



Testimony to the House Judiciary Committee
HB 0269 Juvenile Law: Child Interrogation Protection Act
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My name is Marc Schindler. I serve as the Executive Director of the Justice Policy Institute (JPI), a national research and policy organization with expertise on criminal and juvenile justice issues. Over the last decade, JPI has released over a dozen policy and research reports on the Maryland justice system. Please accept this statement in support of HB069 Juvenile Law: Juvenile Interrogation Protection Act.

By way of background, I have had the opportunity in my career to view the justice system from several different angles. I come to this issue today with perspective drawn from experiences both inside and outside the criminal justice system. After graduating from the University of Maryland School of Law, I began my legal career over 20 years ago with the Maryland Office of the Public Defender, representing children in Baltimore's juvenile court. During that time I also chaired the Baltimore City Bar Association's children's rights committee. I then spent eight years as a staff attorney with the Youth Law Center, a national civil rights law firm. Then, I held several leadership roles within the Washington, DC Department of Youth Rehabilitation Services, Washington, DC's juvenile corrections agency, including serving as General Counsel, Chief of Staff, and Interim Director between 2005 and 2010. Prior to joining JPI, I was a partner with Venture Philanthropy Partners (VPP), a Washington-based philanthropic organization.

The Justice Policy Institute offers this testimony in support of the Child Interrogation Protection Act, HB 0269. HB 0269 will help safeguard children from self-incrimination and mitigate future involvement with the justice system. The developmental vulnerabilities of children and the racial disparities of children in the juvenile justice system, including Maryland's are strong justification for passage of HB 0269. Failing to pass legislation that requires the notification of the child's guardian while in custody would also be inconsistent with cases that ruled in favor of protecting children from self-incrimination and supports their right to receive proper representation. See *Haley v. Ohio* (1948), *Gallegos v. Colorado* (1962), *In re Gault* (1967), *Roper v. Simmons* (2009), *Graham v. Florida* (2010), *J.D.B. v. North Carolina* (2011), *Miller v. Alabama* (2012), *Montgomery v. Louisiana* (2015), and *Jones v. Mississippi* (2021).¹

The juvenile justice system developed over 100 years ago as a response to the recognition that children are developmentally different from adults, demonstrating the need for specially tailored practices for children. Roughly 50,000 children are confined to juvenile detention facilities every day.² Over the past two decades the number of confined youths has dropped by 60 percent, though it is important to note that during that time in many jurisdictions racial disparities have actually increased.³ Across multiple offenses, children of color, are more likely to be detained pre-adjudication, more likely to be committed post-adjudication, and are less likely to be diverted from the justice system at large.⁴ According to *Sticker Shock: The Cost of Youth Incarceration*, the total costs of serving a youth in the state's secure facilities is at an all-time high of \$414,929 annually, this despite evidence that youth confinement is not associated with mitigating involvement in future crimes as an adult. When a child is involved with the justice system, it increases their likelihood of being incarcerated as an adult by up to 41 percentage points.⁶

JPI's report, *Rethinking Approaches to over Incarceration of Black Young Adults in Maryland*, highlights the racial disparities within Maryland's criminal justice system. Seventy percent of Maryland's prison population is Black, yet Black individuals make up only 31 percent of the state's population. Maryland's incarceration rate for Black individuals is more than twice the national average, surpassing Mississippi, South Carolina, and Georgia. Maryland leads the nation in incarcerating young Black men, with the highest disparities being for those between the ages 18 and 24.⁷ Black individuals are incarcerated in state prisons at nearly five times the rate of White individuals.⁸ These inequities highlight the need for policies that deter youth from becoming involved with the justice system. Nationally, Black youth are more than four times as likely to be detained in juvenile facilities than their White peers. While Black youth represent 41 percent of the detained youth population, they represent only 15 percent of the entire adolescent population.⁹ Racial disparities are just as stark when examining Maryland's juvenile justice system. Across Maryland, Black youth are 6.3 times more likely to be detained in juvenile facilities.⁹ Between 2013 and 2020, nearly 8,000 children were automatically tried as adults, 80 percent of those tried were Black.¹⁰ More than 400 individuals faced life or life-equivalent sentences for offenses committed as a child.¹¹ With Maryland leading the nation in incarcerating Black men, it is imperative the Maryland legislators use sensible child protection wisdom to implement sensible, age-appropriate practices

Within the past 25 years, nearly 40 percent of exonerations were due to false confessions made by those under the age of 18, compared to 11 percent of exonerations due to false confessions by adults.¹³ Children are two to three times more likely to give false confessions.¹² Children often will take the blame for a crime they did not commit simply to end the interrogation.¹³

¹ Crane, Megan, Laura Nirider, and Steven A. Drizin. 2016. "The Truth about Juvenile False Confessions." American Bar Association.

² Sawyer, Wendy. 2019. "Youth Confinement: The Whole Pie 2019." *The Sentencing Project*. The Sentencing Project. <https://www.prisonpolicy.org/reports/youth2019.html>.

³ Sawyer, Wendy. "Youth Confinement: The Whole Pie 2019."

⁴ Rovner, Josh. 2021. "Black Disparities in Youth Incarceration." *The Sentencing Project*. The Sentencing Project. <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>.

⁵ Aizer, Anna, and Joseph J. Doyle, Jr. 2015. "Juvenile Incarceration & Adult Outcomes: Evidence from Randomly Assigned Judges." *The Quarterly Journal of Economics* 120. <https://doi.org/10.1093/qje/qjv003>.

⁶ Alzer, Anna, and Joseph Doyle. "What Is the Long-Term Impact of Incarcerating Juveniles?" VOX, CEPR Policy Portal, 2013. <https://voxeu.org/article/what-long-term-impact-incarcerating-juveniles>.

⁷ Prison Policy Initiative. 2018. "Maryland Profile." *Prison Policy Initiative*. The Sentencing Project. <https://www.prisonpolicy.org/profiles/MD.html>.

⁸ Nellis, Ashley. 2021. "The Color of Justice: Racial and Ethnic Disparity in State Prisons." *The Sentencing Project*. The Sentencing Project. <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁹ Rovner, Josh. "Black Disparities in Youth Incarceration."

¹⁰ Witte, Brian. "Supporters of Juvenile Justice Reform Hopeful in Maryland." *baltimoresun.com*. Baltimore Sun, December 23, 2021. <https://www.baltimoresun.com/politics/bs-md-pol-maryland-juvenile-justice-reform-20211222-zxc3wrnn6vef7iwluivjur5lpy-story.html>.

¹¹ Equal Justice Initiative. 2021. "Maryland Bans Life Without Parole for Children." Equal Justice Initiative. April 12, 2021. <https://eji.org/news/maryland-bans-life-without-parole-for-children/>.

¹² Crane, Megan, Laura Nirider, and Steven A. Drizin. "The Truth about Juvenile False Confessions."

¹³ Cleary, Hayley M. D., and Todd C. Warner. 2016. "Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects." *Law and Human Behavior* 40 (3): 270–84. <https://doi.org/10.1037/lhb0000175>.

The National Research Council's Report, *Reforming Juvenile Justice: A Developmental Approach*, finds that children differ from adults in three primary cognitive tendencies – cognitive development influences their decision-making capabilities, pleasure-seeking inhibits impulse control which leads to a reduced understanding of long-term consequences, and external influences are significantly more powerful over children's ability to form and convey strategic statements, making them all the more susceptible to psychological interrogation methods. A survey of law enforcement, conducted in 2014, found that nearly all officers use the same interrogation strategies on minors as they do adults.¹⁴ Researchers find that children waive their Miranda rights 90 percent of the time and make false confessions at exponentially higher rates than adults.¹⁵ Children prioritize short-term benefits over long-term consequences, attributing to the high prevalence of waived Miranda rights and inaccurate confessions.

Many states have recently passed legislation ensuring children have quality representation while in police custody. In North Carolina, bill GS-7B-1901, requires the guardian be notified before an investigation proceeds.¹⁶ Alabama's code 12-15-102 requires informing the guardian of the whereabouts of their child and the reason for interrogation.¹⁷ California's Senate Bill 395 sets standards for juvenile defense counsel, requiring youth under the age of 15 to consult with counsel before interrogation or before waiving specified rights.¹⁸ Illinois Senate Bill 2370 expands children's right to counsel during police interrogations, requires recording of interrogations, and requires simplified versions of Miranda warnings be given to minors.¹⁹ Nebraska's guidelines require both defense and prosecuting attorneys to ensure legal representation for minors.²⁰ New Mexico does not allow confessions made by children under the age of 13 admissible in court under any circumstance.²¹ Wisconsin forbids courts from presenting confessions made by children if they were not recorded.²²

¹⁴ Cleary, Hayley M. D., and Todd C. Warner. "Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects."

¹⁵ Redlich, Allison D., Melissa Silverman, and Hans Steiner. 2003. "Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults." *Behavioral Sciences & the Law* 21 (3): 393–410. <https://doi.org/10.1002/bsl.543>.

¹⁶ North Carolina General Assembly. 2021. *Criteria for Secure or Nonsecure Custody*. Vol. G.S. 7b-1901(a)(1). https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_7B/GS_7B-1903.html.

¹⁷ "Alabama – NJDC." *NJDC – Promoting Justice for All Children*, National Juvenile Defender Center, 2018, <https://njdc.info/practice-policy-resources/state-profiles/alabama/>.

¹⁸ "Bill Text - SB-395 Custodial Interrogation: Juveniles." *California Legislative Information*, 2017, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB395.

¹⁹ "Illinois General Assembly - Bill Status for SB2370." *Illinois General Assembly Home Page*, <https://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=SB&DocNum=2370&GAID=13&SessionID=88&LegID=93740>. Accessed 20 Jan. 2022.

²⁰ "S6-1470. Practice Guidelines for Attorneys in Juvenile Court." *State of Nebraska Judicial Branch*, 2017, <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-6-trial-courts/article-14-uniform-county-court-rules-practice-procedure/§-6-1470-practice-guidelines-attorneys-juvenile-court>.

²¹ "HB0142." *Home - New Mexico Legislature*, 2013, <https://nmlegis.gov/Sessions/13%20Regular/bills/house/HB0142.html>.

²² "Wisconsin Legislature: 938.195." *Wisconsin Legislative Documents*, 2017, <https://docs.legis.wisconsin.gov/statutes/statutes/938/IV/195?view=section>.

Washington requires law enforcement to connect a child with legal counsel before beginning an interrogation.²³

Implementing rehabilitative strategies and building decarceration tools for children is paramount in mitigating future justice involvement and reducing racial disparities. The juvenile justice system was developed under the fundamental premise that youth are different from adults in both their level of responsibility and their potential for rehabilitation. There is strong support in research and practice that children should be provided a right to proper representation and deserve protection against self-incrimination. Failing to support HB 0269 undermines the goals of Maryland's juvenile justice system and we would urge passage of the proposed legislation.

²³ *Concerning Juvenile Access to Attorneys When Contacted by Law Enforcement*. 2021.
<https://app.leg.wa.gov/billsummary?BillNumber=1140&Year=2021&Initiative=false>.