

To: Senate Judiciary Committee
From: Indi Schoenherr, Policy Advocate ACLU-VT
Re: S.6 – An act relating to custodial interrogation of juveniles
Date: 1/24/2023

Introduction

The ACLU of Vermont is committed to ending police violence and increasing transparency and accountability because Vermonters deserve to live equitable and secure lives. We know that accountability measures alone are not enough, and Vermont must also invest in our community programs that build sustainable community security and safety. We support S.6 as a measure to limit coercive police interrogations of juveniles and prevent false confessions, and we urge that the same protections be applied to **all** police interrogations.

The ACLU just last week [filed a lawsuit](#) against a Vermont police department that extensively used false, misleading, and coercive interrogation tactics against multiple suspects and witnesses. Situations like these offend our values and sense of justice; they can and should be prevented from occurring in Vermont. Just as it is wrong to allow police to lie to juveniles to coerce false confessions, it is wrong to allow the same conduct for adults.

Coercive and deceptive interrogations often result in false confessions

Currently under Vermont law, police are permitted to use coercive and deceptive tactics on any person regardless of age during a custodial interrogation. These interrogation tactics can and do result in people falsely confessing to an offense they did not commit.

In a study, the Innocence Project found that of 211 exonerees, who were wrongfully convicted as children, 36% falsely confessed, whereas 10% of exonerees who were wrongfully convicted over the age of 18 falsely confessed.¹ This shows that youth are overrepresented in proven false confession cases, typically accounting for about one-third of the samples.² In other words, juveniles are three times more likely to give false confessions than adults.³ The use of deceptive tactics like the Reid method on children has led to an alarmingly high rate of false confessions among juveniles, who are already at an increased risk for false confessions.⁴

Deceptive interrogation tactics ultimately harm the people our state has made the most vulnerable: people of color, youth, and people with mental or physical disabilities. These tactics also harm victims, insofar as false confessions often result in an innocent person being convicted while the actual perpetrator faces no

¹Nigel Quiroz, Five Facts About Police Deception and Youth You Should Know, Innocence Project (May 13, 2021), available at <https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers/>.

² *Id.*

³ https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf

⁴ Ariel Spierer, The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations, 92 N.Y.U.L. REV. 1719, 1729–34 (2017), available at <https://www.nyulawreview.org/issues/volume92-number-5/the-right-to-remain-a-child-the-impermissibility-of-the-reid-technique-in-juvenile-interrogations/>.



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accountability. Data shows that BIPOC are overrepresented in the criminal legal system, including in exoneration databases and in instances of false confessions. Experts have found that people living with mental and physical disabilities are also at particular risk for exploitation and manipulation during interrogation.⁵ Youth are particularly susceptible to deceptive tactics because the part of the brain that controls future planning, judgment, and decision-making is not fully formed until their mid-twenties.

Recognizing the vulnerable position of justice involved youth, S.6 is a critically important and overdue step to mitigate the possibility of false confessions arising from our youth and to minimize the use of deceptive and coercive practices in policing.

Even if these tactics are more likely to produce a false confession from youth, we believe it is just as important to end the use of deception tactics by police for everyone in a custodial interrogation. There are many reasons to end deceptive interrogation tactics by police and we want to center the astounding lack of scientific evidence supporting its efficacy. Historically, the shift from physical interrogation tactics used by police in the early twentieth century to psychological interrogation was thought to be a scientific and effective advancement that was more humane than intimidation and physical violence.⁶ But since the inception of this interrogation strategy eighty years ago, its efficacy has been conclusively discredited in scientific evaluations.⁷

In addition, the Reid technique was developed in the 1930's and 40's and scholars have called on a very legitimate question regarding its efficacy to obtain truthful and reliable confessions. Science has developed since this method was introduced and there are many other alternatives that result in more reliable confessions.⁸ Now we know that the confessions produced by police deception often result in wrongful convictions based on false confessions. So it would make sense to implement appropriate guardrails so we limit deception and the possibility for a false confession.

S.6 enables truthful and just resolutions and accountability

As a state we should strive to ensure that any confession is accurate, freely given, and obtained with interrogation techniques based in modern science. Illinois, Oregon, Utah, and California have prohibited the use of deceptive interrogation tactics as applied to juveniles with support from law enforcement and prosecutors. The language found in section three of S.6 mirrors Connecticut's SB 306 provisions relating to juveniles.

⁵ Age and Mental Status of Exonerated Defendants Who Confessed (Mar. 17, 2020), available at <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf>.

⁶ Leo, supra note 3, at 42; Simon-Kerr, supra note 1, at 647.

⁷ https://www.acluct.org/sites/default/files/acluct_2022_written_testimony_supporting_sb_306_deceptive_interrogation_tactics.pdf (pg 2).

⁸ Press Release, Wicklander Zuluski Discontinues Reid Method Instruction After More Than 30 Years, WICKLANDER-ZULAWSKI & ASSOC. (Mar. 6, 2017), <https://www.w-z.com/wp-content/uploads/2017/03/AttachmentA-WZ-Press-Release-Discontinue-Reid-1.pdf>



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The bill before us is specific to prohibiting threats, physical harm, deception, or psychologically manipulative tactics by an officer during a custodial interrogation of a person under 18 years of age. S.6 confronts the use of deceptive interrogation tactics on juveniles by creating a presumption that statements from custodial interrogations in which an officer knowingly used specific coercive and deceptive tactics are involuntary unless the presumption is overcome by clear and convincing evidence.

However, S.6 does not go nearly as far as legislation passed by the Connecticut senate, which includes the most comprehensive abolishment of deceptive interrogation practices in the country. We have an opportunity to join Connecticut in taking the lead to ban the use of deception or coercion in any custodial interrogation.

It's wrong for police to coerce false confessions in any interrogations, whether involving children or adults

While we strongly support S.6 as a good start, we also believe that deceptive tactics should be prohibited in **any** police interrogations – regardless of the age of the person in custody – to increase transparency and accountability of law enforcement officers and minimize false confessions.

The ACLU filed a lawsuit last week on behalf of John Chinnici, who was unlawfully arrested, interrogated, and searched by Bennington police after they repeatedly pressured multiple witnesses and suspects—in some instances, using the very same tactics this bill addresses—to name Mr. Chinnici as an accomplice in a January 2016 armed robbery. Police used these tactics to elicit a false accusation, despite the fact that Mr. Chinnici did not match witness descriptions and no other evidence connected him to the crime.

While still trying to get Mr. Chinnici named as an accomplice, Bennington police arrested Mr. Chinnici without probable cause, and went on to make multiple misrepresentations in their interviews with Mr. Chinnici and in their application for a warrant to search his phone. Mr. Chinnici was prosecuted based on evidence arising from these unlawful actions, though his resulting conviction was eventually thrown out. Mr. Chinnici now asserts that BPD officials and the Town of Bennington violated his federal and state constitutional rights.

Last session, we supported legislation that prohibited the use of deceptive and coercive methods towards all people, and we continue to urge the legislature to adopt that approach. Permitting deception or coercive techniques for adults is not aligned with the values of our legal system or our state, and this bill should be broadened to include all persons in a custodial interrogation.

Conclusion

The ACLU-VT strongly supports S.6 as an essential step in creating a more accountable and fair legal system. Deceptive interrogation tactics are outdated and ineffective, can and do result in false confessions resulting in the incarceration of innocent people, and are inconsistent with the values of our legal system and our state. We urge the legislature to act now and prohibit the use of these manipulative and deceptive tactics during *any* custodial interrogation.



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