interrogations such as being accompanied and advised by an attorney or professional advocate.”²

Legislatures around the country have also acted. California has enacted legislation nearly identical to SB 136 to ensure that child status is accounted for in the context of custodial interrogation and that children’s constitutional rights are safeguarded. That legislation passed with wide bi-partisan support in both chambers.³ Illinois, North Dakota, Oklahoma, Iowa, North Carolina, and Virginia have also created statutory protections to safeguard children’s constitutional rights prior to a custodial interrogation.

Maryland remains a national outlier in its protection of the human rights of children in the justice system. In 2020, we designated Maryland as one of the worst human rights offenders when it comes to the treatment of justice-system involved youth. Maryland was tied for last in the nation, alongside Alabama, Georgia, Tennessee, Mississippi, and Wyoming. Maryland’s lack of due process protections for youth upon arrest is one of the reasons for Maryland’s poor rating.

Human Rights Law

In 2019, the U.N. Committee on the Rights of the Child (CRC) affirmed that the assistance available to children involved in the justice system under the Convention on the Rights of the Child should be provided throughout the entire process, “beginning with the interviewing (interrogation) of the child by the police . . .” Articles 37 and 40 of the CRC specifically state that children should have prompt access to legal assistance once their liberty has been deprived and that they should not be “compelled to give testimony or confess guilt.”

¹ https://www.aacap.org/aacap/policy_statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx

² <https://www.apa.org/about/policy/interrogations>

³ <https://www.hrw.org/news/2020/09/30/california-new-law-protects-children-police-custody>

These human rights principles are also reflected in the recent policy recommendations by both the APA and the AACAP.

Nelson Mandela once said, *“There is no keener revelation of a society’s soul than the way in which it treats its children.”* It is our responsibility as a society to safeguard and protect the rights of our children. Nowhere is that more evident or needed than in the criminal justice system where the consequences of failing to do so can have a profound, life-altering impact. Children are not as sophisticated as adults when it comes to interacting with the justice system. They can easily be manipulated into confessing to crimes they did not commit. It is for these reasons, that SB 136 is critical. Under the bill, children will be required to consult with counsel before being interrogated or waiving their Miranda Rights. The bill provides exceptions in the case of imminent threats to public safety and only applies once a child is in custody, thereby minimizing disruption to law enforcement investigations.

We would also note that the safeguards in SB 136 also serve law enforcement by helping to prevent unsubstantiated claims of coerced or involuntary confessions for instance, and protecting the integrity of law enforcement investigations. This bill is also good for victims, who are severely harmed when false confessions are obtained by innocent people and the person who actually harmed them goes free.

This is a common-sense, reasonable bill to protect the rights of our most vulnerable citizens – our children. We strongly urge this committee to vote favorably upon SB 136 to ensure that we do everything we can to protect both the Constitutional and Human Rights of Maryland’s children. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James L. Dold', with a long horizontal flourish extending to the right.

James. L. Dold
CEO & Founder
Human Rights for Kids