

Juvenile Justice Initiative

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Lawyers for All Children During Interrogation

IN SUPPORT OF SB 3321 [Sen. Robert Peters - Sen. Mattie Hunter]

What the Bill Does

This bill raises the age requiring counsel from 15 to 18 to **protect all children during interrogation by requiring that they have a lawyer** with them throughout a custodial interrogation.

Why This Is Needed

Juveniles aged 13 to 18 are at risk of prosecution in adult court. Even being at or near the scene of an offense could trigger transfer provisions that send them automatically to adult court so they need a lawyer because **juveniles have more difficult legal decisions to make than adults in custodial interrogation.**

Statements by juveniles could trigger automatic or discretionary adult prosecution/sentencing under the extremely complex juvenile transfer laws (automatic transfer, presumptive transfer, discretionary transfer, extended jurisdiction juvenile) –

- **Automatic transfer** – automatically tried in adult court if child is 16 or older and charged with murder, aggravated criminal sexual assault or aggravated battery.
- **Discretionary transfer** – any child aged 13 or older charged with any offense could be the subject of a petition to transfer the case to adult court.
- **Presumptive transfer** – adult sentencing could apply if proof of probable cause of certain offenses.
- **Extended Jurisdiction Juvenile (EJJ)** – sentenced as juvenile but with suspended adult sentence that could be triggered by minor violations.

Juvenile brains are less able to understand their rights: Brain research reveals children are less competent than adults to make legal decisions and may not understand their rights under *Miranda*. (See Thomas Grisso, *Juveniles' Capacities to Waive Miranda Warnings: An Empirical Analysis*, 68 Calif. L. Rev. 1134-1166 (1980).

What About Parents? Aren't Parents With Their Child During Interrogation?

No – all our laws require is that parents be told their child has been arrested and where their child is being held – nothing more. **There is no statutory requirement that parents be allowed to see and speak with their child. And PARENTS ARE NOT A SUBSTITUTE FOR A LAWYER – the laws of transfer to adult court and accountability are too complex for non-lawyers to navigate.**

What About Videotaping? Don't We Require Videotaping of Interrogations of Children?

Yes, videotape requirements were put in place over a decade ago after a series of **investigations revealed coercive tactics being used to elicit confessions from children as young as 10.**

Also, all videotaping does is record the interview– but it does not address the problem that **children do not have the capacity to UNDERSTAND the complex laws that could trigger adult trial/sentencing.**

This Is Not a Burden on the System

- **COOK** – The public defender already has a unit w 24/7 legal support for adults/juveniles in interrogation.
- **DOWNSTATE** – Public defenders/private lawyers can accommodate the small number of cases involved. [in July of 2023, reports reveal only 305 admissions to detention outside Cook County and only a quarter of those were for “violent” offenses.....so assuming custodial interrogation in every alleged “violent” offense by a juvenile outside of Cook, that’s @75/month or **2.5 per day outside of Cook in IL.**

POLICE CHARGED W OFFENSE GET INTERROGATIONS AT REASONABLE TIME OF DAY & WITH TIME TO CONTACT LAWYER - CHILDREN NEED AS MANY Protections as Police have during interrogation - In IL, **police who are accused of a crime have significantly greater protections than children**, including being informed in writing of the nature of the charge, interrogations during a reasonable time of day, of reasonable duration, written *Miranda* warnings, and a reasonable amount of time to obtain counsel when under investigation for misconduct. See (50 ILCS 725/) Uniform Peace Officers' Disciplinary Act.
<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=736&ChapterID=11>

Will This Stop Police From Solving Cases? NO – The experience in England, which has required lawyers for children and adults during interrogation for over twenty years, reveals lawyers actually help by exchanging critical information (alibi evidence, for example) – and by eliminating false confessions.

Will This Interfere With Investigations?

NO – investigatory questioning (questioning witnesses at the scene of an offense) is an exception to the MIRANDA rule as witnesses are not deemed to be “in custody” for purposes of Miranda. This requirement of a lawyer only applies when a child is in custody and Miranda warnings apply

SEE the Chicago Sun Times editorial supporting the bill and related stories:

BILL REQUIRING ATTORNEYS WHEN POLICE INTERROGATE MINORS IS THE RIGHT MOVE

<https://chicago.suntimes.com/editorials/2024/02/12/police-juvenile-interrogations-lawyers-miranda-rights-robert-peters-editorial>

<https://www.wbez.org/stories/planned-bill-to-require-lawyers-in-juvenile-interrogations/046016f0-e37e-42da-8bda-389d61b34d3e>

<https://www.wbez.org/stories/cook-county-states-attorney-candidates-on-requiring-lawyers-for-kids/41a0adaf-d5b5-4efa-8d23-e5c524612311>

<https://www.wbez.org/stories/lawyers-for-kids-would-be-required-under-new-illinois-bill/356bd09b-d717-4391-ab8e-4bd026a3c2e0>