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POSITION ON PROPOSED LEGISLATION

BILL: HB 1374 -- Custodial Interrogation of Minors – Admissibility of Statements

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 03/01/2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 1374.

House Bill 1374 would create the rebuttable presumption that a statement made by a minor during a custodial interrogation is involuntary and inadmissible if the law enforcement officer intentionally used false information to elicit the minor's statement. Implementing this presumption is essential to protect the due process rights of children and prevent wrongful convictions due to the use of false confessions in juvenile and criminal proceedings.

The U.S. Supreme Court has recognized that police interrogation tactics “can induce a frighteningly high percentage of people to confess to crimes that they never committed.”^{i,ii} The risk of false confessions is multiplied when a child is the subject of an interrogation. Children are two to three times more likely than adults to give false confessions,ⁱⁱⁱ and children account for approximately one-third of all false confessions.^{iv}

The risk of false confessions is disproportionately higher among children because they are uniquely vulnerable to coercive police interrogation tactics. Youth prioritize short-term benefits over long-term consequences and are especially prone to comply with the requests of authority figures like police.^{2,3} During adolescence, the reward-seeking part of the brain is highly active, while the frontal lobe, which governs measured decision-making, is still developing.³ Current research demonstrates that all children, even those as old as 16 and 17, are highly susceptible to pressure, have poor impulse control, incomplete brain development, and limited understanding of long-term consequences.² As a result of these inherent characteristics of youth, children are more likely to falsely confess.

An additional factor contributing to the increased likelihood of false confessions by youth is the usage of deceptive tactics during interrogation. Research has found that lying to a suspect during questioning results in more false confessions.^v When law enforcement officials falsify evidence against a suspect, it can cause innocent people to “feel trapped by the inevitability of the evidence against them” and cause them to confess to crimes that they did not commit.⁵ Given that adults are likely to succumb to deceptive interrogation tactics, youth are even more vulnerable to these tactics because of their tendency to comply with authority figures and inability to weigh long-term consequences over short-term gratification.

In response to evidence that deceit increases false confessions, both Oregon and Illinois enacted laws in 2021 that prohibit law enforcement from using deception during the interrogation of minors.^{vi} Four other states—Colorado,^{vii} Pennsylvania,^{viii} Utah,^{ix} and Virginia^x—have introduced bills that would prohibit the use of deception in custodial interrogation of minors.

Other states have introduced bills—similar to Maryland’s HB 1374—that would render inadmissible statements made by minors as a result of deception by law enforcement during custodial interrogation. In 2021, for example, a bill was introduced in New York.^{xi} This session, both Florida^{xii} and California^{xiii} have introduced similar bills. One notable difference is that California’s proposed bill applies to young adults who are 25 years of age or younger.

Children—when subjected to interrogation—are in an extremely vulnerable position. An abundance of psychological evidence demonstrates that children are highly susceptible to giving false confessions. This is confirmed by data showing that children are several times more likely than adults to confess to crimes that they did not commit. When deceptive tactics are used by law enforcement during interrogation, the risk of false confessions increases even further. It is crucial that children who are charged with crimes are protected from those false confessions being used against them in court proceedings.

For these reasons, the Maryland Office of the Public Defender urges a favorable report on House Bill 1374.

Submitted By: Maryland Office of the Public Defender, Government Relations Division.

ⁱ *Corley v. United States*, 556 U.S. 303, 320-21 (2009).

ⁱⁱ Steven Drizin & Richard Leo, The Problem of False Confessions in the Post-DNA World, NORTH CAROLINA LAW REVIEW, Vol. 82, Number 3 (March 1, 2004.)
<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4085&context=nclr>.

ⁱⁱⁱ Megan Crane, Laura Nirider, & Steven A. Drizin, The Truth About Juvenile False Confessions, 16 INSIGHTS ON L. & SOC'Y 10, 12 (2016).

^{iv} National Registry of Exonerations, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess (February 26, 2019).

^v Saul M. Kassin et al., Police-induced confessions: Risk factors and recommendations., 34 Law and Human Behavior 3–38 (2010), <http://doi.apa.org/getdoi.cfm?doi=10.1007/s10979-009-9188-6> (last visited Feb 23, 2022).

^{vi} 1. Oregon Deception Bill is Signed into Law, Banning Police from Lying to Youth During Interrogations, , Innocence Project (2021), <https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/> (last visited Feb 23, 2022).

^{vii} 2022 Colorado Senate Bill No. 23, Colorado Second Regular Session of the Seventy-Third General Assembly, 2022 Colorado Senate Bill No. 23, Colorado Second Regular Session of the Seventy-Third General Assembly.

^{viii} 2021 Pennsylvania House Bill No. 1669, Pennsylvania Two Hundred Fifth General Assembly - 2021-2022, 2021 Pennsylvania House Bill No. 1669, Pennsylvania Two Hundred Fifth General Assembly - 2021-2022.

^{ix} 2022 Utah House Bill No. 171, Utah Sixty-Fourth Legislature - 2022 General Session, 2022 Utah House Bill No. 171, Utah Sixty-Fourth Legislature - 2022 General Session.

^x 2022 Virginia Senate Bill No. 746, Virginia 2022 Regular Session, 2022 Virginia Senate Bill No. 746, Virginia 2022 Regular Session.

^{xi} 2021 New York Assembly Bill No. 8252, New York Two Hundred Forty-Fourth Legislative Session, 2021 New York Assembly Bill No. 8252, New York Two Hundred Forty-Fourth Legislative Session.

^{xii} 2022 Florida Senate Bill No. 668, Florida One Hundred Twenty-Fourth Regular Session, 2022 Florida Senate Bill No. 668, Florida One Hundred Twenty-Fourth Regular Session.

^{xiii} 2021 California Assembly Bill No. 2644, California 2021-2022 Regular Session, 2021 California Assembly Bill No. 2644, California 2021-2022 Regular Session.