

Innocence Project Potential Revisions to S. 6

The Innocence Project recommends the following amendments to S. 6 as introduced. These recommendations are based on the testimony provided and the questions raised by the committee.

Simplification of Language & Scope - We have removed the language covering Psychologically Manipulative tactics. We have also added language to cover the “agent” of a law enforcement officer which has been used in recording of interrogations statutes in other states to cover interrogations conducted by persons other than a sworn officer.

Standard of Proof – We have simplified the language governing how a court would weigh the admission of a statement elicited through deceptive tactics. We recommend maintaining the “clear and convincing standard” in the bill as it is a middle ground already adopted by Oregon and denotes the seriousness with which the legislature asks the courts to weigh the admission of statements procured in violation of the statute. The statute should require a court to be more than only 51% certain that a statement procured through the use of deception is still reliable.

Deception Definition - We have added “knowing” language throughout the definition of deception. We recommend maintaining the “knowing” standard as it is a sufficiently high bar for defense counsel to overcome in first challenging the admission of the statement. We also recommend maintaining the definition of deception as drafted. Due to the bill not explicitly barring the admission of statements procured through deception as Utah has enacted, limiting the language will only further limit the world of statements a court would consider with heightened scrutiny.

Applicability - Lastly, we encourage the committee’s consideration of expanding the bill to cover all persons in light of also limiting the scope of tactics covered. Vermont is helping to lead the country in training on alternative interrogation methods. This is another area the state can lead the country whilst causing minimal disruption to existing practices. Already, 397 cases of wrongful convictions involving false confessions have been revealed since 1989. 96 of these cases were of children below 18. 251 were juveniles below age 25. And 146 were persons age 25 and above. Training can protect many innocent persons from falsely confessing but without the protections included in this bill an innocent person is left vulnerable if that training fails or is willfully ignored, even by one person, and the court must consider their confession.

§ 5585a. DEFINITIONS

As used in this subchapter:

(1) “Custodial interrogation” means any interrogation:

(A) involving questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject; and (B) in which a reasonable person in the subject's position would consider the person to be in custody, starting from the moment a person should have been advised of the person's Miranda rights and ending when the questioning has concluded.

(2) "Deception" includes the knowing communication of false facts about evidence, **knowing** misrepresenting the accuracy of the facts, **knowing** misrepresentation of the law, or **knowing communication of** unauthorized statements regarding leniency.

(3) "Electronic recording" or "electronically recorded" means an audio and visual recording that is an authentic, accurate, and unaltered record of a custodial interrogation or, if law enforcement does not have the current capacity to create a visual recording, an audio recording of the interrogation.

(4) "Place of detention" means a building or a police station that is a place of operation for the State police, a municipal police department, county sheriff department, or other law enforcement agency that is owned or operated by a law enforcement agency at which persons are or may be questioned in connection with criminal offenses or detained temporarily in connection with criminal charges pending a potential arrest or citation.

~~(5) "Psychologically manipulative interrogation tactics" include the following:~~

~~(A) Depriving the person being interrogated of physical or mental health needs, including food, sleep, or use of the restroom.~~

~~(B) Making direct or indirect promises of leniency, such as indicating the person will be released if the person cooperates.~~

~~(C) Using or threatening to use unwarranted enhanced penalties upon the person being interrogated or another person or using or threatening to use the unwarranted criminalization of another person.~~

~~(D) Providing key incriminating facts about evidence presumed only to be known to law enforcement and the perpetrator of the crime that were not previously articulated by the person being interrogated, inducing the person to adopt these facts.~~

(6) "Statement" means an oral, written, sign language, or nonverbal communication.

§ 5587. JUVENILES

(a) During a custodial interrogation of a person ~~under 18 years of age~~ relating to the commission of a criminal offense or delinquent act, a law enforcement **or their agent** officer shall not

employ threats, physical harm, **or** deception, ~~or psychologically manipulative interrogation tactics.~~

(b)(1) Any admission, confession, or statement, whether written or oral, made by a person ~~under 18 years of age~~ and obtained in violation of subsection (a) of this section shall be presumed to be involuntary and inadmissible in any proceeding.

(2) The presumption that any such admission, confession, or statement is involuntary and inadmissible may be overcome if the State proves by clear and convincing evidence that the admission, confession, or statement was:

(A) voluntary and not induced by a law enforcement officer **or their agent's** use of threats, physical harm, deception, or **other** ~~psychologically manipulative~~ interrogation tactics prohibited by subsection (a) of this section; and

(B) **Reliable**. ~~any actions of a law enforcement officer in violation of subsection (a) of this section did not undermine the reliability of the person's admission, confession, or statement and did not create a substantial risk that the person might falsely incriminate themselves.~~

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2024.