



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN OPPOSITION TO:

**H.B. NO. 5589: AN ACT CONCERNING CUSTODIAL INTERROGATIONS**

JOINT COMMITTEE ON JUDICIARY  
March 24, 2014

The Division of Criminal Justice opposes H.B. No. 5589, An Act Concerning Custodial Interrogations, and respectfully recommends the Committee take NO ACTION this bill. This bill seeks to create a one-size fits all answer to a question that is best left to our courts to determine on a case-by-case basis under the totality of the circumstances presented by the case. The rule proposed by H.B. No. 5589 is not needed to protect the rights of defendants because our law already strictly regulates the admission of confessions in evidence at a criminal trial. On the other hand, the rule ill suits the interests of the citizens of the State of Connecticut because it may result in the needless suppression from evidence of confessions which, by any reasonable measure, are voluntary, reliable and highly probative of guilt.

The added protection contemplated by H.B. No. 5589 is unnecessary because our law regarding the admission of confessions is already strict. "[T]he use of an involuntary confession in a criminal trial is a violation of due process.... The state has the burden of proving the voluntariness of the confession by a fair preponderance of the evidence.... [T]he test of voluntariness is whether an examination of all the circumstances discloses that the conduct of law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined.... The ultimate test remains ... [that is] [i]s the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.... The determination, by the trial court, [of] whether a confession is voluntary must be grounded [on] a consideration of the circumstances surrounding it...." *State v. Garcia*, 299 Conn. 39, 50-51 (2010).

Where present, one of the circumstances that a court will take into account in assessing the validity of a confession is the use by the police of trickery and deception during their interrogation of the suspect. *State v. Lawrence*, 282 Conn. 141, 174-76 (2007); *State v. Pinder*, 250 Conn. 385, 422 (1999); *State v. Doyle*, 104 Conn. App. 4, 17, cert. denied, 284 Conn. 935 (2007); *State v. Williams*, 16 Conn. App. 75, 82 (1988). Our courts, courts across the country and legal scholars all recognize that police trickery and deception can entail coercion sufficient to render a confession involuntary, but that such a practice is a commonly accepted investigatory technique that is not automatically unfair or coercive, and rarely so. *State v. Lawrence*, 282 Conn. at 176-77; *United States v. Byram*, 145 F.3d 405, 408 (1st Cir. 1998); *Green v. Scully*, 850 F.2d 894, 903-904 (2d Cir.), cert. denied, 488

U.S. 945 (1988); 2 W. LaFave, J. Israel & N. King, *Criminal Procedure* (2d Ed.1999) § 6.2(c), p. 456; 3 W. Ringel, *Searches and Seizures, Arrests and Confessions* (2d Ed.1996) pp. 25-25-26.

Our law is clear, therefore, that while the police may employ deception during an interrogation, they do so at the risk of tainting a confession obtained thereby should a reviewing court determine that the deception was such as to be fundamentally unfair or to sufficiently coercive to raise the danger that it induced a false confession.

The problem with H.B. No. 5589 is that it presumes, contrary to the vast majority of courts and legal scholars, that the police use of deception is automatically fundamentally unfair or sufficiently coercive to raise the danger that it induced a false confession. Because this is not so, the fairest and most effective way to determine whether the police use of deception tainted a particular confession is to hold a suppression hearing before a Superior Court judge, who can take evidence and assess the matter based on the totality of the circumstances presented by the case. If the court rules to admit the confession in evidence, that ruling, upon conviction of the defendant, is appealable to our Appellate Court, and/or our Supreme Court and, in the rare case, the United States Supreme Court. In sum, H.B. No. 5589 is unnecessary because the law as it currently exists adequately protects the competing interests that are involved.

H.B. No. 5589 would do nothing to further its supposed goal of increasing reliability. The state already has the burden of demonstrating both compliance with *Miranda*, voluntariness and now compliance with the requirements for the recording of interrogations. The only thing this bill would do is preclude the use of an interrogation technique found acceptable by our courts for decades. It would even, in blanket fashion, prevent the use of completely reliable confessions in cases where an officer may, at some point inadvertently misspeak during the course of a lengthy interview.

In conclusion, the Division would also respectfully note that this legislation undermines the efforts made in recent years to adopt "best practices" with regard to investigative techniques and procedures, including the recording of interrogations conducted in the course of investigations into serious felony offenses. The requirements for the electronic recording of interrogations are still new and it is way too early to make any valid assessment of how the system is working and whether any refinement is necessary. We must allow that process to proceed in an orderly fashion. The law enforcement community remains committed to the continued examination of issues and to revising policies or procedures to reflect "best practices" or a demonstrated need for such change. H.B. No. 5589 accomplishes neither of these goals and should be rejected.