

5-16-2022

## REFORMING THE METHODS USED FOR OBTAINING JUVENILE CONFESSIONS

Melissa Sarsten Polito  
melissasarsten@hotmail.com

Follow this and additional works at: <https://lawpublications.barry.edu/barryrev>



Part of the [Jurisprudence Commons](#), and the [Other Law Commons](#)

---

### Recommended Citation

Melissa Sarsten Polito, *REFORMING THE METHODS USED FOR OBTAINING JUVENILE CONFESSIONS*, 27  
Barry L. Rev. 141 (2022).  
Available at: <https://lawpublications.barry.edu/barryrev/vol27/iss1/4>

This Article is brought to you for free and open access by Digital Commons @ Barry Law. It has been accepted for inclusion in Barry Law Review by an authorized editor of Digital Commons @ Barry Law.

**REFORMING THE METHODS USED  
FOR OBTAINING JUVENILE CONFESSIONS**

*Melissa Sarsten Polito\**

On January 5, 1989, 16-year-old Huwe Burton confessed to murdering his mother.<sup>1</sup> During his confession, he sat alone in a New York police precinct with three detectives “in a cramped, windowless room.”<sup>2</sup> In the preceding 48 hours, he had not eaten or slept.<sup>3</sup> Instead, the three detectives had spent the prior two days grilling Huwe Burton on the events leading up to his mother’s death.<sup>4</sup> During those two days, Huwe stuck to his story that he “had come home two days earlier after spending the day at school and then at his girlfriend’s house, to find his mother, Keziah Burton, face-down on her bed, stabbed to death.<sup>5</sup> Her nightgown was pulled up to her waist.<sup>6</sup> A blue telephone cord was wrapped around her wrist.”<sup>7</sup> But, by January 5, Burton had been worn down by the coercive techniques employed by the three detectives interrogating him.<sup>8</sup> Techniques which included “isolating Burton from his father, threatening him with additional criminal charges and, ultimately, offering leniency if he confessed to killing his mother.”<sup>9</sup> These techniques were not only standard at the time but are still widely used today.<sup>10</sup> Physically, mentally, and emotionally broken down, Burton:

---

\* Law Clerk, State of New Jersey Appellate Division. J.D. 2021, Rutgers School of Law – Newark. The author wishes to express her sincere appreciation to Professor Twila Perry for her thoughtful insight, guidance, support, wisdom, and editorial suggestions. The author is also grateful for valuable insight on this topic provided by her teenage children and their peers. The views expressed, and errors in, this Article are solely those of the author.

<sup>1</sup> Jan Ransom, *3 Detectives Obtained a False Murder Confession. Was it One of Dozens?*, N.Y. TIMES, Feb. 15, 2021, <https://www.nytimes.com/2021/02/15/nyregion/3-detectives-obtained-a-false-murder-confession-was-it-one-of-dozens.html> [<https://perma.cc/68DA-FGSZ>].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; see also Innocence Staff, *Bronx Man’s 1991 Murder Conviction Vacated*, THE INNOCENCE PROJECT (Jan. 24, 2019), <https://innocenceproject.org/bronx-mans-1991-murder-conviction-vacated/> [<https://perma.cc/4XXV-PUM7>] [hereinafter *Bronx Man*].

<sup>9</sup> *Bronx Man*, *supra* note 8.

<sup>10</sup> *Id.*

[P]rovided a written and recorded statement that he'd accidentally stabbed his mother during an argument when she would not give him money to pay a debt to a drug dealer. He told detectives that he left the key to the family car on the floorboard after the murder and the drug dealer took it.<sup>11</sup>

Important to note, Burton's mother's "car was missing when her body was found."<sup>12</sup> Almost instantly, Burton recanted his confession, but it was too late.<sup>13</sup> Two years later, even though he continued to maintain his innocence, Burton was found guilty of his mother's murder and was sentenced to 15 years to life in prison, based largely on his false confession.<sup>14</sup> He would spend almost 20 years incarcerated before being exonerated.<sup>15</sup>

False confessions are a leading cause of wrongful convictions, accounting for roughly 25% of all convictions which were later overturned, yet confessions are the most incriminating and persuasive evidence of guilt that the state can bring against a defendant.<sup>16</sup> "The presence of a confession creates confirmatory and cross-contaminating biases, which lead officials and jurors to interpret all other case information in the most inculpatory way."<sup>17</sup> This is especially problematic for juveniles.<sup>18</sup> In fact, "63% of false confessors were under the age of 25, and 32% were under 18; yet of all persons arrested for murder and rape, only 8 and 16%, respectively, are juveniles."<sup>19</sup> Not only are juvenile false confessions common, but they are an "inevitable occurrence given the impact of the interrogation process on children and the inadequacies of the legal standard that currently exists to protect against juvenile false confessions."<sup>20</sup>

This is particularly troubling given psychological research and social science, as well as Supreme Court of the United States jurisprudence, demonstrating that juveniles

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (Police also interviewed Burton's neighbor, Green, but ultimately prosecuted Burton. *Id.* "Five days after detectives obtained Burton's confession, Green was arrested by the police." *Id.* He was driving Keziah Burton's car, which had been stolen the day of the murder. *Id.* "The same detectives who obtained Burton's false confession questioned Green." *Id.* "They secured written and videotaped statements from him claiming that "Burton asked Green for help after stabbing his mother and Green complied . . . by staging the crime scene to look like a rape and robbery, telling Burton to dispose of the murder weapon, and promising to sell the family car and split the profits." *Id.* Green was killed in a lover's triangle incident before Burton's trial and never testified." *Id.*)

<sup>13</sup> *Id.*

<sup>14</sup> Liam Boylan-Pett, *Huwe Burton's Journey From Wrongfully Convicted to Runner*, WORLD ATHLETICS, (Feb. 20, 2021), <https://www.worldathletics.org/news/feature/huwe-burton-from-wrongfully-convicted-to-runner> [<https://perma.cc/4JVK-MCP9>].

<sup>15</sup> *Bronx Man*, *supra* note 8.

<sup>16</sup> *Facts Figures*, FALSECONFESSIONS.ORG, <https://falseconfessions.org/fact-sheet/> [<https://perma.cc/C2KE-SU86>] (last visited Mar. 18, 2021).

<sup>17</sup> Marco Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, and Prosecutorial Discretion*, 18 NEV. L.J. 291, 293-94 (2017) (quoting Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 293 (2006)).

<sup>18</sup> See FALSECONFESSIONS.ORG, *supra* note 16.

<sup>19</sup> *Id.*

<sup>20</sup> 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, 1238 (2019).

differ from adults, and as such, need to be treated differently.<sup>21</sup> Indeed, studies have shown teenagers:

[D]iffer from adults in three critical ways: (1) they lack mature capacity for self-regulation in emotionally charged contexts; (2) they have a heightened sensitivity to proximal external influences, such as peer pressure, and the need for immediate gratification; and (3) they show less ability to make judgments and decisions that require future orientation.<sup>22</sup>

As such, this paper argues that juveniles should be afforded more protection when being interrogated because the adolescent brain not only makes a juvenile “particularly vulnerable to specific coercive interrogation techniques,” but it also affects how a juvenile interprets and understands the safeguards offered by *Miranda v. Arizona*.<sup>23</sup> This paper will proceed in three parts. Part I will discuss Supreme Court jurisprudence, which has held that juveniles differ from adults. This portion will discuss research on the adolescent brain to argue that adolescents have an inclination toward suggestion and authority.<sup>24</sup> Specifically, this paper will argue that interrogation techniques created for adults have particularly harsh consequences for a juvenile.<sup>25</sup> Part II will discuss false confessions and their impact on wrongful convictions generally, and then discuss two major issues in the context of juvenile false confessions: (i) whether a juvenile is able to fully comprehend his *Miranda* rights and invoke them properly; and (ii) that “standard interrogation tactics—coercion, false promises of leniency, deception about evidence—are intended for adults, not [children],” and as such should be considered unemployable coercive techniques.<sup>26</sup> Part III will advocate legislative reforms aimed at reducing and/or eliminating the possibility of a juvenile false confession, including: (i) videotaping confessions; (ii) employing age appropriate interrogation techniques; (iii) introducing age appropriate *Miranda* warnings;

---

<sup>21</sup> RICHARD J. BONNIE, ROBERT L. JOHNSON, BETTY M. CHEMERS & JULIE A. SCHUCK, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 91 (Committee on Assessing Juvenile Justice Reform et al. eds., 2013).

<sup>22</sup> *Id.*; see also *Building off Connecticut’s Success in Raising the Age of Juvenile Court Jurisdiction*, CT.GOV (Dec. 31, 2018), <https://portal.ct.gov/-/media/Office-of-the-Governor/Working-Groups/Transition-Policy-Working-Group/Criminal-Justice-Policy-Committee---Sub-Group---Raise-the-Age.pdf> [<https://perma.cc/5QKK-GRY4>].

<sup>23</sup> Brudney, *supra* note 20, at 1238, 1257, 1265 (For purposes of this paper, it is assumed that the juvenile is in custody for *Miranda* purposes).

<sup>24</sup> *Id.* at 1247.

<sup>25</sup> *Id.* at 1248.

<sup>26</sup> Youth in the Criminal Justice System Working Group, Cri. Just. Comm., *Why are Youth Susceptible to False Confessions*, THE INNOCENCE PROJECT (Oct. 16, 2015), <https://innocenceproject.org/why-are-youth-susceptible-to-false-confessions/> [<https://perma.cc/3YBA-NK7J>] [hereinafter *Why are Youth Susceptible*].

and (iv) mandating attorney representation or parental consent to interrogate anyone under the age of 18.<sup>27</sup>

## Part I. Background

### A. Brain Development

There is ample research suggesting a distinct difference between the ongoing development of the teenage brain and the fully formed adult brain. Specifically, neurological research in the past 20 years shows brain development continues into the mid-twenties and beyond—and teenagers are particularly susceptible to risky behavior—an inclination that declines as the juvenile matures.<sup>28</sup> This research suggests “youths are: prone to be impulsive; more sensitive to immediate rewards and less future-oriented; more volatile in emotionally charged settings; and highly susceptible to peer and other outside influences.”<sup>29</sup>

When you take into account the vast amount of social science and psychological research, it is apparent that an adolescent’s cognitive functioning is simply not equal to that of an adult’s.<sup>30</sup> “We do not hold adults with mental health problems to the same standards as we do mentally healthy adults,” so it should not be any different for adolescents.<sup>31</sup> The justice system needs to recognize the inherent differences between the cognitive functions of a teenager and that of an adult, and interrogate accordingly.<sup>32</sup> Indeed, adolescents process information with the amygdala—which controls fear, anger, and aggression,

---

<sup>27</sup> Steven A. Drizen & Beth A. Colgen, *Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois’ Problem of False Confessions*, 32 LOYOLA UNIV. L.J. 337, 343-44 (2001); see Mitzi Johanknecht, *Sheriff’s Office simplifies Miranda Warnings for Juveniles*, KING COUNTY SHERIFF (Sept. 27, 2017), <https://kingcounty.gov/depts/sheriff/news-media/news/2017/September/Miranda-warnings-simplified-for-juveniles.aspx> [<https://perma.cc/XU2F-Z3V4>]; see e.g. George Coppolo, *Interrogation of Minors—Presence of Parents or Guardians*, OLR RESEARCH REPORT (Mar. 1, 2020), <https://www.cga.ct.gov/2000/rpt/2000-R-0282.htm> [<https://perma.cc/3FSW-HTV6>] (discussing state laws).

<sup>28</sup> SARA B. JOHNSON PH. D., MP.H., ROBERT W. BLUM M.D., PH. D., & JAY N. GIEDD M.D., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 43 J. OF ADOLESCENT HEALTH 213, 216 (2009); see also Lael Chester & Vincent Schiraldi, *Public Safety and Emerging Adults in Connecticut: Providing Effective and Developmentally Appropriate Responses for Youth Under Age 21*, HARV. PROGRAM IN CRIM. JUST. POL’Y & MGMT. 9-10 (2016).

<sup>29</sup> Chester & Schiraldi, *supra* note 28 at 10; see Vincent Schiraldi, Bruce Western, & Kendra Bradner, *Community Based Responses to Justice-Involved Young Adults*, 1 HARV. PROGRAM IN CRIM. JUST. POL’Y & MGMT. 1, 3-4 (2015); see Greg Ridgeway & Robert L. Listenbee, *Young Offenders: What Happens and What Should Happen*, NATIONAL INSTITUTE OF JUSTICE, (Feb. 2014); <https://www.ojp.gov/pdffiles1/nij/242653.pdf> [<https://perma.cc/3F6D-GWEL>]; see also CT.GOV, *supra* note 22.

<sup>30</sup> *Adolescents and the Criminal Justice System; Should We Treat Them as Adults?*, PENN STATE: PSYCH 424 BLOG (Mar. 5, 2014, 8:03 PM), <https://sites.psu.edu/aspsy/2014/03/05/adolescents-and-the-criminal-justice-system-should-we-treat-them-as-adults/> [<https://perma.cc/YRT2-Q8M7>].

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

among other basic instincts—which is why teenagers are often emotionally charged.<sup>33</sup> Because of the amygdala’s takeover, “the frontal cortex is unable to temper these reactions as it does in adults, therefore you often have a teen that isn’t thinking about the ramifications of his actions and often makes decisions based on the present circumstances.”<sup>34</sup> Thus, a teenager is unable to properly assess the risks of his actions—which arguably diminishes his ability to understand the consequences of a confession—in the same way an individual with mental health issues or mental capacity issues is unable to assess the risks of their actions.<sup>35</sup> Following this line of reasoning, the interrogation of a juvenile should not only be in line with his level of reasoning, but also structured to take into his account his ability to comprehend the consequences of his words or actions and his desire for instant gratification.<sup>36</sup>

## B. Supreme Court Jurisprudence Holds Teenagers Differ From Adults

Over the last two hundred years, courts have struggled with balancing a juvenile’s rights and a juvenile’s culpability.<sup>37</sup> For example, in the late 1700s, there was little difference between a juvenile’s criminal culpability and an adult’s criminal culpability. Even children as young as seven could face a trial and sentencing in criminal courts.<sup>38</sup> Then, in 1825, the Society for the Prevention of Juvenile Delinquency created The New York House of Refuge, which was designed to accommodate juvenile delinquents.<sup>39</sup> After that, advocates began introducing more innovative approaches to dealing with juvenile delinquents, such as cottage institutions, out-of-home placement, and probation.<sup>40</sup> These innovative approaches culminated with the creation of the juvenile court in 1899.<sup>41</sup> This new juvenile court’s benevolent mission was to act as a go-between for delinquent youth and the criminal justice system in hopes of rehabilitating and protecting the juvenile.<sup>42</sup> In affording more protection to minors, the juvenile justice process was confidential.<sup>43</sup> The juvenile court judges typically took on a paternal role and were given discretion in

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> PBS, *Child or Adult? A Century Long View*, PBS FRONTLINE: JUVENILE JUSTICE, <https://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/childadult.html> [<https://perma.cc/B6GC-8M3E>].

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Juvenile Justice History*, CENTER ON JUV. & CRIM. JUST., <http://www.cjcj.org/education1/juvenile-justice-history.html> [<https://perma.cc/KTK2-T854>] (last visited October 11, 2020).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

achieving individualized rehabilitative justice.<sup>44</sup> This rehabilitative justice model remained mostly intact until the mid-1960s when advocates voiced concerns about the “progressive era model of juvenile justice,” including the concern that these juveniles were simply being warehoused in institutions akin to prison, and not being rehabilitated at all.<sup>45</sup> Advocates argued juveniles were entitled to due process protections, and they challenged a juvenile court judge’s broad discretion.<sup>46</sup> With many of these concerns ultimately exposed in the Supreme Court, the Court determined, “juveniles must be afforded due process protections including: formal hearings when facing waiver to criminal court; protection against self-incrimination; the rights to notice of charges, counsel, and cross-examination of witnesses; and adherence to the ‘proof beyond a reasonable doubt’ judicial standard.”<sup>47</sup> This jurisprudence has held that a juvenile differs from an adult.<sup>48</sup> Indeed, as mentioned, the Supreme Court has recognized that adolescents differ from adults in their level of culpability, in the constitutional rights afforded them, and in their ability to be rehabilitated.<sup>49</sup> States need to look at the inherent differences between juveniles and adults—which it has used in setting sentencing parameters for juveniles—and use the same reasoning in establishing conditions for interrogating juveniles.<sup>50</sup>

For example, in the context of punishment and sentencing, the Supreme Court held in *Roper v. Simmons* that capital punishment was unconstitutional for juvenile offenders.<sup>51</sup> There, the defendant, Christopher Simmons, was only 17 years old when he planned and committed a murder.<sup>52</sup> Simmons was tried as an adult, convicted of murder, and sentenced to death.<sup>53</sup> In a post-conviction proceeding, the Missouri Supreme Court set aside Simmons’ sentence in favor of life imprisonment without parole, a decision affirmed by the Supreme Court of the United States.<sup>54</sup> In this landmark decision, the Court declared capital punishment unconstitutional for juvenile offenders.<sup>55</sup> In concluding that capital punishment was unconstitutional for juveniles, the Court weighed the social science evidence, which confirmed that “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults,” and because of that, “juveniles are more likely to take ‘impetuous and ill-considered actions.’”<sup>56</sup> The Court also recognized that juveniles are easily subjected to external pressure and are less able to control their reactions to that pressure.<sup>57</sup>

---

<sup>44</sup> PBS FRONTLINE, *supra* note 37.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (Decisions such as *Kent*, *In re Gault*, and *In re Winship* laid the groundwork for this new holding. *Id.*)

<sup>48</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010).

<sup>49</sup> *Roper*, 543 U.S. at 569; *Graham*, 560 U.S. at 50.

<sup>50</sup> *Roper*, 543 U.S. at 569; *Graham*, 560 U.S. at 50.

<sup>51</sup> *Roper*, 543 U.S. at 578.

<sup>52</sup> *Id.* at 556.

<sup>53</sup> *Id.* at 558.

<sup>54</sup> *Id.* at 559-60.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 569.

<sup>57</sup> *Id.* at 570.

In 2010, the Supreme Court built on its *Roper* decision in *Graham v. Florida*, holding the Eighth Amendment's Cruel and Unusual Punishments Clause does not permit sentencing of a juvenile offender to life in prison without parole for a non-homicidal crime.<sup>58</sup> “While incapacitation may be a legitimate penological goal sufficient to justify life without parole in other contexts, it is inadequate to justify that punishment for juveniles who did not commit homicide.”<sup>59</sup> The Supreme Court again looked at the differences between a juvenile and an adult in 2012 when it granted certiorari in *Miller v. Alabama*, holding sentencing schemes mandating life in prison without the possibility of parole for those under eighteen at the time the crime was committed violates the Eighth Amendment’s prohibition on cruel and unusual punishments<sup>60</sup> because it would be a disproportionate punishment for children.<sup>61</sup> With each of these decisions the Court took one step forward in setting limits for sentencing a juvenile, recognizing the inherent differences between a juvenile’s culpability and that of an adult’s.<sup>62</sup>

Similar to the Supreme Court’s limits on juvenile sentencing, the Supreme Court has slowly begun to apply the same principles in recognizing that the validity of confessions obtained after interrogation of juveniles needs to be approached differently.<sup>63</sup> Indeed, translating the principles that the Court took into account when declaring certain sentencing standards unconstitutional for juveniles, if these same principles were applied when looking at interrogation of a juvenile, one can easily assume that a juvenile would be swayed by authority figures, i.e. a police officer, and would likely be more susceptible to admitting to a crime he may not have committed if promised the ability to “go home” after he confesses.<sup>64</sup>

Most notably, for confession purposes, the court’s opinion in the 1967 case of *In re Gault* is illustrative of how the Supreme Court has held that juveniles should be afforded more protection than their adult peers, stating:

[I]f counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.<sup>65</sup>

---

<sup>58</sup> *Graham*, 560 U.S. at 72.

<sup>59</sup> *Id.*

<sup>60</sup> U.S. CONST. amend. VIII.

<sup>61</sup> *Miller v. Alabama*, 567 U.S. 460, 480 (2012).

<sup>62</sup> *Roper*, 543 U.S. at 569; *Graham*, 560 U.S. at 50; *Miller*, 567 U.S. at 472.

<sup>63</sup> *In re Gault*, 387 U.S. 1, 46 (1967); Lisa M. Krzewinski, *But I Didn’t Do It: Protecting the Rights of Juveniles During Interrogation*, 22 B.C. THIRD WORLD L. J. 355, 356 (2002).

<sup>64</sup> Krzewinski, *supra* note 63, at 361.

<sup>65</sup> *In re Gault*, 387 U.S. at 55.

The Court’s statement in *In re Gault*—which extended *Miranda* rights to juveniles—“implicitly recognizes two separate but related problems inherent in the interrogation of juveniles.”<sup>66</sup> First, is a juvenile able to fully understand “his Fifth Amendment right against self-incrimination, which is ‘explained’ to him through the standard *Miranda* warning?”<sup>67</sup> And, even assuming he understands that right, will he be able to properly invoke it when he is being interrogated by law enforcement?<sup>68</sup>

Next, even accepting that a juvenile makes his confession “voluntarily, knowingly and intelligently,” are his statements reliable?<sup>69</sup> Probably not. As social science has shown that the reliability of his statements may be questionable “for a variety of reasons, including an incapacity for adult reasoning, susceptibility to suggestion, and a value system misunderstood by adults...[and may result in] a confession that can be anything from partly untrue to wholly false”<sup>70</sup>

## Part II. Confessions

### A. False Confessions Generally

“A false confession is an admission (“I did it”) plus a postadmission narrative (a detailed description of how and why the crime occurred) of a crime that the confessor did not commit.”<sup>71</sup> False confessions typically occur because of:

[ (i) ] real or perceived intimidation of the suspect by law enforcement; [ (ii) ] use of force by law enforcement during the interrogation, or perceived threat of force; [ (iii) ] compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations, or limited education. Young people who do not understand their rights and are taught to please authority figures are particularly vulnerable; [ (iv) ] devious interrogation techniques, such as untrue statements about the presence of incriminating evidence; and [ (v) ] fear on the part of the suspect, that failure to confess will yield a harsher punishment.<sup>72</sup>

---

<sup>66</sup> Krzewinski, *supra* note 63, at 355-56.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY L. 332, 333 (2009).

<sup>72</sup> *False Confessions & Recording of Custodial Interrogations*, THE INNOCENCE PROJECT, <https://innocenceproject.org/false-confessions-recording-interrogations/> [https://perma.cc/3FER-5CZM].

False confessions have been grouped by researchers into three basic categories: voluntary, compliant, and internalized.<sup>73</sup> In “*voluntary false confessions*, innocent people take responsibility for crimes they did not commit without prompting or pressure from police.”<sup>74</sup> Reasons people confess voluntarily include: “a pathological desire for notoriety; a conscious or unconscious need for self-punishment to expiate feelings of guilt over prior transgressions; an inability to distinguish fact from fantasy due to a breakdown in reality monitoring; and a desire to protect the actual perpetrator.”<sup>75</sup> In “*compliant false confessions*, suspects are induced through interrogation to confess to a crime they did not commit.”<sup>76</sup> In cases of a *compliant false confession*, the suspect confesses “to escape a stressful situation, avoid punishment, or gain a promised or implied reward.”<sup>77</sup> “This type of confession is an act of mere public compliance by a suspect who knows that he or she is innocent, but bows to social pressure, often coming to believe that the short-term benefits of confession relative to denial outweigh the long-term costs.”<sup>78</sup> There are usually very specific incentives used to gain a confession in these cases, which include “being allowed to sleep, eat, make a phone call, [or] go home.”<sup>79</sup> Juveniles are especially susceptible to these types of promises.<sup>80</sup> The third type of false confession, *internalized false confessions*, typically occurs where “an innocent but malleable suspect is told that there is incontrovertible evidence of their involvement,” and they “come not only to capitulate in their behavior but also to believe that they may have committed the crime in question, sometimes confabulating false memories in the process.”<sup>81</sup> Here, the suspect comes to distrust their own memory in such a way that they become “vulnerable to influence from external sources.”<sup>82</sup>

## B. Juvenile False Confessions

“Youth is a significant risk factor for police-induced false confessions” because “many juveniles [are] highly compliant.”<sup>83</sup> “They tend to be immature, naively trusting of authority, acquiescent, and eager to please adult figures, [and] are thus predisposed to be submissive when questioned by police.”<sup>84</sup> “Juveniles also tend to be highly suggestible,” and “are easily pressured, manipulated, or persuaded to make false statements, including

---

<sup>73</sup> Leo, *supra* note 71, at 338.

<sup>74</sup> Saul M. Kassir et al., *Police-Induces Confessions: Risk Factors and Recommendations*, 34 L. HUM. BEHAV. 3, 14 (2010).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Leo, *supra* note 71, at 336.

<sup>81</sup> Kassir, *supra* note 74, at 15.

<sup>82</sup> *Id.*

<sup>83</sup> Leo, *supra* note 71, at 336.

<sup>84</sup> *Id.*

incriminating ones.”<sup>85</sup> They “lack the cognitive capacity and judgment to understand the nature or gravity of an interrogation or the long-term consequences of their responses to police questions.”<sup>86</sup> Thus, juveniles are especially susceptible to two types of false confessions: compliant false confessions and internalized false confessions.<sup>87</sup>

One of the most famous examples of a *compliant false confession* in the context of a juvenile is the Central Park jogger case, where five teenagers, ranging in age from 14 to 16, falsely confessed to a ruthless attack and rape of a woman in New York City’s Central Park, which resulted in their conviction and imprisonment.<sup>88</sup> The court summarized the case against the defendants as follows:

[A]t approximately 1:30 a.m., an unconscious woman was found by two men walking on a foot path through Central Park. Police and medical personnel were summoned. The victim, a twenty-nine-year-old white woman who came to be known as the “[“]Central Park jogger,[”]” was removed to the hospital. She had been badly beaten about the head, and suffered numerous bruises, scratches, and abrasions else-where on her body. Her t-shirt had been rolled into a ligature and used to tie her in a distinctive fashion. Subsequent investigation revealed that she had been raped and that her radio headset and keys were missing. Raymond Santana and Kevin Richardson, as well as a number of other youths were apprehended at approximately 10:15 p.m., on April 19, 1989, after police officers responding to reports concerning some of the incidents spotted them on the western out-skirts of the park. Antron McCray, Yusef Salaam and Kharey Wise were brought in for questioning on April 20, 1989, after they had been identified by other youths as having been present at or participated in some of the events in the park. Each of the defendants was questioned by detectives and made one or more statements. All five of the defendants implicated themselves in a number of the crimes which had occurred in the park. None of them admitted actually raping the Central Park jogger, but each gave an account of events in which he made himself an accomplice to the crime. Defendant Wise was 16 years-old, defendants Salaam and McCray were 15 and defendants Richardson and Santana were 14.<sup>89</sup>

---

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 337-38.

<sup>88</sup> *Id.* at 332; *see generally* People v. Wise, 752 N.Y.S.2d 837, 843 (2002).

<sup>89</sup> *Wise*, 752 N.Y.S.2d at 843. (In 2002, “convicted rapist and murder, Mathias Reyes, admitted to the rape of the jogger. *Id.* An analysis of the DNA evidence confirmed that he was the rapist, and the convictions of the Central Park Five were vacated.” *Id.*).

When obtaining the coerced-compliant false confessions, each of the teenagers in the Central Park jogger case “was [led] to believe that he would get to go home if he confessed... each one calculated—given that they had been there from 14-30 hours of interrogation under tremendous pressure—that it was in his own best interest to cooperate.”<sup>90</sup> Shortly after confessing, the juveniles recanted their stories.<sup>91</sup> Yet “despite quickly recanting their confessions, despite the lack of physical evidence linking them to the crime, and despite the only DNA evidence taken from the victim belonging to a man not one of the five, [the boys were] prosecuted and convicted.”<sup>92</sup> The five teenagers “collectively . . . spent about 41 years in prison for a crime they did not commit.”<sup>93</sup>

“The case of 14-year-old Michael Crowe, whose sister Stephanie was stabbed to death in her bedroom,” illustrates an internalized false confession.<sup>94</sup> In this instance, “after a series of interrogation sessions, during which time police presented Crowe with compelling false physical evidence of his guilt, he concluded that he was a killer, saying: ‘I’m not sure how I did it. All I know is I did it.’”<sup>95</sup> The detectives went so far as to convince Michael “that he had a split personality—that ‘bad Michael’ acted out of a jealous rage while ‘good Michael’ blocked the incident from memory.”<sup>96</sup> The relevant facts of the case were summarized as follows:

On the night of January 20, 1998, police received several 911 phone calls reporting that a man—later identified as Richard Tuite—was bothering people in the neighborhood in which the Crowe family resided.... Escondido police officer Scott Walters was dispatched to the area. As Officer Walters drove toward the Crowe house, he noticed a door next to the garage close. He could not see who closed the door. Officer Walters then noted in his log that the transient was “gone on arrival” and left the scene at 9:56 p.m. Sometime between 10:00 p.m. and 11:00 p.m., 12-year-old Stephanie Crowe was stabbed to death in her bedroom. An autopsy determined that Stephanie was stabbed numerous times with a knife with a 5–6 inch blade. Stephanie was found dead by her grandmother the next morning around 6:30 a.m. Paramedics were the first to respond to the 911 call. Defendant Escondido Police Department Detective Barry Sweeney

---

<sup>90</sup> Evan Nesterak, *Coerced to Confess; The Psychology of False Confessions*, BEHAV. SCIENTIST (October 21, 2014), <https://behavioralscientist.org/coerced-to-confess-the-psychology-of-false-confessions/> [<https://perma.cc/2DAU-Y9V7>].

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* (In 2003 a “federal judge in New York approved a \$41 million dollar settlement between New York City and The Central Park Five in a civil case the five men brought against the city in 2003, after their convictions were overturned. *Id.* Despite the settlement, New York City still denies any wrongdoing in the case.” *Id.*).

<sup>94</sup> Kassir, *supra* note 74, at 15.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

arrived on the scene shortly thereafter. Police checked all of the doors and windows in the house and found no signs of forced entry. However, they did discover that a door leading to the master bedroom, a door located near the garage, and at least one window had not been locked during the night.<sup>97</sup>

The next afternoon, police questioned all of the members of the Crowe family at the Escondido police station including the decedent's parents, grandmother, 10-year-old sister, and 14-year-old brother, Michael Crowe.<sup>98</sup> "Before questioning Michael, the police advised him of his *Miranda* rights."<sup>99</sup> During this initial interrogation, Michael was interviewed by Detective Mark Wrisley.<sup>100</sup>

Michael told Detective Wrisley that he had gotten up at 4:30 a.m. that morning with a headache, and that he had been running a fever the day before. He described having turned on his television for light and walked to the kitchen, where he took some Tylenol. He also told Detective Wrisley that all other bedroom doors had been shut when he was in the hallway.<sup>101</sup>

The officers believed Michael's statement was suspicious, "because by 4:30 a.m. Stephanie was dead in the doorway of her bedroom with the door open."<sup>102</sup> Upon this suspicion, police placed Michael in protective custody and transported him to the local children's detention center.<sup>103</sup>

Michael was then interrogated three more times.<sup>104</sup> Michael continued to tell the same version of events that he had during the first interrogation.<sup>105</sup> At the beginning of the third interrogation, Michael told the officers that he felt sick, and then "repeated the same series of events for the evening of January 20 and the morning of January 21 that he had

---

<sup>97</sup> *Crowe v. Cty of San Diego*, 593 F.3d 841, 852–53 (9th Cir. 2010).

<sup>98</sup> *Id.* at 853. ("The same day, the police located Richard Tuite and brought him to the police station so that they could talk to him, fingerprint him, and take samples of fingernail scrapings, hair, and clothing. *Id.* At the police station, Detective Sweeney attempted to interview Tuite, but did not obtain much information. *Id.* Detective Sweeney did not run a background check on Tuite. *Id.* A background check would have shown that Tuite had an extensive mental health history and had been arrested multiple times on various charges. *Id.* Tuite was detained for only a short period of time and then released." *Id.*).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 854.

<sup>105</sup> *Id.*

recounted in the first two interviews.”<sup>106</sup> The detectives then asked Michael if he would be willing to take a truth test of sorts.<sup>107</sup> Michael agreed, but stated:

I feel like I just ... I spent all day away from my family. I couldn't see them.... I feel like I'm being treated like I killed my sister, and I didn't. It feels horrible, like I'm being blamed for it. Everything I own is gone ... Everything I have is gone. Everything. You won't even let me see my parents. It's horrible.<sup>108</sup>

The interview proceeded with the detectives telling Michael that this test “was controlled by the government for a long time . . . because it was so accurate,” and Michael’s answers showed he was lying.<sup>109</sup> They then “told Michael they found blood in his room, lifted fingerprints off the blood stains, and that the police now knew who killed Stephanie.”<sup>110</sup> “Michael responded: What—God. I don't—no. I don't know. I didn't do it. I swear to God.”<sup>111</sup> The detective “continued to insist Michael killed Stephanie and Michael continued to deny it,” which is when the detectives “introduced the idea that Michael killed Stephanie but did not remember it.”<sup>112</sup> By the end of the interview Michael said:

Like I said, the only way I even know I did this [is] because she's dead and because the evidence says that I did. You could find someone else did it—and I pray to God someone else did. I think it's too late for that. I think I did it.<sup>113</sup>

The problem with false confessions is that judges and juries tend to heavily weigh the evidence of a confession whether they are true or false.<sup>114</sup> For example, in the Central Park jogger case, discussed *supra*, the judge and the two juries that later convicted the boys were aware that the “only DNA evidence taken from the victim belonging to a man” did not match any of the five boys’ DNA.<sup>115</sup> “But, as the jurors later said afterwards, ‘they confessed,’ and if you think the odds of a single false confession are unlikely, what are the

---

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 857 (The charges were later dropped when Truite was found with Stephanie’s blood on his clothing. *Id.*).

<sup>114</sup> Nesterak, *supra* note 90.

<sup>115</sup> *Id.*

odds of five false confessions in a single case...[n]obody could fathom the possibility that five boys gave false confessions.”<sup>116</sup>

### **i. Is A Juvenile Able To Fully Comprehend His Miranda Rights and Invoke Them Properly?**

As illustrated in the *Crowe* case above, even when *Miranda* rights are administered to juveniles, “juveniles waive their *Miranda* rights at extremely high rates, with several studies putting it at roughly 90%,” yet most juveniles do not understand exactly what rights it is that they are waiving.<sup>117</sup> First, contrary to what people see on television shows, there is not an official “*Miranda* warning.” In fact there are over 371 *Miranda* warnings from around the country, and “52% [of these warnings] required at least an eighth-grade reading level.”<sup>118</sup> Couple that with the stress of being arrested, and an individual’s comprehension is reduced by at least 20%.<sup>119</sup> Furthermore, “juvenile offenders were able to remember an average of just 32.3% of a simple *Miranda* warning immediately after hearing it read aloud.”<sup>120</sup> Most simply put, most juveniles interpret the right to remain silent to mean “don’t talk back to me,” rather than “you don’t have to answer my questions.”<sup>121</sup>

### **ii. Standard Interrogation Techniques Should Be Unemployable Coercive Techniques Against Juveniles**

As mentioned herein, juveniles are particularly susceptible to the coercive techniques employed by law enforcement during interrogations.<sup>122</sup> One of the most widely used interrogation techniques in the United States is the Reid Method, or the Reid Technique.<sup>123</sup> This two-step method “has been the predominant interrogation method in the United States, with hundreds of thousands of law enforcement agents trained to use the method since the 1960’s.”<sup>124</sup> Under this method, law enforcement “brings an individual in who may or may not become a suspect,” and during this interview the detectives trained in this technique look for “behavioral cues, verbal and nonverbal cues, to determine whether

---

<sup>116</sup> *Id.*

<sup>117</sup> Lorelei Laird, *Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them?* ABA JOURNAL (June 1, 2016, 2:50 AM), [https://www.abajournal.com/magazine/article/police\\_routinely\\_read\\_juveniles\\_their\\_miranda\\_rights\\_but\\_do\\_kids\\_really\\_und](https://www.abajournal.com/magazine/article/police_routinely_read_juveniles_their_miranda_rights_but_do_kids_really_und) [https://perma.cc/2KL3-EYWU].

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Brudney, *supra* note 20, at 1247.

<sup>123</sup> Wyatt Kozinski, *The Reid Interrogation Technique and False Confessions: A Time for Change*, 16 SEATTLE J. FOR SOC. JUST. 301, 301–02 (2018).

<sup>124</sup> *Id.*

this person is lying or telling the truth.”<sup>125</sup> “Using these behavioral cues, they claim that they can train interrogators up to an 85 or 90 percent level of accuracy in judging truth or deception.”<sup>126</sup> Note, that this estimate is widely inconsistent with science, which suggests that “people are barely better than they would be by flipping a coin.”<sup>127</sup> The behavior cues a detective is trained to look for as signs of deception include: the suspect breaking eye contact; the suspect being fidgety; and the suspect crossing his arms.<sup>128</sup> If the investigator believes according to these signs that the suspect is lying, then he proceeds to the next step, interrogation.<sup>129</sup> “When an interrogator moves a suspect on to the process of interrogation, which is accusatory and confrontational, it means also that the process of interrogation is by definition a guilt presumptive process,” and “the judgment has already been made that the suspect is lying and is a criminal.”<sup>130</sup> Thus, the techniques employed during the interrogation phase are in place to elicit the confessions that the detectives are certain (in their minds), that the *guilty* suspect is clearly hiding; in other words, “we know you did this, stop lying.”<sup>131</sup> These techniques include: (i) isolating the suspect, without parents or an attorney in a small room, which is often “windowless, barely furnished, and soundproof, so that the suspect can’t hear voices and phones ringing,” with the goal being making “suspect feels out of sorts, isolated, alone, and uncomfortable”; (ii) breaking down the suspect by having the investigator overcome the suspects denials and objections by overtly lying about the evidence; and (iii) simultaneously showing the suspect:

[S]ympathy and understanding — Look, I know you did this, but I think you’re a good person. I think that you didn’t do this on purpose. I don’t think you intended to commit this crime. I think maybe you were provoked. Maybe somebody put you up to it. Maybe you had too much to drink.<sup>132</sup>

Ultimately, the Reid Technique “puts people under stress, under the stress of isolation, it breaks them down, makes them seek a way out, and then provides confession as an opportunity to minimize the cost of what will happen next.”<sup>133</sup>

The main problem with using these techniques to interrogate a juvenile is that juveniles focus on short-term rather than long-term consequences.<sup>134</sup> This may lead them to, in the moment, falsely confess under the idea that they can go home.<sup>135</sup> Additionally, juveniles are susceptible to authority and will believe what the police say, and may not understand that not only are the police lying to them about evidence, but that the police are

---

<sup>125</sup> Nesterak, *supra* note 90.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Brudney, *supra* note 20, at 1248.

<sup>135</sup> Nesterak, *supra* note 90.

in fact allowed to lie to them to get a confession.<sup>136</sup> Put all of these factors together and it is a recipe for a solid false confession from a juvenile.<sup>137</sup>

While courts have held that under certain circumstances juvenile confessions may not stand up in court, there has been little to no legislation passed to protect juveniles from making these confessions in the first place.<sup>138</sup> In *Haley v. State of Ohio*, a 15-year-old boy confessed to murder after five hours of interrogation—starting at midnight—by police officers working in relays without warning to him regarding his rights, and without his having had benefit of the advice of friends, family or counsel.<sup>139</sup> The Supreme Court held that his confession should have been excluded because it was involuntary and extracted by methods violative of due process requirements of the Fourteenth Amendment.<sup>140</sup> The Supreme Court specifically stated:

What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him. No friend stood at the side of this 15-year old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning. A photographer was admitted once this lad broke and confessed. But not even a gesture towards getting a lawyer for him was ever made.<sup>141</sup>

Similarly, in *Gallegos v. Colorado*, the Supreme Court held that “[u]nder the circumstances, the confession state officers obtained from 14-year-old boy, who had been

---

<sup>136</sup> *Id.*

<sup>137</sup> Brudney, *supra* note 20, at 1247; Nesterak, *supra* note 90.

<sup>138</sup> Krzewinski, *supra* note 63, at 384; *see* *Haley v. State of Ohio*, 332 U.S. 596, 599 (1948).

<sup>139</sup> *Haley*, 332 U.S. 596 at 598.

<sup>140</sup> *Id.* at 600.

<sup>141</sup> *Id.*

held five days without officers sending for his parents or seeing that he had advice of lawyer or adult friend, and without their bringing him immediately before judge, was obtained in violation of due process, although boy had made earlier confessions.”<sup>142</sup> However, in *Dassey v. Dittmann*, the court upheld 16-year-old Brendan Dassey’s conviction based on his confession, which was obtained using the same tactics employed by the investigators in the Crowe case, the Reid Technique.<sup>143</sup> Here, police interrogated 16-year-old Dassey—who ultimately provided the confession the police demanded—repeating their suggestion that he assisted his cousin in a local young woman’s murder.<sup>144</sup> Dassey was then convicted in 2007.<sup>145</sup> “In August 2016, a federal magistrate judge ruled that Dassey’s confession had been coerced, overturned his conviction, and ordered him released, which was delayed during appeal, and affirmed in June 2017 by a divided panel of the 7th Circuit Court of Appeals.”<sup>146</sup> However, in December 2017, the full en banc Seventh Circuit upheld Dassey’s conviction by a vote of 4–3, with the majority finding that the police had properly obtained Dassey’s confession.<sup>147</sup> Dassey’s conviction has been upheld and his Petition to the Supreme Court has been denied.<sup>148</sup>

### Part III. Proposed Changes

#### A. Videotaping Confessions

All interrogations should be videotaped.<sup>149</sup> This will guarantee compliance with any instituted procedures so that the jury can see the confession and how it was obtained.<sup>150</sup> Additionally, the video should be of the interrogator and the defendant to ensure a balance between constitutional protections and the truth-seeking process.<sup>151</sup> More importantly, the video should encompass the entire process from start to finish.<sup>152</sup>

#### B. Age-Appropriate Interrogation Techniques

<sup>142</sup> *Gallegos v. Colorado*, 370 U.S. 49, 49-50 (1962).

<sup>143</sup> *Dassey v. Dittmann*, 877 F.3d 297, 312 (7th Cir. 2017).

<sup>144</sup> *Id.* at 309.

<sup>145</sup> *Id.* at 311.

<sup>146</sup> *Id.* at 301.

<sup>147</sup> *Id.* at 312.

<sup>148</sup> Robert Barnes, *Supreme Court won’t hear the case of Brendan Dassey, sentenced to life and featured in ‘Making a Murderer,’* THE WASHINGTON POST (June 25, 2018), [https://www.washingtonpost.com/politics/courts\\_law/supreme-court-wont-hear-the-case-of-brendan-dassey-a-teen-sentenced-to-life-and-featured-in-making-a-murderer/2018/06/25/6f97336e-787c-11e8-93cc-6d3beccdd7a3\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-wont-hear-the-case-of-brendan-dassey-a-teen-sentenced-to-life-and-featured-in-making-a-murderer/2018/06/25/6f97336e-787c-11e8-93cc-6d3beccdd7a3_story.html) [<https://perma.cc/9FWL-AE2L>].

<sup>149</sup> Drizen, *supra* note 27, at 341-42.

<sup>150</sup> *Id.* at 363.

<sup>151</sup> *Id.* at 340-41.

<sup>152</sup> *Id.* at 385, 395.

One of the main reasons that “standard interrogations often result in juvenile false confessions is simple: standard interrogation tactics—coercion, false promises of leniency, deception about evidence—are intended for adults, not kids.”<sup>153</sup> Indeed, “these techniques are so powerful—they’re designed for seasoned adult criminals,” and when used against a juvenile, there is an increased “risk of a false confession.”<sup>154</sup> The techniques being used “automatically make youth more susceptible to buckling under the unrelenting pressure of tough interrogation practices, and making a false confession.”<sup>155</sup> Psychologists and adolescent experts should be afforded the opportunity to weigh in on the interrogation techniques used when questioning a juvenile, and there should be certain techniques put in place specifically tailored towards juveniles.<sup>156</sup> These tactics should include, at a minimum: the prohibition on leading questions; a prohibition on investigators lying to a juvenile about evidence; and time limits on interrogation.<sup>157</sup>

### C. Age-Appropriate *Miranda* Warnings

*Miranda* warnings should be simple, comprehensible, and age-appropriate, and all jurisdictions should adopt the same procedures and statements, which should be taught as part of the middle school curriculum in all public schools in America.<sup>158</sup> These statements should be a replica of the statements adopted in 2017, in King County, Washington, and should be read to juveniles in addition to the regular *Miranda* warnings:<sup>159</sup>

1. You have the right to remain silent, which means that you don’t have to say anything.
2. It’s OK if you don’t want to talk to me.
3. If you do want to talk to me, I can tell the juvenile court judge or adult court judge and Probation Officer what you tell me.
4. You have the right to talk to a free lawyer right now. That free lawyer works for you and is available at any time – even late at night. That lawyer does not tell anyone what you tell them. That free lawyer helps you decide

---

<sup>153</sup> *Why are Youth Susceptible*, *supra* note 26.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*; Coppolo, *supra* note 27. **Error! Hyperlink reference not valid.**

<sup>157</sup> *Why are Youth Susceptible*, *supra* note 26; Nesterak, *supra* note 90; Leo, *supra* note 71, at 333-34; Brudney, *supra* note 20, at 1249.

<sup>158</sup> Johanknecht, *supra* note 27.

<sup>159</sup> *Id.*

if it's a good idea to answer questions. That free lawyer can be with you if you want to talk with me.

5. If you start to answer my questions, you can change your mind and stop at any time. I won't ask you any more questions.

Juvenile Waiver of Rights:

1. Do you understand? (If yes, then continue to number 2).
2. Do you want to have a lawyer? (If no, then continue to number 3).
3. Do you want to talk with me? (If yes, then proceed with questioning).<sup>160</sup>

#### **D. Attorney Representation / Parental Consent:**

There should be a mandatory requirement that a parent, guardian, or a non-law enforcement adult be present during interrogation of a juvenile, at a minimum.<sup>161</sup> Ideally, state laws should prohibit police from interrogating anyone under 18 without an attorney present.<sup>162</sup>

### **Part IV. Conclusion**

Because false confessions are a leading cause of wrongful convictions and are the most incriminating and persuasive evidence of guilt that the state can bring against a defendant, there needs to be certain safeguards in place for suspects.<sup>163</sup> This is especially true for juveniles, given the vast amount of psychological research and social science, as well as Supreme Court jurisprudence, demonstrating that juveniles differ from adults in: their inclination towards suggestion and authority; their ability to comprehend their *Miranda* rights and invoke them properly; and their vulnerability to coercive interrogation techniques.<sup>164</sup> As such, juveniles should be afforded more protection when being interrogated.<sup>165</sup> While there has been piecemeal momentum to address the problem of juvenile false confessions, there needs to be a stronger, swifter, and more consistent push

---

<sup>160</sup> *Id.*

<sup>161</sup> Coppolo, *supra* note 27.

<sup>162</sup> *Id.*

<sup>163</sup> FALSECONFESSIONS.ORG, *supra* note 16. **Error! Hyperlink reference not valid.**

<sup>164</sup> Brudney, *supra* note 20, at 1257-58 (For purposes of this paper, it is assumed that the juvenile is in custody for *Miranda* purposes).

<sup>165</sup> *Id.* at 1265.

among all fifty states.<sup>166</sup> New York has attempted to “mandate standard and easy-to-understand language for all officers in the state to use when giving the warnings to juveniles, and if the language isn’t used, any confession police elicit would be considered involuntary.”<sup>167</sup> Unfortunately, the New York legislature has yet to pass this mandate.<sup>168</sup> New York also has a bill pending that would (i) preclude inadmissible statements made by defendants because they were told false information and (ii) require data collection of recorded interrogations.<sup>169</sup> Other states have attempted to set parameters on juvenile confessions in more broad ways.<sup>170</sup> For example, in New Mexico, “confessions by children under 13 are not admissible in court under any circumstance...[for] ages 13 and 14 confessions are presumed inadmissible, but prosecutors may rebut that,” and “courts must consider age, custody status, how the rights were read, circumstances of questioning and whether a parent or attorney was present” for confessions from juveniles age 15 and older.<sup>171</sup> In Wisconsin, the court is forbidden “from admitting any juvenile confession that was not recorded by police,” and “in Illinois, confessions of juveniles under 13 charged with any crime are not admissible unless an attorney was present at the confession.”<sup>172</sup> Additionally, Illinois’ “SB2122, [which] provides that, if a law enforcement or juvenile officer ‘knowingly engages in deception’—by lying about the evidence or making unauthorized statements about leniency—any statement the child makes will be presumed inadmissible in court,” took effect on January 1, 2022.<sup>173</sup> Oregon passed a similar bill in July 2021.<sup>174</sup> Notably, California recently passed Senate Bill 203, which “bans police custodial interrogation of any youth under age 18 until the young person has consulted with an attorney about their rights.”<sup>175</sup> Lastly, Florida Representative Travaris McCurdy filed HB 109 on September 15, 2021.<sup>176</sup> The measure would deem confessions of suspects younger than 18 inadmissible if “knowingly” obtained through deception, and defines deception as “the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer to a subject of custodial interrogation.”<sup>177</sup>

<sup>166</sup> Coppolo, *supra* note 27.

<sup>167</sup> Laird, *supra* note 117.

<sup>168</sup> *Id.*

<sup>169</sup> 2022 SB No. 324 (Jan. 6, 2021), <https://www.nysenate.gov/legislation/bills/2021/s324> [<https://perma.cc/G5QC-RE97>].

<sup>170</sup> Laird, *supra* note 117.; *California: New Law Protects Children in Police Custody*, HUMAN RIGHTS WATCH (Sept. 30, 2020, 8:00 PM), <https://www.hrw.org/news/2020/09/30/california-new-law-protects-children-police-custody#> [<https://perma.cc/E49K-42ZF>].

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Illinois Bans Police Deception in Juvenile Interrogations*, EQUAL JUSTICE INITIATIVE (July 18, 2021), <https://eji.org/news/illinois-lawmakers-ban-police-deception-in-juvenile-interrogations/> [<https://perma.cc/2HUC-J9PL>].

<sup>174</sup> *Id.*

<sup>175</sup> California, *supra* note 170.

<sup>176</sup> 2022 HB No. 109 (Proposed Effective Date July 1, 2022),

<https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=73149&SessionId=93>

[<https://perma.cc/M8LL-KGL5>];

[https://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?FileName=\\_h0109\\_.docx&DocumentType=Bill&BillNumber=0109&Session=2022](https://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?FileName=_h0109_.docx&DocumentType=Bill&BillNumber=0109&Session=2022) [<https://perma.cc/E75H-UKS9>].

<sup>177</sup> *Id.*

However, the measure also states that the presumption of inadmissibility could be overcome by “a preponderance of the evidence that the confession was voluntary, based on the totality of the circumstances.”<sup>178</sup>

If passed, the measure would become effective July 1, 2022.<sup>179</sup>

By putting in place certain safeguard measures including: (i) videotaping confessions; (ii) employing age-appropriate interrogation techniques; (iii) introducing age-appropriate *Miranda* warnings; and (iv) mandating attorney representation or parental consent to interrogate anyone under 18, the justice system will be able to ensure a balance between constitutional protections and the fact-finding process.<sup>180</sup>

---

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> Drizen, *supra* note 27, at 341-42; Brudney, *supra* note 20, at 1270; Krzewinski, *supra* note 63, at 366.