

Memorandum in Support

NYSBA #7

March 27, 2023

S. 2303
A. 1156

By: Senator Myrie
By: M. of A. Vanel

Senate Committee: Codes
Assembly Committee: Codes
Effective Date: 90 days after it shall have
become a law

AN ACT to amend the criminal procedure law and the family court act, in relation to the admissibility of defendants' and juvenile respondents' statements procured by deceptive interrogation practices.

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION

The New York State Bar Association studies issues relevant to providing mandated representation of people in New York Criminal and Family Courts and recommends how to improve the quality of that representation.

The Association strongly supports legislation to ban police lying during interrogations (S.2303/A.1156). The proposed legislation protects against false confessions and wrongful convictions by making confessions inadmissible if they were procured by police deception. The bill also requires judges to evaluate the reliability of confessions before trial – the same way that the reliability of forensic evidence and eyewitness identifications are assessed before they are admitted as evidence.

THE PROBLEM

False confessions are one of the leading causes of wrongful convictions, accounting for almost 30 percent of all convictions that were later overturned based on DNA evidence.¹ Indeed, as the U.S. Supreme Court acknowledged in 2009, “There is mounting empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed.”² The risk of a person admitting to a crime they did not commit is increased by factors such as police intimidation and deception, as well as compromised reasoning due to youth, mental limitations, stress, and exhaustion.

New York is not immune to the problem of false confessions. According to the Innocence Project, exonerations of 48 New Yorkers involved false confessions since 1989. Nearly 80 percent of these

¹ Innocence Project, *Exonerations Data*, available at <https://innocenceproject.org/exonerations-data/> (last viewed 1/31/22).

² *Corley v. United States*, 556 U.S. 303 (2009).

innocent New Yorkers were Black or Latinx.³

The Exonerated 5 are the most prominent example of how the current law permitting coerced confessions destroys lives. Nearly 20 years ago, on December 19, 2002, DNA evidence exonerated Yusef Salaam, Kevin Richardson, Korey Wise, Raymond Santana and Antron McCray of the brutal 1989 rape of a jogger in Central Park. Teenagers at the time, they endured hours of coercive police interrogations. Detectives lied repeatedly, claiming their fingerprints matched crime scene evidence, that the others had confessed and implicated them in the attack, and that they could go home if they admitted to it. The deceptive and intimidating questioning led them to falsely confess to the crime. Even though their admissions were inconsistent and inaccurate, the evidence was a centerpiece in their convictions. Years later, Matias Reyes confessed to the rape while he was serving a prison sentence for other sexual assaults. S.2303/A.1156 would have prevented their wrongful convictions and the subsequent attacks committed by Reyes.

CURRENT LAW

It is legal for police to lie during interrogations. For example, the U.S. Supreme Court has allowed police to falsely claim that a suspect's confederate confessed when in fact he had not (*Frazier v. Cupp*, 1969) and to have found a suspect's fingerprints at a crime scene when there were none (*Oregon v. Mathiason*, 1977). In New York, police are mostly given free rein to interrogate suspects as they see fit, with some limitations. See, e.g., *People v. Thomas* (N.Y. 2014); *People v. Aveni*, 22 NY 3d 1114 (2014).

In *Thomas*, for example, the Court of Appeals unanimously concluded that the officers' conduct in eliciting incriminating statements from a father suspected of killing his infant son rendered the defendant's statements involuntary as a matter of law. The officers repeatedly offered false assurances that they believed the child's injuries were accidental and that the defendant would not be arrested, threatened to arrest the defendant's wife, and falsely told the defendant that his child was alive, and the defendant should disclose what he did to save his child's life. The court ruled that these deceptive tactics, combined with a lengthy interrogation during which the defendant was hospitalized for suicidal ideation, all converged to overbear the defendant's will. Yet the *Thomas* ruling was unusual and instances of courts limiting the ability of law enforcement to coerce confessions are limited.

LEGISLATIVE PROPOSAL

S.2303/A.1156 amends the section of the criminal procedure law (CPL 60.45) that defines when a statement is involuntarily made. New language ensures that providing any promise or statement of fact by law enforcement to an individual under interrogation that undermines the reliability of such individual's statement and increases the likelihood of that individual's false self-incrimination is designated as involuntary. In addition, any confession produced from such interrogation tactics is deemed involuntary.

³ National Registry of Exonerations, "New York Exonerations," available at <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=NY&FilterField2=FC&FilterValue2=8%5FFC> (last viewed Jan. 31, 2022).

The bill reflects landmark legislation passed in Oregon and Illinois in 2021 banning police from using deception during juvenile interrogations. New York's amended version goes a step further by barring police lies both for adults and youths through a cross reference to the Family Court Act. This would put New York's law in line with other countries, including England, which outlawed lying to adults during interrogations in 1984, and other countries like Australia, New Zealand and Germany.⁴

For the above reasons, the New York State Bar Association **SUPPORTS** this legislation and urges it be signed into law.

⁴ Lakshmi Gandhi, "Lying to police suspects is banned in several countries. Why is it still legal in the U.S.?" *Prism Reports*, Aug. 30, 2021, available at <https://prismreports.org/2021/08/30/lying-to-police-suspects-is-banned-in-several-countries-why-is-it-still-legal-in-the-u-s/> (last viewed 1/31/22).