



State of Vermont
Department of Public Safety
45 State Drive
Waterbury, Vermont 05671-2101

To: House Committee on Judiciary
From: Department of Public Safety
Re: Recommendations regarding S. 6 as passed by the Senate
Date: April 12, 2023

As discussed in its April 5 testimony, the Department of Public Safety believes S. 6 as passed by the Senate may undermine lawful investigative techniques used to secure just outcomes in serious cases, including cases involving sexual violence and internet crimes against children. To address these concerns, the Department recommends the following amendments to this bill:

- Lower the age threshold for the prohibition on the use of deception during custodial interrogations from age 22 to age 18. To the Department’s knowledge, no other state with comparable legislation has an age threshold above 18. See Utah [House Bill 171](#) (age 18); Delaware [House Bill 419](#) (age 18); Illinois [Public Act 102-0101](#) (age 18); Oregon [Senate Bill 418](#) (age 18); Indiana [Senate Bill 415](#) (age 18); California [Assembly Bill 2644](#) (age 17). Deception is a constitutionally permissible investigative technique used in certain circumstances to elicit truthful statements by suspects in serious cases, including suspects between the ages of 18 and 22. For reference, approximately 50 to 150 Vermont cases per year involve a conviction for a listed offense committed by an individual between the ages of 18 and 22.
- Simplify the judicial standard of review from the current draft (which includes four factors proven by clear and convincing evidence) to two factors proven by a preponderance of the evidence. To the Department’s knowledge, no other state that uses a judicial standard of review in this context includes as many factors as contained in this bill draft. To address concerns regarding the reliability of a juvenile’s statement, the Department recommends a judicial standard of review that “the statement is reliable and was not induced by the use of deception” under a preponderance of the evidence burden of proof. This is a straightforward and practical standard used by Delaware in House Bill 419 that appropriately focuses on the reliability of a juvenile’s statement.
- Ensure the Vermont Criminal Justice Council has the resources and capacity to carry out its obligation to develop a statewide interrogation policy.
- Ensure the Vermont Criminal Justice Council consults with Vermont law enforcement subject matter experts in the development of any statewide policy on interrogations, including the following entities and individuals: Special Investigative Unit detectives and directors; the Vermont Internet Crimes Against Children Task Force; the Commissioner

of the Department of Public Safety or designee; the President of the Vermont Troopers' Association or designee; the President of the Vermont Police Association or designee; the President of the Chiefs of Police Association of Vermont or designee; the President of the Vermont Sheriffs' Association or designee, and; the Executive Director of the Department of State's Attorneys and Sheriffs or designee.

- Ensure any statewide interrogation policy will not result in sanctions against an officer's certification when an officer uses constitutionally permissible investigative techniques, like deception, that are otherwise subject to a judicial standard of review, including the judicial review established by this bill.

The Department welcomes the opportunity to collaborate with the Committee and stakeholders to address the recommendations highlighted above.