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POSITION ON PROPOSED LEGISLATION

BILL: HB 76 - Custodial Interrogation of Minors - Admissibility of Statements

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 1/24/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 76.

House Bill 76 would create the rebuttable presumption that a statement made by a minor during a custodial interrogation is involuntary and inadmissible when the law enforcement officer intentionally used false information to elicit the statement. This presumption is essential to protect the due process rights of children and prevent wrongful convictions that result from false confessions.

The Supreme Court has recognized that police interrogation tactics “can induce a frighteningly high percentage of people to confess to crimes that they never committed.”¹ The risk of false confessions is multiplied when a child is the subject of an interrogation: children are much more likely than adults to falsely confess,² and children account for more than one-third of all false confessions.³

The risk of false confessions is disproportionately higher among children because they are uniquely vulnerable to coercive police interrogation tactics. Youth prioritize short-term benefits over long-term consequences and are particularly inclined to comply with requests of authority figures, including police.⁴ During adolescence, the reward-seeking part of the brain is

¹ *Corley v. United States*, 556 U.S. 303, 320-21 (2009).

² *See* American Bar Association Insights on Law & Society 16.2 available at https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf (“Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults.”).

³ National Registry of Exonerations, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess (April 10, 2022).

⁴ *See* Feld, B. C. (2006). Juveniles’ competence to exercise Miranda rights: An empirical study of policy and practice. *Minnesota Law Review*, 91, 26–100; Grisso, T. (1981). Juveniles’ waiver of rights: Legal and psychological competence. New York, NY: Plenum. *See also*: Steven Drizin & Richard Leo, The Problem of False Confessions in the Post-DNA World, *NORTH CAROLINA LAW REVIEW*, Vol. 82, Number 3 (March 1, 2004.) <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4085&context=nclr> (“[J]uvenile suspects share many of

highly active, while the frontal lobe, which governs measured decision-making, is still developing. Children, even 16 and 17 year olds, are highly susceptible to pressure, have poor impulse control, developing brains, and a limited understanding of long-term consequences. As a result of these inherent characteristics of youth, children are more likely to falsely confess.

An additional factor contributing to the increased likelihood of false confessions by youth is the usage of deceptive tactics during interrogation. When police deceive a suspect during questioning, the interrogation is more likely to result in a false confession.⁵ When law enforcement officials falsify evidence against a suspect, even innocent people can “feel trapped by the inevitability of the evidence against them,” causing them to confess to crimes that they did not commit.⁶ Given that adults are likely to succumb to deceptive interrogation tactics, youth are even more vulnerable to these tactics because of their tendency to comply with demands of authority figures and their inability to weigh long-term consequences over short-term gratification.

In response to evidence that deceit increases false confessions, both Oregon and Illinois enacted laws in 2021 that prohibit law enforcement from using deception during the interrogation of minors. Utah, Delaware, and California have since followed suit. Other states have proposed legislation similar to HB 76.

Children—when subjected to interrogation—are in an extremely vulnerable position. An abundance of psychological evidence demonstrates that children are highly susceptible to coercive interrogation tactics. This is confirmed by data showing that children are more likely than adults to confess to crimes they did not commit. When deceptive tactics are utilized by law enforcement during interrogations, the risk of false confessions increases even further. The use of deceptive interrogation practices must be discouraged to protect the due process rights of children and ensure the integrity of both the criminal and juvenile legal systems.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on HB 76.

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the same characteristics as the developmentally disabled, notably their eagerness to comply with adult authority figures, impulsivity, immature judgment, and inability to recognize and weigh risks in decision-making.”)

⁵ Saul M. Kassin et al., Police-induced confessions: Risk factors and recommendations., 34 Law and Human Behavior 3–38 (2010), <http://doi.apa.org/getdoi.cfm?doi=10.1007/s10979-009-9188-6> (last visited Feb 23, 2022).

⁶ *Id.*