

**Testimony in Support of House Bill 169
Custodial Interrogation of Minors – Admissibility of Statements**

To: Luke Clippinger, Chair, and Members of the Judiciary Committee

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I am a student attorney in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school as well as individuals who are serving life sentences for crimes committed when they were children or emerging adults. I write in support of House Bill 169, which seeks to establish a rebuttable presumption that a statement made by a minor during a custodial interrogation is involuntary and inadmissible against them if the law enforcement officer intentionally used false information to elicit the minor’s statement.

Custodial interrogations are “intentionally structured to promote isolation, anxiety, fear, powerlessness, and hopelessness.”¹ Scientific research links interrogation techniques that presume guilt and use deceit to unreliable and false testimony from even the most “psychologically healthy adults.”² In this interrogation setting, children are even more vulnerable to the pressures placed on them by law enforcement officers. Under this stress, they are likely to make decisions based on an officer’s authority, “rather than on logical reasoning or independent judgement.”³

The interrogation of a child is inherently coercive. Even in this coercive environment, Maryland allows law enforcement officers to use deception during interrogation, which heightens the likelihood that any subsequent statement or confession is involuntary. Children have unique responses to high pressure situations and have a tendency to believe and trust adults when directed to do so.⁴ This immaturity is due the scientific fact that their brains have not fully developed, especially the their prefrontal cortex, the region of the brain responsible for decision-making, judgement, behavior regulation, and planning.⁵ As a result, a child’s decision-making process “places emphasis on immediate rewards, not long-term consequences.”⁶ Thus, when an officer makes a false statement or promise, in order to elicit testimony or a confession during a custodial interrogation, the child is essentially unable to contemplate the long-term consequences of their statement, but rather is primarily concerned with pleasing the officer and ending the interrogation.

¹ Steven A. Drizin & Richard A. Leo, *The Problem False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 911 (2004)

² Haley Cleary, MPP, Ph.D., 46-DEC CHAMP 20, 22 (2022). [I CANNOT FIND THIS SOURCE. DOES IT NOT HAVE A TITLE? PLEASE SENT ME THE LINK-

³ Samantha Buckingham, *Abolishing Juvenile Interrogation*, 101 N.C. L. REV. 1015, 1029 (2023).

⁴ Danielle Palmieri, *From Interrogation to Truth: The Juvenile Custodial Interrogation, False Confessions, and How We Think About Kids in Trouble*, 54 CONN. L. REV. ONLINE 1, 6 (2022).

⁵ Mariam Arain et al., *Maturation of the Adolescent Brain*, NEUROPSYCHIATRIC DISEASE AND TREATMENT, 449, 453 (2013).

⁶ K'reisa Cox, Note, *Curtailing Coercion of Children: Reforming Custodial Interrogations of Juveniles*, 49 J. LEGIS. 393, 397 (2023).

Accordingly, the danger of eliciting false confessions from children in custodial interrogations, especially in instances where officers use false information, is extremely high. The U.S Supreme Court recognizes that “there is mounting empirical evidence” that custodial interrogations “can induce a frighteningly high percentage of people to confess to crimes they never committed.”⁷ Compared to adults, children are more likely to falsely confess to a crime.⁸ The Innocence Project specifically tracked DNA exonerations from 1989 to 2020.⁹ Of 375 DNA exonerations, 28% involved a false confession.¹⁰ Of these false confessors, 49% were twenty-one years of age or younger, while 33% were eighteen-years-old or younger.¹¹ A 2004 study examined 125 proven false confessions. Forty of these false confessions were from children under eighteen years of age and twenty-two were from children fifteen-years-old or younger.¹² Eight of these false confessions occurred in California and Maryland.¹³

Moreover, police interrogations disproportionately impact and harm Black and Latinx children,¹⁴ who are disproportionately arrested and detained and whose relationship with law enforcements is often rooted in mistrust and fear. Thus, these interrogation settings are particularly fraught, which intensify the conditions tailor-made for involuntary statements and false confessions. Sadly, there are an abundance of examples, from the Exonerated Five in New York City to the Harlem Park Three in Baltimore, where law enforcement coerced Black teenagers to give false confessions and statements, which led to wrongful convictions and decades of wrongful imprisonment.

Other states recognize the inherent coercion in permitting law enforcement officers to use knowingly false information in interrogation settings focused on children. Oregon, Illinois, Utah, California, and Delaware have passed legislation similar to HB 169.¹⁵ Importantly, Oregon’s law passed in 2021 with bipartisan support and encouragement “from medical professionals, justice advocates, and law enforcement.”¹⁶ In this regard, HB 169 is a significant but humble step, as it does not forbid officers from intentionally using false information against children, but rather creates a rebuttable presumption – a presumption that would be litigated case-by-case – that a statement that follows is involuntary and admissible.

As HB 169, if enacted, would be an important step forward, the Clinic asks for a favorable report. This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

⁷ *Corley v. United States*, 556 U.S. 303, 320–321 (2009).

⁸ Hannah Brudney, *Confessions of A Teenage Defendant: Why A New Legal Rule Is Necessary to Guide the Evaluation of Juvenile Confessions*, 92 S. CAL. L. REV. 1235, 1241–42 (2019)

⁹ INNOCENCE PROJECT, DNA EXONERATIONS IN THE UNITED STATES, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states> (last visited February 5, 2024).

¹⁰ *Id.*

¹¹ *Id.*

¹² Drizin & Leo, *supra* note 1, at 944.

¹³ *Id.* at 946.

¹⁴ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, RACIAL AND ETHNIC DISPARITY IN JUVENILE JUSTICE PROCESSING (last updated March 2022), <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity> (last visited February 5, 2024).

¹⁵ Cox, *supra* note 6, at 405-414.

¹⁶ *Id.* at 407 (quoting Press Release, Chris Gorsek, Senator, Oregon State Senate, Senate Votes to Protect Youth From Deceptive Interrogation Tactics (May 24, 2021)).