



Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 7, 2019

The Honorable Senator Floyd Prozanski, Chair
Senate Judiciary Committee, Members

Re: Testimony in support of HB 3261

Dear Chair Prozanski and Members of the Committee:

Thank you to Our Partners: OCDLA thanks legislative champions Representative Gorsek and Representative Piluso for their commitment to juvenile justice in the state of Oregon. We also want to thank all of our law enforcement partners who joined us in hammering out this incredibly important policy.

What does HB 3261 do? In 2017, the Legislature passed HB 3242. It required law enforcement to record interviews with youth suspected of felony conduct within law enforcement facilities.

HB 3261 expands the work of HB 3242 (2017) and updates current law to require custodial interviews¹ are recorded:

- By police officers, school resource officers, and campus security officers;
- In connection with any criminal offense, not just potential felonies;
- In both law enforcement facilities and out in the field if officer already has access to bodycams.

¹ Specifically, HB 3261 seeks to require electronic recording of an interview¹ conducted by a peace officer with a juvenile “in custody.”¹ “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.”

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).

HB 3261 seeks to require electronic recording of custodial interviews—regardless of offense or location of the interview—as it is the best way to determine (1) “whether a reasonable person in the child’s position * * * would have felt required to stay and answer all of the detective’s questions,” (2) whether the peace officer gave *Miranda* warning to the juvenile before the interview, and (3) whether the juvenile’s waiver of *Miranda* was knowing, intelligent, and voluntary.

We support HB 3261 for the following reasons:

Juveniles Require Different Protections in the Criminal Justice System

As neuroscience and movement of jurisprudence show, juveniles are different than adults in many ways, and thus need to be treated differently within the criminal justice system. With shocking statistics such as juveniles being three times more likely than adults to falsely confess during interrogations, it's clear that adequate protections must be implemented to ensure that juveniles are not disadvantaged by the criminal justice system which has been structured for adults. As a girth of jurisprudence has established, juveniles are entitled to greater constitutional protections than adults. Thus, OCDLA supports HB 3261's recording requirement because it would bring Oregon closer to adequately instituting well-established best practices that increase protections for juveniles in the criminal justice system.

Recording Interviews with Minors is Best Practice, Regardless of the Offense

It is well-established that recording custodial interviews is best practice, regardless of the offense. Recording of custodial interviews benefits law enforcement, increases public trust and safety, and results in more efficient and accurate interviews, as well as more accurate and reliable records of said interviews.

None of the above stated benefits are specific to certain offenses. It holds true that a recording protects law enforcement and the juvenile with equal force whether that juvenile committed a misdemeanor or a felony. There is no reason why a juvenile who has committed a felony deserves more protection and safeguards (as provided by a recording) than a juvenile who has committed a misdemeanor. Thus, OCDLA supports HB 3261's recording requirement of juvenile custodial interviews regardless of offense as it is well-established best practice.

Recording Interviews with Minors is Best Practice, Regardless of the Location of the Interview

As mentioned above, it is well-established that recording custodial interviews is best practice, and this holds true regardless of the location of said interview. As mentioned above, recording custodial interviews benefits law enforcement, the public, and juveniles alike. None of these benefits derive from the location of the interview, and thus the protections and benefits that recording provides should not be limited to only those situations in which a juvenile is interviewed in a law enforcement facility.

Oregon law structures whether a youth is "in custody" around "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) (internal quotation marks omitted). Thus, when dealing with juveniles "in custody," Oregon law does not focus on the location of the interview, but instead whether it is reasonable for the child to feel required to stay and answer all of the detective's questions.

Any recording requirements of juvenile custodial interviews should follow the same logic—it matters not where the interview occurs, but only whether the juvenile feels required to stay and answer all the detective's questions. As noted above, the Supreme Court has found that "[i]t 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." Thus, recording of custodial interviews must take into account that this power dynamic holds true when in settings other than a law enforcement facility, and perhaps especially so in places where juveniles are operating under other power dynamics, such as schools. Accordingly, OCDLA supports HB 3261's recording requirement of

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juvenile custodial interviews regardless of location as it is well-established best practice and consistent with Oregon law and Supreme Court findings.

For the reasons outlined above, OCDLA urges a “Aye” to HB 3261. Thank you for your consideration.

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About OCDLA

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

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