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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 449- Juvenile Restoration Act

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE:

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on HB 449.

The U.S. Constitution guarantees to all people the fundamental rights to remain silent and to consult with an attorney before deciding whether to speak to police during a custodial interrogation.

Children have unique vulnerabilities which cause them to be more likely to succumb to coercive tactics during an interrogation, including developmental limitations that may preclude their ability to invoke their rights without legal guidance. In light of the uniqueness of childhood this body enacted the Child Interrogation Protection Act (CIPA) in 2022. CIPA requires that before police conduct a custodial interrogation of a child the child must be given the opportunity to consult with an attorney with one very important exception: when the law enforcement officer reasonably believes that the information sought is necessary to protect against a threat to public safety.

This bill will significantly undermine CIPA by allowing the police to interrogate a child without the child having access to counsel if the child's parents consent to the interrogation. The Office of the Public Defender urges an unfavourable report on this bill because it would unconstitutionally allow a parent to waive the child's right to counsel during an interrogation, and because it would undercut the vital protections put into place by CIPA.

Rationale for the enactment of CIPA.

Regardless of CIPA police are required to advise people of their Fifth Amendment rights to remain silent and to consult with an attorney.¹ Children are two to three times more likely to falsely confess than adults.² Teens and their parents rarely realize law enforcement are allowed to lie to them.³ For example, police are permitted to tell someone that they have scientific evidence or witness statements that do not exist. Promises of leniency and minimization of legal exposure are common police interrogation techniques that further elevate the false confession rate to 43%.⁴ Maryland enacted CIPA and included the legal consultation provisions in light of this historical backdrop, and to ensure the integrity of Maryland's legal system and prevent wrongful convictions.

As the law currently stands, a parent has the right to be notified of their child's custodial status and that the police intend to interrogate the child. This right belonging to the parent is distinct from the child's right to consult with counsel prior to a custodial interrogation. This is an important distinction. While Miranda made clear that all people have a right to consult with counsel prior to being interrogated, CIPA put measures into place to ensure that are able to actually exercise that result in a meaningful way. Those measurements include enabling them to consult with an attorney before they decide whether to waive their Miranda rights.

This legislative body recognized that 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. Likewise, a parent's encouragement that their child waives 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

¹ Miranda v. Arizona, 384 U.S. 436 (1966)

² See, eg, Crane, M., Nirider, L & Drizin, S.A. (2016), The Truth about False Confessions. https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf; Cleary, H., Guarnera, L., Aaron, J., & Crane, M. (2021). How Trauma May Magnify Risk of Involuntary and False Confessions Among Adolescents. *The Wrongful Conviction Law Review*, 2(3), 173–204. <https://doi.org/10.29173/wclawr53>

³ Whittington v. State, 147 Md. App. 496 (2002).

⁴ Center for Law, Brain & Behavior at Massachusetts General Hospital (2022). White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers (January 27th, 2022). <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/>

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.⁵

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 behaviours.

It is unconstitutional to allow parents to either waive a child's right to counsel, or their right to remain silent.

House Bill 622 seeks to authorize "a parent, guardian, or custodian" to consent to the interrogation of the child "without the child's consultation with an attorney." Bill page 3, lines 16-18. Maryland law defines custodians as a person who is authorized to have custody of and exercise control of a child, this includes both persons and governmental agencies as ordered by courts- such as the Department of Social Services or the Department of Juvenile Services.⁶ The right to consult with an attorney before speaking to the police was guaranteed to *the accused* in *Miranda v. Arizona*. Parents, DSS or DJS case workers are not the accused, therefore they do not have the standing to waive the child's right to consult with counsel prior to a custodial interrogation. Allowing a parent, guardian or custodian to waive a child's constitutional rights

⁵ Naomi E. S. Goldstein, Ph.D., Emily Haney-Caron, M.S., J.D., Marsha Levick, J.D., & Danielle Whiteman, J.D., Waving Good-bye to Waiver: A developmental Argument Against Youths' Waiver of Miranda Rights. New York University Journal of Legislation and Public Policy, v 21(1), p1 -22 Mar 2018. <https://www.nyuilpp.org/wp-content/uploads/2018/06/Legis-21-1-Article-Goldstein-WavingGoodbyetoWaiver.pdf>

⁶ Md. Cts & Jud Pro §3-801(j).

will result in litigation ultimately precluding the use of any resulting statements and the fruits of such statements.

CIPA does not interfere with the ability police to question youth in exigent circumstances where community safety is at risk, nor does CIPA prevent prosecutors from obtaining convictions.

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.

Police and prosecutors have publicly claimed that CIPA has hampered their ability to investigate serious crimes and to prosecute children in those cases. For example, after a shooting at Joppatowne High School, Harford County Sherriff claimed that CIPA prevented him from gaining pivotal information about where the gun was.⁷ This was incorrect, first and foremost protecting community safety- such as ascertaining the location of a firearm- is an exception specified in CIPA. Further The U.S. Supreme Court has determined that protecting the public by ascertaining the location of a firearm is of such importance that Miranda warnings need not be given before police can ask where to find the gun.⁸ Despite not being able to find the gun, police were able to complete their investigation and prosecutors were able to obtain a conviction and sentence of Life plus 20 years, with all but 80 years suspended.⁹

Every child has the right to understand their legal rights and protections and what it means to waive those rights. Parents lack the legal expertise needed to replace legal counsel for a child. Beyond their expertise in criminal and juvenile law. 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.

⁷ Hill, Vincent. Debate over child interrogation law intensifies after teen sentenced to life in prison. October 14, 2025. <https://foxbaltimore.com/news/local/debate-over-child-interrogation-law-intensifies-teen-sentenced-life-in-prison-maryland>

⁸ *New York v. Quarles*, 467 U.S. 649 (1984).

⁹⁹ Harford County Maryland, Office of the State's Attorney, Press Release dated October 14, 2025. <https://www.harfordcountystatesattorney.org/eighty-years-to-serve-for-joppatowne-high-school-murder/>

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 622

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