

As Introduced

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Representatives Heard, McGregor

**Cosponsors: Representatives Stinziano, Ramos, Boyd, Huffman, Strahorn,
Phillips, Reece, Antonio, Mallory, Rogers, Ashford, Letson, Pillich**

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A B I L L

To enact section 2152.05 of the Revised Code to 1
protect the rights of children before and during 2
custodial interrogations. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2152.05 of the Revised Code be 4
enacted to read as follows: 5

Sec. 2152.05. (A) As used in this section: 6

(1) "Child" means any unemancipated person under the age of 7
eighteen, notwithstanding the definition of "child" in section 8
2152.02 of the Revised Code. 9

(2) "Custodial interrogation" means the questioning of a 10
child about an act that was allegedly committed by the child and 11
that would be a criminal offense if committed by an adult, which 12
questioning occurs while that child is in law enforcement custody 13
or is being deprived of freedom of action in any significant way 14
by a law enforcement officer, a court employee, or an employee of 15
the department of youth services. "Custodial interrogation" does 16
not include questioning of a child by a public school 17
administrator or teacher if the questioning is not conducted on 18

behalf of a law enforcement officer, a court employee, or an 19
employee of the department of youth services. 20

(B) Before a child is questioned about anything concerning a 21
charge that the child allegedly committed an act that would be a 22
criminal offense if committed by an adult and on which the child 23
was taken into custody or deprived of freedom of action in any 24
significant way by a law enforcement officer, a court employee, or 25
an employee of the department of youth services, the person asking 26
the questions shall inform the child, in the child's own language, 27
of the following rights: 28

(1) That the child has the right to an attorney; 29

(2) That if the child is unable to pay for an attorney and if 30
the parent, legal guardian, or legal custodian of the child has 31
not provided an attorney, one will be appointed; 32

(3) That the child is not required to say anything and that 33
anything the child says may be used against the child; 34

(4) That the child has a right to communicate with the 35
child's parent, legal guardian, or legal custodian, whether or not 36
that person is present and that, if necessary, reasonable means 37
will be provided for the child to do so; 38

(5) That even if the child's attorney is not present or has 39
not yet been appointed, the child has the right to communicate 40
with the child's attorney and that, if necessary, reasonable means 41
will be provided for the child to do so. 42

(C) No person shall question a child who has been taken into 43
custody or deprived of freedom of action in any significant way by 44
a law enforcement officer, a court employee, or an employee of the 45
department of youth services for an act that would be a criminal 46
offense if committed by an adult if the child has indicated in any 47
manner any of the following: 48

<u>(1) That the child does not wish to be questioned;</u>	49
<u>(2) That the child wishes to speak with the child's custodial parent, guardian, or custodian or to have that person present;</u>	50 51
<u>(3) That the child wishes to consult an attorney before submitting to any questioning.</u>	52 53
<u>(D)(1) A child who is alleged to have committed an act that is a violation of section 2903.01, 2903.02, 2903.04, 2903.041, 2907.02, 2907.03, 2907.05, or 2907.06 of the Revised Code shall be represented by an attorney during the entire period of any custodial interrogation of the child. The child may not waive this right to counsel.</u>	54 55 56 57 58 59
<u>(2) No admission or confession resulting from a custodial interrogation of a child may be 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 division (B) of this section. A parent, guardian, or custodian of a child may not waive any right on behalf of the child.</u>	60 61 62 63 64 65 66 67 68 69
<u>(E)(1) If a child waives any of the rights set forth in division (B) of this section, a court may admit into evidence against the child any statement made by the child during a custodial interrogation 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 the child's rights, the court shall consider all of the circumstances of the waiver, including the following:</u>	70 71 72 73 74 75 76 77
<u>(a) The child's physical, mental, and emotional maturity;</u>	78
<u>(b) Whether the child or the child's parent, guardian,</u>	79

custodian, or attorney understood the consequences of the child's statement; 80
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(c) 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; 82
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(d) The length of time the child was held in custody before consulting with the child's parent, guardian, or custodian; 85
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(e) Whether there was any coercion, force, or inducement used in obtaining the statement; 87
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(f) 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. 89
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(2) 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 shall be admissible into evidence against the child. 92
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(3) When 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, no admission or confession of the child resulting from a custodial investigation may be 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 law enforcement agency that has taken the child into custody or the facility to which the child has been delivered shall immediately make reasonable efforts to contact a parent who is not involved in the investigation of the act. 96
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(F)(1) Subject to division (F)(2) of this section, a law enforcement agency shall make an audio or audio and visual 109
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recording of any custodial interrogation of a child that is 111
conducted at a place of detention and, if feasible, shall make an 112
audio or audio and visual recording of any custodial interrogation 113
of a child that is conducted at a place other than a place of 114
detention. 115

(2) A law enforcement agency is not required to make an audio 116
or audio and visual recording of a custodial interrogation of a 117
child if any of the following applies: 118

(a) The child refuses to respond or cooperate in the 119
custodial interrogation, and a law enforcement officer or agent of 120
a law enforcement agency made a contemporaneous audio or audio and 121
visual recording or written record of the child's refusal. 122

(b) The child made the statement in response to a question 123
asked as part of the routine processing after the child was taken 124
into custody. 125

(c) The law enforcement officer or agent of a law enforcement 126
agency conducting the interrogation in good faith failed to make 127
an audio or audio and visual recording of the interrogation, 128
because the recording equipment did not function, the officer or 129
agent inadvertently failed to operate the equipment properly, or 130
the equipment malfunctioned or stopped operating without the 131
officer's or agent's knowledge. 132

(d) The child made the statement spontaneously and not in 133
response to a question by a law enforcement officer or agent of a 134
law enforcement agency. 135

(e) Exigent public safety circumstances existed that 136
prevented the making of an audio or audio and visual recording or 137
rendered the making of such a recording infeasible. 138