

Right to Advice of Counsel for Youth

Sen. Steans

During Homicide Interrogation

SB2351

Providing Counsel During Interrogation for Minors Charged with Murder:

This bill allows the use of statements made without the provision of counsel by minors in murder cases in juvenile court, but creates presumption against use to try youth as adult. Under the provisions of this bill, if police choose to question a youth without an attorney in a murder case, then any resulting statement will be presumed inadmissible against the minor in adult court.

Current Law Regarding Counsel for Juveniles:

Current law prohibits the use of statements made without counsel for juveniles under the age of 13 during interrogation for murder and sex offenses. This prohibition applies to the use of statements in both juvenile and adult court proceedings. However, there is no requirement for counsel for minors over the age of 13 when questioned on a murder charge. The numbers are few (in 2007 there were 43 juveniles arrested for murder in Illinois, according to CJIA), but the need for counsel is great.

60 Minutes recently labeled Chicago the False Confession Capital of the Nation – this bill would address the concerns raised by 60 Minutes.

Why This Bill is Necessary:

Risk of trial in adult court: Minors age 13 - 17 have more complex legal decisions to make than adults charged with these serious offenses. Statements made by minors accused of these serious offenses place them at the highest risk of adult-type punishments. Transfer provisions are so complex that it requires assistance of counsel to determine the consequences of a statement.

Understanding application of accountability: This bill will also affect minors charged by accountability who need the assistance of counsel to determine whether accountability provisions may apply.

Juvenile brains less able to understand rights: Brain research reveals children are less competent than adults to make legal decisions and may not understand Miranda.

- Only 20.9% of minors, as compared to 42.3% of adults, understand the *Miranda* warnings.
- 63.3% of minors, as compared to 37.3% of adults, fail to understand at least one “critical” word in the standard *Miranda* warnings.

- Among minors, the least understood warning is the right to consult with an attorney prior to responding to police questioning.
- 62% of minors believe that a judge can penalize them for exercising their right to remain silent.
- 96% of 14 year olds do not have an adequate understanding of the consequences of waiving their rights.

Last year, Cook County vacated the convictions of eleven men. Nine African American children were wrongfully convicted and served a total of 145 years in prison for rape/murders they did not commit. Seven of those nine children falsely confessed to these crimes and these confessions were used to obtain their convictions. If this bill had been law at the time of these convictions, none of these children would have been in prison.

Not passing this law is an expensive decision. On January 26th, 2012, another child who was wrongfully convicted for murder in Illinois was awarded \$25 million by a jury.

2012 Supporters of this bill include:

Juvenile Justice Initiative;
Illinois Parent Teacher Association
ACLU of Illinois
Enlace Chicago
John Howard Association
Project Nia
Sankofa

The Chicago Bureau

Roster of Exonerations Shows the Particular Vulnerability of Juveniles Under Questioning »

December 31, 2012 Joyce Lee

Carl Williams was 17 years old when Cook County police arrested him in January of 1994. Williams was charged with two counts of murder and one count of sexual assault. He confessed to the crime after a police interrogation and along with four co-defendants, Williams was sentenced to life imprisonment without parole in 1996.

Now, 18 years later, Williams, who claims he is innocent, has been granted an evidentiary hearing and a re-sentencing by the 1st District Appellate Court of Illinois. "The case of the wrong Carl" is a prime example of change in the way Illinois judges view confessions, said Steven Drizin, director of the Center on Wrongful Convictions – and co-founder of the Center on Wrongful Convictions of Youth - at the Northwestern University School of Law.

The Cook County justice system interrogates its juveniles as they do its adults. And the center is quite certain that of the 100-plus juveniles currently serving life without parole sentences in the state, many of their convictions were based on false confessions.

Police found two of Williams' co-defendants, Anthony Brown and Zarice Johnson, in a car with 'Larry McGee,' whose real name was later revealed as Clinton Taylor, a day after the murder on Jan. 14, 1994. Police who had already arrested the other two co-defendants only knew that the fifth perpetrator's name was 'Carl.' Police demanded McGee tell them where 'Carl' was and threatened to implicate him in the crime, said Michael Sklar, Williams' attorney. So McGee told them where to find the only Carl he knew, Carl Williams, Clinton Taylor, McGee's real name, wrote in an affidavit obtained years later by Sklar.

Williams was arrested at half past 8 a.m. on that same day. He was brought to a small, windowless interrogation room in the South side of Chicago and handcuffed to the wall, Sklar said, where he was interrogated until 5 p.m. without food or drink.

"[Williams] said he was yelled at and accused of being involved in the crimes, and then towards the end of the interrogation, he claims he was physically abused, hit and knocked to the ground by the interrogating officers," Sklar said. Several hours later, at 11:15 p.m. Williams signed a confession – a hand written one by the assistant state's attorney, which, according to Williams, went on for 10 pages and was ultimately a false admission.

"I think at least in Illinois, judges can no longer pretend that false confessions don't exist," Drizin said. "There have just been too many cases of proven false confessions and it's beginning to challenge the long-held opinions of some who are on the bench. And the Williams case is a prime example. One of the justices [Patrick Quinn], during oral argument, commented that his views [on] false confessions are evolving."

The drama – and trauma – of the Carl Williams case is hardly an isolated occurrence – one in fact that seems so common in Illinois and Cook County that '60 Minutes' recently ran a segment on cases, police and prosecutors here, dubbing Chicago as the 'capital' of false confessions. It's a charge that Cook County State's Attorney Anita Alvarez responded to quickly, and angrily, in letters to CBS News and various news organizations.

But there's no denying this: The past few years have highlighted the role of false confessions in juvenile convictions. In the Dixmoor 5 case, in which five juveniles were convicted with the 1991 murder and rape of a 14-year-old girl in the Chicago suburb, all five of the suspects had their convictions vacated and the group was cleared of the charges after DNA evidence exonerated them and their confessions were deemed false.

In the Englewood case, which happened in one of Chicago's most bloody and notorious neighborhoods, four juveniles – ages 15, 16, 17 and 18 – were convicted in 1995 with the murder and rape of 30-year-old Nina Glover, who was slain four months earlier. All four had their convictions overturned on Nov. 16, 2011– also because of DNA evidence that showed the semen on Glover's body belonged to a man with a long history of violence against sex workers and what were deemed false confessions.

"There was a time, decades, where I would completely agree with you...based on personal experience that people don't confess to heinous murders," said Justice Patrick Quinn during oral arguments to the prosecutor handling the case. Noting many changes have come with the advance of DNA testing and other science, he continued: "Why people confess to murdering and raping people, I have no idea, but they do. And it's just a fact of jurisprudence that people do falsely say that they did terrible acts when they're lying about it."

And Drizin charged the problems that forced Williams and other juveniles to make false confessions. – problems he and others believe are systematic – still exist, and quite widely.

The reasons, he and other experts say, are many. But chief among them, perhaps, is that Chicago police are not trained to interrogate juveniles, who an increasing number of studies and even the U.S. Supreme Court have said are developmentally different from adults, and that electronic recordings, which can help judges, lawyers and police officers later determine if the interrogators had given enough detail for a false confession to be made, is only required by Illinois law of homicide interrogations – not all juvenile cases.

“When you have a highly confrontational interrogation in which police officers accuse suspects of lying, themselves lie, about the evidence against the suspect, and suggest to suspects that they will be treated more leniently if they can confess than if they don’t, you’re going to get a large number of false confessions from kids,” Drizin said.

The prefrontal cortex of the brain regulates judgment, problem-solving and stops impulsive behavior when an individual is faced with stress or fear. The prefrontal cortex of children and youth are less developed than in adults, according to, among others, the International Association of the Chiefs of Police (IACP), a nonprofit for police executives founded in Chicago.

In a joint collaboration between the IACP and the Center on Wrongful Conviction of Youth, several standards were established in a brief for police interrogation of juveniles. Among other suggestions, police need to explain the juveniles’ Miranda Rights in simple terms, as the Miranda Rights requires a tenth-grade reading comprehension, and, even then, the juvenile may not understand their rights fully.

The interrogation can’t last more than four hours, especially not at night as they often had. After the first hour of interrogation, with each passing hour comes an increased chance of unreliable testimony and false confessions, according to experts. Police can’t use deception, threats or leniency as interrogation tactics as they lead juveniles to believe they have no choice but to confess to a crime they didn’t commit or juveniles begin to have doubts about their own innocence.

In a 2005 study of 340 individuals wrongfully convicted from 1989 to 2003 by Samuel R. Gross, a professor at the University of Michigan Law School, **42 percent of juveniles had made false confessions while only 13 percent of adults** in the study had done so.

Police across Cook County, which includes Chicago and is among the largest court systems in the country and world, need to be trained in interrogating juveniles and adopt measures to ensure false confessions aren’t made, said Joshua Tepfer, project director at the Center on Wrongful Convictions of Youth. Training police in interrogating juveniles is “the best thing that can be done,” Tepfer said in a recent opinion piece in the Chicago Sun Times. Such measures include using simpler language, avoiding deception, and using electronic recordings of interrogations. In 2005, lawmakers in Illinois passed a law requiring interrogations in homicide cases are electronically recorded—video or audio.

The law, should be extended to all juvenile cases, and not just homicides, Drizin said. Recordings serve to prevent police misconduct and also to help prosecutors, police, jurors, judges determine afterwards whether the defendant’s confession was a false one. Even a well-meaning police officer or prosecutor can give away facts and suggest answers in an intense interrogation, which the juvenile suspect will, all too frequently, repeat back to investigators during the confession.

But, “recording is not a panacea,” Drizin added in an email. “False confessions will continue to exist as long as police officers continue to interrogate suspects as if they were adults.”

Instead, juvenile suspects should be required to have counseling during interrogations, Drizin added. Juveniles often do not understand the consequences of their answers or their rights when they’re being interrogated. The presence of a parent, guardian, lawyer or even a youth officer – a police officer asked to switch roles and become an advocate for the juvenile during the interrogation – would be a friendly presence to the juvenile and decrease the chance of a false confessions, according to the IACP and CWCY brief.

The U.S. Supreme Court ruled in 1962 in the case of *Gallegos v. Colorado*, which involved the five-hour-long relay interrogation of a 15-year-old boy in the middle of the night on the murder of an elderly man that “a lawyer or an adult relative or friend could have given the petition the protection which his own immaturity could not.”

Drizin says he hopes police and prosecutors across Cook County, will adopt the measures outlined police needs to adopt when interrogating youth in the brief done by IACP and CWCY.

Such protections and measures could have helped Williams 18 years ago when he was subject to over seven hours of interrogation without food or water, and ended in what Williams maintains was a false confession.

Williams, who is now 36, appealed his ruling only to have his conviction affirmed by the state appellate court. He then petitioned twice at trial courts to have his convictions vacated, citing a warrantless arrest and withholding of evidence favorable to Williams

by police. In his second petition, Williams was able to obtain affidavits from two of his co-defendants stating that when the police showed the co-defendants a Polaroid photo of Williams, the co-defendants had told the police Williams wasn't the fifth perpetrator.

With each petition the court sided with the state. The third petition filed by Sklar and Williams resulted in the evidentiary hearing and resentencing. The ruling was a hard win, but brief victory after almost two decades of litigation battles. Williams is due a re-sentencing hearing regardless of whether the evidentiary hearing is successful or not because Williams was a juvenile when he was sentenced to life without parole. The appellate judge ruled that the U.S. Supreme Court's ruling in *Miller v. Alabama*, in which the court this summer ruled that juveniles cannot be sentenced to life imprisonment without parole – no matter the charge facing them, including murder, should be applied retroactively to Williams' case.

Still, having his conviction vacated is not the same as being completely clear. Williams, in fact, is far from having his conviction overturned. He and Sklar are waiting, not for the evidentiary hearing, but for the state to decide if it will file a Petition for Leave to Appeal with the Illinois Supreme Court. Then, if the state's high court decides to take the appeal, the ruling in favor of Williams could be overturned. If the appeal is not taken, then a hearing date will be scheduled. Williams could be months to a year away from his evidentiary hearing, Sklar said.

"[Williams] is incredibly calm and he's hopeful," Sklar said. "But he's realistic."

Visit: <http://www.chicago-bureau.org/?p=1302>

Excerpt [Capitol Fax blog](#)

Alvarez complains about "60 Minutes" story

Friday, Dec 14, 2012

* Cook County State's Attorney Anita Alvarez is miffed about a story aired by "60 Minutes" last Sunday which portrayed her in a harsh light...

Cook County State's Attorney Anita Alvarez called a recent "60 Minutes" report on false confessions in the Chicago area a "misrepresentation of the facts" and sent a letter to the chairman of CBS News.

Byron Pitts interviewed Alvarez six months ago for the segment "Chicago: The False Confession Capital," a piece about Cook County leading the nation in false confessions that aired nationally Sunday night on CBS. It featured high-profile murder cases where teenage boys falsely confessed and were later exonerated by DNA evidence.

* **But here's the problem** with Alvarez's protests. She had an opportunity to support a common sense change in the law this year which would've probably prevented the false convictions of the Dixmoor Five.

A bill was introduced in February which would've likely prevented some confessions by juveniles without the benefit of counsel from being used in prosecutions of those minors as adults...

Provides that an oral, written, or sign language statement of a minor who, at the time of the commission of the offense was under the age of 17 years, made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the minor in any criminal proceeding, for an act that if committed by an adult would be homicide or would be driving under the influence that was the proximate cause of death of another person unless the minor was allowed to consult with and have access to counsel throughout the entire custodial interrogation.

Chicago Muckrakers

Cook County leads the nation in exonerations while price of justice grows

By **YanaKunichoff**, January 16, 2013 at 6:45 am

We might need to add \$10.25 million to Chicago's long tab of legal settlements paid out to people who've been wrongfully convicted.

The city's council's Finance Committee on Tuesday approved the payment to Alton Logan, a man who spent 26 years behind bars for murder while police swept evidence under the rug that he was innocent, the *Chicago Tribune* [reported](#).

Logan is just one of 83 people wrongly convicted in Cook County over the past three decades. That figure has earned the county the distinction of being the "[false conviction capital](#)" of the nation because more people have been exonerated here than in any other jurisdiction. As we [reported](#) in our latest issue, Dallas and Los Angeles counties take second and third place but have far fewer cases:

Cook leads the nation

More people have been exonerated in Cook County than in any other jurisdiction in the country since 1989.

Number of exonerations



46% of those exonerated were convicted since the 1990s.

Source: National Registry of Exonerations; analyzed by *The Chicago Reporter*.

Those cases played out in Cook County's criminal courts, which is a place known for its ever-revolving door of defendants and public defenders who carry crushing caseloads. What do we mean by crushing? We broke down the numbers:

Carrying a hefty load

Cook County ranks second out of the nation's top three judicial circuits for its volume of cases but takes the lead when it comes to the average caseload of its public defenders.

	Total cases	Avg. load
Law Office of the L.A. County Public Defender	353,812	472
Law Office of the Cook County Public Defender	251,135	522
The Legal Aid Society (Brooklyn, N.Y.)	234,606	430

Source: Inter-University Consortium of Political and Social Research at the University of Michigan; analyzed by *The Chicago Reporter*.

Read more about how the criminal justice system has changed in the past four decades in our [new 40th anniversary issue](#) of the Reporter. Reporter Angela Caputo contributed to this report.

On Thursday, the full City Council will put Logan's settlement to a vote. If it is approved, the \$10.25 million payout will be just a drop in the bucket compared with how much Cook County taxpayers are paying to cover the cost of criminal justice.

In the 40 years since *The Chicago Reporter* launched, spending on the county's courts, police and jail alone have jumped from \$45 per person each year to \$222.

High price of justice

Per-capita spending on the criminal justice system in Cook County has grown five fold since 1969.

	Total	Per capita	In 2012 \$
1969	\$39 m	\$7	\$45
2009	\$1.1 b	\$205	\$222

Sources: U.S. Department of Justice, U. S. Department of Commerce; analyzed by *The Chicago Reporter*.