NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER
MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS
ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: SB 22 – Criminal Procedure – Custodial Interrogation – Codification

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 2/2/2023

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on Senate Bill 22. Senate Bill 22 would codify the procedural safeguards established by the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966).[1] *Miranda* established guidelines for courts and law enforcement officers to follow to protect a person's Fifth Amendment privilege against self-incrimination and their right to request an attorney's presence during an interrogation. Senate Bill 22 is necessary to ensure that the procedural safeguards established in *Miranda* endure to protect Marylanders from unconstitutional police practices.

In *Miranda*, the Supreme Court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[2] Since *Miranda*, the meaning of custodial

[1] Under *Miranda*, the person being interrogated "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Id.* at 479. Unless the prosecution can demonstrate that the person was warned and waived their rights, a prosecutor cannot use any evidence obtained during that interrogation at trial. *Id.* at 479.

The Maryland Office of the Public Defender notes, however, that the bill should be amended to include the final *Miranda* advisement: if a person cannot afford an attorney, one will be appointed for the person prior to any questioning if they desire.

[2] 384 U.S. at 444. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980), expanded "interrogation" to include "words or actions" that police reasonably should know are likely to elicit an incriminating response.

interrogation has been subjected to an evolving judicially determined meaning. And, "[w]ithout the womb of custodial interrogation,"[3] there are no *Miranda*-based protections.

Senate Bill 22 establishes a statutory definition for custodial interrogation rather than leaving it to its evolving judicially determined meaning. Under the bill, "custodial interrogation" means any questioning conducted by an officer while the person is detained, is arrested, or has a reasonable belief that they are not free to leave the encounter. This concrete definition is necessary because Maryland courts engage in a fact-based analysis to determine whether a person is entitled to *Miranda*-based protections.[4] Thus, under current law, a person can be detained,[5] held in police custody,[6] or subjectively believe they are not free to leave,[7] but that person may not be entitled to *Miranda*-based protections if the court so determines.

Furthermore, the task of determining whether a person is "in custody" for the purpose of *Miranda* "has proved to be 'a slippery one.'"[8] Previous judicial opinions demonstrate that factual

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[3] *In re Darryl P.*, 211 Md. App. 112, 158 (2013).

[4] *Smith v. State*, 186 Md. App. 498, 522-23 (2009), *aff'd*, 414 Md. 357 (2010).

[5] *See Jones v. State*, 132 Md. App. 657, 666 (2000) (concluding that, even though the person "had been seized within the contemplation of the Fourth Amendment and was not free to leave the scene[,]" *Terry v. Ohio*, 392 U.S. 1 (1968)[,] [t]hat was enough to engage the gears of the Fourth Amendment, but it was not enough to engage the gears of *Miranda v. Arizona*."); *see also Griner v. State*, 168 Md. App. 714 (2006); *Craig v. State*, 148 Md. App. 670 (2002).

[6] *See Minehan v. State*, 147 Md. App. 432, 441-42 (2002) ("[W]e recognize that each case must be judged on its own merits, although certain benchmarks have developed in the thirty-plus years of *Miranda* litigation. For example, interrogation in a police station does not amount to custody *per se*."); *see, e.g.*, *Gupta v. State*, 452 Md. 103, 135 (2017) (holding that, because the suspect's demands to see a lawyer came when he was still in a holding cell and before interrogation was "imminent," his invocation of his *Miranda* right to counsel was invalid); *see also Hoerauf v. State*, 178 Md. App. 292 (2008) (same); *Costley v. State*, 175 Md. App. 90 (2007) (same). *But see State v. Rucker*, 374 Md. 199, 212 (2003) ("Rucker was not in custody for purposes of *Miranda* because he was not restrained to a degree associated with a formal arrest. Accordingly, *Miranda* warnings were not required before the police asked Rucker whether he had anything illegal.").

[7] *See Thomas v. State*, 429 Md. 246, 259 (2012) ("In analyzing whether an individual is in custody for *Miranda* purposes, we ask, under the 'totality of the circumstances' of the particular interrogation, 'would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'").

[8] *Withrow v. Williams*, 507 U.S. 680, 711-12 (1993) (O'Connor, J., concurring, in part, and dissenting in part). Maryland court's have attempted to define custody in various factual scenarios with differing results. *See, e.g.*, *Reynolds v. State*, 88 Md. App. 197, 209 (1991) ("'Custody' ordinarily contemplates that a suspect will be under arrest, frequently in a jailhouse or station house

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please contact Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

scenarios can sometimes create legal conundrums and case law that may be unfavorable to the people placed in similar situations.[9] Nonetheless, courts place the burden on a person to prove that they were entitled to *Miranda*-based protections when a *Miranda* violation is in issue.[10] Senate Bill 22 eliminates that complicated task by providing three distinct factual situations where *Miranda* would apply. In effect, Senate Bill 22 would evince this Legislature's intent that *Miranda*-based constitutional protections should not evaporate simply because the facts missed some judicially determined mark.

While some court decisions reinforce constitutional guarantees, varying judicial interpretations of those decisions may threaten constitutional guarantees. Senate Bill 22 would ensure that a person's *Miranda*-based constitutional rights are statutorily protected anytime they are detained, arrested, or otherwise subjected to questioning in a police-dominated environment.[11] A vote in favor of this bill is a vote for constitutional rights.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a FAVORABLE report on Senate Bill 22.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Tia L. Holmes, Esq., Assistant Public Defender, Tia.Holmes@maryland.gov.

setting."), *aff'd,* 327 Md. 494 (1992). *But see Bond v. State*, 142 Md. App. 219, 228 (2002) (holding the person was in custody when police questioned him in his bedroom, late at night).

[9] For example, in *Gupta*, *supra* note 6, Judge Sally Denison Adkins wrote a separate concurring opinion because she was "concerned that through its analysis of Mr. Gupta's arguments the Majority opinion will encourage interrogation practices that infringe on suspects' *Miranda* rights."452 Md. at 139 (Adkins, J., concurring).

[10] *Smith*, 186 Md. App. at 520.

[11] This legislation should not affect the judicially determined meaning of the custodial interrogation of a child or minor as it relates to their subjective belief. The Supreme Court has recognized that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *J.D.B. v. N. Carolina*, 564 U.S. 261, 272 (2011).