



PAUL DeWOLFE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 53 Child Interrogation Protection Act
POSITION: Favorable
DATE: January 25, 2022

[E]vidence is accumulating that confessions by juveniles do not aid in individualized treatment...and that compelling the child to answer questions, without warning or advice as to his right to remain silent, does not serve this or any other good purpose.

– Justice Abe Fortas
In re Gault, 387 U.S. 1, 51 (1967)

Senate Bill 53 provides important due process protections for children. These protections are critical because children are uniquely vulnerable to coercive police interrogation tactics. Protecting children’s due process rights and preventing false confessions doesn’t just protect kids charged with the most serious crimes, it also protects law enforcement and victims by ensuring that false confessions and statements don’t allow the real perpetrators of crime to go undetected for decades like in the recent case of the Harlem Park 3.

The U.S. Supreme Court has recognized that police interrogation “can induce a frighteningly high percentage” of false confessions, and that this risk is multiplied when a child is the subject of an interrogation. Children are 2 to 3 times more likely to falsely confess than adults and account for approximately one-third of all false confessions.

Research on adolescent development and neuroscience developments over the last half century has demonstrated unequivocally that teenagers are uniquely vulnerable to coercive interrogation tactics because teenagers prioritize short-term benefits over long-term consequences and are especially prone to comply with the requests of authority figures like police. During adolescence, the reward-seeking part of the brain is highly active, while the frontal lobe, which governs measured decision-making, is still developing. This is why they waive their Miranda rights almost 90% of the time and why juveniles falsely confess at rates that are exponentially rates compared to adults.

Public defenders who represent young people across Maryland witness firsthand the harmful impact of police interrogation techniques and practices on juveniles, most of whom routinely waive Miranda without any real understanding of what they have given up. MOPD's young clients have told their lawyers they believed the "right to remain silent" meant they were

rights related to moving your hand back and forth ("waving hello"), and that "a right to an attorney" meant that they would have to "write a letter" to get help. Many of my clients cannot define the word attorney or lawyer, but when asked by police if they "understand they have a right to a lawyer" happily answer in the affirmative.

Maryland should explicitly require that all children consult with an attorney before any interrogation takes place. Requiring an attorney consultation is not the creation of a new Constitutional right. The U.S. Constitution already guarantees children the right to remain silent. The U.S. Constitution already guarantees every child the right to speak to an attorney before answering questions. This bill simply makes that Constitutional guarantee real instead of abstract.

The only way to ensure that the waiver of a youth's constitutional rights; a knowing, intelligent and voluntary waiver are protected is to have an attorney consultation before any interrogation. With this notion, the element of coerciveness by police officers in interrogation will never be a factor. In all actuality, this consultation ensures the reliability of juvenile statements and should be viewed as protection not just for children, but also of law enforcement and the reliability of possible convictions.

The U.S. Supreme Court recognizes that a lawyer is uniquely positioned in the context of an interrogation to protect the Fifth Amendment rights of the accused. "[T]he lawyer occupies a critical position in our legal system because of his unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation. Because of this special ability of the lawyer to help the client preserve his Fifth Amendment rights once the client becomes enmeshed in the adversary process, the Court found that 'the right to have counsel present as the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system' established by the Court."

Even before the Miranda rights were formally established, the U.S. Supreme Court made clear that, in the context of police interrogation, events that "would leave a man cold and unimpressed can overawe and overwhelm a lad ..." The Supreme Court has since stressed what "any parent knows"—indeed, what any person knows—that "children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them." Adolescents lack the experience, perspective, developmental maturity, and judgment to recognize and avoid choices that could be detrimental to them.

Current research demonstrates that all children, even those as old as 16 and 17, are highly susceptible to pressure, have poor impulse control, incomplete brain development, and limited understanding of long-term consequences. Studies show that of the Miranda policies in 122 police departments across the country, “[e]ven under the best circumstance, preteen suspects are likely to find Miranda vocabulary and reading levels are far beyond their understanding.” In light of this information, the American Bar Association (ABA) resolved more than 17 years ago that, “youth should not be permitted to waive the right to counsel without consultation with a lawyer and without a full inquiry into the youth's comprehension of the right and their capacity to make the choice intelligently, voluntarily and understandingly.” Maryland should make the same resolution by passing SB 0053.

The International Association of Chiefs of Police (IACP) has recognized that “juveniles are more vulnerable than adults during interrogation – a vulnerability that is categorically shared by every juvenile, no matter how intelligent or mature.” In recognition of the research establishing the heightened risks of youth interrogations, in 2006, the IACP in conjunction with the U.S. Department of Justice Office of Juvenile Justice Delinquency Prevention (OJJDP) developed a training curriculum for law enforcement and a set of model policies for juvenile interrogation. In their extensive report *Reducing Risks: The Executives Guide to Effective Juvenile Interview and Interrogation*, the IACP acknowledged that standard law enforcement interrogation techniques are unreliable when used with children. SB 0053 would codify the requirement for an age appropriate Miranda warning for youth in custody.

Maryland should establish a youth-specific, developmentally appropriate Miranda warning. The standard Miranda warning requires a tenth-grade level of reading comprehension. Adolescents are more likely than their adults to assert they understand material to avoid embarrassment and to appear intelligent. When a law enforcement officer simply asks “do you understand” many children will respond in the affirmative even though they do not actually understand. To ensure that a waiver is knowing, intelligent, and voluntary, Miranda warnings for children must be provided at a third-grade reading level, police officers must read each warning slowly, and the interrogator must stop after each one to ask the child to explain the warning back in his or her own words.

Parents or guardians should be notified expeditiously that their child was taken into police custody, why they were taken into custody and where their child is located. While current law states that a parent should be notified, this language must be strengthened to ensure that parents are actually informed of their child’s whereabouts. Since not every arrest will result in an interrogation, and a child needs a parent or guardian to be released from police custody, these measures are not far reaching and will help secure the presence of a parent or guardian.

However, a parent or guardian’s presence is insufficient for purposes of interrogation. Parents generally lack the competency about police interrogation techniques and the risks of providing a statement, even a truthful one, to properly advise their child and ensure that any statement is knowing, intelligent and voluntary. The American Academy of Child and Adolescent Psychiatry

(AACAP) has declared “that juveniles should have an attorney present during questioning by police or other law enforcement agencies.” While noting that youth should also be able to consult with a parent, the AACAP recognized that “parental presence alone may not be sufficient to protect juvenile suspects.”

Consequentially, because there is no legally recognized confidentiality of communications between a parent and their child, a parent could be compelled to testify against their child if they are present or partake in the child’s interrogation.

Lastly, as to implementation, OPD is committed to provide representation related to interrogations of youth in person, by phone or by video conference. In March 2022, OPD will launch a youth interrogation hotline in Baltimore City in conjunction with new policies adopted by the Baltimore Police Department. The cost to operationalize a 24/7 hotline in Maryland’s largest city was relatively small – the cost of software licenses for the call-forwarding system. Policies and procedures for how to advise young people have already been developed. OPD stands ready to scale the program statewide if this legislation should pass.

For all these reasons, and those outlined in our oral testimony, OPD would ask for a favorable report on SB 0053.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

Authored by: Jenny Egan, Chief Attorney Juvenile Division, 443-263-6361
jenny.egan@maryland.gov.

Sources

1. Human Rights for Kids, *2020 National State Ratings Report* (October 2020)
<https://humanrightsforkids.org/publication/2020-national-state-ratings-report/>
2. Steven Drizin & Richard Leo, *The Problem of False Confessions in the Post-DNA World*, NORTH CAROLINA LAW REVIEW, Vol. 82, Number 3 (March 1, 2004.)
<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4085&context=nclr>
3. National Registry of Exonerations, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess (February 26, 2019.)
4. *Corley v. United States*, 556 U.S. 303, 320-21 (2009).
5. *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).
6. Megan Crane, Laura Nirider, & Steven A. Drizin, The Truth About Juvenile False Confessions, 16 INSIGHTS ON L. & SOC’Y 10, 12 (2016)
7. *Fare v. Michael C.*, 442 U.S. 707, 719 (1979).

8. *Haley v. Ohio*, 332 U. S. 596, 599 (1948) (plurality opinion); see also *Gallegos v. Colorado*, 370 U. S. 49, 54 (1962).
9. *Brief for American Psychological Assoc. (APA) as Amicus Curiae*, p. 4, *Roper v. Simmons*, 543 U.S. 551 (2005). See also, *Miller v. Alabama*, 567 U.S. 460 (2012).
10. *Roper v. Simmons*, 543 U.S. 551 (2005).
11. American Bar Association, *Resolution on Youth in the Criminal Justice System* 101D (3).
12. American Academy of Child and Adolescent Psychiatry (AACAP) *Policy Statement: Interviewing and Interrogating Juvenile Suspects* (2013).
13. Richard Rogers, et al., *The Language of Miranda Warnings in American Jurisdictions: A Replication and Vocabulary Analysis*, 32 L. & HUM. BEH. 124 (2008).
14. Juv. Delinquency Act, 18 U.S.C. § 5033 (requiring Miranda warnings for youth to be delivered in “language comprehensive to a juvenile.”); Richard Rogers, et al., *Juvenile Miranda Warnings: Perfunctory Rituals or Procedural Safeguards?*, 39 CRIM. JUST. & BEHAV. 229 (2012), online at <http://cjb.sagepub.com/content/39/3/229>.
15. King County Sheriff’s Office, Press Release, Sept. 27, 2017, online at: <https://www.kingcounty.gov/~media/depts/executive/performance-strategybudget/documents/pdf/RLSJC/2018/July26/Miranda-Warning-for-Youth.ashx?la=en>.
16. Richard Rogers, et al., *The Comprehensibility and Content of Juvenile Miranda Warnings*. PSYCHOLOGY, PUBLIC POLICY, AND LAW 2008, Vol. 14, No. 1, 63–87. <https://njdc.info/wp-content/uploads/2013/12/The-Comprehensibility-and-Content-of-Juvenile-Miranda-Warnings.pdf>
17. International Association of Chiefs of Police, *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation* (2012), <https://theiacp.org/sites/default/files/all/pr/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>.