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POSITION ON PROPOSED LEGISLATION

BILL: SB 0531 Juvenile Law - Custodial Interrogation (Juvenile Justice Restoration Act of 2025)

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 7, 2025

The Maryland Office of the Public Defender strongly urges the Committee to issue an unfavorable report on Senate Bill 531.

In 2022, Maryland passed the Child Interrogation Protection Act (“CIPA”) to protect the fundamental rights to remain silent and to have a lawyer guaranteed to all people, including children. CIPA was a vital measure to ensure that these constitutional rights are meaningfully protected for children, in light of their unique vulnerabilities to make a coerced statement and their developmental limitations that may preclude their ability to invoke their rights without legal guidance.

Studies show that children are two to three times more likely to falsely confess than adults.¹ Youth and their parents rarely realize law enforcement can lie to them. For example, police are permitted to tell someone that they have scientific evidence or witness statements that do not exist.² Promises of leniency and minimization of legal exposure are common police interrogation techniques that further elevate the false confession rate to 43%.³ Maryland enacted the Child Interrogation Protection Act and included the legal consultation provisions in light of this historical backdrop.

¹ See, e.g., Amanda Ghibaudo, Vulnerability of Juveniles to False Confessions (2023), https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1111&context=honors_theses#:~:text=During%20a%20interrogation%2C%20juveniles%20are,et%20al.%2C%202016; Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C. L. Rev. 891 (2004), <https://scholarship.law.unc.edu/nclr/vol82/iss3/3>.

² *Whittington V. State*, 147 Md.App. 496 (2002).

³ Mass General Brigham and Harvard Medical School, White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers (2022), <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/>.

As the law currently stands, a parent has the right to be notified of their child's custodial status. This right belonging to the parent is distinct from the child's right to consult with counsel created by CIPA prior to a custodial interrogation. This is an important distinction. Parents do not have the expertise to understand the legal jeopardy that their children are in, the rights that their child may need to invoke, or what is needed to ensure that those rights are protected.

Senate Bill 531 seeks to authorize a parent guardian or custodian to consent to the interrogation of the child. However, constitutional rights can only be waived by the person who holds the right – in this case, the child – and requires that the waiver be made knowingly and voluntarily. Allowing a parent to provide this waiver will result in litigation ultimately precluding the use of any resulting statements and the fruits of such statements.

Likewise, a parent's encouragement that their child waive their rights does not ensure that the child understands the consequences of doing so, and will similarly be inadmissible in any subsequent prosecution for failing to meet the knowing and voluntary standard. This is particularly true as most adults misunderstand their legal rights and protections within a criminal setting, especially involving custodial interrogations, which means many parents lack the necessary information in order to adequately assist their children prior to a custodial interrogation. Evidence suggests that the presence of a parent does not impact a juvenile's assertion of their rights nor mitigates the coercive circumstances inherent in police interrogations.⁴

Treating a parent, guardian, or custodian as an adult proxy for the client also creates conflicts of interest that are particularly problematic for waiving constitutional rights. Children interrogated by law enforcement are often wards of the State, in DSS or DJS custody. This law would thus allow the State to waive the rights of those children, despite its clear conflict as the prosecuting entity. In other circumstances, parents and guardians are often the complaining witnesses, creating a similar conflict of interest when it comes to advising children of their rights. Other bills under consideration by the General Assembly that would allow for parents to be prosecuted for failing to prevent their child's delinquent acts would create further conflicts of interest if passed, as a parent may be more prone to encourage their child to speak to the police as a means to distinguish themselves from having any involvement in the child's behaviors.

⁴ Naomi E. S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, Waving Goodbye to Waiver: A Developmental Argument Against Youth's Waiver of Miranda Rights, 21 LEG. & PUB. 1, 52 (2018) (citing Thomas Grisso & Carolyn Pomictor, Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver, 1 LAW & HUM. BEHAV. 321, 340 (1997)).

While allowing for parents, guardians and custodians to waive their child's rights or to serve as the legal advisor for a child will create constitutional barriers for prosecutions seeking to rely on these interrogations, the purported safety concerns with the existing practice under CIPA are non-existent. The police can already question a child without advisement in exigent circumstances where community safety is at risk. Police also have a full range of investigatory tools available that do not involve encouraging a child to surrender their rights in hopes of eliciting a statement that may be coerced or otherwise inaccurate.

Every child has the right to understand their legal rights and protections and what it means to abandon their rights. Parents lack the legal expertise needed to replace legal counsel for a child. Beyond their expertise in criminal and juvenile law, attorneys with the Office of the Public Defender are trained about adolescent brain development, speaking to young clients, and identifying key differences between children and adults for advisements. To ensure that any waiver of these rights complies with the constitutional standard of being knowingly, intelligently, and voluntarily made, CIPA must remain as written.

Therefore the Maryland Office of the Public Defender strongly urges the Committee to issue an unfavorable report on Senate Bill 531.

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

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