

HOUSE BILL REPORT

HB 1062

As Reported by House Committee On:
Community Safety, Justice, & Reentry
Appropriations

Title: An act relating to the use of deception by law enforcement officers during custodial interrogations.

Brief Description: Concerning deception by law enforcement officers during custodial interrogations.

Sponsors: Representatives Peterson, Simmons, Bateman, Reed, Doglio, Orwall, Macri, Gregerson, Thai, Stonier, Santos and Farivar.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/8/24, 1/23/24 [DPS];
Appropriations: 2/1/24, 2/5/24 [DP2S(w/o sub CSJR)].

Brief Summary of Second Substitute Bill

- Requires the Criminal Justice Training Commission to contract with an expert or organization with expertise in interrogation tactics to develop, administer, and periodically revise a training in evidence-based, noncoercive interrogation techniques for law enforcement personnel.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Graham.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Corey Patton (786-7388).

Background:

The state and federal constitutions provide certain rights and protections during interactions with law enforcement officers, including the right to remain silent and the right to counsel during a custodial interrogation. A custodial interrogation generally means questioning, actions, or words by an officer designed to elicit an incriminating response from a person who has been taken into custody or otherwise deprived the freedom of action in any significant way. Prior to engaging in a custodial interrogation, the officer must provide a *Miranda* warning to advise the person of certain constitutional rights and the ability to invoke those rights at any time during the interrogation. The person may waive those rights if the waiver is made voluntarily, knowingly, and intelligently. If the officer fails to provide an effective *Miranda* warning or obtain a valid waiver, incriminating statements made by the person during the interrogation are inadmissible as evidence.

When seeking to introduce a defendant's statement as evidence, the prosecution must prove by a preponderance of the evidence that the defendant made the statement voluntarily. Courts evaluate whether a statement was voluntary in light of the totality of the circumstances, which may include evaluating whether the behavior of law enforcement was such as to overbear the defendant's will to resist and bring about a confession that was not freely self-determined. An officer's use of deception during an interrogation, alone, does not render a defendant's statement involuntary.

Summary of Substitute Bill:

Presumption of Inadmissibility.

Effective December 1, 2025, a statement made during a custodial interrogation is presumed to be inadmissible if the court determines that the interrogating officer intentionally engaged in deception in obtaining the statement. The presumption of inadmissibility applies to statements made in relation to the investigation of a misdemeanor or felony, or, in the case of a juvenile, an allegation that the subject of the interrogation committed an act that would constitute a misdemeanor or felony if committed by an adult. The prosecution may overcome the presumption of inadmissibility if it proves by clear and convincing evidence that the person's statement was voluntary and not made in response to the officer's use of deception.

"Custodial interrogation" means express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual, and occurs when reasonable individuals in the same circumstances would consider themselves in custody. Custodial interrogations do not include any circumstances where the court finds that the officer was not required to give the individual a warning and advise the individual of his or her rights before eliciting a response, including questioning,

actions, or words by the officer during a traffic stop, sting operation, or routine booking process.

"Deception" means the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer to the subject of a custodial interrogation, except where the officer has a reasonable belief that using such tactics is necessary to:

- protect the integrity of a previous or ongoing undercover law enforcement operation, or an ongoing criminal investigation;
- protect the identity or ensure the safety of an officer, confidential informant, witness, victim, or other individual; or
- confirm the existence, identity, or whereabouts of a suspected victim that the officer reasonably believes the subject of the interrogation is attempting to conceal information about.

Training in Evidence-Based, Noncoercive Interrogation Techniques.

The Criminal Justice Training Commission (CJTC) must, subject to appropriations, contract with an expert or organization with expertise in interrogation tactics to develop, administer, and periodically revise a training in evidence-based, noncoercive interrogation techniques for law enforcement personnel. The training must include instruction on the use of the following techniques:

- the preparation and planning, engage and explain, account, closure and evaluate method;
- the strategic use of evidence;
- the cognitive interview; and
- the trauma-informed interview.

The CJTC must begin offering the training by July 1, 2025, at no cost to state law enforcement personnel and agencies.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) exempts from the definition of "custodial interrogation" any circumstances where the court finds that an officer was not required to give the subject of an interrogation a warning and advise the subject of his or her rights before eliciting a response; (2) exempts from the definition of "deception" any circumstances where an officer has a reasonable belief that using otherwise deceptive tactics is necessary for certain purposes; (3) requires the CJTC to contract with an expert or organization with certain expertise to develop, administer, and periodically revise a training in evidence-based, noncoercive interrogation techniques for law enforcement personnel, and to begin offering the training by July 1, 2025; and (4) provides an effective date of December 1, 2025, for the provisions establishing the presumption of inadmissibility for certain statements made during a custodial interrogation.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 24, 2024.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) Using deception in interrogations has been considered constitutional for many decades. Deceptive practices and techniques, such as making up the existence of false evidence, are extremely common. For example, the Reed technique is a series of such tactics that law enforcement has been trained in to extract confessions. Even though these tactics are permitted by the courts, they are highly problematic because they start with the assumption that the subject of the interrogation is guilty and they cause memory distrust and confusion. This results in false confessions and damages the credibility of law enforcement. If the wrong person is caught, the actual criminal may go on to commit further crimes and create additional victims. Our criminal justice system is founded on the presumption of innocence, and the point of the interrogation should be to gather new evidence.

It is difficult to imagine why a person would take responsibility for a crime the person did not commit, but that is because most people have never experienced an interrogation from a law enforcement officer who is trained in psychological tactics. An innocent person believes that the police are there to protect them. People are often shocked to learn that police have the ability to make up a story and trick people into making a confession or an incriminating statement. Although there is a pretrial process where the court analyzes statements for admissibility, the court only looks at whether the statements were voluntarily given.

There are newer techniques that have been proven to obtain reliable information and do not require lying about evidence. These techniques have been developed in collaborative efforts between researchers and law enforcement so that they can produce reliable confessions and solid investigations. Nine other states have also banned deceptive tactics as applied to juveniles. Even though juveniles are more susceptible to giving false confessions, they happen across all demographics. This bill takes away an unreliable tool from law enforcement officers and moves them toward a more advanced, scientifically proven method.

(Opposed) In all things related to criminal justice, there is a need for balance. We are often looking at nuanced situations and this bill shifts the balance unnecessarily. There are many circumstances where this bill should not apply, like traffic stops where officers are not required to automatically provide all factual information. The unfortunate reality is that law enforcement officers must sometimes lie to get people to tell the truth, to protect

confidential informants, to conduct Net Nanny stings, or to protect ongoing criminal investigations. There are some appropriate times where less than truthful responses are needed to handle an investigation.

Some of the opposition to this bill does not take issue with the provision regulating false promises of leniency. Several courts have already ruled on the types of things that constitute coercion. Every admission by a defendant needs to be ruled on before it becomes admissible in a criminal case. The use of deception already renders statements inadmissible in court and a decent lawyer will get those statements thrown out. We should let the courts do their job by throwing out inadmissible evidence. The states that have passed similar laws about this issue have limited its application to juveniles.

Persons Testifying: (In support) Representative Strom Peterson, prime sponsor; James Trainum; David Thompson, Wicklander-Zulawski & Associates, Inc.; Lara Zarowsky and Ted Bradford, Washington Innocence Project; and Amanda Knox.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; Russell Brown, Washington Association of Prosecuting Attorneys; and Julie Barrett, Conservative Ladies of Washington.

Persons Signed In To Testify But Not Testifying: Brian Flaherty, King County Department of Public Defense; and Eric Pratt.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community Safety, Justice, & Reentry. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Corry, Ranking Minority Member; Berg, Callan, Chopp, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Couture, Assistant Ranking Minority Member; Dye, Sandlin, Stokesbary and Wilcox.

Minority Report: Without recommendation. Signed by 4 members: Representatives Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Schmick.

Staff: Emily Stephens (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Community Safety, Justice, & Reentry:

The second substitute bill:

- authorizes any law enforcement agency to contract for or otherwise receive training in evidence-based, noncoercive interrogation techniques from entities other than the Criminal Justice Training Commission and its contracted expert or organization, provided that such entities are certified in specified techniques;
- eliminates all provisions in the substitute bill related to establishing a presumption of inadmissibility for certain confessions made during a custodial interrogation in response to the interrogating officer's use of deception; and
- adds a null and void clause, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Deception by police results in distrust and unreliable confessions. Truthful interrogation enhances fairness and promotes public safety. The interrogation methods described in the bill are evidence-based and science-based. There are many exonerations related to false confessions because of deceptive interrogation techniques.

(Opposed) The bill is redundant as police undergo rigorous training on how to conduct interviews. Accused people cannot be convicted solely on the basis of a confession. The bill will negatively impact the ability of law enforcement agencies to solve crimes. Criminals create elaborate stories to conceal their crimes and sometimes deception is required to solve crimes.

Persons Testifying: (In support) Carol Velazquez and Brooks Holland, Gonzaga University School of Law - Center for Civil and Human Rights; Ramona Brandes, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Mark Fallon, ClubFed, LLC; and Lara Zarowsky, Washington Innocence Project.

(Opposed) Lorilee Gates; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.