

MEMORANDUM IN SUPPORT
S.1099-A/A.8923-A

The Schuyler Center for Analysis and Advocacy urges the Legislature to pass S.1099-A/A.8923-A, to prohibit police from interrogating a child under the age of 18, who is in their custody, until the child has consulted with an attorney.

The Schuyler Center for Analysis and Advocacy is a 151-year-old statewide, nonprofit organization dedicated to policy analysis and advocacy in support of public systems that meet the needs of disenfranchised populations and people living in poverty.

It is now well documented that false confessions occur more frequently than has been commonly believed, and that children are more vulnerable to the pressures that can lead to false confessions, like intimidation, deceptive methods of questioning and other coercive practices.¹ New York is home to one of the most infamous examples of children being coerced into false confessions in the 1989 case of the “Central Park 5” – now referred to as the Exonerated 5.² The story of these five innocent teenagers, whose coerced confessions led each to suffer lengthy imprisonment for a crime they did not commit, serves as a somber reminder of the dire need for due process protections and safeguards to protect the civil rights of children. Yet, New York police are still allowed to use many of the same coercive techniques that led to the wrongful conviction of the Exonerated 5. Specifically, it remains lawful under current New York law to do the following:

- Interrogate a child without a parent or guardian present.
- Lie to a child in order to coerce them to waive their *Miranda* rights.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
- Police are not required to explain to the child – or the child’s parent or guardian – what the police want to question them about.
- Police do not have to tell the child, parent or guardian that the child can stop answering questions any time they choose.

Approximately 90 percent of children waive their *Miranda* rights.³

Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right.⁴ Young people who come into contact with law enforcement also have higher rates of mental illness and cognitive deficits.⁵ Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of *Miranda* rights becomes a myth. It should be no surprise that children falsely confess three times more than adults.⁶

While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, most children will say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated.⁷ The Exonerated 5 were not an isolated case, but rather an example of what happens all too often.

On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are Black and Latinx children from over-surveilled schools and socioeconomically disadvantaged communities.⁸ The result is a disproportionate number of Black and Latinx children are interrogated by police without the assistance of an attorney, while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low-income communities, the protections of *Miranda* are illusory.

S.1099-A /A.8923-A would provide protection our children need. When police determine that interrogation of a child is necessary, this bill would require that the child first consult with counsel before any questioning can take place. Consultation with a lawyer would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the child.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

April 2, 2024

¹ Quiroz, N. "Five Facts About Police Deception and Youth You Should Know." The Innocence Project. May 13, 2022. <https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers/>

² The Central Park Five: About the Case. Public Broadcasting Service (PBS). n.d. <https://www.pbs.org/kenburns/the-central-park-five/about-the-case>

³ Laird, Lorelei. "Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them." American Bar Association. August 2016.

https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights-but-do-kid/.

⁴ Zelle, H., Romaine, C. L. R., & Goldstein, N. E. S.. "Juveniles' Miranda comprehension: Understanding, appreciation, and totality of circumstances factors." *Law and Human Behavior*, 39(3), 281–293. (2015). <https://doi.org/10.1037/lhb0000116>; see also <https://psycnet.apa.org/record/2014-55451-001>.

⁵ Naomi E.S. Goldstein, Emily Haney-Caron, Marsha Levick, & Danielle Whiteman, *Waving Good-Bye to Waiver:*

A Developmental Argument against Youths' Waiver of Miranda Rights, 21 LEGIS. & PUB. POL'Y 1, 24-28 (2018).

⁶ National Registry of Exonerations, *Age and Mental Status of Exonerated Defendants Who Falsely Confessed*, at

<https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20FINAL%20CHART.pdf>.

⁷ Zelle, et al., *supra*.

⁸ "Racial and Ethnic Disparities in Juvenile Justice Processing: Literature Review: A product of the Model Programs Guide." Office of Juvenile Justice and Delinquency Prevention. March 2022.

<https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity>.