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SENATE BILL NO. 746

Offered January 21, 2022

A *BILL to amend the Code of Virginia by adding a section numbered 19.2-268.4, relating to the prohibition of deceptive tactics during the custodial interrogation of a minor.*

Patrons—Surovell and Boysko; Delegate: Price

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-268.4 as follows:

§ 19.2-268.4. Prohibition of deceptive tactics during the custodial interrogation of a minor.

A. For purposes of this section:

"Custodial interrogation" means any interview conducted by a law-enforcement officer in such circumstances that would lead a reasonable person to consider himself to be in custody associated with arrest and during which the law-enforcement officer takes actions or asks questions that are reasonably likely to elicit responses from the person that could incriminate him.

"Deception" means the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law-enforcement officer to a subject of custodial interrogation.

"Minor" means a person who is younger than 18 years of age.

"Place of detention" means a police station, sheriff's office, jail, detention center, or other similar facility in which suspects may be detained.

B. Any oral, written, or sign language confession of a minor made as a result of a custodial interrogation conducted at a place of detention on or after July 1, 2022, shall be presumed to be inadmissible as evidence against such minor making such confession in any adjudication of delinquency or criminal proceeding for an act that if committed by an adult would be a criminal offense if, during the custodial interrogation, a law-enforcement officer knowingly engages in deception.

C. The presumption of inadmissibility for such confession of a minor when such confession is procured through the knowing use of deception during a custodial interrogation at a place of detention, may be overcome if the confession was voluntarily given.

D. The Commonwealth shall bear the burden of proving that such a confession was voluntary by a preponderance of the evidence, based on the totality of the circumstances. Any objection on the issue of whether the confession was voluntarily made shall be made in the trial court.

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