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**Written Testimony Supporting Senate Bill 306, An Act Concerning
Deceptive Interrogation Tactics**

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein, and distinguished members of the Judiciary Committee:

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am here to testify in support of Senate Bill 306, An Act Concerning Deceptive Interrogation Tactics.

The ACLU-CT is committed to ending police violence and racism in policing in all forms. Accountability measures alone are not enough. Connecticut must also divest from policing and reinvest in programs that build strong and safe communities. To build an equitable future for all people in Connecticut, policymakers must reduce policing's responsibilities, scale, and tools. We counseled this Committee in the summer of 2020 that a serious rethinking of policing is needed and that one bill would not solve the problems of policing in Connecticut's communities. That caution is still true.

Under current Connecticut law and in most jurisdictions,¹ it is completely legal for police to lie to people during a custodial interrogation about evidence and leniency, threaten use of force, and deny physical and mental health needs in order to obtain a confession.² Although these deceptive interrogation tactics by police are

¹ See, e.g., Julia Simon-Kerr, *Public Trust and Police Deception*, 11 N.E.U.L. REV. 625, n.106 (2019) (describing the lawfulness of deceptive interrogation tactics in virtually all federal and state jurisdictions, and limited exceptions concerning the prohibition on the use of manufactured evidence in interrogations in some states).

² For example, the Reid technique has been one of the most common interrogation method in the United States since the 1940s, which "is designed to elicit confessions from suspects who are presumed to be adverse to

commonplace, they frequently result in false confessions, and at least 29 percent of Connecticut's wrongful convictions involve false confessions.³ Deceptive interrogation tactics by police, for example, were the cause of the wrongful convictions of the Central Park Five, where police told the five teenagers that the others had implicated them in the crime.⁴ The reasons to end deceptive interrogation tactics by police are many: an astounding lack of scientific evidence supporting its efficacy; disownment by leading experts, including police; disparate harm to our most vulnerable residents; and Connecticut's own painful legacy of wrongful convictions stemming from deception.

Historically, the shift from physical interrogation tactics used by police in the early twentieth century to psychological interrogation was thought to be a scientific and effective advancement that was more humane than intimidation and physical violence.⁵ But since the proliferation of this interrogation strategy eighty years ago, its efficacy has been conclusively discredited in scientific evaluations.⁶ Scholars argue that this "veneer of scientific authority,"⁷ when compared to the brutality of physical violence, lead the techniques to escaping serious review for far too long. Science has

confessing because it is against their interests. . . . [and] unabashedly recommends the use of lies to help elicit confessions." Julia Simon-Kerr, *Public Trust and Police Deception*, 11 N.E.U.L. REV. 625, 634–35 (2019).

³ One study of interrogations found that deception was routine: in 90 percent of cases, detectives confronted suspects with evidence of guilt and then suggested that it would be in their interest to confess, but the evidence of guilt was false in 30 percent of the cases. Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 278 (1996). A recent survey of 340 police officers across the country found that 84.7 percent were trained in the use of deceit. Hayley M.D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40 L. & HUM. BEHAV. 270, 274 (2016).

⁴ Antron McCray, *Exoneration Anniversary: Central Park Five*, INNOCENCE PROJECT (Dec. 19, 2012), available at <https://innocenceproject.org/exoneration-anniversary-central-park-five/>.

⁵ Leo, *supra* note 3, at 42; Simon-Kerr, *supra* note 1, at 647.

⁶ Jaume Masip et al., *Is the Behaviour Analysis Interview Just Common Sense?*, 25 APPLIED COGNITIVE PSYCHOL. 593, 594–95 (2011) (reviewing empirical research that discredits the scientific basis of the Reid technique); Timothy E. Moore & C. Lindsay Fitzsimmons, *Justice Imperiled: False Confessions and the Reid Technique*, 57 CRIM. L.Q. 509, 518 (2011) (stating that the Reid manual is "replete with unsupported pronouncements regarding what an innocent [compared to a guilty] suspect 'would do'"); Brandon L. Bang, Duane Stanton, Craig Hemmens, Mary K. Stohr, *Police Recording of Custodial Interrogations: A State-By-State Legal Inquiry*, 20 INT'L J. POLICE SCI. & MGMT 3, 10 (2018) (finding that "the research is clear that many of the tactics advocated for in the Reid Technique are also complicit in leading to false confessions."); Douglas Starr, *This Psychologist Explains Why People Confess to Crimes They Didn't Commit*, SCI. MAG. (June 13, 2019), available at <https://www.science.org/content/article/psychologist-explains-why-people-confess-crimes-they-didn-t-commit> (describing the application of the Reid technique).

⁷ See Simon-Kerr, *supra* note 1, at 648.

advanced since the Reid technique developed in the 1930s and 1940s, and has called into question the legitimacy of the very quality of deceptive tactics that initially led to overtake physical interrogation: its efficacy in obtaining truthful confessions. Now we know that the confessions produced by police deception often result in wrongful convictions based on false confessions. As a state, we should strive to ensure that confessions obtained by police are accurate, freely given, and done so with interrogation techniques based in modern science.

The widespread recognition that deceptive interrogation includes disavowal by experts in the criminal legal system, including interrogation researchers, leading police training organizations, police officers, and prosecutors. The High-Value Detainee Interrogation Group is an inter-agency entity that is shared between the FBI, CIA, and Department of Defense, whose interrogation teams work on sensitive terrorism interrogations and research best practices for interrogations based on the latest scientific research.⁸ The High-Value Detainee Interrogation Group conducted sweeping research on interrogation techniques, reviewing over 120 peer-reviewed studies on evidence-based interrogation strategies, and ultimately eschewing deceptive tactics like that of the Reid technique.⁹ Similarly, global police training organizations, such as Wicklander-Zulawski, have altered their interrogation techniques to reject the use of deception in order to reduce the occurrences of false confessions while ensuring that police officers are able to obtain reliable confessions.¹⁰

⁸ See *High-Value Detainee Interrogation Group*, FED. BUREAU OF INVESTIGATIONS (last accessed Mar. 8, 2022), available at <https://www.fbi.gov/investigate/terrorism/high-value-detainee-interrogation-group>.

⁹ Christian A. Meissner, Frances Surmon-Bohr, Simon Oleskiewicz & Laurence Alison, *Developing an Evidence-Based Perspective on Interrogation: A Review of the Government's High-Value Detainee Interrogation Group Research Program*, HIGH-VALUE INTERROGATION GROUP RES. PROGRAM (2017), available at <https://wp.las.iastate.edu/interrogation-symposium/wp-content/uploads/sites/119/2017/10/Meissner-paper.pdf>;

¹⁰ Eli Hager, *The Seismic Change in Police Interrogations*, MARSHALL PROJECT (Mar. 7, 2017), available at <https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations#w66PQa6vE>.

Illinois,¹¹ Oregon,¹² and Utah,¹³ have all banned deceptive interrogation tactics as applied to juveniles with support from police and prosecutors. The International Association of Chiefs of Police has also rejected the deceptive tactics, particularly when applied to the interrogation of juveniles.¹⁴ Wicklander-Zulawski ended trainings on deceptive interrogation tactics in 2017, and offer a plethora of alternatives that result in more reliable confessions.¹⁵ If some of the largest and most prominent interrogation research organizations and police training institutions are capable of abandoning this flawed practice, so too can Connecticut.

Deceptive interrogation tactics ultimately harm the people whom our state has made most vulnerable: people of color, youth, and people with mental or physical disabilities. Black and Latinx people are overrepresented in the criminal legal system, including in exoneration databases and in instances of false confessions.¹⁶ People of color are more likely to be targeted by police, and scholars argue that cultural biases held by officers lead to more intense interrogation tactics against people of color who are accused of a crime.¹⁷ Youth are also particularly threatened

¹¹ In Illinois, the Office of Cook County State's Attorney Kim Foxx supported an end to deceptive interrogation tactics and worked with the Illinois Innocence Project to pass the legislation. The Illinois Chiefs of Police and the Illinois State's Attorney Association both supported the bill, which passed with near-unanimous bipartisan support. *Historic Deception Bill Passes Illinois Legislature, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (May 30, 2021), available at <https://innocenceproject.org/historic-deception-bill-passes-illinois-legislature-banning-police-from-lying-to-youth-during-interrogations/>.

¹² The Oregon bill was originally co-sponsored by State Senator Chris Gorsek, a former police officer. The Oregon Association of Chiefs of Police and the Oregon State Sheriffs' Association also supported the measure. *Oregon Deception Bill is Signed Into Law, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (June 16, 2021), available at <https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/>.

¹³ The deception bill in Utah received broad bipartisan support, with legislators of both parties signing on as co-sponsors. Ashley Imlay, *Utah Bill Would Prohibit Police From Using Deception During Interrogations with Minors in Custody*, KSL.COM (Feb. 3, 2022), available at <https://www.ksl.com/article/50341330/utah-bill-would-prohibit-police-from-using-deception-during-interrogations-with-minors-in-custody>.

¹⁴ *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, INT'L ASS'N CHIEFS OF POLICE (Aug. 11, 2018), available at <https://www.theiacp.org/resources/document/reducing-risks>.

¹⁵ *Press Release, Wicklander Zulawski Discontinues Reid Method Instruction After More Than 30 Years*, WICKLANDER-ZULAWSKI & ASSOC. (Mar. 6, 2017), <https://www.w-z.com/wp-content/uploads/2017/03/Attachment-A-WZ-Press-Release-Discontinue-Reid-1.pdf>.

¹⁶ Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. Hum. Behav. 3 (2010), available at <https://pubmed.ncbi.nlm.nih.gov/19603261/>; J. GUILLERMO VILLALOBOS & DEBORAH DAVIS, *Interrogation and the Minority Suspect: Pathways to True and False Confession*, in ADVANCES IN PSYCHOLOGY AND LAW (2016).

¹⁷ Villalobos, *supra* note 17.

by deceptive interrogation tactics because parts of the brain that control future planning, judgment, and decision-making are not fully developed until a person reaches their mid-twenties.¹⁸ The Innocence Project found that of the 211 exonerees who were wrongfully convicted as children, 36 percent falsely confessed, whereas 10 percent of exonerees who were wrongfully convicted over the age of eighteen falsely confessed.¹⁹ Use of deceptive tactics like the Reid technique on children has led to an alarmingly high rate of false confessions among juveniles, who are already at an increased risk for false confessions.²⁰ Experts have also found that people living with mental and physical disabilities are also at particular risk for exploitation and manipulation during interrogation.²¹ People with intellectual or other developmental disabilities are demonstrably susceptible to false or coerced confessions.²²

People in Connecticut have directly suffered due to the use of deceptive interrogation tactics by police officers. The elevated vulnerability of people living with disabilities and youth when exposed to interrogation tactics has been demonstrated in Connecticut through several wrongful conviction cases, like those of Bobby Johnson²³ and Richard LaPointe.²⁴ Bobby Johnson was just sixteen years old when he was interrogated by police as a suspect in a homicide investigation.²⁵ Police falsely told him that he was facing the death penalty and that he would never see his parents again unless he confessed.²⁶ Johnson was interrogated outside the presence of his

¹⁸ Laurence Steinberg, *Risk Taking in Adolescence: New Perspectives From Brain and Behavioral Science*, 16 CURRENT DIRECTIONS IN PSYCH. SCI. (Apr. 1, 2007), available at <https://journals.sagepub.com/doi/10.1111/j.1467-8721.2007.00475.x>.

¹⁹ Nigel Quiroz, *Five Facts About Police Deception and Youth You Should Know*, Innocence Project (May 13, 2021), available at <https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers/>.

²⁰ Ariel Spierer, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, 92 N.Y.U.L. REV. 1719, 1729–34 (2017), available at <https://www.nyulawreview.org/issues/volume-92-number-5/the-right-to-remain-a-child-the-impermissibility-of-the-reid-technique-in-juvenile-interrogations/>.

²¹ Kassin, *supra* note 16.

²² *Age and Mental Status of Exonerated Defendants Who Confessed* (Mar. 17, 2020), available at <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf>.

²³ Maurice Possley, *Bobby Johnson*, NAT'L REGISTRY OF EXONERATIONS (Sept. 12, 2018), available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4751>.

²⁴ Maurice Possley, *Richard LaPointe*, NAT'L REGISTRY OF EXONERATIONS (Aug. 5, 2020), available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4766>.

²⁵ Possley, *supra* note 23.

²⁶ *Id.*

parents and had an IQ indicative of mental impairment.²⁷ In spite of this, detectives doubled down on him as their suspect, interrogating him multiple times in order to force him to change his coerced confession to fit new evidence.²⁸ Johnson was sentenced to 38 years in prison, and ultimately spent nine years in prison before a judge vacated his conviction.²⁹ Richard LaPointe was another Connecticut resident who was wrongfully convicted for a homicide after police used deceptive tactics during his interrogation, falsely telling LaPointe that they would imprison his wife and take away his son, and that his wife implicated him in the murder.³⁰ LaPointe's conviction was challenged due to the fact that LaPointe had been diagnosed with Dandy Walker syndrome, a congenital brain malformation of the cerebellum that impacted him physically and mentally.³¹ This syndrome, his lawyers successfully argued, would have rendered him unable to commit the crime, and that this syndrome which causes brain malformations in the cerebellum also made him more susceptible to a coerced false confession when the police interrogated him for nine and a half hours.³² After spending twenty-six years in prison, LaPointe's conviction was dismissed.³³

In addition to the real, human harms to Connecticut residents because of antiquated deceptive interrogation tactics by police, they also result in enormous financial costs to the state. Suits resulting from wrongful convictions involving deceptive interrogations have alone cost Connecticut's taxpayers at least \$37.5 million in state compensation and an additional \$10.74 million in civil settlements.³⁴ Additional costs are incurred when cases are re-opened, the actual offender is identified, and cases involving false confessions are re-prosecuted. In light of Connecticut's horrific

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Possley, *supra* note 24.

³¹ Ana Monteagudo, *Dandy-Walker Malformation*, 223 AM. J. OBSTETRICS & GYNECOLOGY B38 (2020), available at <https://pubmed.ncbi.nlm.nih.gov/33168220/>.

³² *Id.*

³³ *Id.*

³⁴ See Possley, *supra* note 23; Possley, *supra* note 24.

experiences with deceptive interrogation tactics by police, the legislature must act now to ban the practice completely.

Senate Bill 306 confronts the issue of deceptive interrogation tactics head-on. The bill ends deceptive interrogation by police by creating a presumption that statements from custodial interrogations in which law enforcement knowingly used specific coercive and deceptive tactics are involuntary unless the presumption is overcome by clear and convincing evidence. The language is based on successful laws in Oregon, Illinois, and Utah as well as admissibility laws already in place in New York. Deception or coercive tactics are defined to include written, verbal, electronic, or nonverbal communication that runs the gamut of deceptive tactics, like stating false facts about evidence, making false or misleading promises of leniency or about the law, and threatening use of force, among many others. The bill would apply to both state and municipal police. If the police use deception or coercive tactics, then a court will presume that the admission, statement, or confession was involuntary and therefore inadmissible in court. The state may rebut by offering evidence that the statement was either involuntary and not induced by deception or coercion or that coercive tactics did not make the statement unreliable and did not create a substantial risk of false self-incrimination, balancing the interest of the state in obtaining true confessions with the need to protect our most vulnerable from coercion and false convictions.

The ACLU-CT strongly supports Senate Bill 306 as an essential step in creating a more fair and just criminal legal system and ending mass incarceration. Deceptive interrogation tactics are outdated and ineffective threats to justice. Connecticut has the opportunity to lead the nation as the first state to comprehensively abolish deceptive interrogation practices by police and the fourth to end the practice for our youngest and most vulnerable. This Committee must act now to ban deception by police during custodial interrogations and pass Senate Bill 306.