



DEPARTMENT OF HEALTH AND HUMAN SERVICES

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**Testimony of Ebby Stoutmiles on behalf of Juvenile Law Center and Montgomery County's
Commission on Juvenile Justice
House Bill 315 (Cross-filed with Senate Bill 136)
February 4, 2021**

Good afternoon and thank you for hearing my testimony today. My name is Ebby Stoutmiles. I'm the State Policy Advocate for Juvenile Law Center¹ and Vice Chair of Montgomery County's Commission on Juvenile Justice.² Both Juvenile Law Center and the JJC work to ensure the constitutional rights of youth are protected in the juvenile justice system.

I am here to urge the legislature to adequately protect vulnerable youth in our State by supporting Maryland Senate Bill 136 and House Bill 315 - the Juvenile Interrogation Protective Act. This legislation will require Maryland law enforcement officers to give actual notice to a child's parent, guardian, or custodian prior to interrogating the child and ensure each child consults with counsel prior to any waiver of the child's rights.

[During the Maryland 2018-2019 school year, 69 elementary schoolers, 1,029 middle schoolers and 1,912 high schoolers were arrested](#) — numbers that do not reflect the number of youth questioned but not arrested by police.³ Under Maryland law, police can detain and interrogate a child without a parent's presence or knowledge that their child is being questioned or arrested. For example, in 2019, there were two instances of police questioning elementary school children for playing with play money.⁴ Their

¹ Juvenile Law Center is the first non-profit, public interest law firm for children in the country, advocating for the rights, dignity, equity, and opportunity for children who come into contact with the child welfare and justice systems. Juvenile Law Center has written extensively on the issue of constitutional protections for children who are subjects of interrogation in both state and federal courts.

² MC CJJ was established to advise the Montgomery County Executive, County Council and the Juvenile Court on matters concerning juvenile justice. Our work includes gathering and disseminating information from public and private agencies serving youth, monitoring the Juvenile Justice System, visiting facilities, and closely following State and County legislative proposals affecting juveniles. MC CJJ consists of citizen members who serve three-year terms without compensation, and agency members that include; Collaboration Council on Children, youth and families, Voices for Children, Health and Human Services, Child Welfare, State's Attorney's Office, Office of the Public Defender, Montgomery County Police, Montgomery County Public schools, and Department of Juvenile Services. **Note:** The following agencies who are Ex-Officio members to the Montgomery County Juvenile Justice Commission abstained from the vote to support this legislation: Dept of Juvenile Services, Montgomery County Circuit Court, Montgomery County Council, Montgomery County Health and Human Services, Montgomery County Police, State's Attorneys' Office and Montgomery County Child Welfare Services

³ <http://marylandpublicschools.org/stateboard/Documents/2020/0623/MarylandPublicSchoolsArrestData20182019.pdf>

⁴ https://www.washingtonpost.com/local/education/the-money-was-fake-the-police-were-real-it-happened-in-an-elementary-school/2019/07/05/c2652b5c-704a-11e9-9f06-5fc2ee80027a_story.html; <https://bethesdamagazine.com/bethesda-beat/schools/mcps-cites-clear-missteps-after-calling-police-on-black-boy-with-play-money/#:~:text=A%20Chevy%20Chase%20mother%20says,on%20a%20county%20school%20bus.&text=The%20boy%20was%20excited%20about,his%20mother%20recounting%20the%20incident>

parents were not notified until after the police asked the children questions. Even when questioning does not lead to an arrest, the potential trauma of these interactions for youth is significant.⁵

At this time, Maryland police are not required to ensure children understand their Miranda rights before being interrogated, nor [what it means to “waive” their rights](#), increasing the likelihood of self-incrimination.⁶ The protections of this bill are vital. Adolescents waive their *Miranda* rights at an astounding 90%, a rate exponentially higher than that of adults. Children are also significantly overrepresented in cases of false confession. In addition to causing harm to the individual child who falsely confesses, this creates a public safety problem by incarcerating an innocent child and failing to identify the actual perpetrator of the crime. Even older youth are more likely to waive the right to an attorney than adults, likely because they prioritize the importance of ending the interrogation and leaving the room over any long-term legal consequences.

The current practice of interrogating children without counsel or guardian notification only heightens the chance of a false confession, enabling the actual perpetrators to wander the streets. In any event, the likelihood of a false confession is too high to forgo procedural safeguards.

If we wish for Maryland to have a fair and equitable justice system, we must ensure that youth are not coerced and incarcerated simply because they are children and do not understand their constitutional rights.⁷ The Juvenile Interrogation Protection Act would better protect children’s constitutional rights and better meet their needs. For these reasons, we urge the legislature to pass Senate Bill 136 and House Bill 315.

⁶<https://www.baltimoresun.com/education/bs-md-youth-miranda-warning-20180521-story.html#:~:text=Advertisement-.Coalition%20pushes%20for%20Baltimore%20school%20police.more%20youth%20friendly%20Miranda%20warning&text=A%20coalition%20dedicated%20to%20reforming,children%20know%20their%20legal%20rights.>

⁷ The Juvenile Interrogation Protective Act’s protective legal standards will ensure children will be treated in ways that are both developmentally appropriate and constitutionally sound. As both courts and social science have repeatedly established, developmental differences between children and adults necessitate additional protections during interrogation and when taking juveniles into custody. (The protections provided under the proposed legislation would respond to the realities of adolescent development. Children are distinct from adults in their capacities to both understand and interact with the world, in ways that are particularly important in the context of the criminal justice process. Neuroscience reveals substantial developmental differences between youth and adults, and those structural and functional differences between adolescent and adult brains impact adolescent behavior. (See generally Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 CURRENT DIRECTIONS PSYCHOL. SCI. 158 (2013); *Miller v. Alabama*, 567 U.S. 460, 471 (2012)) Despite general cognitive skills improving by mid-adolescence, areas of the brain that regulate impulse control and do not completely mature until an individual is well into their twenties. (Terry A. Maroney, *The Once and Future Juvenile Brain*, in CHOOSING THE FUTURE FOR AMERICAN JUVENILE JUSTICE, 189, 193 (Franklin E. Zimring & David S. Tanenhaus eds., 2014).) Additionally, the limbic system, which governs the reward structure of the brain, is highly active during adolescence. (Dustin Wahlstrom et al., *Developmental Changes in Dopamine Neurotransmission in Adolescence: Behavioral Implications and Issues in Assessment*, 72 BRAIN COGNITION 146, 148 (2010).) These neurological differences between youth and adults help explain what developmental research has shown – youth are more impulsive and tend to weigh short term benefits over long-term consequences.(See Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 *Victims & Offenders*, 428, 432-433 (2012). See also Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 450 & 455 (2013).)