

Testimony of Laura Nirider and Steven Drizin in Support of MD House Bill 315

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Modern-day police interrogation involves the use of a standard set of psychological techniques designed to convey – often falsely – that a person is trapped and will improve his legal situation by choosing to confess.¹ Those potent techniques have long been used on both children and adults alike. In recent years, however, it has become well-recognized that children, as a category, are less equipped to process the high-stakes choices that interrogation presents. Both research and empirical experience, accordingly, have shown that children under age 18 who undergo interrogation are between two and three times more likely than adults to falsely confess to crimes they did not commit.²

This reality has been recognized by the International Association of Chiefs of Police, which warned in a 2012 national training guide that “young people are particularly vulnerable to making false or involuntary statements” and recommended that children under 18 consult with counsel before being questioned.³ The same reality has also been recognized by the United

¹ Saul M. Kassin, et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3 (2010), available online at [http://web.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20-%20LHB%20\(2010\).pdf](http://web.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20-%20LHB%20(2010).pdf).

² Kassin et al. at 19-20; Samuel R. Gross, et al., *Exonerations In the United States, 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 (2005) (13% of adult exonerees falsely confessed, whereas 42% of juvenile exonerees falsely confessed); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 963 (2004) (a full one-third of all false confessions studied were made by juveniles).

³ International Association of Chiefs of Police, REDUCING RISKS: AN EXECUTIVE’S GUIDE TO EFFECTIVE JUVENILE INTERVIEW AND INTERROGATION 7-8 (2012), available online at <http://www.theiacp.org/portals/0/pdfs/reducingrisksanexecutiveguide toeffectivejuvenileinterviewandinterrogation.pdf>.

States Supreme Court, which held in 2011 that the risk of false confession “is all the more troubling [and] all the more acute when the subject of custodial interrogation is a juvenile.”⁴

This is also a reality that, unfortunately, Maryland children have lived. In 1998, Cecil County resident Allen Chesnet was sixteen years old when his neighbor was stabbed to death. After receiving a tip that Allen had been seen with a bleeding hand – he had cut it on a tool in his basement – police brought the teen in for interrogation. With no lawyer present, officers accused Allen of murder and falsely told him that his DNA was found at the crime scene. Eventually, the scared child agreed to say that he was responsible for his neighbor’s murder. Allen later explained, “In my head, I thought if I told them stuff, they would let me go.” To the contrary, Allen Chesnet spent months in jail awaiting trial before DNA from the crime scene exonerated him, identified the true perpetrator, and prompted his release. While Allen was in jail, he reports having been stabbed and raped twice. His mother has since described his ordeal as “pure hell.”⁵ Allen’s story, and the hundreds of similar stories from around the country, serve as undeniable calls to action: Children need greater protections in the interrogation room.

Because children “lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,”⁶ Maryland legislators have seen fit on many occasions to protect young people from the dangers of unguided decision-making. Maryland residents under age 21, for instance, are not permitted to purchase cigarettes or possess handguns.⁷ Similarly, Marylanders under age 18 cannot obtain unrestricted driver’s licenses,

⁴ *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

⁵ Del Wilber, *Teen Tormented By an Erroneous Charge of Murder*, Baltimore Sun, April 23, 2001, available at <https://www.baltimoresun.com/news/bs-xpm-2001-04-23-0104230226-story.html>.

⁶ *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

⁷ Md. Code Ann., Pub. Safety § 5-134(b)(1) (handgun).

enter into most contracts, or use tanning beds.⁸ It is now time to extend that thinking to the interrogation room.

Before custodial interrogation, the Constitution requires children and adults alike to be advised of their *Miranda* rights to silence and counsel. The reason for this requirement is simple: the *Miranda* warnings are intended to make real and concrete those constitutional rights that, in the moment, may seem distant, meaningless, and inaccessible to a frightened person in an interrogation room. Only after a person knowingly, intelligently, and voluntarily waives those rights, the idea goes, may interrogation proceed.

But just as children are not equipped to make unguided judgments about tanning beds and contracts, they are similarly not equipped to decide, alone and afraid, whether to waive their *Miranda* rights – and thereby allow interrogation to take place. As any parent will understand, the mere fact of being with police in an interrogation room will cause children like Allen Chesnet to feel intense pressure to say whatever authority figures want, instead of asserting their rights. And many children simply don't comprehend what lawyers do or whether asking for a lawyer will hurt or help. Indeed, a recent study of twelve- to nineteen-year-olds showed that 69% didn't fully comprehend their *Miranda* rights.⁹ This problem is even more severe for justice-involved youth, who tend to demonstrate lower average intelligence and academic achievement scores than youth in the general population.¹⁰

⁸ Md. Code, Transportation § 16-103, § 105, § 16-111, § 16-213; The People's Law Library of Maryland, <https://www.peoples-law.org/when-tenant-minor>; Maryland Dept. of Health, <https://phpa.health.maryland.gov/OEHFP/EH/pages/tanning-for-minors.aspx>.

⁹ Naomi E. S. Goldstein et al., *Miranda Rights Comprehension Instruments* (MRCI) 93 (2014).

¹⁰ Amy E. Lansing et al., Cognitive and Academic Functioning of Juvenile Detainees: Implications for Correctional Populations and Public Health, 20 *J. Correctional Health Care* 18 (2014).

The research and empirical experience is clear: Children cannot be relied on to invoke their right to counsel and thereby protect themselves against the risk of false confession. This is why both California and Illinois have recently enacted laws requiring counsel for children being questioned by police. California's law, in particular, requires all children under age 18 to have an opportunity to consult with an attorney before undergoing custodial interrogation; it passed the state legislature with bipartisan support before being signed by that state's governor.¹¹ It's time for Maryland to follow suit.

And as both California and Illinois have recognized, it is crucial that children receive opportunities to speak with licensed *attorneys*, in addition to parents. Many parents themselves do not understand the *Miranda* rights. Police interrogators, moreover, are often trained to marginalize parents by keeping them out of the interrogation room or not fully informing them of the legal stakes faced by the child. For those parents who do gain admittance to the interrogation room, case examples abound in which police tell the parent falsely that the child will help himself by confessing and enlist the parent's help in pressuring the child to cooperate. Those members of this Legislature who have seen the Netflix series *When They See Us*, based on the real-life case of New York's Central Park Five, will recall how fifteen-year-old Antron McCray was pressured by his own father into falsely confessing to a brutal rape he did not commit, after police told Antron's father that it would benefit Antron to do so. Antron served six years in prison before he and his co-defendants were exonerated by DNA evidence.

As experts who have helped build new understandings around juvenile interrogations and false confessions, we reflect often on the prescient words of the U.S. Supreme Court in 1948:

¹¹ *California: New Law Protects Children in Police Custody*, Human Rights Watch (Sept. 30, 2020), available at <https://www.hrw.org/news/2020/09/30/california-new-law-protects-children-police-custody>.

“[A teenager] needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.”¹² Again, in 1962, the Court reiterated that “only adult advice” can give a child “the protection which his own immaturity could not.”¹³ Those words have gone unheeded for too long. Our country’s collective recent advances in understanding the problem of juvenile false confessions makes these warnings more important than ever to heed today. We submit this testimony in support of House Bill 315.

¹² *Haley v. Ohio*, 332 U.S. 596 (1948).

¹³ *Gallegos v. Colorado*, 370 U.S. 49 (1962).