

# #RIGHT2REMAIN SILENT

December 12, 2023

BY EMAIL AND FIRST CLASS MAIL

Hon. Majority Leader Andrea Stewart-Cousins  
New York State Senate  
28 Wells Avenue, Building #3, 5th Floor  
Yonkers, NY 10701

Hon. Speaker Carl E. Heastie  
New York State Assembly  
1446 East Gun Hill Road  
Bronx, NY 10469

Dear Speaker Heastie and Majority Leader Stewart-Cousins:

Representing more than 140 organizations across New York State, the #Right2RemainSilent Coalition calls on the Legislature to pass the Youth Interrogation Act (S.1099 - Bailey/A.1963 - Joyner) in 2024. This essential bill requires that all youth under the age of 18 consult with a lawyer before they can waive their right to remain silent, and be subjected to custodial interrogation by law enforcement. By ensuring that all young people – not just those who can afford to hire lawyers – have the benefit of a legal consultation before being questioned by police, this bill will move New York State toward greater racial and economic justice for all of our children.

All young people under the age of 18 deserve to have a lawyer if they are being questioned by police. The experience of the Exonerated Five is a well-known, glaring example of how desperately our most vulnerable young people need more protection than is currently provided, but there are many others. 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.<sup>1</sup> Add the stress and tension inherent in a

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<sup>1</sup> Zelle, H., Romaine, C. L. R., & Goldstein, N. E. S. “Juveniles’ Miranda comprehension: Understanding, appreciation, and totality of circumstances factors,” *Law and Human Behavior*, 39(3), 281–293. (2015). <https://doi.org/10.1037/lhb0000116>; see also <https://psycnet.apa.org/record/2014-55451-001>.

custodial interrogation, and the prospect of a knowing, intelligent and voluntary waiver of the right to remain silent becomes a myth. Instead, young people will often say whatever they think will immediately get them out of the interrogation room.<sup>2</sup>

Despite young people's well-documented developmental incapacity, under New York law, police are still allowed to interrogate a child without a parent or guardian present, and to lie to a child in order to coerce them to waive their *Miranda* rights. Moreover, 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, nor are police required to explain to the child – or the child's parent or guardian – what the police want to question the child about, or to advise the child, parent or guardian that the child can stop answering questions any time they choose.

As a result, approximately 90% of youth who are arrested waive the right to remain silent.<sup>3</sup> This police practice - of interrogating youth without providing them an attorney - has a disproportionate effect on Black or Latinx youth<sup>4</sup> from over-surveilled schools and low socioeconomic communities. These youth, who make up the majority of those interrogated, lack the protection provided to their more affluent peers who typically have hired attorneys. It is time to level the playing field and provide every youth under the age of 18 with an attorney before they are interrogated. Other states have already enacted similar legislation including California, Washington, Maryland, and Hawaii. New York State must do so as well.

The Youth Interrogation Act would provide the protection our children need. When police determine that interrogation of a child is necessary, the bill would require that the child first consult with counsel (by phone, video or in person) before any questioning could take place. Consultation with a lawyer would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the child.

In addition to safeguarding children's constitutional rights, this bill would help to protect the State and localities from expensive lawsuits by individuals who were wrongfully convicted based upon false confessions they made as children. Thirty-four percent of all exonerees who made false confessions from 1989 to 2020 were under 18 years old at the time of the alleged offense.<sup>5</sup> Exonerees in New York who were wrongfully convicted for alleged offenses when they were under 18 have won almost \$77.5 million in compensatory civil damages since 2011.

The legislation is also an important step toward racial and economic equity. We know that the children most likely to come into contact with law enforcement and the juvenile legal system are

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<sup>2</sup> Id.

<sup>3</sup> Barry C. Feld, Behind Closed Doors: What Really Happens When Cops Question Kids, 23 Cornell J.L. & Pub. Pol'y 395, 429 (2013).

<sup>4</sup>

[https://www.nyc.gov/assets/nypd/downloads/pdf/analysis\\_and\\_planning/year-end-2020-enforcement-report-20210721.pdf](https://www.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2020-enforcement-report-20210721.pdf)

<sup>5</sup> THE NAT'L REGISTRY OF EXONERATIONS, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confessed (2020), <http://www.law.umich.edu/special/exoneration/Pages/False-Confessions.aspx>.

Black and Latinx youth from over-surveilled schools and communities affected by poverty.<sup>6</sup> These children come from families who are often unable to hire attorneys to protect them. In contrast, affluent parents are able to ensure that their children have access to counsel before they decide to waive their *Miranda* rights. The Legislature can remedy this inequity by passing this bill to ensure that all children are provided with counsel when the police seek to question them.

The Youth Interrogation Act has garnered wide-spread support among members of both the Senate and the Assembly. It currently has 30 co-sponsors in the Senate and 48 co-sponsors in the Assembly. We look forward to building upon this momentum with you in 2024 and passing this critical piece of legislation to ensure that children's *Miranda* rights are protected. We welcome an opportunity to discuss this important bill with you as the #Right2RemainSilent Coalition brings its state-wide advocacy to Albany for the 2024 session.

In partnership,

1. 1199SEIU
2. Adoptive and Foster Family Coalition of New York
3. Alliance of Families for Justice
4. Association of Legal Aid Attorneys, UAW Local 2325
5. Breaking the Chains of Your Mind
6. BronxConnect (Urban Youth Alliance)
7. Brooklyn Defender Services
8. Broome County Public Defender
9. CASES
10. Center for Community Alternatives
11. Center for Disability Rights
12. Center for Family Representation
13. Central Family Life Center
14. Chief Defenders Association of New York
15. Children's Defense Fund-New York
16. Children's Rights
17. Citizens' Committee for Children of New York
18. Coalition for Homeless Youth
19. Congregation Beth Elohim Dismantling Racism Team
20. Council of Holistic Christian Churches & Ministries (C.H.C.C.M.)

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<sup>6</sup> "Racial and Ethnic Disparities in Juvenile Justice Processing: Literature Review: A product of the Model Programs Guide." Office of Juvenile Justice and Delinquency Prevention. March 2022. <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity>.

21. Covenant House New York
22. The Deskovic Foundation
23. Drama Club
24. Elite Learners, Inc.
25. Equality New York
26. Esperanza NY, Inc.
27. Exalt Youth
28. Families Together in New York State
29. FPWA
30. Free to Be Youth Project
31. Freedom Agenda, Urban Justice Center
32. Genesee County Public Defender
33. Good Call
34. Human Rights for Kids
35. Innocence Project
36. It Could Happen To You
37. JMAC FOR FAMILIES
38. Justice for Families
39. Latino Pastoral Action Center
40. Lawyers For Children
41. Legal Aid Bureau of Buffalo
42. Legal Aid Society of Nassau County
43. Legal Aid Society of Westchester County
44. Life Camp Inc.
45. Livingston County Public Defender
46. Monroe County Public Defender's Office
47. National Juvenile Justice Network
48. Neighborhood Defender Service of Harlem
49. New Alternatives for Homeless LGBTQ Youth
50. New York City Narrowing the Front Door Workgroup
51. New York Civil Liberties Union
52. New York State Association of Criminal Defense Lawyers
53. New York State Defenders Association
54. NYC Family Policy Project

55. NYU Family Defense Clinic
56. Onondaga County Bar Association Assigned Counsel Program, Inc.
57. Ontario County Office of the Conflict Defender
58. Parent Legislative Action Network (PLAN)
59. Penn and Perry, Inc.
60. Prisoners' Brain Trust
61. Project UNITE
62. Queens Defenders
63. Safe Horizon
64. Sanctuary for Families
65. Schuyler Center for Analysis and Advocacy
66. Scientist Action and Advocacy Network
67. SJ.II - Society's Justice . Innovations & Interventions Inc.
68. Sylvia Rivera Law Project
69. The Bronx Defenders
70. The Center for Appellate Litigation
71. The Children's Law Center (CLC)
72. The Fortune Society
73. The Gathering for Justice
74. The Gault Center
75. The Hub585
76. The Legal Aid Society
77. The Legal Aid Society of Rochester
78. Unchained
79. Unlock the Bar
80. Urban Justice Center
81. Westchester Children's Association
82. Youth Justice Network
83. Youth Law and Psychology Lab, John Jay College of Criminal Justice
84. YouthNPower: Transforming Care Collective
85. Youth Represent

cc: Senator Jamaal Bailey  
Assembly Member Latoya Joyner