

Statement of Hon. Emily Olshansky (retired) in Support of the “Protection of Children During Custodial Interrogation” Bill – A5891-B / S2800-B

I am a retired New York State Family Court judge who served in Kings and New York County Family Courts from 2004 until 2021. During my years on the bench, I presided over numerous juvenile delinquency cases. Based on my observations and experience, I support the passage of the above-referenced Bill that would require that children under the age of 18 years, consult with an attorney before a custodial interrogation commences

My support for the Bill is based on a several factors. First, the Bill would ameliorate the unfairness inherent in a custodial situation due to the power distinction between the child and law enforcement. Social science, common sense and my own observations make it clear that young people do not have the maturity or the capacity to intelligently and knowingly waive the right to remain silent. As a result, they fail to understand or appreciate what is at stake for them and they are more susceptible to suggestion.

Second, the harm resulting from this power imbalance is overwhelmingly paid by children of color because they make up the vast majority of youth in the juvenile justice system and are the ones least likely to have family who can afford to retain counsel to assist at the time of an arrest. Furthermore, it is unrealistic to rely on parents or guardians to adequately look out for their childrens’ interests, given the difference in terms of education and resources.

The integrity of the system necessitates that we ensure that the Fifth Amendment right to children is not just an illusion. The best way to do this is to require consultation with an attorney before a youth is Mirandized and questioned, as presented in this Bill. For the reasons stated above, I support its passage.

Thank you for your time and consideration.

Dated: March 6, 2022

Emily Olshansky _____ S/ _____