

SENATE BILL 120

E3

4lr1136

(PRE-FILED)

By: **Senators Watson, Carozza, and West**

Requested: October 24, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Custodial Interrogation – Parental Consultation**

3 FOR the purpose of authorizing a child to consult with the child’s parent, guardian, or
4 custodian instead of an attorney before a law enforcement officer may conduct a
5 custodial interrogation of the child; and generally relating to juvenile law and
6 custodial interrogation.

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 3–8A–14(e) and 3–8A–14.2
10 Annotated Code of Maryland
11 (2020 Replacement Volume and 2023 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That the Laws of Maryland read as follows:

14 **Article – Courts and Judicial Proceedings**

15 3–8A–14.

16 (e) **(1)** The Supreme Court of Maryland may adopt rules concerning
17 age-appropriate language to be used to advise a child who is taken into custody of the
18 child’s rights.

19 **(2) LANGUAGE USED TO ADVISE A CHILD WHO IS TAKEN INTO**
20 **CUSTODY OF THE CHILD’S RIGHTS SHALL INCLUDE A STATEMENT THAT THE CHILD**
21 **HAS THE RIGHT TO CONSULT WITH THE CHILD’S PARENT, GUARDIAN, OR CUSTODIAN**
22 **INSTEAD OF AN ATTORNEY BEFORE A CUSTODIAL INTERROGATION, AS DEFINED IN**
23 **§ 3–8A–14.2 OF THIS SUBTITLE.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



3-8A-14.2.

(a) (1) In this section the following words have the meanings indicated.

(2) "Custodial interrogation" retains its judicially determined meaning.

(3) (i) "Law enforcement officer" has the meaning stated in § 1-101 of the Public Safety Article.

(ii) "Law enforcement officer" includes a school resource officer, as defined in § 7-1501 of the Education Article.

(b) A law enforcement officer may not conduct a custodial interrogation of a child until:

(1) (I) The child has consulted with an attorney who is:

[(i)] 1. Retained by the parent, guardian, or custodian of the child; or

[(ii)] 2. Provided by the Office of the Public Defender; [and] OR

(II) 1. **THE CHILD HAS CONSULTED WITH THE PARENT, GUARDIAN, OR CUSTODIAN OF THE CHILD;**

2. **THE CHILD AND THE PARENT, GUARDIAN, OR CUSTODIAN HAVE JOINTLY DECIDED THAT THE CHILD SHOULD PARTICIPATE IN THE CUSTODIAL INTERROGATION BY A LAW ENFORCEMENT OFFICER; AND**

3. **THE PARENT, GUARDIAN, OR CUSTODIAN OF THE CHILD DECIDES THAT THE CHILD DOES NOT NEED TO CONSULT WITH AN ATTORNEY BEFORE THE INTERROGATION; AND**

(2) The law enforcement officer has made an effort reasonably calculated to give actual notice to the parent, guardian, or custodian of the child that the child will be interrogated.

(c) (1) A consultation with an attorney under this section:

[(1)] (I) Shall be:

[(i)] 1. Conducted in a manner consistent with the Maryland Rules of Professional Conduct; and

[(ii)] 2. Confidential; and

1 [(2)] **(II)** May be:

2 [(i)] **1.** In person; or

3 [(ii)] **2.** By telephone or video conference.

4 **(2) A CONSULTATION WITH A PARENT, GUARDIAN, OR CUSTODIAN**
5 **UNDER THIS SECTION MAY BE:**

6 **(I) IN PERSON; OR**

7 **(II) BY TELEPHONE OR VIDEO CONFERENCE.**

8 (d) To the extent practicable and consistent with the Maryland Rules of
9 Professional Conduct, an attorney providing consultation under this section shall
10 communicate and coordinate with the parent, guardian, or custodian of the child in custody.

11 (e) The requirement of consultation with an attorney **OR A PARENT, GUARDIAN,**
12 **OR CUSTODIAN** under this section:

13 (1) May not be waived; and

14 (2) Applies regardless of whether the child is proceeded against as a child
15 under this subtitle or is charged as an adult.

16 (f) (1) A law enforcement agency conducting an interrogation under this
17 section shall maintain a record of the notification or attempted notification of a parent,
18 guardian, or custodian under this section, including:

19 (i) A signed statement by a duly authorized law enforcement officer
20 employed by the agency that an attempt to notify a parent, guardian, or custodian was
21 made;

22 (ii) The name of the person sought to be notified; and

23 (iii) The method of attempted notification.

24 (2) (i) A law enforcement agency conducting an interrogation under
25 this section shall maintain a record of the name of the attorney contacted and the county
26 or counties in which the attorney provided the consultation.

27 (ii) An attorney contacted to provide legal consultation to a child
28 under this subtitle shall provide to a law enforcement officer the information required for
29 the record required to be maintained under subparagraph (i) of this paragraph.

(g) (1) Notwithstanding the requirements of this section, a law enforcement officer may conduct an otherwise lawful custodial interrogation of a child if:

(i) The law enforcement officer reasonably believes that the information sought is necessary to protect against a threat to public safety; and

(ii) The questions posed to the child by the law enforcement officer are limited to those questions reasonably necessary to obtain the information necessary to protect against the threat to public safety.

(2) (i) Unless it is impossible, impracticable, or unsafe to do so, an interrogation conducted under paragraph (1) of this subsection shall be recorded.

(ii) In a jurisdiction that has adopted the use of body-worn digital recording devices by law enforcement officers, the interrogation of a child may be recorded using a body-worn digital recording device in a manner that is consistent with departmental policies regarding the use of body-worn digital recording devices.

(iii) In a jurisdiction that has not adopted the use of body-worn digital recording devices, the interrogation of a child may be recorded using other video and audio recording technology in a manner that is consistent with any policies of the law enforcement agency regarding the use of video and audio recording technology.

(iv) A child being interrogated under this subsection shall be informed if the interrogation is being recorded.

(h) (1) There is a rebuttable presumption that a statement made by a child during a custodial interrogation is inadmissible in a delinquency proceeding or a criminal prosecution against that child if a law enforcement officer willfully failed to comply with the requirements of this section.

(2) The State may overcome the presumption by showing, by clear and convincing evidence, that the statement was made knowingly, intelligently, and voluntarily.

(3) This subsection may not be construed to render a statement by that child inadmissible in a proceeding against another individual.

(i) The Office of the Public Defender shall:

(1) Develop and implement policies to provide guidance and instruction to attorneys to meet the requirements of this section; and

(2) On or before October 1, 2022, publish on its website, or provide to law enforcement on request, information on attorneys available to act as counsel to a child in accordance with this section.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2024.