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Haley Shefferman

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Legislative Update:
**Maryland's New Child Interrogation Protection Act Will Provide Much Needed
Safeguards for Youth**

*Haley Shefferman*¹

I. INTRODUCTION

This legislative session, Maryland was primed to make some substantial improvements in the realm of juvenile justice. The recently-passed Child Interrogation Protection Act (“Act”) is one of these measures and will create important safeguards for youths who are taken into custody and questioned by police officers. The Act recognizes juveniles’ increased vulnerability in custodial interactions with officers due to their lessened developmental capacity and increased deference to adult authority figures. By providing stronger protections for youth in their interactions with police, involving family members in this process, and ensuring that youth understand the impact and consequences of their discussions with officers, children will be more likely to avoid self-incrimination, false confessions, and the ensuing harms of involvement with the justice system. Children’s due process rights must be protected and bolstered at this make-or-break stage in their potential involvement with the justice system.

II. THE PROPOSED CHILD INTERROGATION PROTECTION ACT

The Child Interrogation Protection Act was first introduced to the Maryland legislature in the 2021 session where it passed in the House of Representatives but died after reaching the Senate Judicial Proceedings Committee. The co-sponsors of the bill, Senator Jill P. Carter and Delegate J. Sandra Bartlett, reintroduced the Act for the 2022 session as Senate Bill 53. The Act will require any law enforcement officer who takes a child into custody to notify the child’s parent, guardian, or custodian in a manner “reasonably calculated to give actual notice.” In addition, the Act will provide an un-waivable right to counsel for youth before any interrogation. It also creates a rebuttable presumption of inadmissibility for statements that violate the Act. A few exceptions have been written into the bill, including allowing officers to ask children limited questions before contacting parents when there is an immediate threat to public safety.

On January 27, 2022, the Senate Judicial Proceedings Committee held a hearing on the Act, where roughly seventy witnesses testified, ranging from family members of individuals who were incarcerated as youth to law professors. A wide range of organizations across Maryland and the nation also provided favorable testimony and support for the Act.

¹ Haley is a second-year J.D. candidate at Loyola University Chicago School of Law. She is interested in pursuing a career in juvenile defense.

However, the bill was not without opposition. The Maryland State's Attorney's Association stated that the law could interfere with criminal investigations and create logistical difficulties. A Baltimore County State's Attorney, Scott Schellenberger, stated that the bill is wholly unnecessary and that Miranda rights should be easily understandable for youth. In addition, Senator Robert Cassilly referred to juvenile crime in the state as a "bloodbath of epic proportions" and stated that the legislature would be "sending the wrong message" by enacting this bill.

In March 2022, the Act passed through the Senate Judiciary Committee after undergoing some final amendments, including broadening the exceptions to its requirements and expanding the ways the State can overcome the rebuttable presumption of inadmissibility for statements that violate the Act. In April 2022, the Act passed both chambers of the legislature, and was then vetoed by Governor Larry Hogan. However, the General Assembly overrode the veto and the law will go into effect in October 2022.

III. THE STATE OF JUVENILE INTERROGATIONS

A. *Unique Risks for Youth*

Without the guidance and support from a parent, nor the legal protection from an attorney, children face significant dangers when taken into custody. When children are questioned by police, they often do not understand the meaning of their Miranda rights—the constitutional rights to refuse to answer questions and to consult with an attorney, which officers must inform individuals of before any custodial interrogation can take place. Children also often do not understand the risks and consequences of speaking with officers, and whether or not they are in custody. These concepts have proven to be difficult even for adults to understand. While some states require officers to give modified Miranda rights explanations to children, the concepts and magnitude of these rights are often too difficult for young people to understand, especially in high-pressure police interactions that place them in extremely vulnerable positions.

Notably, in almost every state, police officers can legally lie to individuals during interrogations—including youth. Officers are permitted to use deceptive psychological tactics to get information from individuals, such as lying about statements that others have made or lying about having incriminating evidence to coerce the individual into confessing to a crime the officers believe they committed. These tactics are proven to significantly increase the risk of false confessions and wrongful convictions for both youth and adults. Children, however, are much more likely to fall prey to these deceptive tactics and make false confessions.

Adolescents also often end up making false confessions to police since they are more likely to focus on the short-term rewards of saying what an officer wants to hear without thinking about the long-term consequences. This type of thinking is common in adolescents as the portion of the brain that controls decision-making is far from being fully developed at this point, as it continues to develop until the mid-to-late-twenties. Officers frequently take advantage of this to manipulate adolescents into giving information; for instance, telling children that if they give them certain information, they

will be able to go home immediately. Youth therefore often end up making choices in these interactions that can potentially alter their life trajectory without even realizing it and without having any guidance from their family. In addition, youth are conditioned to be more deferential to adult authority figures, often leading them to submit to the pressures of officers.

The detrimental effects of children's lack of support by parents and attorneys in interrogations can be seen in several statistics. Youth waive their Miranda rights in eighty percent of custodial interrogations nationally. Youth are also far more likely to confess to crimes they did not commit—thirty six percent of exonerees nationally made false confessions when they were children, while ten percent made false confessions as adults, according to the National Registry of Exonerations. In addition, youth of color are even more likely to make false confessions due to police bias in these interactions.

B. Current Juvenile Interrogation Laws & Trends in Maryland

The state of protections for children taken into custody in Maryland is quite bleak. Human Rights for Kids' 2020 Report listed Maryland as having some of the worst protections for children's human rights within the justice system. Notably, Maryland had the lowest possible score for due process rights for children taken into custody.

Within the past few years in Maryland, several illustrative examples of youth being unjustly questioned in custody have come to the forefront. In 2019, in the affluent suburb of Chevy Chase, a fourth-grade student with disabilities was questioned by police officers without his parents' knowledge for playing with toy money on a school bus. In 2021, a video was released of an interrogation of a fifteen-year-old boy who was questioned by an officer while he laid his head on the table and grunted when asked if he understood his Miranda rights. The officer told him "You're a juvenile, you're not going to need a lawyer or anything like that." After this conversation, the youth was arrested, spent close to 50 days in juvenile detention, and was put on house arrest for over three months, before having all of his charges dropped. A Maryland juvenile public defender stated that this video is "not an exception," and is in fact how most juvenile interrogations look.

Maryland case law has shown some recognition of the importance of the presence of a parent in juvenile interrogations. In a 2011 Maryland Court of Appeals case, *Moore v. State*, a sixteen-year-old defendant made thirteen requests to call his mother before his initial interrogation, and the officers did not allow him to do so. The Court held that the child's requests to speak with his parent was not an invocation of his right to remain silent, but the denial of parental access is a "very important" factor in the totality of circumstances test regarding the admissibility of an inculpatory statement.

The current law in Maryland that the Act will repeal and amend is § 3-8A-14(b) of the Courts and Judicial Proceedings Article of the Maryland Code. The current law requires officers to make "reasonable efforts" to give notice to parents when their child has been taken into custody and must "with all reasonable speed," release the child to their parents. The Maryland Court of Special Appeals recognized the right of a child to be

released to their parents after being taken into custody as a protected liberty interest in *Branch v. McGeeney*.

The current notice requirements under this statute, however, have little enforcement power through the “reasonable efforts” language surrounding parent notification. The Act will make important changes to that language by instead requiring officers to attempt to notify parents “in a manner reasonably calculated to give actual notice.” It also will require officers to provide specific information to parents such as the child’s exact location, the reason they are being taken into custody, and instructions on how to make immediate in-person contact with their child. In addition, the bill will add a rebuttable presumption that any statement made by a child in which an officer violated this act will be inadmissible. While the original statute has no mention of requirements for attorney involvement, the Act will create a new section explicitly barring officers from conducting any interrogation unless the child has first consulted with an attorney. Finally, the Maryland Office of the Public Defender will put forth procedures for enforcing these new requirements and making attorneys available and accessible to youth in these circumstances.

While current Maryland law provides some base-level acknowledgment of the importance for adult guidance in juvenile interrogations, this Act will overhaul the existing law and create concrete and meaningful legal protections for youth before they are able to give any information to police.

IV. JUVENILE INTERROGATION REQUIREMENTS NATIONALLY

At the federal level, the Supreme Court held in *J.D.B. v. North Carolina* that a child’s age must be considered in determining whether the child understood whether they were in police custody. The Court explicitly acknowledged that the fundamental and common-sense differentiating characteristics of children from adults—which are recognized by the law in countless ways, including the many legal disqualifications placed on youth—also apply to custodial interrogations. The Court emphasized that many children will undeniably feel as if they must submit to police questioning when an adult would otherwise feel free to leave. Notably, the Court determined that a “reasonable child” test should be applied as opposed to a broad “reasonable person” test in determining whether a child would understand they are in custody and whether Miranda warnings are therefore required.

The landmark juvenile justice case, *In re Gault*, conferred many of the constitutional due process rights afforded to adults in criminal court to youth in juvenile court—including the 5th Amendment right against self-incrimination. After *Gault*, however, the Supreme Court, in *Fare v. Michael C.* explicitly declined to extend Miranda protections for youth to include a right to contact other trusted adults in addition to an attorney. While there is a growing foundation for safeguards in juvenile interrogations at the national level, states can and should provide enhanced protections.

V. SIMILAR STATE LEGISLATION

Maryland is far behind the majority of states when it comes to requirements for contacting parents and/or attorneys before interrogating children. Thirty-three states currently require parental notification when a child is held in police custody and, notably, many of these state laws were enacted in the 1990s. In 2015, North Carolina updated their laws to require courts to throw out any confession made to law enforcement in which a child did not have a parent or legal counsel present.

Illinois became the first state to adopt a law prohibiting police from lying in interrogations of youth. The state enacted Senate Bill 2122 in 2021, which makes any statement by a child presumptively inadmissible when an officer uses deceptive interrogation tactics. This law will provide another essential form of protection against false confessions by youth, and Maryland and the rest of the nation should follow suit to eliminate this contemptible practice and the unique harms it causes for youth.

VI. CONCLUSION

The new Child Interrogation Protection Act is a significant step in the right direction for young people and their families in the state of Maryland. While certain protections exist at the national level regarding juvenile interrogations, states must provide concrete and practical requirements for their police officers and courts, and Maryland is severely behind in this area. This legislation will allow them to catch up. The Act reflects the common-sense notion that children are different and their interactions with police should be treated differently. There is a well-established and growing body of research pointing to the ways children and adolescents are unable to grasp the risks of their decisions when speaking with police, and their increased deference to adult authority figures. This is why children deserve parental guidance and attorney support when they are placed into such a vulnerable position. Youth in Maryland and the entire nation deserve to have the utmost protection from police interactions, which can send them into the maze of the criminal court system and severely impact their liberty interests and life trajectories. This law will help fulfill the promise of *Gault* by giving teeth to children's 5th Amendment and due process rights. The children of Maryland deserve nothing less.

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