

**From:** Nathaniel Erb  
**Sent:** Friday, April 28, 2023 12:21 PM  
**To:** Martin LaLonde  
**Subject:** [External] S.6 Reliability Test

Dear Chair LaLonde,

I am writing in regards to the question raised on the reliability factor in S. 6 today. As Mashall noted, reliability is an import and key aspect of the bill because the use of deception is widely known to produce confessions that are voluntary but clearly unreliable. Even with the heightened test of voluntariness, without an assessment of reliability there may be nothing to prevent problematic confession from coming in or deterring the use of deception.

Judges needs to act as a first gate keeper over confessions on this factor, as they already do regarding the reliability of witnesses and scientific evidence, because false confessions are persuasive enough to overpower exculpatory evidence and have the ability to trump scientific certainty in the minds of the jury. Juries have consistently found false confessions more convincing than even exculpating DNA evidence due to a strong tendency to believe statements that fly in the face of self-interest. This is compounded by the belief that law enforcement is always sufficiently trained and equipped to identify false confessions and would never cause them.

In one of the key cases covering deception, *Colorado v. Connelly*, the U.S. Supreme Court stated affirmatively that it is the role states to enact statutes to restrict the admissibility of confessions to those deemed reliable because it was only able to expand to voluntariness, writing: *"A statement rendered by one in the condition of respondent might be proved to be quite unreliable, but this is a matter to be governed by the evidentiary laws of the forum."*

Lastly, this is not a novel test in state laws regarding statements by suspects. Delaware's law barring deception requires a test of reliability as well as do many state laws regarding the admission of an unrecorded statement from an interrogation including California, Connecticut, Delaware, Illinois, Montana, and North Carolina.

We strongly encourage maintaining this factor in S. 6 and standby to help address any questions.

Thank you for your consideration,

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Nathaniel Erb  
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**Innocence Project**