



## Memorandum in Support

### COMMITTEE ON CHILDREN AND THE LAW

Children #1

March 30, 2023

S.1099  
A.1963

By: Senator Bailey  
By: M of A Joyner  
Senate Committee: Finance  
Assembly Committee: Ways and Means  
Effective Date: April 1, 2024

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

**LAW & SECTIONS REFERRED TO:** Sections 305.2 and 724 of Family Court Act; Sections 140.20, 140.27 and 140.40 of Criminal Procedure Law

#### **THE COMMITTEE ON CHILDREN AND THE LAW** **SUPPORTS THIS LEGISLATION**

The Committee on Children and the Law (the Committee) supports S.1099/A.1963, legislation entitled “The Protection of Children During Custodial Interrogation Bill”. The bill would mandate that children under the age of 18 who are questioned while in custody following arrest consult with an attorney, in person, by telephone, or via video conference prior to questioning or waiving rights. A failure to consult would result in the suppression of any confession or admission. The bill would also strengthen current provisions regarding the notification and presence of a child’s parent or other legal guardian during the child’s interrogation.

The fact that confessions or out-of-court admissions by alleged adolescent offers are highly unreliable is well known. In the past twenty years multiple cases of false confessions have been documented. The local example is the Central Park case. Similar cases have been documented nationally. The rate of false confessions by youths is very alarming.

In New York, and nationally, statutes to protect children during custodial questioning have been enacted. Our State has recently mandated the videotaping of custodial questioning. However, the problem is deeper. Children, who are neurologically less developed than adults, and are readily intimidated by authority, do not comprehend, or have only a limited comprehension, of Miranda, regardless of efforts to adapt the Miranda warnings. While it is imperative for a parent or a responsible adult to be present, some are equally unable to comprehend Miranda, while others are unable to do so, due to the emotionally charged nature of a custodial interrogation or a conflict of interest. Hence the need for the involvement of legal counsel before the commencement of questioning to safeguard children during interrogations. California and Washington State require the assistance of counsel, similar to the New York bill, via telephone, video, or in person. Other states are considering similar measures. Counsel is the key to minimizing the danger of false adolescent confessions.

Based on the forgoing, the NYSBA’s Committee on Children and the Law **SUPPORTS** this legislation.

---