



# CHIEF DEFENDERS ASSOCIATION OF NEW YORK

## **Memorandum of Support for Requiring Consultation with Counsel Before Police Interrogate Children (S.2800-B Bailey/A.5891-C Joyner)**

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The Chief Defenders Association of New York (CDANY) submits this memorandum calling for the legislature to pass S.2800-B/A.5891-C, to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions. CDANY is a membership organization of the appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices and Administrators of Assigned Counsel Panels throughout New York State.

### **Current Law**

The Netflix series "When They See Us"—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. Still, New York law continues to fail to protect children under the age of 18. California and the state of Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why the Chief Defenders Association of New York supports S.2800-B/A.5891-C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- 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 and the child's parent or guardian what it is the police want to question the youth about.
- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.
- Even if present, a parent or guardian may be unable to protect their child's right to remain silent because they do not understand the right either, the

stress of their child's situation renders them unable to think clearly, or they have conflicting interests.

**90% of youth waive their *Miranda* rights.** 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. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in "When They See Us" were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800-B/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights 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.

### **The Proposed Legislation**

**S.2800-B/A.5891-C would provide the needed protection.** When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

For more information, please contact:

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