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Memo in Support of S.4980-B and A.6982-B:
Protecting Children who are Subject to Custodial Interrogation

The Center for Family Representation strongly supports the passage of A.6982B/S.4980B, which protects children who are arrested by requiring that they consult with an attorney prior to waiving any of their Miranda rights. The right to remain silent and the right to an attorney, as guaranteed under the Bill of Rights, are fundamental liberty interests protected by a Miranda warning. A.6982B/S.4980B recognizes that children lack the capacity to understand these important rights or when to assert them.

Our office has heard too many stories of children waiving their rights without proper support or understanding, as we have recently begun representing juveniles in delinquency proceedings in Queens and Manhattan. We have seen children being coerced into making false confessions through lengthy interrogations and manipulation, including lies and deception. One attorney relays the story of a former client who was interrogated for up to eight hours before falsely confessing to a crime that he did not commit. The juvenile's father arrived at the precinct in no condition to provide meaningful advice to his son. Without parent support, or the advice of an experienced attorney, the child was told that he could go home if he simply told the police what they wanted to hear. We cannot stress enough the pivotal role an attorney can play in preventing false confessions, as well as limiting police misconduct.

CFR is also the New York City county-wide assigned indigent defense provider for parents who are respondents in Family Court Act (FCA) Article 10 and criminal court proceedings in Queens and New York counties. We have seen that even a parent, whose child is in trouble with the law, may not be able to make an objective decision or understand whether or not to waive their childrens' rights.

Due to the high pressure and power differential in a custodial interrogation by law enforcement and premature brain development, we cannot expect that children will fully comprehend their constitutionally protected rights, let alone when to waive them.¹ Children often fail to comprehend the consequences of their decisions in general. One study found that only 20% of juveniles understood the Miranda warning, and a simplified version did not help.² Children are fundamentally different from adults and require increased protections.

Interrogations, by nature, are coercive. Children are more likely to trust the police and answer any questions, especially when told that they can go home. Currently, 90% of youth waive their Miranda rights, leaving police free to interrogate children through deception, lies, and intimidation.³ Other vulnerable populations, such as non-English speakers and immigrants, are particularly susceptible to

¹ M. Dyan McGuire, *Miranda is not Enough: What Every Parent in the United States Should Know About Protecting Their Child*, 2 *Journal of Law and Criminal Justice*, 299-312 (2014).

² Barry C. Feld, *Behind Closed Doors: What Really Happens when Cops Question Kids*, 23 *CORNELL J.L. & PUB. POL'Y* 395, 409 (2013).

³ A. Bruce Ferguson & Alan Charles Douglas, *A Study of Juvenile Waiver*, 7 *SAN DIEGO L. REV.* 39, 53 (1970).

police tactics and have increased difficulty with understanding the rights. This bill would ensure that every individual knows and understands what their rights are and when, if ever, to waive them.

When the Supreme Court extended the Miranda warning to juveniles in 1967, the Court recognized that these rights are in fact more compelling for children; the Court also noted that attorneys “will, of course, assist” with protecting these rights.⁴ For such reasons and more, we urge the New York State Legislature to pass this critical legislation to ensure that children’s Miranda rights are protected.

⁴ *In re Gault*, 387 U.S. 1, 48-55 (1967).