J. CHARLES SMITH, III
STATE'S ATTORNEY

KIRSTEN N. BROWN
DEPUTY STATE'S ATTORNEY

STATE'S ATTORNEY

County Courthouse
100 West Patrick Street
Frederick, Maryland 21701

www.statesattorney.us

CIRCUIT COURT DIVISION
301-600-1523

DISTRICT COURT DIVISION
301-600-2573

CHILD SUPPORT DIVISION
301-600-1538

JUVENILE DIVISION
301-600-2980

Dear Honorable Delegates,

The Frederick County State's Attorney's Office registers strong opposition to HB 165. Substantial curtailment of law enforcement's ability to investigate crime is not in best interest of our citizens, especially in light of all the prolific protections already in place for suspects in police custody.

> HB 165 quoted here below adds a new section of law, Courts & Judicial Proceedings 10-926
>
> (B)(1) THERE IS A REBUTTABLE PRESUMPTION THAT A STATEMENT MADE BY A MINOR DURING A CUSTODIAL INTERROGATION IS INVOLUNTARY AND IS INADMISSIBLE IN A JUVENILE OR CRIMINAL PROCEEDING AGAINST THE MINOR IF THE LAW ENFORCEMENT OFFICER INTENTIONALLY USED INFORMATION KNOWN BY THE OFFICER TO BE FALSE IN ORDER TO ELICIT THE STATEMENT.
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> (2) THE PRESUMPTION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE THAT THE STATEMENT WAS VOLUNTARY AND NOT MADE IN RESPONSE TO THE FALSE INFORMATION USED BY THE LAW ENFORCEMENT OFFICER TO ELICIT THE STATEMENT.

HB 165 eliminates officers' ability to use deception when communicating with a suspect in custody. This exact scenario has been litigated many times and the Maryland high courts have ruled that deception is an appropriate tool in some circumstances and will not be pro se prohibited. This Bill will reverse a plethora of cases approving of this tactic.[i]

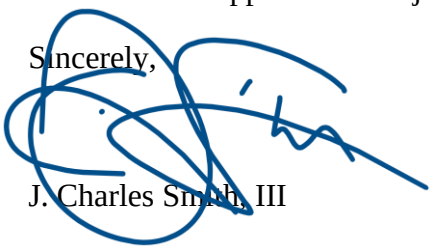
Juveniles have even more protections. In 2022, Maryland passed into law Courts and Judicial Proceedings 3-8A-14.2, which does not allow our police officers to question a youth who is in custody unless the youth has first consulted with an attorney and then made the decision to talk to the police officer. Any such statement must be recorded. Since this law has gone into effect to date, the MSAA is unaware of any juveniles being questioned by an officer while in custody after speaking to an attorney.

Although it has not been happening for more than two years, if in the future any youth does speak to an officer in custody after given the protection of an attorney, Maryland law, case precedent and Constitutional protections are replete with provisions that ensure that statements by youth are made voluntarily and if not must be suppressed. Specific to age, a court already is required to consider the youth's age and mental status, experience with the criminal justice system, the education and or mental acuity, the presence or

access of support individuals, etc.[ii] The law already requires the Courts to review a long list of factors to determine by a totality of the circumstances that the statement was in fact given voluntarily.[iii]

On behalf of our public, our crime victims and our law enforcement, I urge you to recognize that the laws in place provide tremendous protection to ensure that all custodial statements to police officers are voluntary or will be suppressed. I urge you to reject this expansion, this unnecessary restriction on law enforcement. With the requirement of an attorney to represent every youth in custody, there is no evidence that custodial interviews of juveniles are being conducted and one could suppose that this legislation is merely an effort towards restricting law enforcements' interaction with adults which is contrary to the long-standing and well-reasoned appellate court jurisprudence.

Sincerely,



J. Charles Smith, III

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[i] "[I]t is not unconstitutional to entice confessions deceptively"; "Deception short of an overbearing inducement is a 'valid weapon of the police arsenal' " *Rowe v. State,* 41 Md.App. 641, 645, 398 A.2d 485 *cert. denied,* 285 Md. 733 (1979); *Watkins v. State,* 59 Md.App. 705, 718, 478 A.2d 326 (1984) (asserting that mere fact that officer's deceit motivated accused to make inculpatory statement did not render statement involuntary). Whittington v. State, 147 Md. App. 496, 522, 809 A.2d 721, 737 (2002) … [T]the bright line exclusion of deception was rejected by the court as "at odds with the rationale of the "totality of the circumstances" analysis. Under the totality of circumstances analysis, the [deception] was one factor, among many, relevant to voluntariness." Whittington at 524-25.

[ii] "It is well settled in Maryland that the same totality of circumstances standard applies in juvenile cases in regard to determining the voluntariness of a statement. *McIntyre v. State,* 309 Md. 607, 620–21, 526 A.2d 30 (1987). Thus, "the age of a juvenile, in itself, will not render a confession involuntary," ****1165** *Jones v. State,* 311 Md. 398, 407, 535 A.2d 471 (1988), but it is a factor for the court to consider. Similarly, although lack of access to a parent does not compel ***600** a finding of involuntariness, *id.* at 407–08, 535 A.2d 471; *McIntyre,* 309 Md. at 620, 526 A.2d 30, it is another important factor in regard to the voluntariness issue. The Court of Appeals has cautioned, however, that "great care must be taken to assure that statements made to the police by juveniles are voluntary before being permitted in evidence." *Jones,* 311 Md. at 407, 535 A.2d 471. In re Joshua David C., 116 Md. App. 580, 598, 698 A.2d 1155, 1164 (1997).

[iii] Whittington v. State, 147 Md. App. 496, 519–20, 809 A.2d 721, 735 (2002) summarizes:

> Ultimately, the voluntariness of a statement turns on "the totality of all of the attendant circumstances." *Burch,* 346 Md. at 266, 696 A.2d 443; *see Winder v. State,* 362 Md. 275, 307, 765 A.2d 97 (2001); *Gilliam v. State,* 320 Md. 637, 650, 579 A.2d 744 (1990), *cert. denied,* 498 U.S. 1110, 111 S.Ct. 1024, 112 L.Ed.2d 1106 (1991). In *Hof,* the Court explicated the factors relevant to the "totality of the circumstances" standard. The factors include where the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given Miranda warnings; the mental and physical condition of the defendant; the age, background, experience, education, character, and intelligence of the defendant; when the defendant was taken before a court commissioner following arrest; and whether the defendant was physically mistreated, [or] physically intimidated or psychologically pressured. *Hof,* 337 Md. at 596–97, 655 A.2d 370 (citations omitted). Although there are many relevant factors, courts must consider the particulars of each case. *Cf.* ***520**