

HRFK HB 76 2023 SUPPORT.pdf

Uploaded by: Emily Virgin

Position: FAV



January 26, 2023

HB 76 – Custodial Interrogation of Minors - Admissibility of Statements
House Judiciary Committee
Position: Favorable

Human Rights for Kids respectfully requests that the Committee issue a favorable report on House Bill 76. We are grateful to Delegate Acevero for his leadership in introducing this bill and we appreciate the opportunity to express our support.

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 policymakers’ understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research and public education, coalition-building and grassroots mobilization, and policy advocacy and strategic litigation to advance critical human rights on behalf of children in the United States.

We support HB 76 because minors who come into contact with the justice system must be treated differently than adults. This is because the brain science tells us that children’s brains are not fully developed, and therefore they are more vulnerable to deceptive police tactics. During custodial interrogation, young people are especially likely to feel fear and take actions they believe will satisfy law enforcement and lead to their release.

When examining the research, it becomes clear that when subject to interrogation and deceptive tactics, children are likely to falsely confess: “Coercive and deceptive interrogation methods, coupled with the recognized vulnerabilities and susceptibilities of children as a group, has led to an unacceptably high rate of false confessions among juvenile suspects.”¹ According

¹ “Five Facts about Police Deception and Youth You Should Know” by Nigel Quiroz, The Innocence Project: <https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers/>

to the National Registry of Exonerations 36% of exonerees who were wrongly convicted as children falsely confessed.² The number is even higher when considering 14- and 15-year-olds (57%) and children under 14 (86%).³

It is for the foregoing reasons that Human Rights for Kids respectfully requests that the Committee issue a favorable report on HB 76 by Delegate Acevero.

Thank you for your time and consideration.

Submitted by: Emily Virgin, Director of Advocacy & Government Relations, Human Rights for Kids, evirgin@humanrightsforkids.org

² “Age and Mental Status of Exonerated Defendants Who Confessed” 3/17/2020, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf>

³ Id.

MD Catholic Conference_HB 76_FAV.pdf

Uploaded by: Garrett O'Day

Position: FAV



MARYLAND
CATHOLIC
CONFERENCE

January 26, 2023

HB 76
Custodial Interrogation of Minors – Admissibility of Statements
House Judiciary Committee

Position: SUPPORT

The Maryland Catholic Conference offers this testimony in SUPPORT of House Bill 76. The Catholic Conference is the public policy representative of the three (arch)dioceses serving Maryland, which together encompass over one million Marylanders. Statewide, their parishes, schools, hospitals and numerous charities combine to form our state’s second largest social service provider network, behind only our state government.

House Bill 76 would ensure that system-involved youth who are subject to interrogation are protected from *knowingly false statements* made by authorities. The statement must be a.) known to be false by law enforcement and b.) intentionally used. If it is deemed by the court to meet these criteria, statements made by youth subject to interrogation may be excluded unless law enforcement show clear and convincing evidence that the statement was voluntary and not made in response to the false information provided by authorities.

House Bill 76 builds upon the Youth Interrogation Protection Act passed by the General Assembly in 2022. That law ensures youth a right to counsel, requires parents to be notified that their child will be interrogated and ensures that children are read their Miranda rights in a manner commensurate with their developmental age. One of the end-goals of that legislation was to protect against unjustified and unfair false confessions. This bill is an additional reasonable protection to ensure constitutional rights are upheld.

Our United States and Maryland Constitutions guarantee numerous rights to its citizens. These are included but not limited to the right to be free from self-incrimination. That concern should be heightened when applied to system-involved youth. The United States Conference of Catholic Bishops has specifically cautioned that youth involved with the criminal justice system should never be treated as if they are “fully formed in conscience and fully aware of their actions.” (*Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, 2000) In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the United States Supreme Court agreed, specifically noting that youthful offenders possessed “diminished capacity” and the inability to fully appreciate the risks and consequences of their actions.

If the State of Maryland truly values the rights and protections afforded by our Constitution, we owe it to youth subject to custodial interrogation to see that the rights afforded by the document are upheld. We request a favorable report on House Bill 76.

HB 76 Custodial Interrogation of Minors - Written

Uploaded by: Michal Gross

Position: FAV



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: HB 76 - Custodial Interrogation of Minors - Admissibility of Statements

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 1/24/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 76.

House Bill 76 would create the rebuttable presumption that a statement made by a minor during a custodial interrogation is involuntary and inadmissible when the law enforcement officer intentionally used false information to elicit the statement. This presumption is essential to protect the due process rights of children and prevent wrongful convictions that result from false confessions.

The Supreme Court has recognized that police interrogation tactics “can induce a frighteningly high percentage of people to confess to crimes that they never committed.”¹ The risk of false confessions is multiplied when a child is the subject of an interrogation: children are much more likely than adults to falsely confess,² and children account for more than one-third of all false confessions.³

The risk of false confessions is disproportionately higher among children because they are uniquely vulnerable to coercive police interrogation tactics. Youth prioritize short-term benefits over long-term consequences and are particularly inclined to comply with requests of authority figures, including police.⁴ During adolescence, the reward-seeking part of the brain is

¹ *Corley v. United States*, 556 U.S. 303, 320-21 (2009).

² *See* American Bar Association Insights on Law & Society 16.2 available at https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf (“Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults.”).

³ National Registry of Exonerations, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess (April 10, 2022).

⁴ *See* Feld, B. C. (2006). Juveniles’ competence to exercise Miranda rights: An empirical study of policy and practice. *Minnesota Law Review*, 91, 26–100; Grisso, T. (1981). Juveniles’ waiver of rights: Legal and psychological competence. New York, NY: Plenum. *See also*: 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> (“[J]uvenile suspects share many of

highly active, while the frontal lobe, which governs measured decision-making, is still developing. Children, even 16 and 17 year olds, are highly susceptible to pressure, have poor impulse control, developing brains, and a limited understanding of long-term consequences. As a result of these inherent characteristics of youth, children are more likely to falsely confess.

An additional factor contributing to the increased likelihood of false confessions by youth is the usage of deceptive tactics during interrogation. When police deceive a suspect during questioning, the interrogation is more likely to result in a false confession.⁵ When law enforcement officials falsify evidence against a suspect, even innocent people can “feel trapped by the inevitability of the evidence against them,” causing them to confess to crimes that they did not commit.⁶ Given that adults are likely to succumb to deceptive interrogation tactics, youth are even more vulnerable to these tactics because of their tendency to comply with demands of authority figures and their inability to weigh long-term consequences over short-term gratification.

In response to evidence that deceit increases false confessions, both Oregon and Illinois enacted laws in 2021 that prohibit law enforcement from using deception during the interrogation of minors. Utah, Delaware, and California have since followed suit. Other states have proposed legislation similar to HB 76.

Children—when subjected to interrogation—are in an extremely vulnerable position. An abundance of psychological evidence demonstrates that children are highly susceptible to coercive interrogation tactics. This is confirmed by data showing that children are more likely than adults to confess to crimes they did not commit. When deceptive tactics are utilized by law enforcement during interrogations, the risk of false confessions increases even further. The use of deceptive interrogation practices must be discouraged to protect the due process rights of children and ensure the integrity of both the criminal and juvenile legal systems.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on HB 76.

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

Authored by: Michal Gross, Assistant Public Defender, michal.gross@maryland.gov

the same characteristics as the developmentally disabled, notably their eagerness to comply with adult authority figures, impulsivity, immature judgment, and inability to recognize and weigh risks in decision-making.”)

⁵ Saul M. Kassin et al., Police-induced confessions: Risk factors and recommendations., 34 Law and Human Behavior 3–38 (2010), <http://doi.apa.org/getdoi.cfm?doi=10.1007/s10979-009-9188-6> (last visited Feb 23, 2022).

⁶ *Id.*

SUPPORT HB 76- custodial interrogation of children

Uploaded by: Philip Caroom

Position: FAV

SUPPORT HB 76 – Custodial Interrogation of Minors - Admissibility

MARYLAND ALLIANCE FOR JUSTICE REFORM
Working to end unnecessary incarceration and build strong, safe communities



To: Chair Luke Clippinger and House Judiciary Committee members January 26, 2023
From: Phil Caroom, MAJR executive committee

Maryland Alliance for Justice Reform (MAJR - www.ma4jr.org) strongly supports HB 76 to prevent unintended mishandling of children’s prosecutions during custodial interrogations.

Current Maryland statutes provide that reasonable efforts should be made to notify a parent of the child's arrest and that the child should have an attorney’s advice– unless the officer decides there is a need related to “public safety” that requires a quicker interrogation. See Md. Code, Courts & Jud.Proc.Art., sec. 3 - 8A - 14.2.

With or without an attorney being present, current case still permits a police officer to use deception, perhaps misrepresenting the status of evidence in police possession. For example, Maryland’s highest court has stated, “[W]e permit the police to... use some amount of deception in an effort to obtain a suspect's confession.” Winder v. State, 362 Md. 275, 305 (2001)-emphasis added.

However, several studies, publicized by the American Psychological Association, have shown that police can induce juvenile suspects to give false confessions at a rate approximately three times higher than adult suspects, as reported by the American Psychological Association. See <https://www.apa.org/pi/families/resources/newsletter/2014/12/adolescent-false-confessions>

Other states such as Illinois, Oregon and Utah have already adopted laws to bar such dangerous tactics by police interrogators of juveniles. More states actively considering such bills include Ohio, Colorado, and New York.

For all these reasons, Maryland Alliance for Justice Reform urges that the Committee pass HB 76 so that police officers’ use of deception that will not serve induce false confessions and lead to unjust convictions.

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PLEASE NOTE:

This testimony is offered for Maryland Alliance for Justice Reform and not for the Md. Judiciary.

HB 0076.pdf

Uploaded by: Dana Schulze

Position: UNF

NO. A blanket set of rules, prohibiting the interrogation of a juvenile arrestee does not serve the public interest and could potentially endanger the public.

HB 76 - UNFAV - OPP.pdf

Uploaded by: Gavin Patashnick

Position: UNF



Maryland State's Attorneys' Association

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Rich Gibson
President

Steven I. Kroll
Coordinator

DATE: **January 26, 2023**

BILL NUMBER: **HB 76**

POSITION: **Oppose**

The Maryland State's Attorney's Association (MSAA) opposes HB 76.

Established U.S. Supreme Court precedent is clear that even if a suspect's *Miranda* rights are knowingly, voluntarily and intelligently waived, those rights remain throughout any custodial interrogation and may be asserted at any point. Further, there is an illogical construct that arises when a suspect waives *Miranda* but then asserts that the statement was involuntarily made due to the action or inaction of law enforcement. See, *Colorado v. Spring*, 479 U.S. 564 (1987).

HB 76 is predicated on the fiction that suspects do not have the ability to invoke the privilege against self-incrimination at any point during a custodial interrogation. This is especially salient when the question of whether any utilized false information invalidates the entire exchange or a specific statement would be subject to endless litigation, when the necessity of arguing against such a notion is mitigated by the inherent right of the suspect to simply not answer and invoke *Miranda*.

Further, the General Assembly passed a sweeping juvenile custodial interrogation decree last session which mandates the provision of an attorney prior to any advisement. Assuming that a suspect would actually waive *Miranda* following an interaction with an attorney, that attorney would presumably be available throughout any law enforcement interaction, which enhances the protections guaranteed by the 5th Amendment of the Constitution and renders this legislation unnecessary.

In short, in light of the above and the passage of the Juvenile Custodial Interrogation Act, HB 76 seems to be an answer in search of a problem.

hb76.pdf

Uploaded by: Matthew Pipkin

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 76
Custodial Interrogation of Minors – Admissibility of Statements
DATE: January 18, 2023
(1/26)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 76. This bill would establish a rebuttable presumption that a statement made by a minor during a custodial interrogation is both involuntary and inadmissible in a juvenile or criminal proceeding against the minor if the law enforcement officer intentionally used information known by the officer to be false in order to elicit the statement.

The Judiciary recognizes that there are legitimate policy issues, within the purview of the legislative branch of government, connected with the interrogation of juveniles. However, it is somewhat unclear how the court would analyze voluntariness under the bill. Voluntariness is generally determined based on well-established jurisprudence and, ultimately, is a question for the factfinder. This bill would invade the province of juries who are tasked with such ultimate determinations.

It further raises questions in application including whether the knowledge of other members of the law enforcement agency that information is false should be imputed to the law enforcement officer who used information. Moreover, will the veracity of the information, or its falsehood, become an issue that must separately be litigated prior to the statement?

The Judiciary is also concerned that the bill would create a disparity between treatment of defendants in criminal cases charged in adult circuit court, based on age. For example, during a suppression hearing in a murder case, the statement by a minor is analyzed differently than a statement by an adult. This disparity becomes more apparent if the individuals are co-defendants.

Finally, this bill is unnecessary as Chapter 50/Senate Bill 53 from 2022 addressed some of these issues and strengthened the protections for minors in these cases.

cc. Hon. Gabriel Acevero
Judicial Council
Legislative Committee
Kelley O'Connor

MCPA-MSA_HB 76 Custodial Interrogation of Minors-A

Uploaded by: Natasha Mehu

Position: UNF



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chairman, and
Members of the Judiciary Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: January 25, 2023

RE: **HB 76 –Custodial Interrogation of Minors - Admissibility of Statements**

POSITION: OPPOSE

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 76**.

MCPA and MSA recognize that custodial interrogation of juveniles often requires special care in order to ensure that any statement made by the juvenile is voluntary. Police officers are trained to consider the age, experience, education, character, intelligence, and mental and physical condition of the juvenile when conducting an interrogation. Juries and judges who consider the juvenile's statement in court proceedings are also required to consider these factors. Ultimately, the State must prove that the statement was voluntary after consideration of the totality of the circumstances.

Police deception during an interview is certainly an appropriate consideration for the judge or jury. However, police deception is also an appropriate interrogation technique depending on the characteristics of the person being interviewed and the particular facts and circumstances being investigated. If a person continues to provide the same account when presented with evidence (whether true or false), an investigator may consider that persistence as demonstrating honesty. A change in the narrative, however, may be an indication that the person was not being honest. Deception, if used, is a tool to evaluate an account already provided by the interviewee.

HB 76 creates a presumption against the admissibility of a statement if a law enforcement officer intentionally used false information "to elicit the statement." The presumption can only be overcome if the State can prove the statement was voluntary *and* "not made in response to the false information." This effectively removes the use of false information as a truth-finding tool. Any revision to the interviewee's account following the use of false information will be "in response" to that information, no matter how voluntary or truthful the further statements are.

Just as every juvenile in the State is a unique individual, so, too is every custodial interrogation. Current law expects and requires, that any statement provided be evaluated under the totality of the circumstances – including any use of deception.

For these reasons, MCPA and MSA **OPPOSE HB 76** and ask for an **UNFAVORABLE** Committee report.

HB 76 Scott Shellenberger.pdf

Uploaded by: Scott Shellenberger

Position: UNF

Bill Number: HB 76

Scott D. Shellenberger, State's Attorney for Baltimore County

Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION TO HOUSE BILL 76
CUSTODIAL INTERROGATIONS OF MINORS – ADMISSIBILITY OF STATEMENTS

I write in opposition to House Bill 76 Admissibility of Statements of Minors during Custodial Interrogations. The Bill proposes to create a rebuttable presumption that a statement made by a minor during a custodial interrogation is inadmissible if an officer used false information to elicit the statement.

The admissibility of statements of those in custody has been governed for decades by the Supreme Court ruling in Miranda v Arizona. These rules have for decades been governed by case law. Last year, Maryland broke with this tradition when it passed Senate Bill 53. Senate Bill 53 now the law and codified at Courts and Judicial Proceedings Article 3-8A-14. That statute requires the police when a juvenile is in custody to:

- Notify the child's parent, guardian, or custodian;
- Include child's location;
- Reason for custody;
- Instruct on how to contact child and
- May not conduct a custodial interrogation until the child has consulted with an attorney.

This law just went into effect October 1, 2022.

Last year's Senate Bill 53 provided many protections for juvenile defendants that had not existed for decades. The requirements of the contact with parents and consultation with an attorney supply more than enough protections making House Bill 76 unnecessary.

I urge an unfavorable report.