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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 23-H 5227, AN ACT RELATING TO DELINQUENT AND DEPENDENT CHILDREN – PROCEEDINGS IN FAMILY COURT March 16, 2023

The ACLU strongly supports this legislation, which would generally prohibit the questioning of a juvenile who is suspected of criminal behavior without the presence of their parent or legal guardian or an attorney unless there has been a knowing waiver of rights by the juvenile and parent or attorney.

It should come as no surprise that juveniles are less able to understand or fully comprehend their legal rights while being questioned. However, law enforcement proceeds as if they were well-informed adults who possess a full understanding of the weight of an interrogation. While the Fifth Amendment provides juveniles certain protections in this area, they are less than sufficient to guarantee that a juvenile will not be unfairly interrogated by police without the presence of a parent or guardian.

A case handled by our office a few years ago encapsulates the need for this type of legislation: an 8-year-old girl was removed by police from a school bus, taken alone to the police station without her parent's knowledge, and held and questioned at the station for several hours before being released. The girl was seized, detained, and interrogated based on completely unsubstantiated claims from another child that the girl was carrying "chemicals" in her backpack. All this occurred even after the police found nothing illicit in her possession.

Rhode Island law protects children who are questioned by police *while at school*, and generally requires a guardian present at that questioning. *See* R.I.G.L. 16-21.5-1 et seq. However, a child whose first police interaction occurs off campus has no such protection under the law.

A news story that highlights the dangers of juvenile interrogation without the presence of counsel is attached. We believe that this legislation is critical to ensure full due process for juveniles and we urge its passage.

Thank you for your consideration of our views.

theappeal.org

Children Can Be On Their Own When Grilled By Police. The Push for Protection is Growing

Elizabeth Weill-Greenberg Mar 25, 2021

9-11 minutes

Several states, including Maryland, are considering bills to protect minors from abusive police interrogations.

Screenshot of Damon's interrogation.

Children Can Be On Their Own When Grilled By Police. The Push for Protection is Growing

Several states, including Maryland, are considering bills to protect minors from abusive police interrogations.

In October, Damon, then 15, laid his head on his arm while a Baltimore City police officer placed a Miranda form on the table. The Appeal is using a pseudonym to protect Damon's identity.

"Read this right here," the officer told him, according to a video of the interrogation viewed by The Appeal. "If you want to talk to me, sign it. And then we'll start talking."

Neither an attorney nor guardian were in the room. He had been in the foster care system for about eight years, but police did not notify—nor were they required to—the Department of Social Services, according to the public defender's office. At school, he had an individualized education plan, a list of services a school is mandated to provide to accommodate a student's disability.

The officer began reading the Miranda rights out loud, asking, after each right, "You understand that?" Damon mumbled "yeah," or grunted. He didn't lift his head from his arm.

"You a juvenile," the officer told him. "You're not going to need a lawyer or anything like that." Damon initialed the Miranda warning and provided a statement.

He was arrested and spent close to 50 days in juvenile detention, according to Jenny Egan, chief attorney for the Juvenile Division of the Maryland Office of the Public Defender, Baltimore City. Damon was then released to a children's shelter, and was on house arrest for more than three

months. All charges against Damon have since been dropped.

Last month, an excerpt of his questioning was played at a state legislative hearing on juvenile interrogations.

"That video is not an exception," Egan said. "This is what it looks like most of the time."

Few, if any, legal protections exist for minors during interrogations. In many states, law enforcement don't have to ensure a child of any age consults with an attorney before an interrogation begins. But after high-profile exonerations of young people who falsely confessed, some states are taking action.

In September, California Governor Gavin Newsom signed a bill that requires people who are under 18 to speak with an attorney before an interrogation can commence (previously this requirement only applied to children age 15 and younger). This year, legislators in Maryland, New York, and Washington State are considering similar legislation.

Maryland's House Bill 315 would prohibit the interrogation of anyone under 18 until the child has consulted with an attorney, unless there is an imminent risk of harm, and law enforcement attempts to notify the child's parent or guardian. On Saturday, the bill passed the House; it's now being considered in the Senate. Delegate Sandy Bartlett, one of the bill's sponsors, told The Appeal she is confident it will pass both chambers and be signed into law.

"I've been working closely with the public defender's office," she said. "They have set up and are continuing to set up protocols so that when House Bill 315 passes, they are ready to go."

Caregivers' presence in the interrogation room does not inoculate children from a coercive interrogation, said Hayley Cleary, a developmental psychologist and professor at Virginia Commonwealth University. Parents may be unaware of their child's right to request an attorney and, like their children, are vulnerable to manipulative police tactics, she said.

"Mandatory assistance of counsel is really the only way to ensure that youth's rights are being protected," said Cleary.

Baltimore County State's Attorney Scott Shellenberger told The Appeal that the bill is "completely unnecessary."

"Miranda can apply to juveniles and it's very easily understood," he said. "I don't know what's hard about the statement, 'You have the right to remain silent.'"

But Miranda rights are often illusory for juveniles. Studies have shown that most young people waive their Miranda rights, and they don't understand the rights read to them, such as the right to remain silent. (Studies of adults have come to similar conclusions.)

Not all prosecutors agree with Shellenberger's assessment. Last month, Baltimore City State's Attorney Marilyn Mosby testified in favor of the bill. In a statement to The Appeal, Prince George's County State's Attorney Aisha Braveboy said the bill "protects the rights of juveniles while also protecting the public's safety." A majority of Maryland voters also favor protections for children in the interrogation room, according to polling published by The Lab, a policy

vertical of The Appeal.

Washington State and New York lawmakers are considering similar legislation that would require youth to consult with an attorney before police can question them. (Like the Maryland bill, the Washington proposal has narrow exceptions, including an immediate threat to a person's life.) In Washington, the bill passed the House and is now with the Senate. In New York, the bill passed the Senate Children and Families Committee and is now with the Finance Committee. Later this year, a New York state law will take effect that requires law enforcement to record all interrogations of minors, but more protections are needed, according to Dawne Mitchell, the attorney in charge of The Legal Aid Society's juvenile rights practice.

"There's virtually no real legal difference or procedural difference between interrogation of children and interrogation of adults," Mitchell said.

Mandatory counsel for youth will help prevent false confessions, exoneree Huwe Burton told The Appeal. This month, he testified in favor of a bill in Oregon that will ban deception in interrogations of minors. When Burton was 16, New York City detectives coerced him to confess to a crime he did not commit, the murder of his mother, Keziah Burton. He was incarcerated for almost 20 years.

In 2019, he was exonerated with the assistance of the Bronx district attorney's office, the Innocence Project, Rutgers Law School's Youth and Criminal Justice Clinic, and the Center on Wrongful Convictions at Northwestern University.

Young people are more likely to confess to crimes they did not commit, according to the National Registry of Exonerations. Thirty-six percent of exonerees falsely confessed to crimes when they were children, compared with 10 percent of exonerees who falsely confessed when they were adults.

"We are 32 years removed since that happened to me," Burton said. "It's still happening."

On Jan. 5, 1989, two days after Burton discovered his mother's body in their Bronx home, detectives interrogated him and accused him of killing her.

"I'm crying and at that point, I'm saying, 'No no, I didn't, I didn't kill my mom,'" he said. "I'm asking for my father and they're telling me that I'll see my father when I tell them the truth."

The detectives threatened to charge Burton with statutory rape of his younger girlfriend and his mother's murder, and send him to Rikers Island. But if he told the truth, he'd go to family court and his father could take him home, they said.

"I couldn't physically get up and leave, although no one told me, 'You can't leave,'" he said. "These are adults and if they say, 'Sit here,' you sit here and you can't move. This was authority."

About nine hours after he arrived at the police precinct, he confessed to killing his mother. It was then that he was read his Miranda rights, according to Burton.

"You just brought an exhausted child in there who just witnessed the most traumatic thing that

he could possibly witness,” Burton said. “He would have said anything. You could have got him to say anything.”

Disclosure: Elizabeth Weill-Greenberg was a case analyst at the Innocence Project from 2007 to 2015 and worked on Burton’s case.