

HOUSE BILL 315

E3

(PRE-FILED)

1lr0472
CF SB 136

By: **Delegates Bartlett, D.M. Davis, Feldmark, R. Lewis, Lierman, and
Pena-Melnyk**

Requested: September 8, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2021

CHAPTER _____

1 AN ACT concerning

2 **Juvenile Law – Juvenile Interrogation Protection Act**

3 FOR the purpose of requiring a law enforcement officer who takes a child into custody to
4 provide notice to the child's parents, guardian, or custodian in a certain manner;
5 specifying the required contents of a certain notice; prohibiting the custodial
6 interrogation of a child by a law enforcement officer until the child has consulted
7 with a certain attorney and an effort to provide certain notice ~~has been provided~~ to
8 the child's parent, guardian, or custodian has been made; requiring that a
9 consultation between a child and an attorney under this Act be confidential and in
10 accordance with the Maryland Rules of Professional Conduct; authorizing a
11 consultation between a child and an attorney under this Act to occur in person or by
12 certain electronic methods; providing certain guidelines for an attorney providing
13 legal consultation to a child under this Act; providing that the required consultation
14 under this Act may not be waived and applies regardless of whether the child is
15 ~~proceeded against as a child under certain provisions of law or is charged~~ taken into
16 custody as a child or as an adult; requiring a law enforcement agency to maintain ~~a~~
17 ~~certain record~~; certain records; requiring that an attorney provide a law enforcement
18 officer with certain information; providing that ~~statements made by a child are~~
19 ~~admissible as evidence~~ a law enforcement officer may conduct an otherwise lawful
20 custodial interrogation of a child under certain circumstances; ~~requiring the Police~~
21 ~~Training and Standards Commission~~ authorizing the Court of Appeals to adopt
22 certain rules relating to the advisement of a child of certain rights; requiring a law
23 enforcement officer who charges a minor with a criminal offense to make a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



reasonable attempt to provide actual notice to the parent or guardian of the minor; requiring that the custodial interrogation of a minor be conducted in a certain manner; requiring that an interrogation of a child be recorded under certain circumstances; establishing certain standards for the recording of the interrogation of a child under certain circumstances; requiring that a child be notified of the recording of an interrogation of the child under certain circumstances; establishing a certain rebuttable presumption; requiring the Office of the Public Defender to develop and implement certain policies and to publish on its website or make available to law enforcement certain information; making a conforming change; defining certain terms; and generally relating to juvenile law and the interrogation of children by law enforcement.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–14
Annotated Code of Maryland
(2020 Replacement Volume)

BY adding to
Article – Courts and Judicial Proceedings
Section 3–8A–14.2
Annotated Code of Maryland
(2020 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 2–108
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY adding to
Article – Criminal Procedure
Section 2–405
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

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

Article – Courts and Judicial Proceedings

3–8A–14.

(a) A child may be taken into custody under this subtitle by any of the following methods:

(1) Pursuant to an order of the court;

(2) By a law enforcement officer pursuant to the law of arrest;

(3) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection;

(4) By a law enforcement officer or other person authorized by the court if the officer or other person has reasonable grounds to believe that the child has run away from the child's parents, guardian, or legal custodian; or

(5) In accordance with § 3–8A–14.1 of this subtitle.

(b) **(1) (I)** If a law enforcement officer takes a child into custody, the officer shall immediately notify, or cause to be notified, the child's parents, guardian, or custodian **IN A MANNER REASONABLY CALCULATED TO GIVE ACTUAL NOTICE** of the action.

(II) THE NOTICE REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:

1. INCLUDE THE CHILD'S LOCATION;

2. PROVIDE THE REASON FOR THE CHILD BEING TAKEN INTO CUSTODY; AND

3. INSTRUCT THE PARENT, GUARDIAN, OR CUSTODIAN ON HOW TO MAKE IMMEDIATE IN-PERSON CONTACT WITH THE CHILD.

(2) After making every reasonable effort to give **ACTUAL** notice **TO A CHILD'S PARENT, GUARDIAN, OR CUSTODIAN**, the law enforcement officer shall with all reasonable speed:

[(1) (I)] Release the child to the child's parents, guardian, or custodian or to any other person designated by the court, upon their written promise to bring the child before the court when requested by the court, and such security for the child's appearance as the court may reasonably require, unless the child's placement in detention or shelter care is permitted and appears required by § 3–8A–15 of this subtitle; or

[(2) (II)] Deliver the child to the court or a place of detention or shelter care designated by the court.

(c) If a parent, guardian, or custodian fails to bring the child before the court when requested, the court may **[issue]**:

(1) **ISSUE** a writ of attachment directing that the child be taken into custody and brought before the court[. The court may proceed]; **AND**

(2) **PROCEED** against the parent, guardian, or custodian for contempt.

(d) In addition to the requirements for reporting child abuse and neglect under § 5–704 of the Family Law Article, if a law enforcement officer has reason to believe that a child who has been detained is a victim of sex trafficking, as defined in § 5–701 of the Family Law Article, the law enforcement officer shall notify any appropriate regional navigator, as defined in § 5–704.4 of the Family Law Article, for the jurisdiction where the child was taken into custody or where the child is a resident that the child is a suspected victim of sex trafficking.

~~(E) THE POLICE TRAINING AND STANDARDS COMMISSION SHALL COURT OF APPEALS MAY ADOPT RULES CONCERNING AGE-APPROPRIATE LANGUAGE TO BE USED TO ADVISE A CHILD WHO IS TAKEN INTO CUSTODY OF:~~

~~(1) THE CHILD'S RIGHTS, INCLUDING:~~

~~(i) THE RIGHT TO REMAIN SILENT; AND~~

~~(ii) THE RIGHT TO BE REPRESENTED BY AN ATTORNEY; AND~~

~~(2) THE REQUIREMENT THAT THE CHILD'S PARENT, GUARDIAN, OR CUSTODIAN BE NOTIFIED:~~

~~(i) THAT THE CHILD WAS TAKEN INTO CUSTODY UNDER THIS SECTION; OR~~

~~(ii) BEFORE AN INTERROGATION IS CONDUCTED UNDER § 3-8A-14.2 OF THIS SUBTITLE THE CHILD'S RIGHTS.~~

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 § 3–101 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) 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 ~~NOTIFIED, OR CAUSED TO BE NOTIFIED,~~ MADE AN EFFORT REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO THE PARENT, GUARDIAN, OR CUSTODIAN OF THE CHILD IN A MANNER REASONABLY CALCULATED TO PROVIDE ACTUAL NOTICE THAT THE CHILD WILL BE INTERROGATED.

(C) A CONSULTATION WITH AN ATTORNEY UNDER THIS SECTION:

(1) SHALL BE ~~CONFIDENTIAL~~:

(I) CONDUCTED IN A MANNER CONSISTENT WITH THE MARYLAND RULES OF PROFESSIONAL CONDUCT; AND

(II) CONFIDENTIAL; AND

(2) MAY BE:

(I) IN PERSON; OR

(II) BY TELEPHONE OR VIDEO CONFERENCE.

(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:

~~(1)~~ (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 MADE;

~~(2)~~ (II) THE NAME OF THE PERSON SOUGHT TO BE NOTIFIED; AND

~~(3)~~ (III) THE METHOD OF ATTEMPTED NOTIFICATION.

(2) (I) A LAW ENFORCEMENT AGENCY CONDUCTING AN INTERROGATION UNDER THIS SECTION SHALL MAINTAIN A RECORD OF THE NAME OF THE ATTORNEY CONTACTED AND THE COUNTY OR COUNTIES IN WHICH THE ATTORNEY PROVIDED THE CONSULTATION.

(II) AN ATTORNEY CONTACTED TO PROVIDE LEGAL CONSULTATION TO A CHILD UNDER THIS SUBTITLE SHALL PROVIDE TO A LAW ENFORCEMENT OFFICER THE INFORMATION REQUIRED FOR THE RECORD REQUIRED TO BE MAINTAINED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(G) (1) NOTWITHSTANDING THE REQUIREMENTS OF THIS SECTION, STATEMENTS MADE BY A CHILD ARE ADMISSIBLE AS EVIDENCE A LAW ENFORCEMENT OFFICER MAY CONDUCT AN OTHERWISE LAWFUL CUSTODIAL INTERROGATION OF A CHILD IF:

~~(1)~~ (I) THE LAW ENFORCEMENT OFFICER WHO CONDUCTED THE CUSTODIAL INTERROGATION OF THE CHILD REASONABLY BELIEVED THAT THE INFORMATION SOUGHT WAS REASONABLY BELIEVES THAT THE INFORMATION SOUGHT IS NECESSARY TO PROTECT AN INDIVIDUAL FROM AN IMMINENT THREAT TO THE LIFE OF THE INDIVIDUAL AND A REASONABLE DELAY TO ALLOW THE CHILD TO HAVE LEGAL CONSULTATION WOULD IMPEDE THE ABILITY OF LAW ENFORCEMENT TO SAFEGUARD THE LIFE OF THE THREATENED INDIVIDUAL; AND

~~(2)~~ (II) THE QUESTIONS POSED TO THE CHILD BY THE LAW ENFORCEMENT OFFICER WERE ARE LIMITED TO THOSE QUESTIONS REASONABLY NECESSARY TO OBTAIN THE INFORMATION NECESSARY TO PROTECT THE INDIVIDUAL FROM AN IMMINENT THREAT TO THE LIFE OF THE INDIVIDUAL.

(2) (I) UNLESS IT IS IMPOSSIBLE, IMPRACTICABLE, OR UNSAFE TO DO SO, AN INTERROGATION CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE RECORDED.

1 **(II) IN A JURISDICTION THAT HAS ADOPTED THE USE OF**
2 **BODY-WORN DIGITAL RECORDING DEVICES BY LAW ENFORCEMENT OFFICERS, THE**
3 **INTERROGATION OF A CHILD MAY BE RECORDED USING A BODY-WORN DIGITAL**
4 **RECORDING DEVICE IN A MANNER THAT IS CONSISTENT WITH DEPARTMENTAL**
5 **POLICIES REGARDING THE USE OF BODY-WORN DIGITAL RECORDING DEVICES.**

6 **(III) IN A JURISDICTION THAT HAS NOT ADOPTED THE USE OF**
7 **BODY-WORN DIGITAL RECORDING DEVICES, THE INTERROGATION OF A CHILD MAY**
8 **BE RECORDED USING OTHER VIDEO AND AUDIO RECORDING TECHNOLOGY IN A**
9 **MANNER THAT IS CONSISTENT WITH ANY POLICIES OF THE LAW ENFORCEMENT**
10 **AGENCY REGARDING THE USE OF VIDEO AND AUDIO RECORDING TECHNOLOGY.**

11 **(IV) A CHILD BEING INTERROGATED UNDER THIS SUBSECTION**
12 **SHALL BE INFORMED IF THE INTERROGATION IS BEING RECORDED.**

13 **(H) THERE IS A REBUTTABLE PRESUMPTION THAT A STATEMENT MADE BY**
14 **A CHILD DURING A CUSTODIAL INTERROGATION IS INADMISSIBLE IN A**
15 **DELINQUENCY PROCEEDING OR A CRIMINAL PROSECUTION AGAINST THE CHILD IF**
16 **A LAW ENFORCEMENT OFFICER WILLFULLY FAILED TO COMPLY WITH THE**
17 **REQUIREMENTS OF THIS SECTION.**

18 **(I) THE OFFICE OF THE PUBLIC DEFENDER SHALL:**

19 **(1) DEVELOP AND IMPLEMENT POLICIES TO PROVIDE GUIDANCE AND**
20 **INSTRUCTION TO ATTORNEYS TO MEET THE REQUIREMENTS OF THIS SECTION; AND**

21 **(2) ON OR BEFORE OCTOBER 1, 2021, PUBLISH ON ITS WEBSITE, OR**
22 **PROVIDE TO LAW ENFORCEMENT ON REQUEST, INFORMATION ON ATTORNEYS**
23 **AVAILABLE TO ACT AS COUNSEL TO A CHILD IN ACCORDANCE WITH THIS SECTION.**

24 **Article – Criminal Procedure**

25 2–108.

26 (a) A law enforcement officer who charges a minor with a criminal offense shall
27 make a reasonable attempt to [notify] **PROVIDE ACTUAL NOTICE TO** the parent or
28 guardian of the minor of the charge.

29 (b) If a law enforcement officer takes a minor into custody, the law enforcement
30 officer or the officer's designee shall make a reasonable attempt to notify the parent or
31 guardian of the minor [within 48 hours of the arrest of the minor] **IN ACCORDANCE WITH**
32 **THE REQUIREMENTS OF § 3–8A–14 OF THE COURTS ARTICLE.**

33 **2–405.**

1 A CUSTODIAL INTERROGATION OF A MINOR SHALL BE CONDUCTED IN
2 ACCORDANCE WITH THE REQUIREMENTS OF § 3-8A-14.2 OF THE COURTS ARTICLE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2021.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.