

SENATE BILL 53

E3
SB 136/21 – JPR

(PRE-FILED)

2lr0658
CF HB 269

By: ~~Senator Carter~~ Senators Carter, Hettleman, Lee, Smith, Sydnor, Waldstreicher, and Watson

Requested: October 6, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 2022

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of establishing certain requirements for taking a child into custody,
4 interrogating a child, or charging a child with a criminal violation, including notice
5 requirements, requirements for consultation with an attorney, and requirements for
6 the maintenance of certain records; authorizing the Court of Appeals to adopt certain
7 rules relating to the advisement of a child of certain rights; establishing a certain
8 rebuttable presumption that a statement made by a child during an interrogation is
9 inadmissible under certain circumstances; requiring the Office of the Public
10 Defender to develop and implement certain policies and to publish on its website or
11 make available to law enforcement certain information; and generally relating to
12 juvenile law and the interrogation of children by law enforcement.

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 3–8A–14
16 Annotated Code of Maryland
17 (2020 Replacement Volume and 2021 Supplement)

18 BY adding to
19 Article – Courts and Judicial Proceedings
20 Section 3–8A–14.2
21 Annotated Code of Maryland

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.



(2020 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 2–108
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

BY adding to
Article – Criminal Procedure
Section 2–405
Annotated Code of Maryland
(2018 Replacement Volume and 2021 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;

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

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

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

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

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

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

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

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

20 (d) In addition to the requirements for reporting child abuse and neglect under §
21 5–704 of the Family Law Article, if a law enforcement officer has reason to believe that a
22 child who has been detained is a victim of sex trafficking, as defined in § 5–701 of the Family
23 Law Article, the law enforcement officer shall notify any appropriate regional navigator, as
24 defined in § 5–704.4 of the Family Law Article, for the jurisdiction where the child was
25 taken into custody or where the child is a resident that the child is a suspected victim of
26 sex trafficking.

27 **(E) THE COURT OF APPEALS MAY ADOPT RULES CONCERNING**
28 **AGE-APPROPRIATE LANGUAGE TO BE USED TO ADVISE A CHILD WHO IS TAKEN INTO**
29 **CUSTODY OF THE CHILD’S RIGHTS.**

30 **3–8A–14.2.**

31 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
32 **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 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:

(1) SHALL BE:

(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 (1) MAY NOT BE WAIVED; AND

2 (2) APPLIES REGARDLESS OF WHETHER THE CHILD IS PROCEEDED
3 AGAINST AS A CHILD UNDER THIS SUBTITLE OR IS CHARGED AS AN ADULT.

4 (F) (1) A LAW ENFORCEMENT AGENCY CONDUCTING AN INTERROGATION
5 UNDER THIS SECTION SHALL MAINTAIN A RECORD OF THE NOTIFICATION OR
6 ATTEMPTED NOTIFICATION OF A PARENT, GUARDIAN, OR CUSTODIAN UNDER THIS
7 SECTION, INCLUDING:

8 (I) A SIGNED STATEMENT BY A DULY AUTHORIZED LAW
9 ENFORCEMENT OFFICER EMPLOYED BY THE AGENCY THAT AN ATTEMPT TO NOTIFY
10 A PARENT, GUARDIAN, OR CUSTODIAN WAS MADE;

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

12 (III) THE METHOD OF ATTEMPTED NOTIFICATION.

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

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

21 (G) (1) NOTWITHSTANDING THE REQUIREMENTS OF THIS SECTION, A
22 LAW ENFORCEMENT OFFICER MAY CONDUCT AN OTHERWISE LAWFUL CUSTODIAL
23 INTERROGATION OF A CHILD IF:

24 (I) THE LAW ENFORCEMENT OFFICER REASONABLY BELIEVES
25 THAT THE INFORMATION SOUGHT IS NECESSARY TO PROTECT ~~AN INDIVIDUAL FROM~~
26 ~~AN IMMINENT THREAT TO THE LIFE OF THE INDIVIDUAL AND A REASONABLE DELAY~~
27 ~~TO ALLOW THE CHILD TO HAVE LEGAL CONSULTATION WOULD IMPEDE THE ABILITY~~
28 ~~OF LAW ENFORCEMENT TO SAFEGUARD THE LIFE OF THE THREATENED INDIVIDUAL~~
29 AGAINST A THREAT TO PUBLIC SAFETY; AND

30 (II) THE QUESTIONS POSED TO THE CHILD BY THE LAW
31 ENFORCEMENT OFFICER ARE LIMITED TO THOSE QUESTIONS REASONABLY
32 NECESSARY TO OBTAIN THE INFORMATION NECESSARY TO PROTECT ~~THE~~

~~INDIVIDUAL FROM AN IMMINENT THREAT TO THE LIFE OF THE INDIVIDUAL 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 ~~THE~~ 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 **Article – Criminal Procedure**

2 2–108.

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

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

10 **2–405.**

11 **A CUSTODIAL INTERROGATION OF A MINOR SHALL BE CONDUCTED IN**
12 **ACCORDANCE WITH THE REQUIREMENTS OF § 3–8A–14.2 OF THE COURTS ARTICLE.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
14 Assembly that the term “threat to public safety”, as used in this Act be construed in a
15 manner consistent with the judicially recognized exception to the requirements of Miranda
16 v. Arizona, 384 U.S. 436 (1966).

17 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2022.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.