



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 50

130th General Assembly
(As Introduced)

Reps. Heard and McGregor, Stinziano, Ramos, Boyd, Huffman, Strahorn, Phillips, Reece, Antonio, Mallory, Rogers, Ashford, Letson, Pillich

BILL SUMMARY

- Requires that a child be informed of specified rights before being questioned concerning a charge that the child committed an act that would be an offense if committed by an adult and on which the child was taken into custody or deprived of freedom of action in a significant way by a law enforcement officer, court employee, or employee of the Department of Youth Services.
- Prohibits the above described custodial interrogation of a child if the child indicates that the child does not wish to be questioned, the child wishes to speak with the child's custodial parent, guardian, or custodian or to have the person present, or the child wishes to consult an attorney before submitting to questioning.
- Permits a court to admit into evidence against the child any statement made during a custodial interrogation if it finds that the child waived any of the rights knowingly, willingly, and understandingly and requires a court to consider specified circumstances to determine if the child waived the rights knowingly and voluntarily.
- Provides that information gained from noncustodial questioning of a child by a public school administrator or teacher concerning a wrongful act committed on public school property is admissible into evidence against the child.
- Precludes the admission into evidence against the child of any admission or confession resulting from a child's custodial interrogation unless it was made in the presence of the child's parent, guardian, custodian, or attorney.
- Generally precludes the admission into evidence of any admission or confession resulting from a child's custodial interrogation if a parent is the alleged victim or

alleged codefendant of the child's act that would be an offense if committed by an adult.

- Specifically requires that a child who is alleged to have committed certain acts that would be any of specified serious offenses be represented by an attorney during the entire custodial interrogation period and provides that this right to counsel may not be waived.
- Requires a law enforcement agency to make an audio or audio and visual recording of any custodial interrogation of a child conducted at a place of detention or, if feasible, at a place other than a place of detention and specifies the circumstances in which the requirement does not apply.

CONTENT AND OPERATION

Rights of child held in custody or deprived of freedom of action; prohibition

The bill requires that before a "child" (see "**Definitions**," below) is questioned about anything concerning a charge that the child allegedly committed an act that would be a criminal offense if committed by an adult and on which the child was taken into custody or deprived of freedom of action in any significant way by a law enforcement officer, a court employee, or an employee of the Department of Youth Services (DYS), the person asking the questions must inform the child, in the child's own language, of the following rights:¹

(1) That the child has the right to an attorney;

(2) That if the child is unable to pay for an attorney and if the child's parent, legal guardian, or legal custodian has not provided an attorney, one will be appointed;

(3) That the child is not required to say anything and that anything the child says may be used against the child;

(4) That the child has a right to communicate with the child's parent, legal guardian, or legal custodian, whether or not that person is present and, if necessary, reasonable means will be provided for the child to do so;

(5) That even if the child's attorney is not present or has not yet been appointed, the child has the right to communicate with the child's attorney and, if necessary, reasonable means will be provided for the child to do so.

¹ R.C. 2152.05(B).

The bill prohibits any person from questioning a child who has been taken into custody or deprived of freedom of action in a significant way as described above and who has indicated in any manner: (1) that the child does not wish to be questioned, (2) that the child wishes to speak with the child's custodial parent, guardian, or custodian or to have that person present, or (3) that the child wishes to consult an attorney before submitting to any questioning.²

Waiver of child's rights – factors to be considered; admission of child's statement into evidence

If a child waives any of the rights set forth above, the bill permits a court to admit into evidence against the child any statement the child made during a "custodial interrogation" (see "**Definitions**," below) if the court finds that the child knowingly, willingly, and understandingly waived the child's rights. In determining whether a child knowingly and voluntarily waived any of those rights, the court must consider all of the circumstances of the waiver, including the following:³

(1) The child's physical, mental, and emotional maturity;

(2) Whether the child or the child's parent, guardian, custodian, or attorney understood the consequences of the child's statement;

(3) Whether the child and the child's parent, guardian, or custodian had been informed of the act with which the child was charged or of which the child was suspected;

(4) The length of time the child was held in custody before consulting with the child's parent, guardian, or custodian;

(5) Whether there was any coercion, force, or inducement used in obtaining the statement;

(6) Whether the child and the child's parent, guardian, or custodian had been advised of the child's right to remain silent and to the appointment of counsel.

Under the bill, a parent, guardian, or custodian may not waive any of the child's rights on behalf of the child.⁴

² R.C. 2152.02(C).

³ R.C. 2152.05(E)(1).

⁴ R.C. 2152.05(D)(2).

The bill provides that any information gained from noncustodial questioning of a child by a public school administrator or teacher concerning a wrongful act committed on public school property is admissible into evidence against the child.⁵

Nonadmission into evidence of child's confession or admission during custodial interrogation

The bill prohibits any admission or confession resulting from a custodial interrogation of a child from being admitted into evidence against the child unless the confession or admission was made in the presence of the child's parent, guardian, custodian, or attorney. If an attorney was not present, no such admission or confession may be admitted into evidence against the child unless the parent, guardian, or custodian as well as the child was advised of the child's rights set forth in the bill.⁶

If a parent is the alleged victim or alleged codefendant of an act of a child that would be a criminal offense if committed by an adult, the bill prohibits any admission or confession of the child resulting from a custodial investigation from being admitted into evidence unless the child made the admission or confession following a consultation between the child and an attorney or a parent who is not involved in the investigation of the act as to whether the child will waive the right to an attorney and the right against self-incrimination. The bill requires the law enforcement agency that has taken the child into custody or the facility to which the child has been delivered to immediately make reasonable efforts to contact a parent who is not involved in the investigation of the act.⁷

Right to counsel – no waiver for serious offenses

The bill requires that a child who is alleged to have committed an act that would be any of the following offenses be represented by an attorney during the entire period of any custodial interrogation of the child and provides that the child may not waive this right to counsel: aggravated murder, murder, involuntary manslaughter, reckless homicide, rape, sexual battery, gross sexual imposition, or sexual imposition.⁸

⁵ R.C. 2152.05(E)(2).

⁶ R.C. 2152.05(D)(2).

⁷ R.C. 2152.05(E)(3).

⁸ R.C. 2152.05(D)(1).



Recording of custodial interrogation

The bill generally requires a law enforcement agency to make an audio or audio and visual recording of any custodial interrogation of a child that is conducted at a place of detention and, if feasible, to make either type of recording of any such custodial interrogation that is conducted at a place other than a place of detention.⁹ A law enforcement agency is not required to make an audio or audio and visual recording of a custodial interrogation of a child if any of the following applies:¹⁰

(1) The child refuses to respond or cooperate in the custodial interrogation, and a law enforcement officer or agent of a law enforcement agency made a contemporaneous audio or audio and visual recording or written record of the child's refusal.

(2) The child made the statement in response to a question asked as part of the routine processing after the child was taken into custody.

(3) The law enforcement officer or agent of a law enforcement agency conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer or agent inadvertently failed to operate the equipment properly, or the equipment malfunctioned or stopped operating without the officer's or agent's knowledge.

(4) The child made the statement spontaneously and not in response to a question by a law enforcement officer or agent of a law enforcement agency.

(5) Exigent public safety circumstances existed that prevented the making of an audio or audio and visual recording or rendered the making of such a recording infeasible.

Definitions

The bill defines the following terms:¹¹

"Child" means any unemancipated person under the age of 18, notwithstanding the definition of "child" in R.C. 2152.02.

R.C. 2152.02(C)(1) defines "child" as a person who is under 18 years of age, except as otherwise provided in R.C. 2152.02(C)(2) to (7).

⁹ R.C. 2152.05(F)(1).

¹⁰ R.C. 2152.05(F)(2).

¹¹ R.C. 2152.05(A).



"Custodial interrogation" means the questioning of a child about an act that was allegedly committed by the child and that would be a criminal offense if committed by an adult, which questioning occurs while that child is in law enforcement custody or is being deprived of freedom of action in any significant way by a law enforcement officer, a court employee, or a DYS employee. "Custodial interrogation" does not include questioning of a child by a public school administrator or teacher if the questioning is not conducted on behalf of any such officer or employee.

HISTORY

ACTION	DATE
Introduced	02-12-13

h0050-i-130.docx/ks

