Child and Family Law Journal

Volume 11 | Issue 1 Article 4

6-2023

EASY VICTIMS OF THE LAW: Protecting the Constitutional Rights of Juvenile Suspects to Prevent False Confessions

Tayler Klinkbeil

EASY VICTIMS OF THE LAW: Protecting the Constitutional Rights of Juvenile Suspects to Prevent False Confessions

Cover Page Footnote

[1] Miranda v. Arizona, 384 U.S. 436, 439 (1966). [2] Hannah Brudney, Confessions of A Teenage Defendant: Why A New Legal Rule Is Necessary to Guide the Evaluation of Juvenile Confessions, 92 S. Cal. L. Rev. 1235, 1242 (2019). [3] Id. [4] Laurel LaMontagne, Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions, 41 W. St. U. L. Rev. 29, 50 (2013). 5 Brudney, 92 S. Cal. L. Rev. at 1242. [6] Id. at 1266-67. [7] Haley v. State of Ohio, 332 U.S. 596, 599 (1948).

EASY VICTIMS OF THE LAW: Protecting the Constitutional Rights of Juvenile Suspects to Prevent False Confessions

Tayler Klinkbeil[*]

ABSTRACT

The inherently coercive nature of custodial interrogation is the very reason the Supreme Court handed down the famous *Miranda v. Arizona* decision; the court recognized the increased vulnerability that suspects under questioning are subjected to when placed in a situation designed to elicit incriminating information.[1] Legal scholars and judiciaries alike agree that the likelihood of police questioning resulting in a false admission of guilt or self-incriminating statements is disproportionately more probable if the subject of the questioning is a minor.[2] The

---

[*] Tayler Klinkbeil is a 2L student at the Barry University School of Law. Before law school, she graduated from the University of Central Florida with a degree in English. She was born and raised here in Orlando, and as such will always have a passion and dedication for protecting its people, especially at their most vulnerable. After admission to the Florida Bar, she hopes to pursue a career in criminal defense work, more specifically, in overturning wrongful convictions. First and foremost, I would like to thank Briana, our Note and Comment Editor, for her dedication and constant support. Her reassurance and guidance helped make this article what it is today, and I hope we've created something worthy of the Child and Family Law Journal. Austin - thank you for always supporting me at my low points, celebrating me at my high points, and for being proud of me during both. Your support of everything I do is unflinching, and I will never be able to tell you how much that means to me. I would also like to thank the entire 2022-2023 Editorial Board. Your support, both direct and indirect, and your confidence in me as a writer, as well as a professional, does not go unnoticed and is greatly appreciated.
Lastly, I would like to thank my family and friends, including those who took time out of their busy schedules to read this article and give me suggestions and feedback, or to give me a supportive comment or motivational speech. You are all appreciated.

[1] Miranda v. Arizona, 384 U.S. 436, 439 (1966).

[2] Hannah Brudney*, Confessions of A Teenage Defendant: Why A New Legal Rule Is Necessary to Guide the Evaluation of Juvenile Confessions*, 92 S. CAL. L. REV. 1235, 1242 (2019).

constitutional protections that are afforded to juvenile suspects subjected to custodial interrogations are those set out in *Miranda*, and as evidenced by the rampant incidence of juvenile false confessions, clearly these protections are either facially insufficient or improperly carried out by investigators.[3] As the law currently stands, there are few protections afforded above and beyond the standard protections for adult defendants as it relates to the voluntariness of confessions.[4]

The most common suggestions to reduce the chances that a juvenile suspect will falsely confess are to reform police procedure during the questioning itself or to suppress any statement resulting from involuntary, coerced, or un-*Mirandized* statements at subsequent proceedings.[5] Adding a requirement that counsel be present during the custodial interrogation of juvenile suspects seems to be the most effective and efficient means of preventing false confessions. The most steadfast and all-encompassing protection is to propose a Constitutional Amendment. As the most difficult legislation to enact, it will ensure that the individual requirements are tempered to both proponents' and opposers' predilections and will most likely stand the test of time provided it is well-rounded and comprehensive enough.[6]

Regardless of what the first step is that the law takes to protect the especially vulnerable members of our society in the criminal justice system, it cannot come soon enough to extend a helping hand towards anyone that has the misfortune of being "an easy victim of the law."[7]

---

[3] *Id.*

[4] Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. St. U. L. Rev. 29, 50 (2013).

[5] Brudney, *supra* note 2, at 1242.

[6] *Id.* at 1266-67.

[7] Haley v. State of Ohio, 332 U.S. 596, 599 (1948).

INTRODUCTION

The inherently coercive nature of custodial interrogation is the very reason the Supreme Court handed down the famous *Miranda v. Arizona* decision; the Court recognized the increased vulnerability that suspects under questioning are subjected to when placed in a situation designed to elicit incriminating information.[1] Legal scholars and judiciaries alike agree that the likelihood of police interrogations resulting in a false admission of guilt or self-incriminating statements is disproportionately more probable if the subject of the questioning is a minor.[2] Attorneys of the Center on Wrongful Convictions of Youth at Northwestern's Pritzker School of Law, lament the prevalence of false confessions and emphasize the disproportionate amount of juvenile false confessors:

> Of 125 proven false confessions, 63% of false confessors were under the age of twenty-five and 32% were under eighteen, a

[1] Miranda v. Arizona, 384 U.S. 436, 439 (1966).
[2] Hannah Brudney, *Confessions of A Teenage Defendant: Why A New Legal Rule Is Necessary to Guide the Evaluation of Juvenile Confessions*, 92 S. CAL. L. REV. 1235, 1242 (2019).

> strikingly disproportionate result. Another study of 340 exonerations found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults. And a laboratory study astonishingly found that a majority of youthful participants complied with a request to sign a false confession without uttering a single word of protest.[3]

The constitutional protections afforded to juvenile suspects subjected to custodial interrogations are set out in *Miranda*, and as evidenced by the rampant incidence of juvenile false confessions, clearly these protections are either facially insufficient or improperly carried out by investigators. [4]

BACKGROUND

This section will focus on the existing applicable law and where the shortfalls are that cause the prevalence of juvenile false confessions, including: the rights of suspects, foundational cases where juvenile defendants have falsely confessed, and proposed legislation aimed at rectifying this issue.

A. Rights of Suspects During Questioning

As set out in *Miranda*, a suspect is entitled to receive prescribed warnings during questioning if it can be classified as custodial interrogation.[5] The Supreme Court of the United States has defined custodial interrogation as, "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[6] *Miranda* warnings are designed to dissipate the chance of law enforcement officers (hereinafter "LEOs") overbearing a suspect's will due to the inherently coercive environment of custodial interrogation.[7] Courts will look at the following factors to determine if the suspect's will has been overborne and the resulting statement is involuntary:

- the use of physical force;[8]
- the threat of physical force;[9]

---

[3] Megan Crane et al., *The Truth About Juvenile False Confessions*, INSIGHTS L. & SOC'Y 16.2, (Winter 2016), https://www.prisonpolicy.org/scans/aba/Juvenile_confessions.pdf.

[4] Brudney, *supra* note 2.

[5] *Miranda*, 384 U.S. at 444.

[6] *Id.*

[7] *Id.*

[8] Brown v. Mississippi, 297 U.S. 278, 285 (1936).

- the length of the interrogation;[10]
- deprivation of bodily needs;[11]
- psychological pressure;[12]
- deception;[13] and
- subjective characteristics of the suspect (age, education, mental condition).[14]

The Supreme Court extended the application of *Miranda* rights to juvenile interrogation in *Fare v. Michael C.*, holding that statements "admissible on the basis of waiver remain[] a question to be resolved on the totality of the circumstances surrounding the interrogation."[15]

The *Miranda* decision was originally construed to protect a suspect's Fifth Amendment constitutional right against self-incrimination.[16] The rules created by this seminal decision are prophylactic, and the Court upheld this presumption by establishing that a violation of *Miranda* "does not necessarily constitute a violation of the Constitution."[17] Subsequent jurisprudence added that the "judicially crafted" prophylactic rule should only be applied "where its benefits outweigh its costs."[18]

This analysis differs from other constitutional violations—such as the "fruit of the poisonous tree" doctrine[19] under the Fourth Amendment—because a violation does not automatically constitute a constitutional violation.[20] It merely indicates a presumption of compulsion, "requiring that unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment be excluded from evidence."[21] A defendant's constitutional right against self-incrimination under the Fifth Amendment is not as broad as *Miranda* (which may be triggered even in the absence of a Fifth Amendment violation) and only

---

[9] Arizona v. Fulminante, 499 U.S. 279, 288 (1991).
[10] Ashcraft v. Tennessee, 322 U.S. 143, 153 (1944).
[11] Colorado v. Connelly, 479 U.S. 157, 188 n.1 (1986) (citing Greenwald v. Wisconsin, 390 U.S. 519, 521 (1968)).
[12] *Id.* at 164.
[13] *Id.* at 165.
[14] *Id.*
[15] Fare v. Michael C., 442 U.S. 707, 728 (1979).
[16] James L. Buchwalter, *Construction and Application of Constitutional Rule of Miranda—Supreme Court Cases*, 17 A.L.R. FED. 2d 465 (2007).
[17] Vega v. Tekoh, 142 S. Ct. 2095, 2098 (2022).
[18] Maryland v. Shatzer, 559 U.S. 98, 106 (2010).
[19] *See* Oregon v. Elstad, 470 U.S. 298, 298 (1985).
[20] *Id.*
[21] *Id.*

prohibits the use of a compelled statement by the prosecution in its case-in-chief.[22]

1. Custody

A suspect is said to be in custody within the meaning of the Fifth Amendment if LEOs restrict their "freedom of action in any significant way."[23] This is an objective standard where the court evaluates whether a reasonable person would feel free to leave and/or terminate the encounter with law enforcement.[24] Further, the voluntariness of the interaction is determined by the totality of the circumstances, evaluated through a variety of factors, such as:

- if the suspect is physically free to leave;[25]
- if law enforcement displays a show of force;[26]
- if the officers inform the suspect they are free to leave;[27]
- if the suspect initiates contact;[28]
- when the suspect was arrested during the encounter (if at all);[29]
- the suspect's age;[30] and
- the overall atmosphere of the questioning.[31]

For example, in *Oregon v. Mathiason*, the defendant was suspected of burglary.[32] The investigating officer asked the suspect to meet up for questioning, and when the suspect did not indicate a preferred location, the investigator said to meet at the patrol office.[33] At the office, the investigator told the defendant he was not under arrest, but that the investigator suspected the defendant of burglary, that the defendant's truthfulness would be taken into consideration, and that the defendant's fingerprints were found at the scene (when in actuality, they were not).[34] The defendant confessed to the burglary, and the officer promptly Mirandized him and recorded a subsequent statement in which the

---

[22] *Id.* at 306-07.
[23] Miranda v. Arizona, 384 U.S. 436, 444 (1966).
[24] Stansbury v. California, 511 U.S. 318, 324 (1994).
[25] California v. Beheler, 463 U.S. 1121, 1122 (1983).
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id*. at 1123.
[30] J.D.B. v. North Carolina, 564 U.S. 261, 281 (2011).
[31] *Miranda*, 384 U.S. at 466.
[32] Oregon v. Mathiason, 429 U.S. 492, 493 (1977).
[33] *Id.*
[34] *Id.* at 493-94.

defendant confessed again on tape.[35] The defendant was not arrested at this time and permitted to leave after only thirty minutes of questioning.[36]

After being convicted based on the confession, the defendant appealed, alleging the confession should have been suppressed because the questioning was not preceded by *Miranda* warnings and it took place in a "coercive environment."[37] The Court rejected this argument, stating that the conditions triggering *Miranda* warnings were not present in the instant case.[38] Here, the defendant was not in custody because:

> He came voluntarily to the police station, where he was immediately informed that he was not under arrest. [After] a ½-hour interview [defendant] did in fact leave . . . without hindrance. It is clear . . . that [defendant] was not in custody or 'otherwise deprived of his freedom of action in any significant way.'[39]

Additionally, the defendant's contention that the questioning took place in a "coercive environment" is irrelevant as to the custodial analysis; a "noncustodial situation is not converted to one in which Miranda applies simply because a reviewing court concludes that, even in the absence of [custody] the questioning took place in a 'coercive environment.'"[40] As a result, the custody prong of *Miranda* was not met, and warnings were not required prior to questioning.[41]

2. Interrogation

In addition to being in custody, the suspect must also be subject to interrogation to trigger *Miranda* warnings.[42] Interrogation occurs one of two ways: either through express questioning by LEOs[43] or the "functional equivalent of questioning."[44] The Court in *Rhode Island v. Innis* defined express questioning as statements made by law enforcement in the presence of the suspect that would invite their response.[45] Conversely, the court defined "the functional equivalent of questioning" as "words or actions on the part of police officers that they

---

35 *Id.* at 494.
36 *Id.*
37 *Mathiason*, 492 U.S. at 492.
38 *Id.* at 495.
39 *Id.*
40 *Id.*
41 *Id.*
42 Rhode Island v. Innis, 446 U.S. 291, 297 (1980).
43 Miranda v. Arizona, 384 U.S. 436, 444 (1966).
44 *Innis*, 446 U.S. at 301.
45 *Id.* at 302.

should have known were reasonably likely to elicit an incriminating response."[46]

In *Innis*, the suspect, Thomas J. Innis, was in the back of a police car while the officers discussed that they hoped children from the nearby handicapped school would not find a firearm they suspected Innis had disposed of.[47] Innis at this point had been placed under arrest, read his *Miranda* warnings, and had invoked his right to an attorney.[48] Hearing the officers state their concern, Innis told the driver to turn around and he would show them where the gun was located.[49] The Court concluded that Innis was not subjected to interrogation because there was no evidence in the record suggesting the officers knew or should have known he would be particularly susceptible to an appeal to his conscience, and therefore it was not reasonably likely to elicit an incriminating response from him.[50]

3. Waiver

Once custodial interrogation is triggered and LEOs provide the prescribed *Miranda* warnings, a suspect has the right to waive those protections.[51] Under *Maryland v. Shatzer*, a waiver must be knowing, intelligent, and voluntary.[52] The voluntariness of a waiver is determined by the objective totality of the circumstances test, plus evaluating the subjective characteristics of the defendant, including age, intelligence, and capacity.[53]

The relinquishing of *Miranda* rights is considered voluntary if "it was the product of a free and deliberate choice rather than intimidation, coercion, or deception" and "must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."[54] A statement is considered "to be involuntary, and therefore obtained in violation of the Fifth Amendment," if "'coercive police activity' . . . preceded the confession."[55] These two requirements can be determined by the totality of the circumstances.[56] Additionally, it is the burden of the government

---

[46] *Id.* at 294.
[47] *Id.*
[48] *Innis*, 446 U.S. at 295.
[49] *Id.* at 303.
[50] *Id.* at 302.
[51] Maryland v. Shatzer*,* 559 U.S. 98, 104 (2010).
[52] *Id.*
[53] J.D.B. v. North Carolina, 564 U.S. 261, 283 (2011).
[54] United States v. Abdalla, 327 F. Supp. 3d 1079, 1090 (2018).
[55] *Id.*
[56] *Id.*

to prove that a defendant's *Miranda* waiver was voluntary, intelligent, and knowing by the preponderance of the evidence.[57]

In *United States v. Abdalla*, the defendant made two statements with alleged waivers after his arrest.[58] The first statement, made immediately after his arrest at his residence, was found to be inadmissible due to involuntary waiver.[59] However, the second statement, made several days later at the jail, was found admissible following a voluntary waiver.[60] Prior to the defendant's arrest, the police effected forced entry into his home, startling the defendant who had admitted to being under the influence of illicit drugs.[61] Upon being restrained, the defendant bit two officers, had to be subdued by four, and broke through flex-cuffs.[62] Officers testified that the defendant had calmed down prior to making his first statement, but the Court determined that the government did not prove this by the preponderance of the evidence.[63] Several days later at the jail, while no longer under the influence, the defendant refused to sign a waiver after being advised of his rights; however, this is not fatal to the voluntariness analysis.[64] Testimony revealed that the day the second statement was made, the defendant was "talkative, cordial and engaging."[65] As a result, the Court determined the defendant voluntarily waived his *Miranda* rights.[66]

B. Foundational Cases of Juvenile False Confessions

The prevalence of juvenile false confessions may seem to be heavily concentrated in recent history, but the truth of the matter is minor suspects have long been left bereft of sufficient protections under the law during interrogations.[67] From one of the first foundational cases in Supreme Court history such as *Gault*, to the recent case of Kevin O'Connor gracing the headlines of last year's news, the number of recorded confessions made by juvenile defendants is astounding.[68] Some states have proposed legislation to combat these occurrences, and

---

[57] United States v. Wooding, 530 F. Supp. 2d 681, 685, 686 (2008).
[58] *Abdalla*, 327 F. Supp. 3d at 1084.
[59] *Id.* at 1091.
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Abdalla,* 327 F. Supp. 3d at 1091.
[64] *Id.*
[65] *Id.* at 1092.
[66] *Id.*
[67] Laura Nirider et al., *Gerald Gault, Meet Brendan Dassey: Preventing Juvenile False and Coerced Confessions in the 21st Century,* 41 APR CHAMPION 28, 30 (2017).
[68] *Id.* at 28.

discussion will follow as to the steps Florida's legislature has taken, but it seems there is a gaping chasm in the law between recognizing juveniles' need for additional protections and the codification of such provisions.[69]

1. Gerald Gault (1967)

In 1964, Gerald Gault was a fifteen-year-old accused of making prank phone calls of an "irritating and offensive nature."[70] While no transcripts exist of the questioning, Gault was interviewed by a juvenile court judge in the presence of his parent, sibling, and probation officers.[71] Later, when Gault was charged with the offense, the judge and probation officers both recalled Gault confessing to making the calls; however, one probation officer said he only confessed to the calls of a less lewd nature, and the other said he later recanted this statement.[72]

Two years later, Gault was released following the Court's ruling.[73] The Court held that assistance of counsel is essential in determinations of delinquency:

> [T]o cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him.'[74]

The *Gault* case revolutionized juvenile proceedings by requiring counsel and notice of charges as well as extending the right to confrontation and cross-examination and the right against self-incrimination to minors.[75]

2. Brendan Dassey (2005)

In 2005, Brendan Dassey was an intellectually limited sixteen-year-old questioned under suspicion of the disappearance and murder of Teresa Halbach, a twenty-five-year-old photographer last seen on the property shared by Dassey's mother and uncle, Stephen Avery.[76] In a videotaped interview on March 1, 2006, following an allegedly valid

---

[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] Application of Gault, 387 U.S. 1, 36 (1967).
[74] *Id.*
[75] *Id.* at 42.
[76] Brian Gallini, *The Interrogations of Brendan Dassey*, 102 MARQ. L. REV. 777, 784 (2019).

Miranda waiver, Dassey confessed to helping his uncle in the rape, torture, and murder of Teresa Halbach.[77]While officers read Dassey his rights and had him sign a waiver, Dassey's attorneys, both at trial and in post-conviction, raised the issue of Dassey's mental capacity as it related to the voluntariness of his waiver and subsequent confession.[78] The interview also persisted for several hours during the school day, with limited opportunity for Dassey to speak with his mother.[79]

Additionally, in the confession, Dassey volunteered information only after incessant assurances the detectives already knew the truth, could help keep him out of trouble, and other various coercive and deceptive means.[80] In a subsequent interview following Dassey's initial confession, a detective said, "Ok. Take me from there and be honest so we don't have ta keep backing up here. Cuz, we, we know but we need it in your words. I can't, I can't say it."[81] Furthermore, many compelling arguments have been made that Dassey only repeated the facts of the case fed to him by investigators.[82] In a chilling excerpt of the confession, Dassey only provided the detail that the victim was shot in the head after several pointed questions where the officers effectively instructed him on what to say.[83] This admission was especially probative for the officers as the victim's cause of death was purposefully kept from the public and news media.[84] Detectives Wiegert and Fassbender practically fed the damning facts to Dassey.[85] The transcript was as follows:

> *Wiegert*: "What else did he do to her? We know something else was done. Tell us, and what else did you do? Come on. Something with the head. Brendan?"
>
> **Dassey**: "Huh?"
>
> *Wiegert*: "What else did you guys do, come on."
>
> *Fassbender*: "What he made you do Brendan, we know he made you do somethin' else."
>
> *Wiegert*: "What was it? [pause] What was it?"

---

[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] Jennifer J. Slate, *Brendan Dassey "Confession" and Trial Transcripts*, JJ SLATE, https://jenniferjslate.com/2016/01/06/brendan-dassey-confession-and-trial-transcripts/ (last visited Apr. 16, 2023).
[81] *Id.*
[82] *See* Gallini, *supra* note 72, at 799.
[83] *Id.*
[84] *Making a Murderer: Indefensible* (Netflix Dec. 18, 2015).
[85] *See* Gallini, *supra* note 72.

Fassbender: "We have the evidence Brendan, we just need you ta, ta be honest with us."

Dassey: "That he cut off her hair."

> [Several minutes pass and the detectives ask further questions about the hair and his uncle's actions.]

Fassbender: "What else was done to her head?"

Dassey: "That he punched her."

Wiegert: "What else? [pause] What else?"

Fassbender: "He made you do somethin' to her, didn't he? So he-he would feel better about not bein' the only person, right?"

Dassey nods.

Fassbender: "What did he make you do to her?"

Wiegert: "What did he make you do Brendan? It's OK, what did he make you do?"
Dassey: "Cut her."

Wiegert: "Cut her where?"

Dassey: "On her throat."

> [The detectives continue questioning about the stabbing and Dassey's uncle.]

Fassbender: "It's extremely, extremely important you tell us this, for us to believe you."

Wiegert: "Come on Brendan, what else?"

> [pause]

Fassbender: "We know, we just need you to tell us."

Dassey: "That's all I can remember."

Wiegert: "All right, I'm just gonna come out and ask you. Who shot her in the head?"

Dassey: "He did."

Fassbender: "Then why didn't you tell us that?"

Dassey: "Cuz I couldn't think of it."[86]

As it pertains to the voluntariness of Dassey's confession, it would seem a court could easily conclude that his will was overborne by the

---

[86] Jennifer J. Slate, *supra* note 76.

LEOs.[87] Dassey was interrogated on four occasions over a forty-eight-hour period between February 27, 2006 and March 1, 2006, including three times in a twenty-four-hour period without the presence of counsel or a parent.[88] He had received special education services in school a decade prior "after intelligence testing revealed a full scale IQ of 74."[89] The LEOs employed a variety of interrogation tactics to elicit a story from Dassey, ultimately resulting in his March 1st confession.[90]

Additionally, officers did not permit Dassey or his mother to go home after the conclusion of the February 27, 2006 interrogation, and instead arranged for them to stay at a hotel near the police station.[91] The officers allegedly paid Dassey a visit overnight in an unrecorded interview that lasted an indeterminate amount of time.[92] The following morning, the officers picked Dassey up from school and questioned him in the car.[93] This recording includes Dassey's waiver of his *Miranda* rights.[94] After arriving at the stationhouse, the LEOs questioned Dassey for four uninterupped hours without a parent or counsel present, during which Dassey confessed to rape and murder.[95]Brendan Dassey was convicted of first-degree murder and is currently serving a life sentence on the basis of his March 1st statements as the "investigators would never find physical evidence linking Dassey to [the] murder."[96] The coercive actions of the officers in this case create implications that are incredibly severe and warrant further discussion regarding how future children in Dassey's position can be protected from these unthinkable consequences.[97]

3. Kevin O'Connor (2021)

More recently, high school freshman Kevin O'Connor was released after two weeks in lockup at the police department once information came to light that the eyewitness identification, stating that O'Connor was the shooter in a murder investigation, turned out to be false.[98] A

---

[87] Gallini, *supra* note 70, at 792.
[88] *Id.*
[89] *Id.* at 784.
[90] *Id*. at 795.
[91] *Id.* at 807.
[92] *Id.*
[93] Gallini, *supra* note 70.
[94] *Id.*
[95] *Id.* at 808.
[96] *Id.*
[97] *Id.*
[98] Gallardo, Michelle, *Police Offered Teen McDonald's in Exchange for Confession to Crime Someone Else Committed: Attorney*, ABC 7 CHI. (Feb. 21,

Dollar Store employee in Waukegan, IL was unfortunately shot in the face and surveillance photos of the shooter were released immediately to the public by police.[99] O'Connor was removed from class and questioned by school officials and police, neither of whom informed the juvenile what he was accused of or eventually charged with.[100] Additionally, he was not given permission to call his mother.[101] Upon insistence by figures of authority, and without knowing what he was confessing to, O'Connor implicated himself.[102] The officers who arrested O'Connor claimed to have several eyewitnesses placing him at the scene, however after further investigation and corroboration from others, it was revealed he was at a basketball game for his school at the time of the shooting.[103] He was fortunate enough to have an alibi that was sufficiently corroborated to dispel suspicion, but other children subject to coercive tactics designed to elicit incriminating statements are not often so lucky.[104]

C. Proposed Bills HB109 and CS/SB 668

In Florida, a bill was proposed in late 2021 to help mitigate the prejudicial effects of deceptive police practices in the questioning of minors.[105] The bill was described as: "Prohibiting Deception in Interrogations of Minors; Creates presumption that confession of minor during custodial interrogation is inadmissible in certain proceedings if law enforcement officer knowingly engaged in deception; provides for rebuttal of presumption.[106]" The bill died in the Criminal Justice & Public Safety Subcommittee in March 2022.[107]

Another bill, CS/SB 668, was proposed in the Florida Senate entitled "Custodial Interrogations of Minors."[108] The bill would provide:

> A presumption of inadmissibility for confessions of certain minors which are made as a result of a custodial interrogation at a

---

2022), https://abc7chicago.com/waukegan-il-police-department-wrongfully-accused-shooting/11587147/.

[99] *Id.*

[100] *Id.*

[101] Perlman, Marissa, *Waukegan Officers Who Interrogated Martell Williams, Teen Coaxed into Falsely Confessing to Shooting, are Still on the Job*, CBS CHI., (March 25, 2022), https://www.cbsnews.com/chicago/news/waukegan-police-martell-williams-false-confession-policy-review/.

[102] Gallardo, *supra* note 94.

[103] *Id.*

[104] *Id.; see* source cited *supra* note 67.

[105] H.B. 109, 2022 Leg., Reg. Sess. (Fla. 2022).

[106] *Id.*

[107] *Id.*

[108] S.B. 668, 2022 Leg., Reg. Sess. (Fla. 2022).

> place of detention if deceptive tactics are used; specifying circumstances under which the presumption may be rebutted; providing that the state attorney has the burden of proving that such confessions were voluntary, etc.[109]

This proposed legislation also did not survive to see enactment; it died in the Rules Committee also in March 2022.[110] The solutions set out in these potential laws create a framework from which scholars and judiciaries can work from to help ameliorate the detrimental effects of juvenile false confessions.[111]

Outside of Florida, states including Maryland, Illinois, California, Washington, New York, and others have proposed and enacted similar legislation.[112] The protections afforded by the Illinois legislature will be discussed later; however, it is important to note the prevalence of juvenile false confessions even after the introduction of these provisions.[113]

In Florida, the lack of notification of a child's parents is a factor the court may consider in determining voluntariness of any child's confession, but it is not a statutory prerequisite to interrogation.[114] Further, if a juvenile during questioning indicates to police that they do not wish to speak until they have had an opportunity to speak with their parents, the questioning must cease until such an opportunity has been afforded.[115] Again, the evaluation of the totality of the circumstances controls whether a juvenile's statement and/or confession will be considered admissible based upon the facts of the situation.[116]

ISSUES

False confessions spark heated debate amongst the legal community as to finding the ideal solution. Many scholars, judiciaries, and legislatures agree that juvenile defendants are particularly susceptible to the coercive tactics employed by police officers in criminal investigations, yet there is dissent as to when and where in the criminal

---

[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] Elizabeth Weill-Greenberg, *Children Can Be on Their Own When Grilled by Police. The Push for Protection is Growing*, APPEAL, https://theappeal.org/juvenile-right-to-attorney-police-interrogation-maryland-state-legislation/ (last visited Apr. 16, 2023).
[113] *Id.*
[114] Doerr v. State, 383 So.2d 905, 906 (1980).
[115] McIntosh v. State, 37 So.3d 914, 918 (2010).
[116] *Id.*

justice system the ameliorative measures should be placed.[117] As the law currently stands, there are few protections afforded above and beyond the standard protections for adult defendants as it relates to the voluntariness of confessions.[118] The importance of addressing this—especially as it pertains to the prosecution of serious felonies such as murder and rape—is exemplified by many legal scholars:

> In a study of 340 exonerations, 33 of the exonerated defendants were under eighteen. While only 13% of the exonerated adults falsely confessed, 42% of the exonerated juveniles falsely confessed[,] highlighting the prevalence of false confessions among juveniles. The rate of false confession was even higher among the youngest juveniles exonerated[,] 69% of the children between ages twelve and fifteen falsely confessed. Despite the prevalence of false confessions by juveniles under eighteen, only 8% and 16% of all people arrested for murder and rape, respectively, are juveniles.[119]

The data clearly shows juveniles are disproportionately more likely than adults to falsely confess to a crime they did not commit.[120] To reduce the chances that a juvenile suspect will falsely confess, common suggestions are to either reform police procedure during the questioning itself or to suppress any statement resulting from involuntary, coerced, or un-*Mirandized* statements at subsequent proceedings.[121]

A. Prevention

False confessions often originate due to a failure to protect a suspects' Fifth Amendment rights during questioning by police officers.[122] Many scholars have suggested remedial measures that are directed at reforming police procedure to reduce the chances a false confession will be obtained, especially as against a minor.[123] Potential remedies include age-based language in Miranda warnings, requiring counsel or a parent to be present during questioning, requiring the interview be recorded, and many more.[124] For example, a

---

[117] Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29, 50 (2013).
[118] *Id.*
[119] Brudney, *supra* note 2.
[120] *Id.*
[121] *Id.* at 1255.
[122] *Id.* at 1266.
[123] *Id.*
[124] *E.g., id*; LaMontagne, *supra* note 109, at 53.

"developmentally appropriate" Miranda warning could potentially look something like this:

> The police want to ask you some questions. You do not have to talk with them. You do not have to answer their questions. They can use anything you say in trying to figure out if you did something that was against the law. If you do not want to talk with the police, you will not get in trouble for being quiet. If you would like an adult to help you decide what to do, you can have your parents here. You can also have a lawyer. A lawyer is someone who is trained in helping you make the best decision for you. This will not cost you any money. If you want to talk to the police, you can stop answering their questions whenever you want. Do you understand what I have just told you? What would you like to do?[125]

Research following the implementation of such procedures—requiring all interrogations be recorded for example—has shown that the measure is ineffective in reducing the tendencies that lead to juvenile false confessions including "difficulty with self-regulation, sensitivity to short-term rewards, limited future orientation, and tendency to comply with authority" because these tendencies "may not be readily observable on camera."[126]

While it may seem the most worthwhile to stop coercive tactics used by police that are especially effective at eliciting false or involuntary statements from juvenile suspects, the measures suggested by many legal scholars may not have the ideal curative effect one might imagine.[127] For example, the interrogations of Brendan Dassey were recorded in, for the most part, their entirety, and Dassey was given an opportunity (although limited to only a few minutes) to speak to his mother in between interrogations.[128] Despite this, Dassey still gave several false statements at the prompting of investigators.[129]

1. Treating Juvenile Defendants as Adults

As aforementioned, false confessions occur with alarming regularity among adult suspects but considering the unique susceptibility of juvenile suspects to falsely confessing, police techniques are surprisingly uniform despite the age of suspects.[130] A recently-conducted

---

125 LaMontagne, *supra* note 109.
126 Brudney, *supra* note 2 at 1266.
127 *Making a Murderer*, *Indefensible* (Netflix Dec. 18, 2015).
128 *Id.*
129 *Id.*
130 Brudney, *supra* note 2, at 1252.

study showed that "over half the officers [observed] were trained to use psychologically coercive techniques on both adults and juveniles," suggesting that "officers simply extend the adult-designed techniques to their interrogations of children."[131]

Discussion of other preventative measures will follow, but whether their implementation would effectively reduce the incidence of juvenile false confessions on a large scale cannot be readily determined.[132] A compelling argument can be made that it is preferable to have no incriminating statement exist at all than for one to have been made and defense counsel now has the burden of suppressing it at subsequent proceedings.[133]

B. Suppression

In federal court, the admissibility of a confession into evidence is mostly a preliminary question to be decided by the judge.[134] Reviewing courts tend to focus on the "presence and validity of *Miranda* waivers" and consequently "devote less attention and scrutiny to the voluntariness of a confession after a *Miranda* waiver."[135] The presence and validity of a *Miranda* waiver is established by the standard of whether the waiver was knowing, intelligent, and voluntary.[136] While courts more often than not engage in a totality-of-the-circumstances analysis to determine whether a juvenile defendant's waiver was voluntary—in which one of the subjective factors includes the defendant's age—it often fails to engage in a subsequent analysis to determine if the giving of the confession post-waiver was voluntary.[137]

In the event a juvenile defendant confesses, defense counsel has a lofty burden to meet for suppression at trial.[138] On appeal, courts commonly partake in the analysis to determine if a valid *Miranda* waiver existed; however, that is only the first step in determining the confession's admissibility.[139] To be rendered inadmissible, a confession must be both involuntary *and* the defense must prove that coercive police

---

131 *Id.*
132 *See id.*
133 *Id.*
134 Fed. R. Evid. 104(c)(1).
135 Brudney, *supra* note 2, at 1254 (emphasis added).
136 Miranda v. Arizona, 384 U.S. 436, 444 (1966).
137 Brudney, *supra* note 2, at 1254.
138 Fed. R. Evid. 104(c)(1).
139 Brudney, *supra* note 2 at 1254.

activity occurred.[140] Even if the prior *Miranda* waiver is considered valid, the confession will still be inadmissible.[141] While this sounds like a reasonable burden to overcome to justify depriving the prosecution of such probative evidence as a confession, the policy considerations behind *Miranda* inherently contradict this requirement.[142]

SOLUTIONS

There are two primary means of preventing a false confession from detrimentally impacting a juvenile defendant. Those are (1) prohibiting (or limiting) police tactics reasonably likely to inspire a false confession and/or (2) subsequently suppressing the confession at trial.[143] The merits of each solution will be analyzed; however, there are other considerations including the likelihood that a defendant who has wrongfully confessed will enter into a plea agreement and will never glean the protections afforded by the Rules of Evidence for suppression at trial.[144]

Lastly, because there are two different viable means of rectifying the harm caused by juvenile false confessions, this Note will discuss the feasibility and benefits of how to implement solutions. The body of law that protects defendants from improperly obtained statements is that set out in *Miranda* and its progeny of jurisprudence, and therefore some proponents of solutions would suggest additional judicial law to clarify and bolster those protections.[145] This may seem the simplest and most rational solution, however, many traditionalists do not believe it is the Court's role to create law outside of interpreting existing law.[146] Especially in the wake of overturning *Roe v. Wade* on a textual basis, it seems probable, if not likely, that the *Miranda* decision could follow closely behind.[147] The *Miranda* decision similarly lacks an explicit textual basis on which the rights established therein are derived from. In that eventuality, the most steadfast and all-encompassing protection against juvenile false confessions is to propose a Constitutional

---

[140] Colorado v. Connelly, 479 U.S. 157, 167 (1986) (This holding was extended to apply to juveniles in State ex rel. Juv. Dep't of Wash. Cnty. v. O'Farrell, 83 P.3d 931, 936 (Or. Ct. App. 2004)).

[141] Brudney, *supra* note 2, at 1254.

[142] *See Miranda*, 384 U.S. at 444.

[143] *Id.*

[144] Oregon v. Elstad, 470 U.S. 298, 317 (1985).

[145] Brudney, *supra* note 2 at 1261.

[146] Henson v. Santander Consumer USA Inc., 582 U.S. 79, 90 (2017).

[147] Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 2267 (2022) (holding that no right to privacy exists in the Constitution).

Amendment.[148] As the most difficult legislation to enact, it will ensure that the individual requirements are tempered to both proponents' and opposers' predilections and will most likely stand the test of time provided it is well-rounded and comprehensive enough.[149]

A. Interrogation Procedural Reform

Prior researchers have suggested different means of reforming police procedure for interrogating juvenile suspects. These measures are all creative and meritorious in their own way, however, in the complete absence of comprehensive legislation or caselaw dictating procedural safeguards, the wisest and most effective options are those that can be easily standardized across different jurisdictions.[150] The two most promising procedural safeguards that could be codified across state and jurisdictional lines are; requiring the presence of a parent and/or requiring the presence of counsel.[151]

1. Requiring the Presence of a Parent

Many researchers and legislators attempting to curb the incidences of juvenile false confessions suggest the requirement of a parent's presence during questioning to mitigate the coercive effects.[152] Unfortunately, it seems requiring a parent's presence during interrogation will serve to make a negligible legal difference in determining if a juvenile's rights have been violated or upheld.[153] While a parent's presence may provide the child comfort, it may also lead to an impermissible false sense of safety and security that could very well lead to the child falsely confessing at the direction of their parent or because they believe the information could never be used against them if their parent is there to protect them.[154]

In addition, the parent's own education and understanding of the legal system (or lack thereof) could further handicap the child suspect.[155] For example, in the aforementioned case of Brendan Dassey, the documentary *Making a Murderer,* played a jailhouse phone call made

---

148 *See* Brudney, *supra* note 2.
149 *Id.* at 1266-67.
150 *See id.*
151 *Id.*
152 *Id.* at 1271.
153 Brudney, *supra* note 2, at 1268.
154 *Id.*
155 Scott-Hayward, *Christine, Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, L. & PSYCH. REV. 53, 70 (2007).

from Dassey to his mother following one of the interrogation sessions.[156] In the call, Dassey can be heard saying to his mother, "They said that my statements were inconsistent. What does 'inconsistent' mean?" To which his mother replies, "I don't know exactly."[157] If a parent does not understand the subject matter, the police's allegations, or the legal implications of their child making a statement, their presence presents no advantage over the deceptive and coercive practices that create false confessions; had Dassey's mother been in the interrogation room with him, she would not have understood what the LEOs meant by Dassey's statements being inconsistent.[158] She could not then conceivably help Dassey knowingly, intelligently, and voluntarily make a statement because she would not have the requisite understanding of the repercussions of said waiver. In Brendan Dassey's case, requiring the police to question him with his mother present would not have prevented the elicitation of his damning confession.

The safeguards established by *Miranda* require the warning of the right to counsel because only the presence of an attorney could potentially mitigate any legally incriminating actions purposefully to protect the suspect.[159] In the *Gault* case, a juvenile is entitled to counsel "to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it."[160] The presence of a parent during a custodial interrogation would do nothing to establish these protections unless the parent themselves were an attorney[161]. For that reason, the requirement that a parent be present will likely not be a viable or worthwhile solution to pursue to resolve this issue.

2. Requiring the Presence of Counsel

Adding a requirement that counsel be present during the custodial interrogation of juvenile suspects seems to be the most effective and efficient means of preventing false confessions.[162] Several state legislatures have proposed or enacted provisions that would require such a measure.[163]

---

[156] *Making a Murderer*, *Indefensible* (Netflix Dec. 18, 2015).
[157] *Id.*
[158] *Id.*
[159] Application of Gault, 387 U.S. 1, 36 (1967).
[160] *Id.*
[161] *See id.*
[162] Walters, Jennifer, L. *Illinois' Weakened Attempt to Prevent False Confessions by Juveniles: The Requirement of Counsel for the Interrogations of Some Juveniles*. 33 LOYOLA UNIV. CHI. L. J. 487, 503 (2002).
[163] *Id.*

Illinois was the first state to implement legislation requiring the presence of counsel during the interrogation of certain minors even when a parent or guardian was available.[164] Passed in 2000, Section 405/5-170 Representation by counsel "prohibits the interrogation of a child under the age of thirteen suspected of committing a murder or sexual assault without the presence of counsel."[165] While this provision seems to have a curative effect for young suspects accused of especially serious offenses, legal scholars conclude the law is not enough.[166] The law does not protect all juvenile suspects under the age of eighteen in all circumstances. This law does not protect against false confessions for crimes other than those enumerated in the law, it does not describe how counsel would be appointed and/or provided, and it does not contain an inadmissibility provision.[167] This legislation is the epitome of why statutory provisions are typically insufficient to adequately protect juvenile suspects' constitutional rights.[168] For the requirement of counsel to be most effectively executed to prevent false confessions, the law must be uniform across all jurisdictions and in all instances.[169] Furthermore, the provisions of the law must provide a process for which counsel to be appointed and provided, as well as establish the penalty of the statement's inadmissibility at subsequent proceedings to ensure compliance.[170]

B. Evidentiary Bars

The second-most promising solution is to prevent the admission of false confessions at a subsequent trial or proceeding against a defendant. The exclusion of illegally obtained evidence has long been a procedural safeguard as evidenced by the exclusionary rule, another prophylactic creation of the Supreme Court to attempt to better protect individual rights.[171] This is a common tactic for defense attorneys attempting to suppress incriminating evidence from the prosecution's case-in-chief, however, the admissibility of confessions is a preliminary question to be determined by the trial judge's discretion.[172] Notwithstanding an amendment to the Federal Rules of Evidence permitting the admissibility of a confession to be subject to a higher standard or to reduce judicial

---

164 *Id.*
165 *Id.* at 511.
166 Walters, *supra* note 148, at 519.
167 *Id.* at 516.
168 *See id.*
169 *See id.*
170 *Id.*
171 Trammel v. United States, 445 U.S. 40, 50 (1980).
172 Fed. R. Evid. 104(c)(1).

discretion, this remedial measure is still unlikely to fully cure the effects of a false confession existing against the defendant.[173] Therefore, while evidentiary suppression is an excellent fallback if somehow an involuntary or false confession is obtained, it should not be the only safeguard or measure that would prevent a false confession from incriminating a juvenile defendant.

CONCLUSION

Juvenile false confessions are more prevalent than most realize.[174] The protections the law currently affords against self-incrimination in the face of coercive police action are embodied almost entirely in *Miranda* and its related jurisprudence under the Fifth Amendment.[175] As the consequence of deprivation of liberty is at stake, the Constitution deliberately aims to provide due process of law to those subject to such deprivation.[176] Consideration of the current body of law and potential solutions will determine how best to protect juveniles subjected to the inherently coercive environment of custodial interrogation.[177]

At this point in confession jurisprudence and legal scholarship, it would seem the measure that is most likely to form the ideal solution is to require the presence of counsel in all criminal investigations where a suspect under the age of eighteen is subject to custodial interrogation.[178] This provision should, in an ideal world, be codified in the Federal Constitution to ensure it will withstand shifting political attitudes and judicial fads. At minimum, each state should endeavor to codify this provision into law to best provide standardized and comprehensive protection against juvenile false confessions. The appointment of counsel should be treated similarly to how public defenders are appointed, however instead of the appointment triggering at arrest, the statute(s) should provide that the presence of counsel is required at the outset of custody under the meaning of *Miranda*.[179] This will likely also call for increased education of law enforcement officers to ensure they will recognize when the protections are required, and as such a basic criminal procedure and constitutional education course should be required in police officer training.

---

173 *See Trammel*, 445 U.S. at 50.
174 Brudney, *supra* note 2.
175 Miranda v. Arizona, 384 U.S. 436, 436 (1966).
176 *Id.*
177 Brudney, *supra* note 2.
178 *See id.*
179 *See* Walters, *supra* note 148, at 519.

As it stands today, the measures taken by judiciaries and legislatures alike, at both the state and federal level, are abysmally inadequate to protect the constitutional rights of juvenile suspects under *Miranda* and the Fifth Amendment.[180] Due to the pervasive nature of false confessions and their increased likelihood when involving juvenile defendants, the complete lack of comprehensive protections must be remedied at the earliest possible time, even if such a solution is not as complete or ideal as it most likely should be. Regardless of what the first step is that the law takes to protect the especially vulnerable members of our society in the criminal justice system, it cannot come soon enough to extend a helping hand towards anyone that has the misfortune of being "an easy victim of the law."[181]

[180] Brudney, *supra* note 2.
[181] Haley v. State of Ohio, 332 U.S. 596, 599 (1948).