

Youth, Rights & Justice

ATTORNEYS AT LAW

Oregon Senate
Committee on Judiciary
Testimony in Support of HB 3261
May 9, 2019

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee, Youth, Rights & Justice (YRJ) would like to thank you for the opportunity to testify in support of HB 3261 and the amendments.

Founded in 1975, Youth, Rights & Justice is a non-profit law firm located in Portland, Oregon, that provides client-centered legal representation for children, youth, and parents in the child welfare and juvenile justice systems. Youth, Rights & Justice also represents children, youth, and parents in delinquency and dependency cases heard by the Oregon Court of Appeals and Oregon Supreme Court, in addition to staffing an educational advocacy program. It is our mission to improve the lives of vulnerable children and families in the courts, legislature, schools and community.

HB 3261 builds upon important law reform passed during the 2017 legislative session. Current law requires peace officers to record “custodial interviews” with individuals less than 18 years of age in connection with an investigation for a felony, or an act that, if committed by an adult, would constitute a felony, if the interview is conducted in a law enforcement facility. (ORS 133.400) This bill would require peace officers, school resource officers or special campus security officers to record custodial interviews with individuals less than 18 years of age if the interview is conducted for an act that, if committed by an adult, would constitute a misdemeanor or felony if the interview occurred inside a law enforcement facility or conducted by an interviewer who possesses a bodycam or other reasonable means of electronic recording.

“In custody” is a familiar concept in jurisprudence around the Fifth Amendment to the United States Constitution and Article I, section 12, of the Oregon Constitution. When in custody, a suspect must be given *Miranda* warnings prior to being asked questions. Whether a suspect is in custody under the Fifth Amendment depends on whether, in the circumstances, “a reasonable person [would] have felt he or she was at liberty to terminate the interrogation and leave.” *J.D.B. v. North Carolina*, 564 US 261, 131 S Ct 2394, 2397, 180 L Ed 2d 310 (US 2011). In *J.D.B.*, the Supreme Court held:

“It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child’s age properly informs the *Miranda* custody analysis.”

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A similar test is used for analysis under the Oregon Constitution. “Article I, section 12, of the Oregon Constitution provides that ‘[n]o person shall be * * * compelled in any criminal prosecution to testify against himself.’ To protect a person's right against compelled self-incrimination under that section, this court has held that, before questioning, the police must give *Miranda* warnings to a person who is in full custody or in circumstances that create a setting which judges would and officers should recognize to be compelling.” *State v. Jarnagin*, 351 Or 703, 713, 277 P3d 535 (2012) (internal quotation marks omitted.) “When a youth is involved, the determination that circumstances are compelling depends on ‘whether a reasonable person in child’s position—that is, a child of similar age, knowledge and experience, placed in a similar environment—would have felt required to stay and answer all of’ the detective’s questions.” *State v. D.P.*, 259 Or App 252, 261, 313 P3d 306 (2013).

Determinations regarding whether a youth is “in custody” and whether a youth’s statements to peace officers were voluntarily made and reliable are fact specific. The following are real-life scenarios encountered by attorneys and judges.

1. A 13-year-old youth was charged with crimes after he made self-incriminating statements to police officers during custodial questioning. The youth filed a motion to suppress his statements, saying that officers made promises of leniency if he confessed to a crime, and threats to send him to prison if he did not confess. The officers denied saying such things.

2. A 14-year-old youth with limited English-language ability made a number of statements in a custodial interview. Officers used a telephone interpreter. The youth later filed a motion to suppress evidence, claiming he was not told of, or if told, did not understand, his *Miranda* rights, and that some of the things reported in the police report were not what he said. The officers stated that they did a very careful job of explaining youth’s *Miranda* rights and double checking for understanding.

A recorded interview preserves crucial evidence and allows juvenile court judges, district attorneys and defense counsel to objectively assess a youth’s statements to law enforcement for reliability, voluntariness and compliance with the provision of *Miranda* warnings. YRJ attorneys representing youth in delinquency cases have experienced the benefits of having cases with recorded interviews. Some of these cases have resolved without contested hearings, both with admissions and with dismissals, due to the ability of the defense counsel and the prosecutor to objectively assess recorded statements. Other cases with contested hearings are decided by judges based on the best possible evidence, protecting both constitutional rights and the public perception of legitimacy of the justice system.