REPORT ON LEGISLATION BY
THE JUVENILE JUSTICE COMMITTEE AND
THE CHILDREN AND THE LAW COMMITTEE

A.2620-B	**M. of A. Hevesi**
S.878-C	**Sen. Bailey**

AN ACT to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement

THIS BILL IS APPROVED

I. INTRODUCTION

On behalf of the New York City Bar Association's Juvenile Justice Committee and Children and the Law Committee, we write to express our support for legislation to protect children during custodial police interrogation, A.2620-B / S.878-C.

The Juvenile Justice Committee is comprised of members from a range of entities involved in the criminal legal system for youth in both family court and adult criminal court, includes judges, prosecutors/the presentment agency, defense attorneys, researchers, policy advocates, the City's Department of Probation, and the Administration for Children's Services. The Children and the Law Committee addresses legal issues that impact upon the quality of life for children and families. The Committees strive to respect all perspectives within this complex system. The Committees recognize that youth affected by current police interrogation practices are overwhelmingly Black or Latinx. Black and Latinx youth comprise a substantially larger proportion of arrests than their proportion of the general population, and the State's confinement settings are predominately filled with Black and Latinx youth. These disparities exist in both New York City and communities across the State and are evident within both the Youth Part and family court delinquency

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has over 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

proceedings.[1] We also recognize that the victims of crime are also disproportionately Black and Latinx.[2] Thus we analyze this and all legislation through a racial equity lens.

II. ISSUE / PROBLEMS WITH THE CURRENT STATE OF THE LAW

As recent successful reforms in New York's youth justice system reflect, children are not the same as adults. Both socioemotional and neural development continue across childhood and into young adulthood, and brain regions responsible for decision making and for managing emotional or stressful situations are among the last to fully mature.[3] As a result of their developmental immaturity, children and adolescents are more likely to act impulsively, make decisions based on emotion, and prioritize short-term rewards over long-term consequences.[4] As a result, youth are uniquely vulnerable to making an unknowing, unintelligent, or involuntary waiver of their Miranda rights and of providing unreliable confessions.[5]

Research on adolescent development and youth interrogations emphasizes that, to understand and appreciate the meaning of their Miranda rights, youth need to be able to understand the plain meaning of the rights, hold the Miranda warnings in their minds while thinking through their options, understand the legal system sufficiently to anticipate what is likely to happen next, identify the short- and long-term benefits and risks of waiving or asserting their rights, and manage their emotions enough to make a reasoned choice.[6] They must also resist pressure from police—and sometimes also from parents—to decide on the best course of action.[7] However, decades of research makes clear that children and adolescents are developmentally unable to navigate each of

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[1] See, e.g., Raise the Age Task Force Final Report (2020), at 6, https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Report-Raise%20the%20Age%20Task%20Force%2012-22-20.pdf (All websites last accessed May 7, 2026).

[2] See, e.g., NYPD, Crime and Enforcement Activity in New York City, (Jan. 1 – Dec. 31, 2020), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2020-enforcement-report.pdf.

[3] Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities, in* HUMAN RIGHTS AND ADOLESCENCE 59, 64 (Jacqueline Bhabha ed., 2014). The United States Supreme Court has recognized and relied on these hallmarks of adolescent developmental immaturity in a number of decisions over the past 15 years. *See* Montgomery v. Louisiana, 136 S. Ct. 718, 733 (2016); Miller v. Alabama, 567 U.S. 460, 471–72 (2012); Graham v. Florida, 560 U.S. 48, 68 (2010); Roper v. Simmons, 543 U.S. 551, 569 (2005).

[4] Sarah-Jayne Blakemore & Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 NATURE NEUROSCIENCE 1184, 1186 (2012); Dustin Albert & Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. RES. ADOLESCENCE 211 (2011).

[5] *See generally* Emily Haney-Caron, Naomi E.S. Goldstein, & Constance Mesiarik, *Self-Perceived Likelihood of False Confession: A Comparison of Justice-Involved Juveniles and Adults*, 45 CRIM. JUST. & BEHAV. 1955 (2018).

[6] Naomi E.S. Goldstein et al., *Potential Impact of Juvenile Suspects' Linguistic Abilities on* Miranda *Understanding and Appreciation, in* THE OXFORD HANDBOOK OF LANGUAGE AND LAW 299, 307 (Lawrence M. Solan & Peter M. Tiersma eds., 2012); Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of* Miranda *Rights*, 2006 WIS. L. REV. 431, 431–432 (2006); Jessica Owen-Kostelnik et al., *Testimony & Interrogation of Minors: Assumptions about Maturity and Morality*, 61 AM. PSYCHOL. 286, 295 (2006); Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, & Psychological Symptoms*, 29 LAW & HUM. BEHAV. 723, 738–39 (2005).

[7] Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 440 (2012).

these tasks in the same way that adults do, and so it is therefore unsurprising that the vast majority of children and adolescents waive their Miranda rights when asked to do so by police.[8]

Under current New York law, children and adolescents are expected to understand and exercise their rights on their own, despite research showing that, even under the best of circumstances, youth have difficulty with Miranda rights comprehension.[9] Research demonstrates that 94 percent of justice-involved youth ages 12 to 19 fail to fully appreciate the import and function of Miranda rights.[10] Young people hold serious misconceptions; for example, a majority of youth believe that, if they exercise their rights during interrogation, the judge will just make them talk later.[11] Young people's ability to understand their rights is likely even worse under the stress of interrogation.[12]

Once youth waive their Miranda rights, current law requires that police question them in designated spaces intended for juveniles, and only for a "reasonable" length of time, based on "the child's age, [and] the presence or absence of his parents or other persons legally responsible for his care."[13] These provisions reflect the known vulnerability of children and adolescents during questioning. Nonetheless, police are still permitted to employ the same high-pressure interrogation techniques as are used with adults, including telling a youth that the police are on his or her side and misrepresenting evidence of the youth's guilt.[14] This kind of treatment leads most young people who are interrogated to make incriminating statements.[15] Because of heightened vulnerability due to developmental immaturity, youth confessions are less reliable than adult confessions: A large body of research shows that adolescents are at great risk of giving false confessions.[16] These confessions, in turn, put youth at heightened risk for wrongful conviction, potential incarceration and all of the collateral consequences that a criminal conviction entail.

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[8] Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 429 (2013). About ninety percent of interrogated youth waive their rights. *Id*.

[9] Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003); McLachlan et al., *supra* note 159, at 170–72; Allison D. Redlich et al., *Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393, 400–04 (2003); Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 690–94 (2008); Heather Zelle et al., *Juveniles' Miranda Comprehension: Understanding, Appreciation, and Totality of Circumstances Factors*, 39 LAW & HUM. BEHAV. 281, 287–88 (2015).

[10] NAOMI E. S. GOLDSTEIN ET AL., MIRANDA RIGHTS COMPREHENSION INSTRUMENTS 93 (2014).

[11] Allison D. Redlich et al., *Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393, 400–04 (2003).

[12] *See* Kyle C. Scherr & Stephanie Madon, *You Have the Right to Understand: The Deleterious Effect of Stress on Suspects' Ability to Comprehend* Miranda, 36 LAW & HUM. BEHAV. 275, 278–79 (2012).

[13] F.C.A. §305.2.

[14] Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 433 (2013).

[15] *Id*.

[16] Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post- DNA World*, 82 N.C. L. REV. 891, 944 (2004); Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 400 (2015);

Young people who have contact with the criminal legal system are disproportionately poor, Black and Latinx, more likely to have a developmental disability, a mental health condition, and be disconnected from school. They are, by all accounts, among the most vulnerable youth in our communities. These young people are at even greater risk than youth as a whole for waiving rights they do not understand.[17] Without extra legal protections in place, those who already face discrimination and disadvantage are the ones most likely to be unable to benefit from their constitutional rights in interrogation contexts.

Although research makes clear that youth, as a whole, are unable to effectively navigate interrogation on their own, police can question a child without a parent or guardian present. While New York's Raise the Age law calls for "immediate" parental notification prior to the waiver of Miranda rights, notification has been deemed "immediate" by police in New York City even if, in fact, significant time passes in police custody. This passage of time can result from the fact that the law requires only that "reasonable efforts to notify" a parent or guardian are made.[18] In addition, police are not required to explain to the child and the child's parent or guardian what it is the police want to question the youth about, and police do not have to tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses. Notably, research shows that even when parents are present, they themselves often have serious misconceptions about Miranda rights.[19] Even when parents do understand a youth's rights, they are often ill-equipped to serve in a protective capacity during interrogation, as research shows that parents themselves are vulnerable to police pressure and, most of the time, either encourage their children to confess or do not speak or participate at all.[20]

It is important to consider the context of potential interrogation. Children under the age of 18 are subjected to the same conditions as adults with regard to pre-arraignment detention. In New York State, this may mean up to or exceeding 24 hours in custody subjected to interrogation,

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Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 148–49 (2003); Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 LAW & HUM. BEHAV. 181, 186 (2014); Emily Haney-Caron, Naomi E.S. Goldstein, & Constance Mesiarik, *Self-Perceived Likelihood of False Confession: A Comparison of Justice-Involved Juveniles and Adults*, 45 CRIM. JUST. & BEHAV. 1955 (2018).

[17] Lower academic engagement and achievement, higher suggestibility, lower socioeconomic status, and diagnosis with some mental health conditions are all associated with poorer understanding of Miranda rights. Kaitlyn McLachlan et al., *Examining the Role of Interrogative Suggestibility in* Miranda *Rights Comprehension in Adolescents*, 35 LAW & HUM. BEHAV. 165, 167 (2011); Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003); Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 690–94 (2008).

[18] Fam. Court Act § 305.2(4).

[19] Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 689 (2008). In one study of parents of justice-involved youth, a majority of parents believed youth had legal protections during interrogation that they actually do not have. *Id*.

[20] Jodi L. Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals*, 29 LAW & HUM. BEHAV. 253, 261 (2005).

potentially without a parent or guardian present. In most cases, the entirety of this period is spent in police custody without access to legal counsel.

III. SUMMARY OF THE LEGISLATION

The proposed legislative amendment defines key terms in the current law and provides additional safeguards to protect the Constitutional rights of children. The amendment defines when the police must contact the youth's parent or guardian, and requires that a youth subjected to custodial interrogation first consult an attorney. The remedy for violation of the law would be suppression of any statement taken. The proposed revisions affect Article Three of the Family Court Act as well as the corresponding provisions of Article Seven of the Family Court Act and the Criminal Procedure Law addressing youth under 18 years old. The effect is to protect youth who may be subject to delinquency or Persons in Need of Supervision (PINS) proceedings in family court, or adult prosecution in criminal court.

As discussed above, police are required to Mirandize every child subjected to a custodial interrogation. The proposed amendment attempts to ensure that any waiver of those Miranda rights is knowing, intelligent and voluntary, as required by the U.S. Constitution. Currently, police must only read children their Miranda warnings and ask whether they understand and waive those rights. Attorney consultation aims to ensure that children have a full and true opportunity to understand the complex Constitutional rights they would be waiving before they do so. Requiring that youth in police custody consult with an attorney prior to waiving their Miranda rights, either in person, by telephone, or by video conference, responds directly to what we know about children's developmental limitations and poor decision making. This would require ensuring that attorneys are available to all youth in police custody state-wide.

As discussed above, under current law, if an officer takes a child into custody, the parent, or person legally responsible or person with whom the child resides, must be immediately notified.[21] However, "immediate notification" is not defined in the existing law, leaving officers without guidance. The proposed legislation clarifies that the officer must notify the child's caretaker *before* that child can be taken from the scene of the arrest to the police precinct.[22] This definition will assist police in complying with the law, reduce the amount of time a child is in custody without the support of a parent or other adult.

Under the proposed legislation, the police are not foreclosed from interrogating a juvenile when the child is not in custody. Youth are only entitled to Miranda warnings prior to a custodial interrogation. This legislation does not change the law defining custody. It does not affect non-custodial interrogations: those where a reasonable child would feel they are free to end the interrogation and leave. If, after consulting an attorney, a child wants to waive their Miranda rights, they can still do so. This legislative amendment aims only to ensure that such waiver is in fact knowing, voluntary and intelligent, as the Constitution requires. With the additional guidance and

[21] F.C.A. §305.2(3).

[22] The bill provides guidance about what an officer must do if he or she does not reasonably believe the parent or guardian will appear, e.g., F.C.A. §305.2(4)(b).

safeguards in the proposed amendment, children's Constitutional rights will be better protected and police will have better guidance on what the law requires of them.

While a majority of Committee members voted to support the bill, some members raised that requiring juveniles to speak with an attorney prior to police custodial interrogation might interfere with police investigations, hamper prosecutions and impact public safety. In examining the racial impact of the legislation, some members noted that a potential reduction in public safety impacts communities of color because they reflect the majority of crime victims. These are, of course, important considerations in any criminal justice reform. While the majority of the Committees support the bill as proposed, a concern was raised that the bill should only address access to counsel and equitable safeguards for all youth regarding their Fifth Amendment right against self-incrimination during custodial interrogations without addressing the related issue of when a child should be released to the custody of a parent or guardian.[23]

IV. CONCLUSION

Our current interrogation law fails to protect children, despite their well-known vulnerabilities and recent legislative reforms that have recognized this fact and centered their developmental stage in approaches to public safety like Raise the Age. The effect of our current approach is disproportionately visited upon Black and Latinx youth. New York's youth justice system continues to be marked by deep racial and ethnic disparities from arrest to case resolution.

An attorney can assist youth in understanding their legal rights and the potential consequences of waiving those rights. Youth may have never experienced police questioning, yet interrogators are trained, experienced professionals. In this context it is difficult to imagine that an adolescent would be able to provide a knowing, intelligent and voluntary waiver in the absence of speaking with an attorney. The presence of a parent or guardian does not mitigate this concern. Current research casts serious doubt on the proposition that parents can effectively advocate for their children or function as substitutes for trained legal defense counsel. While the majority of the Committees' members support the bill as proposed, some members raised that, based on a survey of jurisdictions that have implemented similar safeguards for youth, ensuring necessary funding in support of this legislation is important to ensure that all youth are represented at the time of custodial interrogation and that conflict counsel[24] are available to assist youth and families in a meaningful way.

Finally, we do not accept that the current approach makes us safer. Crime victims are not served by a policy that produces such a high risk for false information, which can derail legitimate investigative practice and permit those who are responsible for offenses to escape consequences. Balancing the individual and system impacts of the legislation from a number of positions within

[23] Specifically, a concern was raised that the bill's proposed changes to Subdivision 5 and 6 of section 305.2 of the family court act would require the release of youth alleged to have committed crimes other than designated felonies in the absence of special circumstances. The language at issue is identical to the current law governing release when family court is not in session. Neither the current law nor the bill defines special circumstances in this context.

[24] Here, 'conflict counsel' refers to attorneys who are unaffiliated with counsel for a co-respondent or co-defendant. This might occur where there are two youth charged, and the same counsel cannot represent both as clients because of conflicts of interest in the representation.

juvenile and adult criminal justice system, the Committees support the proposed legislation and urge its enactment.

Juvenile Justice Committee

Children and the Law Committee

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**This report was first issued in June 2021 during the terms of the following committee chairs: Maura Keating and Jennifer Ruiz, Co-Chairs, Juvenile Justice Committee; and Melissa J. Friedman and Rachel Stanton, Co-Chairs, Children and the Law Committee.*