

**TO:** Senate Committee on Judiciary  
**FROM:** Office of Racial Equity  
**DATE:** February 9, 2024  
**RE:** Comments on S.285, An act relating to law enforcement interrogation policies

Dear Chair Sears and members of the Senate Committee on Judiciary,

Thank you for the opportunity to testify on S.285, An act relating to law enforcement interrogation policies.<sup>1</sup> There are clear racial disparities in the defendants who are convicted based on false confessions after law enforcement officers use deceptive tactics in custodial interrogations.<sup>2</sup> The use of deceptive tactics disproportionately produces false confessions and convictions of people of color in the criminal justice system in the United States. The Office of Racial Equity previously supported the prohibition of the use of deceptive tactics during custodial interrogations for individuals aged 22 and younger as passed in S.6 of 2023.<sup>3</sup> The Office continues to support S.285's ban on deceptive interrogation techniques for youth aged 19 younger because they may help address the racial disparities in Vermont's criminal justice system.<sup>4</sup>

The Committee heard testimony today from stakeholders requesting that the Committee change the age at which deceptive interrogations are banned from 19 years old as currently drafted to 18 years old. The division between 18 or 19 years olds is a socially constructed one based on current laws regarding age of majority and does not represent current scientific consensus on a person's brain development, which is not complete until a person's mid-20's.<sup>5</sup> Therefore, the Office supports keeping the age at which deceptive interrogation techniques are prohibited at 19 as drafted in S.285 As Introduced. The Office would support a complete ban on deceptive interrogation techniques for people of all ages given the racial disparities in false convictions based on deceptive interrogation techniques. The Office also notes that people with developmental disabilities are disproportionately vulnerable to being wrongfully convicted based on false confessions due to deceptive interrogation techniques.<sup>6</sup>

The International Association of Chiefs of Police (IACP) does not recommend the use of deceptive interrogation practices when interviewing youth. The IACP report "Reducing Risks: An Executives Guide to Effective Juvenile Interview and Interrogation" states that, "*Law enforcement, using inappropriate interrogation techniques, have*

<sup>1</sup> <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/S-0285/S-0285%20As%20Introduced.pdf>

<sup>2</sup> The Innocence Project. (n.d.). *Race and Wrongful Conviction*. InnocenceProject.Org. Retrieved May 16, 2023, from <https://innocenceproject.org/race-and-wrongful-conviction/>

<sup>3</sup> <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/S-0006/S-0006%20As%20Passed%20by%20Both%20House%20and%20Senate%20Official.pdf>

<sup>4</sup> For more information on racial disparities in Vermont's criminal justice system, see Bastomski, S., Amora, D. D. ', Dardeau, M., Gunter, A., & Sackey, L. (2021). *Presentation to the Justice Reinvestment II Working Group: Results of the Racial Equity in Sentencing Analysis* . <https://www.vermontjudiciary.org/sites/default/files/documents/VT%20JRII%20WG%20November%202017%20Presentation.pdf>

<sup>5</sup> Galván, A. (2013). The Teenage Brain: Sensitivity to Rewards. *Current Directions in Psychological Science*, 22(2). <https://journals.sagepub.com/doi/10.1177/0963721413480859>

<sup>6</sup> Nguyen, M. (2023, July 31). 8 Ways People With Disabilities Can Be Vulnerable to Wrongful Conviction. Innocence Project. <https://innocenceproject.org/ways-disabilities-can-be-vulnerable-to-wrongful-conviction/>

*the potential of deeply affecting youth, including emotional and psychological impact, development of a negative perception and/or mistrust of law enforcement and the justice system, and even traumatization.”<sup>7</sup> It does not help protect victims of crimes to waste time and energy on seeking confessions through the use of deceptive practices that result in reversal of convictions. Experts on law enforcement interrogation who testified on S.6 in 2023 said, “...when an investigator uses evidence-based techniques to include development of rapport, open-ended questioning and strategic challenges of contradictions they are able to shift the goal of an interrogation from confession-focused to information gathering. This approach still enables investigators to obtain confessions, implications and disclosures while also increasing the likelihood of obtaining actionable, reliable intelligence. Furthermore, the use of evidence-based techniques founded in a humanistic approach can also assist in developing stronger community-police relationships.”<sup>8</sup>*

Better community relationships with law enforcement officers facilitate cooperation and communication during criminal investigations. Truthfulness and transparency in interrogation promote trust of law enforcement officers.<sup>9</sup> The Office encourages the Committee to support the ban on deceptive interrogation techniques in custodial interviews with youth in light of the guidance from IACP.

The Office of Racial Equity further testified that it is inappropriate to use arguments about the need to get confessions from perpetrators of sexual assault to support the use of deceptive interrogation techniques. For more information about the challenges survivors of sexual violence face when interacting with law enforcement, we invite the Committee to read the pamphlet, “What About the Rapists.”<sup>10</sup> According to data from Rape, Abuse, & Incest National Network (RAINN) as cited in “What About the Rapists,” less than 30% of survivors of sexual assault contact law enforcement. Of the 30% who report their assault to law enforcement, only 5% of reported cases lead to the arrest of an alleged perpetrator. Only 3% of those arrested are convicted. These data suggest that an estimated 0.045% of the perpetrators of sexual violence who are reported to law enforcement are eventually convicted.

The criminal justice system as it currently exists, including the use of deceptive interrogation practices, does not come close to addressing the needs of all survivors of sexual violence. The current system especially disadvantages survivors who may be reluctant to interact with law enforcement for a variety of reasons. These reasons include survivors’ immigration status and/or past traumatic experiences with law enforcement over-policing of neighborhoods of color. According to a 2015 study of callers to the National Domestic Violence Hotline, “1 in 4 women (24%) reported they had been arrested or threatened with arrest during a partner abuse incident or while reporting a sexual assault incident to the police.”<sup>11</sup> As Senator Vyhovsky discussed, investigative reporters for the recent documentary film “Victim/Suspect” found 230 cases where survivors of sexual assault were charged with false reporting of sexual assault as a result of deceptive interrogation techniques used by law

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<sup>7</sup> International Association of Chiefs of Police. (2012). *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation*.  
<https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Judiciary/Bills/S.6/Witness%20Documents/S.6~Julio%20Thompson~IACP’s%20Guide%20to%20Effective%20Juvenile%20Interview%20and%20Interrogation~1-18-2023.pdf>

<sup>8</sup> Thompson, D. (2023). Wicklander-Zulawski Testimony to State of Vermont Re: Letter of Support for Senate Bill 6. In *Vermont Senate Committee on Judiciary*. Vermont State Senate.  
<https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Judiciary/Bills/S.6/Public%20Comments/S.6~David%20Thompson~Letter%20of%20Support%20from%20President%20of%20Wicklander-Zulawski~1-18-2023.pdf>

<sup>9</sup> International Association of Chiefs of Police. (2020). *Assessment of the Bennington Police Department Policy and Procedures Prepared for the Town of Bennington, Vermont*.  
[https://cms5.revize.com/revize/bennington/Document%20Center/Services/Police%20Department/Documents%20&%20Reports/Community%20Policing/BPD\\_Policy\\_and\\_Procedures\\_Final\\_Report.pdf](https://cms5.revize.com/revize/bennington/Document%20Center/Services/Police%20Department/Documents%20&%20Reports/Community%20Policing/BPD_Policy_and_Procedures_Final_Report.pdf)

<sup>10</sup> Kaba, M., & Nagosky, E. (n.d.). What About The Rapists. Interrupting Criminalization | Research In Action. Retrieved February 9, 2024, from <https://www.interruptingcriminalization.com/what-about-the-rapists>

<sup>11</sup> Logan, T., & Valente, R. (2015). WHO WILL HELP ME? Domestic Violence Survivors Speak Out About Law Enforcement Responses. National Domestic Violence Hotline. <https://www.thehotline.org/wp-content/uploads/media/2020/09/NDVH-2015-Law-Enforcement-Survey-Report-2.pdf>

enforcement against the survivors.<sup>12</sup> In the film, Professor Lisa Avalos explains that women of color are less likely to report sexual assaults to law enforcement out of fear of not being believed or being accused of false reporting. The Office encourages the Committee not to accept arguments from other witnesses that use the experiences of a small, limited subset of survivors of sexual violence to justify the continued use of a flawed interrogation tool that disproportionately violates the civil rights of people of color and people with disabilities.

While we were unable to find population level data specifically addressing false confessions in Vermont, the Office notes that the ACLU of Vermont is currently representing a plaintiff of color in a case involving the Bennington Police Department's alleged misuse of deceptive interrogation techniques to elicit false confessions.<sup>13</sup> Such conduct undermines the relationships between law enforcement officers and community members, as noted in the IACP's comprehensive report on Bennington Police Department policies and procedures.<sup>14</sup> The Office reminds the Committee that criminal justice systems in Vermont generally reflect national data suggesting racial disparities in our criminal justice system.

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<sup>12</sup> de Leon, R. (2023, September 25). 'If the Police Don't Believe You, They Might Prosecute You': How Officers Turn Victims of Sexual Assault Into Suspects. Reveal. <http://revealnews.org/article/if-the-police-dont-believe-you-they-might-prosecute-you-how-officers-turn-victims-of-sexual-assault-into-suspects/>

<sup>13</sup> *John Chinnici v. Town of Bennington*. (2023, January 23). ACLU of Vermont. <https://www.acluvt.org/en/cases/john-chinnici-v-town-bennington>

<sup>14</sup> International Association of Chiefs of Police. (2020). *Assessment of the Bennington Police Department Policy and Procedures Prepared for the Town of Bennington, Vermont*. [https://cms5.revize.com/revize/bennington/Document%20Center/Services/Police%20Department/Documents%20&%20Reports/Community%20Policing/BPD\\_Policy\\_and\\_Procedures\\_Final\\_Report.pdf](https://cms5.revize.com/revize/bennington/Document%20Center/Services/Police%20Department/Documents%20&%20Reports/Community%20Policing/BPD_Policy_and_Procedures_Final_Report.pdf)