



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

May 1, 2023

Dear Chair LaLonde and Chair Sears:

We respectfully urge you to reconsider Draft 2.1 of S. 6. We believe the entirety of this bill is a significant departure from its original intent, and it will have a chilling effect on law enforcement investigations of young perpetrators involved in serious crimes, including narcotics distribution, sex offenses, and internet crimes against children.

The impact of this bill will be significant, yet there is no evidence to establish the need for it in Vermont. Vermont already has robust constitutional protections in place to ensure statements by suspects are voluntarily given, considering the age of the accused, their level of education, their level of intelligence and many other considerations.

Furthermore, the bill contradicts the purpose of S.4: discouraging young members of criminal organizations from exploiting Vermont's perceived weakness as a favorable location for illegal activities. As several witnesses testified in the House Committee on the Judiciary, targeted deception is a constitutionally permissible investigative technique used in certain circumstances to elicit truthful statements by suspects in serious cases.

The current draft of S. 6 creates an outright prohibition and evidentiary exclusion relating to the use of targeted deception during custodial interviews of individuals under 18, something the version as passed by the Senate did not contemplate. It also maintains a presumptive inadmissibility of statements made in response to the use of targeted deception during custodial interviews of individuals aged 18 to 21.

For example, under this bill, an officer would be prohibited from telling a 17-year-old sexual assault suspect during a custodial interview that a complainant obtained a sexual assault exam when that complainant did not do so—a common investigative technique in such cases that would now render a response inadmissible. Likewise, a statement by a 21-year-old will be presumptively inadmissible if an officer uses the same technique during a custodial interview, subject to a prosecutor meeting a heightened standard of review. The current draft of S.6 would undermine these constitutionally permissible investigative techniques used to secure just outcomes in serious cases, including cases involving sexual violence and internet crimes against children.

These provisions are likely to result in increased litigation about whether a young person was in custody during an interview, a determination that requires a multi-factor analysis by the court and may not always be predictable by law enforcement officers in the field. This heightened focus on custody status could have a chilling effect on law enforcement interviews in all settings because the determination of whether someone was in custody is only made in retrospect by the court.

Also, the bill now introduces the prospect of professional certification sanctions against officers who violate these provisions, even though the use of targeted deception is constitutionally permissible and used in serious cases today. The potential for professional certification sanctions will further chill law enforcement investigative actions in serious felony cases.

Finally, section 5 of the bill now calls for a statewide policy to “limit and eventually eliminate the use of deception in law enforcement interrogations” regardless of age and in circumstances beyond custodial interviews. Section 5 disregards the testimony in the House about the legitimate use of targeted deception in serious cases.

To address these concerns, we ask the Legislature to return the bill to its original intent by:

- (1) reinstating the presumptive inadmissibility of statements made by individuals under age 18 in response to the use of deception and eliminating any heightened evidentiary burden for those between 18-21,
- (2) removing any provision relating to professional regulation,
- (3) simplifying the judicial review for statements made by those under 18 to more closely align with a standard used by other states, and
- (4) revising the intent of the statewide model policy to ensure compliance with the new statutes alone, rather than calling for the limitation and elimination of the use of targeted deception generally.

We believe that returning the bill to its original intent and adopting the revisions outlined above will ensure that the criminal justice system in Vermont remains fair, just, and effective while still protecting the constitutional rights of suspects.

Sincerely,



Jennifer Morrison
Commissioner
Department of Public Safety