

AB 2644: Juvenile Custodial Interrogations Bill **Frequently Asked Questions**

What are deceptive police techniques?

- During interrogations, law enforcement officers are allowed to knowingly make false and deceptive claims to suspects, regardless of their age, in order to extract confessions. For the purposes of AB 2644, such deceptive tactics include: (a) knowingly communicating false facts about evidence, (b) telling youths that their denials will be futile, (c) downplaying the moral severity of the crime so as to suggest that whoever committed the crime has not done anything wrong, (d) telling youths they will be released if they confess, (e) threatening to subject youths to lie detectors, despite the fact that it's illegal for police to do so in California, (f) employing the 'forced choice strategy' wherein police force suspects to choose between two versions of events, both of which incriminate the youth, or (g) 'contaminating' by disclosing non-public facts that only the perpetrator could know, thereby inducing the youth to adopt these facts as her own.

How strong is the link between between deception tactics, false confessions, and wrongful convictions?

- Studies show that police-induced false confessions are the primary cause of wrongful convictions in nearly 20% of cases that have been overturned by DNA evidence over the past 20 years. Moreover, research shows that the chief cause of police-induced false confession is deceptive police tactics used during interrogations.¹

Why does the bill define juveniles as all those 25 and under?

- While deceptive tactics remain the primary driver of all police-induced false confessions, individuals differ in their ability to withstand deceptive interrogation pressures and thus in their susceptibility to making false confessions. Youth is a significant risk factor for police-induced false confessions precisely because young brains have not fully developed. Since a young person's brain remains underdeveloped until 25, simply protecting youth under 18 from deceptive interrogation methods will not adequately protect those most susceptible to false confessions. Crucially, the parts of the brain, such as the pre-frontal cortex, that continue to develop until 25 regulate forms of judgement, rational decision-making, and doubting processes, all of which are central to preventing false confession.² For example, cognitive scientists believe that unfinished development of the pre-frontal cortex leads to a 'doubt deficit' – that is, a failure to produce normal levels of doubt when presented with false information.³ This 'doubt deficit' leaves youths under 25 markedly susceptible to individuals, such as police, trying to deceive them. These cognitive development factors help explain why minors are between two and three times more likely

¹ (See: Richard A. Leo, 'False Confessions: Causes, Consequences, and Implications', *Journal of the American Academy of Psychiatry and the Law Online* 37, no. 3 (1 September 2009): 332–43.)

² Johnson, et al., Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy, *Journal of Adolescent Health* (Sept. 2009); National Institute of Mental Health, *The Teen Brain: Still Under Construction* (2011).

³ Erik Asp et al., 'Benefit of the Doubt: A New View of the Role of the Prefrontal Cortex in Executive Functioning and Decision Making', *Frontiers in Neuroscience* 7 (24 May 2013): 86, <https://doi.org/10.3389/fnins.2013.00086>; Stuss et al., "The frontal lobes are necessary for "theory of mind". *Brain* 124, (2001): 279–286.

to falsely confess than adults. Studies have also found that of 125 proven false confession cases, 63% of false confessors were under 25 and 32% were under 18.⁴

Even if cognitive brain development continues until age 25, how ‘underdeveloped’ are people in their late teens or early 20s? Aren’t they close enough to full development to be treated as adults?

- The progression of prefrontal cortex development and the corollary cognitive ability to doubt information continues to progress at a meaningful rate throughout the early 20s [see Figure]. In terms of overall brain development, the brain of youth 19 years old are more similar to a 16-year-old’s brain than a 25-year-old’s brain, even as those 19 and 25 years old are treated the same in our criminal justice system.⁵



FIGURE 2 | Changes in doubting ability and prefrontal cortex integrity as a function of age. Prefrontal cortex integrity is defined by white matter organization (Klingberg et al., 1999; Pfefferbaum et al., 2005) and is represented by the red inverted U. Doubting ability is represented by the blue inverted U. Early prefrontal integrity development is theorized to track doubting abilities but the initial absence of knowledge representations (which provide discrepant beliefs to form doubt) suggests a steeper ascending curve for doubting ability as knowledge is gained. Late prefrontal integrity development is theorized to be tightly coupled to doubting ability as knowledge is not appreciably diminished in older adults (e.g., Horn and Cattell, 1967).

Do any other areas of California’s criminal justice system define youth as those 25 and under?

- Yes. In 2017, California passed AB 1308 (Stone), which requires the Board of Parole Hearings to conduct youth offender parole hearings for those that were 25 years of age or younger at the time of the offense. As with AB 2644, the age threshold of AB 1308 was motivated by research showing that cognitive brain development continues throughout the early and mid-20s.

Does this bill allow for exceptions in cases where deceptive tactics may be necessary?

- Yes. If law enforcement officers reasonably believe that the information they are seeking during an interrogation is necessary to protect life or property from imminent threat, they may use deceptive tactics against youth so long as they direct their questions towards the pursuit of such vital information. In these cases, statements from youth are presumed admissible in court even if deceptive tactics were employed.

Does the bill include a mechanism to review or dispute whether deceptive tactics were used?

- Yes. If a youth makes a statement during an interrogation where law enforcement uses deceptive tactics, that youth statement is only *presumed* inadmissible. The presumption can be overcome if the prosecution proves by clear and convincing evidence that the statement was voluntary.

Have other jurisdictions enacted similar measures?

- The U.S. is an outlier amongst Western nations in allowing police deception techniques to be used on youth. In fact, Australia, New Zealand, and the majority of all European states (including the UK and Germany) have, for decades, outlawed police deception tactics during

⁴ (For further research see: Johnson, et al., Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy, Journal of Adolescent Health (Sept. 2009); National Institute of Mental Health, The Teen Brain: Still Under Construction (2011).

⁵ California Probation Officers of California, ElevateJustice Act of 2020, p. 2.)

interrogations *for all age groups*. Domestically, Oregon and Illinois both passed legislation banning police deception for youth last year. The Oregon and Illinois bills (SB 418A and SB 2122, respectively) are almost mirror images of what is being proposed in California – as with California’s AB 2644, they stipulate that youths’ statements from interrogations using police deception techniques are presumed inadmissible, leaving the burden of proof with District Attorneys to overturn that presumption in court. This year, New York is considering legislation that would go even further by limiting the very ability of police to question juvenile suspects altogether (see New York Senate Bill 2800B).

Has California already tried to pass similar legislation?

- Yes. In 2021, Senator Bill Dodd introduced SB-494, which would have require that police officers be trained against using the Reid Technique, an investigative practice critiqued for its pseudo-scientific justification of psychological manipulation. The bill almost unanimously passed in both chambers (Senate: 38 Aye, 2 NVR; Assembly: 77 Aye, 2 NVR). Nevertheless, Governor Newsom raised budgetary concerns and vetoed the bill on October 4, 2021.