

HOUSE BILL 727

E3

4lr2545

By: **Delegate Conaway**

Introduced and read first time: January 29, 2024

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law – Custodial Interrogation – In-Person Attorney Consultation**
3 **Requirement**

4 FOR the purpose of requiring that the consultation with an attorney required when a law
5 enforcement officer conducts a custodial interrogation of a child must be in person;
6 and generally relating to the custodial interrogation of a child.

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 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–14.2.

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

17 (2) “Custodial interrogation” retains its judicially determined meaning.

18 (3) (i) “Law enforcement officer” has the meaning stated in § 1–101 of
19 the Public Safety Article.

20 (ii) “Law enforcement officer” includes a school resource officer, as
21 defined in § 7–1501 of the Education Article.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



until:

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

(i) Retained by the parent, guardian, or custodian of the child; or

(ii) Provided by the Office of the Public Defender; 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) A consultation with an attorney under this section **SHALL BE:**

(1) [Shall be:

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

(ii)] **(2)** Confidential; and

[(2) May be:

(i) In person; or

(ii) By telephone or video conference]

(3) IN PERSON.

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

(e) The requirement of consultation with an attorney under this section:

(1) May not be waived; and

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

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

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

1 made;

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

3 (iii) The method of attempted notification.

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

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

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

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

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

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

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

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

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

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

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

1 voluntarily.

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

4 (i) The Office of the Public Defender shall:

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

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

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