

To: Committee Chair, Judiciary Committee
From: Ashley Devaughn, Youth Justice Policy Director
Re: HB 624, Child Interrogation Protection Act
Date: February 13, 2020
Position: Support

Thank you for the opportunity to provide testimony on HB 624, Child Interrogation Protection Act. Advocates for Children and Youth (ACY) SUPPORTS this bill.

We urge this committee to issue a favorable report on HB 624.

Youth have faced coercive police interrogation tactics for decades and despite some legal progress, the problem of coerced, wrongful confessions of youth persists. Research on adolescent brain development states that while the frontal lobe, which governs measured decision-making, is still developing, the reward-seeking part of the brain is highly active, causing teenagers to prioritize short-term benefits over long-term consequences. This brain development is the reason why educators use Positive Behavior Interventions and Supports (PBIS) as a behavioral management strategy to improve the climate of educational environments. PBIS is an evidence based tiered framework used worldwide to improve student outcomes in academic performance, social and emotional competence, and behavior. Adolescent brain development coupled with behavior psychology and sociological literature on coercive persuasion and interrogation-induced false confession explains youth prone to comply with the requests of authority figures like police or school resource officers (SRO's), making them uniquely vulnerable to coercive interrogation tactics.

It is imperative to keep a continued understanding of adolescent brain development and behavior psychology at the forefront of this discourse to ensure we are adequately discussing the dangers of youth interrogations. Further, it is critical to recognize that the goal of interrogations is to elicit incriminating statements, admissions and/or confessions through the use of psychological methods that are explicitly confrontational, manipulative, and suggestive. The purpose of interrogations as stated by Steven Drizin and Richard Leo "is not to determine whether a suspect is guilty; rather, police are trained to interrogate only those suspects whose guilt they presume or believe they have already established. The purpose of interrogation, therefore, is not to investigate or evaluate a suspect's alibi or denials. Nor is the purpose of interrogation necessarily to elicit or determine the truth. Rather, the singular purpose of American police interrogation is to elicit incriminating statements and admissions—ideally a full confession—in order to assist the State in its prosecution of the defendant. Because it is designed to break the anticipated resistance of an individual who is presumed guilty, police interrogation is stress inducing by design; it is intentionally structured to promote isolation, anxiety, fear, powerlessness, and hopelessness." Also, Drizin and Leo make clear distinctions of the difference between interviewing and

interrogation. Stating "the goal of interviewing is to obtain the truth through non-accusatorial, open-ended questioning in order to gather general information in the early stages of a criminal investigation."

Many will conclude that in the era of psychological interrogation, the phenomenon of false confession has become an accepted stratagem. Adolescents waive their Miranda rights at an astounding national rate of 90% and make false confessions at exponentially higher rates than adults. A child's decision to confess in order to end an interrogation can have devastating consequences, at times leading to a conviction and incarceration. Most people are ignorant of the psychologically manipulative methods and strategies of police interrogators or that police detectives are sent to specialized training schools to learn the techniques of interrogation or how and why they are designed to manipulate the perceptions, reasoning, and decision-making of a custodial suspect and thus lead to the decision to confess. Like many criminal justice officials, most people appear to believe in what social psychologists Richard Ofshe and Richard Leo have labeled "the myth of psychological interrogation": that an innocent person will not falsely confess to a serious crime unless he is physically tortured or mentally ill. This discourse is easily dispelled by the story of the Central Park Five, highlighting the devastating impact of coercive and illegal interrogations of youth, leading to wrongfully convictions. Most recently, three Maryland men were exonerated in November after spending 36 years in prison for a crime they did not commit. Add these stories to the litany of miscarriages of justice being enacted every day. Social scientists and legal scholars have documented that contemporary methods of psychological interrogation can lead innocent individuals to confess falsely to serious felony crimes.

Building not only on the theoretical research in rational choice and game theory, but also on earlier applied research by Hilgendorf, Irving, and others, 117 Ofshe and Leo write:

Psychologically-based interrogation works effectively by controlling the alternatives a person considers and by influencing how those alternatives are understood. The techniques interrogators use have been selected to limit a person's attention to certain issues, to manipulate his perceptions of his present situation and to bias his evaluation of the choices before him. The techniques used to accomplish these manipulations are so effective that if misused they can result in decisions to confess from the guilty and innocent alike. Police elicit the decision to confess from the guilty by leading them to believe that the evidence against them is overwhelming, that their fate is certain (whether or not they confess), and that there are advantages that follow if they confess. Investigators elicit the decision to confess from the innocent in one of two ways: either by leading them to believe that their situation, though unjust, is hopeless and will only be improved by confessing; or by persuading them that they probably committed a crime about which they have no memory and that confessing is the proper and optimal course of action.

Ofshe and Leo go on to argue that modern police interrogation is a two-step process of psychological manipulation. The first step is designed to reduce a suspect's subjective self-confidence that he will survive the interrogation without being arrested by persuading him that he has been caught because the evidence incontrovertibly establishes his guilt, that no reasonable person could come to any other conclusion, and thus that there is no way out of his predicament. Once the investigator has convinced the suspect that he is powerless to change his situation, the investigator offers the suspect inducements (i.e., reasons to confess) that are designed to

persuade him that he is psychologically, materially and/or legally better off by cooperating with police and confessing than he is by continuing to deny any role in the crime. Ofshe and Leo point out that in the first step of interrogation, suspects shift from confident to hopeless. Interestingly enough, Cornell West in his book, *Race Matters*, observes that the major enemy of Black survival in America is neither oppression nor exploitation but rather the nihilistic Threat – that is, loss of hope and absence of meaning. West further explains, “Nihilism, is to be understood here not as a philosophic doctrine it is, far more, the lived experience of coping with a life of horrifying meaningless, hopelessness, and lovelessness.”

When all of these factors- Adolescent brain development, behavioral psychology, the purpose of interrogations, and the two-step process of psychological manipulation involved in interrogations- are collectively evaluated only then are we able to acknowledge the impact on children as well as youth. The overrepresentation of African American and Latinx youth as well as the national data suggesting some 90% of youth in the Youth Justice System have experienced some form of Adverse Childhood Experiences (ACES) forces this Committee to grapple with the reality that not passing this legislation is expanding the impact of the Nihilistic Treat and creating hopelessness in youth.

We urge this committee to issue a favorable report on HB 624.