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## Community Safety Committee

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### HB 1138

**Brief Description:** Improving public safety by implementing evidence-based interview practices that increase the reliability of statements collected during criminal investigations.

**Sponsors:** Representatives Peterson, Macri, Obras, Ryu, Farivar, Doglio, Simmons, Street, Duerr, Nance, Berg, Ormsby, Lekanoff and Hill.

#### Brief Summary of Bill

- Establishes a presumption of inadmissibility for a statement made during an interrogation where the interrogating officer intentionally engages in deception to obtain the statement.
- Requires the Criminal Justice Training Commission to contract with an expert or organization with expertise in interrogation and interview tactics to develop, administer, and periodically revise a training in evidence-based techniques for law enforcement personnel.

**Hearing Date:** 1/27/25

**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. The person may waive those

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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 of the person's rights, incriminating statements made by the person during the custodial interrogation are inadmissible as evidence. Even in a noncustodial interaction, incriminating statements made by the person are inadmissible if extracted by any sort of threat or violence, direct or implied promise, or exertion of improper influence that is likely to exert such pressure as to disable the person from making a free and rational choice.

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 Bill:**

#### Presumption of Inadmissibility.

Effective December 1, 2026, a statement made during an interrogation is presumed to be inadmissible if the court determines that the interrogating officer intentionally engaged in deception to obtain 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, if proven, 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.

"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 a reasonable person in the same circumstances would consider themselves in legal jeopardy. "Deception" means the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer to the subject of an interrogation.

#### Training in Evidence-Based Interrogation and Interview Techniques.

The Criminal Justice Training Commission (CJTC) must contract with an expert or organization with expertise in interrogation and interview tactics to develop, administer, and periodically revise a training in evidence-based interrogation and interview techniques for law enforcement personnel. The training must explain and demonstrate:

- the phenomenon of false confessions by suspects under questioning;
- the heightened risk of false confessions when deception and other confession-driven interrogation techniques are used; and
- the implementation process and investigative outcomes for law enforcement organizations

that have adopted rapport-based interviewing techniques.

The training must also include, at minimum, instruction on the following techniques:

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

The CJTC must begin offering the training by July 1, 2026, at no cost to state law enforcement personnel and agencies.

**Appropriation:** None.

**Fiscal Note:** Requested on January 21, 2025.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.