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May 1, 2023

Senator Dick Sears Jr., Chair
Senate Committee on Judiciary

Representative Martin LaLonde, Chair
House Committee on Judiciary

Dear Chair Sears and Chair LaLonde,

As president of the Vermont Association of Chiefs of Police, I have the privilege to represent over 50 chief law enforcement executives and their departments across the state. Today, I am writing to you to express our concerns with S.6, in its current form as found in Draft 3.1.

We believe that the effect of this bill will have a chilling effect across law enforcement and in our service toward justice for victims of crime. The courts already apply stringent standards and protections to judge whether or not a custodial statement was voluntarily made. The totality of circumstances that include a suspect's, age, cognitive ability, location, number and demeanor of law enforcement officers, and a myriad of other factors are already applied by the court.

Targeted use of deception in interviewing a suspect is a long standing constitutionally permissible technique used to elicit truthful statements from a suspect. This draft prohibits any such technique not only from those under 18 but also could make any such elicited statement inadmissible for those aged 18 to 21.

Deception is also not clearly defined. If an officer asks a defendant if there was a reason their DNA may have been found on a sexual assault suspect although no such testing was done, is that a deceptive question? The officer made no false statement but asked a targeted question. This draft would increase litigation on custody and "deception" issues thus adding additional burdens to a backlogged criminal justice system.

Adding a possibility for professional sanctions on an officer who violate these standards will have a chilling effect on law enforcement across the state. Police face evidence exclusion hearings on serious criminal cases routinely. These hearings closely examine the actions of the officer through a lens that often is not available at the time the officer must make a decision in the midst of a critical incident or serious investigation. To then add the pressure of possible professional sanctions if an officer misjudges what is later determined to be a custodial setting or a "deceptive" suggestion will severely hamper such investigations and lead officers in non-productive directions.

P.O. Box 139
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Founded in 1966

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Targeted deceptive questioning has been found to be a constitutionally valid technique and through testimony you've heard that its use in serious criminal investigations has been of significant value. Expanding the limitations and eventually the elimination of this practice regardless of age or custodial status through a statewide policy would be seriously hamper quality criminal investigations.

We recommend the following to return the bill to its original intent:

- 1) Removing any sanctions regarding professional regulation.
- 2) Returning to a heightened burden for admissibility of custodial statements made by persons under the age of 18 in the response of deception and eliminating any additional evidentiary burden for those between the ages of 18 – 21.
- 3) Better defining "deception" as the blatant use of an untrue statement.
- 4) Aligning the judicial review process for custodial statements made by those under age 18 with standards used by other states.
- 5) Better defining the intent of a model policy to ensure compliance with the bill's intent instead of a broad statement calling for the elimination of targeted deception in general.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Allen", is written over a horizontal line.

Douglas Allen, President
Vermont Association of Chiefs of Police