CONNECTICUT
LAW REVIEW

VOLUME 54 MAY 2022 ONLINE EDITION

Note

From Interrogation to Truth: The Juvenile Custodial Interrogation, False Confessions, and How We Think About Kids in Trouble

DANIELLE PALMIERI

False confessions are a prominent contributor to wrongful convictions. Yet law enforcement interrogation tactics, such as lying, deceit, and pressure, lead to false confessions and are practiced widely on adults and juveniles alike. This Article presents the unique psychological, cognitive, and social characteristics of juveniles which make them more vulnerable to law enforcement interrogation tactics and to falsely confessing. This Article dives into current protections for juveniles both in the interrogation room and in the wider criminal justice system, at the statutory and judicial levels, to explore the mechanisms that are meant to curtail false confessions and injustice. But they are inadequate. Instead, the law enforcement function should be re-conceptualized and de-centered from the juvenile interrogation experience.

A community-centered approach—an overall approach currently proposed for criminal justice reform—should find its way into the interrogation room with juveniles, and change the language used around juvenile interrogation. Neutral specialists who are not law enforcement officials should be central in conducting interviews with juveniles, and use noncoercive practices. The goal should be to seek the truth, not a confession. This Article also proposes that state law enforcement officials be required to retain certain data about interrogation practices, such as keeping a record of how many juvenile interviews or questioning occur every year, and how many result in a confession. More transparency in the law enforcement system, in addition to reforming juvenile interrogation practices, is critical in order to implement meaningful and long-term reform.

NOTE CONTENTS

From Interrogation to Truth: The Juvenile Custodial Interrogation, False Confessions, and How We Think About Kids in Trouble

DANIELLE PALMIERI [*]

INTRODUCTION

Coerced false confessions are unsettling and force individuals to wonder at what cost justice is sought. In Chicago in 1998, Romarr Gipson and Elijah Henderson were arrested for the murder of Ryan Harris, an eleven-year-old girl.[1] One summer afternoon, Ryan set out on her bike to ride to a store and disappeared soon after.[2] Her body was found among weeds a day later, her underwear shoved down her throat and a folded leaf in each nostril.[3] Elijah and Romarr were part of the group who gathered around Ryan's body when it was discovered and were only two of more than fifty other children and adults who gathered around to observe the tragedy.[4] Weeks later, law enforcement directed its attention to the two boys after learning that Elijah was part of a group of boys that had previously thrown rocks at Ryan.[5] After receiving an anonymous tip, law enforcement interrogated both boys separately and alone for hours.[6] Law enforcement extracted or constructed details and information that they considered confessions; both boys were charged with murder.[7] Elijah

[*] University of Connecticut School of Law, J.D. 2022; Connecticut College, B.A. 2015. Thank you to all those who have nurtured my love of learning and writing, and a special thank you to those who have been gracious in giving their time and advice throughout my writing this Article.

[1] Alex Kotlowitz, *The Unprotected*, NEW YORKER (Feb. 8, 1999), https://www.newyorker.com/magazine/1999/02/08/the-unprotected.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* Law enforcement garnered permission from the boys' guardians to interrogate them alone and separately, with Romarr's interrogation lasting more than three and a half hours. Illinois state law now mandates that a parent or youth investigator be present when a child is interrogated and read the *Miranda* warnings. 705 ILL. COMP. STAT. 405/5-401.5 (a-5) (2021).

[7] Kotlowitz, *supra* note 1. In law enforcement's construction of Romarr and Elijah's crime, the boys also sexually molested Ryan and suffocated her own underwear. Pam Belluck, *Chicago Boys, 7 and 8, Charged in the Brutal Killing of a Girl, 11*, N.Y. TIMES (Aug. 11, 1998), https://www.nytimes.com/1998/08/11/us/chicago-boys-7-and-8-charged-in-the-brutal-killing-of-a-girl-

was eight years old and Romarr was seven years old.[8] The charges against the boys were dropped months later, and over seven years later, a local serial rapist pled guilty to the rape and murder of Ryan while in prison.[9] While Romarr and Elijah's story is unique in terms of age, [10] it is representative of the prevalence[11] of coerced false confessions among juveniles.[12]

Every day, courtrooms and juries rely on confessions[13] to convict criminal defendants—at times, more than any other piece of evidence.[14] There are times when a confession is presented to a prosecutor, judge, or jury and has the hallmarks of being coerced or

---

11.html. But it is virtually unknown what really happened during the boys' interrogations, since they were not recorded. It is noted that Elijah changed his account once a detective told him what Romarr "admitted" to. Further, despite the inconsistencies between the severity of Ryan's injuries and the "rock-throwing" incident, the boys were charged.

[8] Romarr and Elijah are the youngest defendants charged with murder in U.S. history. Carlos Sadovi, *Killer of Ryan Harris Left a Trail of Violence*, CHI. TRIB. (Apr. 16, 2006), https://www.chicagotribune.com/news/ct-xpm-2006-04-16-0604160456-story.html.

[9] Floyd Durr, when he pled guilty to Ryan's murder, was serving 125 years in prison for sexually assaulting several girls. The same year he raped and murdered Ryan, Durr was convicted of raping another eleven-year-old girl not far from where Ryan was found. Ultimately, DNA from the crime scene led to Durr's murder charge and guilty plea. *Id.* This, however, came late: DNA evidence linked Durr to the crime at the same time that the boys were arrested for Ryan's murder, even though Durr was not charged until years later. Kotlowitz, *supra* note 1.

[10] The reason why teenagers are more frequently interrogated for crimes than younger juveniles is likely because teenagers are typically seen as having a larger propensity to break the rules or be more violent, which can lead to breaking the law. Also, there was a spike in juvenile crime in the late twentieth century, which could have had a larger effect on the prevalence of juvenile custodial interrogations. Donald L. Beschle, *Juvenile Justice Counterrevolution: Responding to Cognitive Dissonance in the Law's View of the Decision-Making Capacity of Minors*, 48 EMORY L.J. 65, 75, 99–100 (1999).

[11] "38% of the exonerations of crimes allegedly committed by youth involved false confessions." *Why Are Youth Susceptible to False Confessions?*, INNOCENCE PROJECT (Oct. 16, 2015), https://innocenceproject.org/why-are-youth-susceptible-to-false-confessions/.

[12] A "juvenile" is "[s]omeone who has not reached the age (usu. 18) at which one should be treated as an adult by the criminal-justice system; minor." *Juvenile*, BLACK'S LAW DICTIONARY (5th ed. 2016).

[13] A "confession" is "[a] criminal suspect's oral or written acknowledgement of guilt, often including details about the crime," and there are over fifteen examples of the different types of confessions. *Confession*, BLACK'S LAW DICTIONARY (5th ed. 2016).

[14] Eighty percent of crimes are solved with a confession, and a defendant is rarely granted an acquittal at trial if a confession is admitted into evidence. Howard B. Terrel & William Logan, *The "False Confession": Manipulative Interrogation of the Mentally Disordered Criminal Suspect*, 13 AM. J. FORENSIC PSYCHIATRY 29, 29 (1992). But more than that, juries have trouble distinguishing between true and false confessions. Further, people generally have trouble distinguishing between truth and deception. Saul M. Kassin, Christian A. Meissner & Rebecca J. Norwick, "*I'd Know a False Confession if I Saw One": A Comparative Study of College Students and Police Investigators*, 29 LAW & HUM. BEHAV. 211, 212 (2005). Finally, most people believe that an innocent individual would not falsely confess to a crime unless "physically tortured or mentally ill," because they do not fully know or understand both what happens during custodial interrogations and that people can act against their own self-interest. Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCHIATRY L. 332, 333 (2009).

false, based on evidence from the custodial interrogation[15] or other, physical evidence that may exonerate the defendant. It is almost impossible to negate the harmful effects of false confessions.[16] Convincing a prosecutor, judge, or a jury that a confession is false is a difficult task,[17] even with a juvenile.[18]

This Note argues that current measures to protect juveniles in the interrogation room, or in the criminal justice system, are inadequate.[19] Part I of this Note describes the key psychological, cognitive, and social differences between adults and juveniles, and differences among juvenile groups. It argues that these differences operate as key vulnerabilities that are relevant to the psychological techniques used in custodial interrogations. Part II examines law enforcement psychological interrogation techniques and their impact on juveniles. Part III analyzes the strengths and shortcomings of current protections meant to mitigate the harms that juveniles can experience in the interrogation context or the broader criminal justice

[15] In this Note, "interrogation" will refer to custodial interrogations that juveniles are subjected to. "Custodial" refers to when "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Miranda v. Arizona, 384 U.S. 436, 444 (1966). "Interrogation" refers to "express questioning or its functional equivalent." Rhode Island v. Innis, 446 U.S. 291, 300–01 (1980) ("We conclude that the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.").

[16] Juries put incredible weight on confessions that are admitted into evidence at trial, at times more than on eyewitness testimony; they often "refuse to believe that anyone would confess to a crime that they had not committed." Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.-C.L. L. REV. 105, 139 (1997).

[17] Often, defense counsel must show that, despite *Miranda* warnings, law enforcement used coercive psychological pressures and techniques to procure the confession that overbore the will of the defendant. In order to show this fact to a judge or prosecutor, defense counsel must realistically show the context of the defendant's state of mind, abilities, and the social atmosphere of the interrogation itself. They may do so by introducing expert testimony at trial about false confessions. Richard A. Leo & Brittany Liu, *What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?*, 27 BEHAV. SCIS. & L. 381, 382, 397 (2009). One example of an attempt to persuade a court that a confession is involuntary is the Brendan Dassey case. The Seventh Circuit Court of Appeals agreed with the Wisconsin state courts that the sixteen-year-old's confession was voluntary, despite serious concerns weighed under a totality of the circumstances. Dassey v. Dittmann, 877 F.3d 297, 301 (7th Cir. 2017). The court noted Brendan's "youth, his limited intellectual ability, some suggestions by the interrogators, their broad assurances to a vulnerable suspect that honesty would produce leniency, and inconsistencies in [his] confession" but ultimately concluded that his confession was voluntary. *Id.*

[18] Jurors place substantial weight on confessions, the presence of which might contravene the "presumption of innocence" legal principle governing criminal law, even despite contradictory evidence. Leo & Liu, *supra* note 17, at 383. What is more, "[o]nce a confession is obtained, police tend to 'close' cases as solved and refuse to investigate other sources of evidence, and prosecutors tend to charge suspects with the highest number and types of offenses, set bail higher, and are far less likely to initiate or accept plea bargains." *Id.*

[19] *See infra* Part III (describing protections such as requiring adult presence during interrogations, videotaping interrogations, and "raise the age" laws).

system. Part IV proposes that the power to conduct custodial interrogations of juveniles should be shifted from law enforcement to neutral specialists[20] who are educated and experienced in eliciting truthful, non-coerced statements without using deceptive tactics or lying, and who recognize the diverse experiences, abilities, and interests of juveniles.

I. CRITICAL PSYCHOLOGICAL AND BEHAVIORAL DIFFERENCES BETWEEN JUVENILES AND ADULTS

In the interrogation context, legal scholars have widely researched, documented, and analyzed the psychological and cognitive differences between juveniles and adults.[21] Juveniles have unique responses to authority and high pressure, as well as the tendency to believe and trust adults when they are told to do so.[22] They are more likely to slouch, avoid eye contact, and shift around than adults are, especially in response to tension or pressure.[23] Juveniles are generally immature, are suggestible to leading questions,[24] have limited language and memory skills, have a shorter attention span, have slower and more limited processing abilities, and have a tendency to comply and obey authority, which supports the notion that juveniles are expected to answer questions posed to them by adults.[25] Further, the younger a juvenile tends to be, the quicker they acquiesce

[20] *See infra* Part IV (suggesting that law enforcement should be involved in some capacity in the interrogation process, but should not be the sole arbiters of this practice).

[21] Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 919 (2004); Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHIATRIC REV. 53, 61 (2007); Beschle, *supra* note 10, at 96–98; Ariel Spierer, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, Note, 92 N.Y.U. L. REV. 1719, 1729–30 (2017).

[22] Seth P. Waxman, *Innocent Juvenile Confessions*, 110 J. CRIM. L. & CRIMINOLOGY 1, 3–4 (2020). Due to the lack of full development in the adolescent brain's prefrontal cortex, [juveniles] are unable to fully assess a cost-benefit analysis, juggle many sources of information at once and understand their consequences, and fully realize the long-term implication of life-altering situations. *Id.* Further, many juveniles have limited or no knowledge about the legal system, both pertaining to its processes and many intricacies. *Id.* Finally, and perhaps most importantly in the self-incrimination context, juveniles are more susceptible to leading questions. *Id.* at 4. This may uniquely place juveniles in a predicament where they make false incriminating statements.

[23] Lisa Dobrowolsky, Are Jurors' Judgments about Confessions Affected by Juvenile Defendant Race? (May 2018) (Honors Thesis, University of Albany) 1, 8–9, https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1014&context=honorscollege_cj.

[24] *See* Waxman, *supra* note 22, at 4 (noting juvenile susceptibility to leading questions).

[25] Dobrowolsky, *supra* note 23, at 8–9.

to questioning.[26] Older adolescents, like sixteen and seventeen-year-olds, still struggle to make "adult-like decisions under stressful conditions with incomplete information"[27] and have an increased tendency toward impulsivity and risk-taking.[28] They also tend to be more anxious and are worse at reasoning through situations calmly.[29]

Yet, juveniles still have respect for and fear of authority.[30] This causes tension, since adults have authority over juveniles in most aspects of their lives.

A. *Differences Among Juvenile Groups*

There is also incredible diversity among juveniles across factors such as intellect,[31] cognitive and physical development,[32] and mental and emotional wellness.[33] Intellectual disabilities[34] alone may make it nearly impossible to understand compound questions, discern best interests amongst strangers, resist pressure, and use language that law enforcement expects.[35] This effect is further exacerbated in foreign

---

[26] Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 411 (2013).

[27] *Id.* at 404–05.

[28] Richard A. Friedman, *Why Teenagers Act Crazy*, N.Y. TIMES (June 28, 2014), https://www.nytimes.com/2014/06/29/opinion/sunday/why-teenagers-act-crazy.html.

[29] *Id.*

[30] *See* Feld, *supra* note 26, at 429 (noting that juveniles are taught that "tell[ing] the truth" and answering to authority are social duties).

[31] Most commonly, autism or other developmental language disorders affect children. About 17% of children between the ages of three and seventeen have a developmental disability of some kind, such as attention-deficit hyperactivity disorder or other learning disabilities such as dyslexia. *Facts About Developmental Disabilities*, CTR. DISEASE CONTROL (Nov. 12, 2020), https://www.cdc.gov/ncbddd/developmentaldisabilities/facts.html.

[32] Most commonly, autism or other developmental language disorders affect children. About 17% of those under the age of eighteen have a developmental disability of some kind, such as attention-deficit hyperactive disorder or other learning disabilities such as dyslexia. *Facts About Developmental Disabilities*, CTR. DISEASE CONTROL (Nov. 12, 2020), https://www.cdc.gov/ncbddd/developmentaldisabilities/facts.html#:~:text=Some%20of%20the%20most%20common,also%20having%20autism%20spectrum%20disorder.

[33] Those with a mental illness may "possess a range of psychiatric symptoms that make them more likely to agree with, suggest, or confabulate false and misleading information and provide it to detectives during interrogations. These symptoms include faulty reality monitoring, distorted perceptions and beliefs, an inability to distinguish fact from fantasy, proneness to feelings of guilt, heightened anxiety, mood disturbances, and a lack of self-control." Leo, *supra* note 14, at 336.

[34] "Intellectual disabilit[ies]" are defined as "disorder[s] with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains." AM. PSYCH. ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 33 (5th ed. 2013).

[35] Leo, *supra* note 14, at 335.

environments,[36] where juveniles with an intellectual disability feel forced to respond to law enforcement, please the interrogators, or respond in ambiguous language.[37] Those with intellectual disabilities may not fully realize that they are in an adversarial setting working against their self-interest.[38] Also, out of simple failure to understand the weight of the interrogation, or the desire to please authority,[39] a juvenile with an intellectual disability may agree to law enforcement's construction of events or accusations so that they can leave an uncomfortable or terrifying environment.[40]

In turn, law enforcement officials are both untrained in questioning juveniles with intellectual disabilities[41] and in detecting or identifying disabilities,[42] rendering juveniles with disabilities more

> Individuals who are highly suggestible tend to have poor memories, high levels of anxiety, low self-esteem, and low assertiveness, personality factors that also make them more vulnerable to the pressures of interrogation and thus more likely to confess falsely. . . . The developmentally disabled are more likely to confess falsely for a variety of reasons. First, because of their subnormal intellectual functioning, low intelligence, short attention span, poor memory, and poor conceptual and communication skills, they do not always understand statements made to them or about the implications of their answers. They often lack the ability to think in a causal way about the consequences of their actions. . . . (discussing contemporary justifications for testing the English proficiency of naturalization applicants).

Id.

[36] Samson J. Schatz, Note, *Interrogated with Intellectual Disabilities: The Risks of False Confession*, 70 STAN. L. REV. 643, 655–58 (2018).

[37] *Id.* at 661 ("Many individuals with intellectual disabilities are exceptionally desirous of pleasing authority figures. This tendency to please and seek approval may follow from the necessary reliance on authority figures for solutions to what an individual with typical abilities would consider everyday problems. This, in turn, could also lead a suspect with intellectual disabilities to watch the interrogator closely for social cues on how to react and indications of what the officer wants to hear.").

[38] *Id.* Equally, juveniles generally may not recognize either the tactic in which the interrogator attempts to form an emotional bond them or the adversarial setting. Feld, *supra* note 26, at 439–40.

[39] Leo, *supra* note 14, at 336.

[40] *Id.* Brendan Dassey was questioned about the murder of a Wisconsin woman as a sixteen-year-old with an IQ of 70. His confession, which was videotaped, played an instrumental role in his conviction, despite its coercive tendencies. Throughout the questioning, it is clear that Brendan thought that if he agreed with law enforcement's story of the murder, then he would make it back to school in time to present a project. Further, law enforcement employed deceptive techniques that allowed Brendan to believe that if he did in fact "confess," he could go back to school and then go home to see his mother. MAKING A MURDERER (Netflix 2015).

[41] Schatz, *supra* note 36, at 660. *See also id*. at 659 (discussing the fact that the "most consequential step of the interrogation process is . . . the interrogator's failure to recognize the individual's disability at the outset").

[42] *Id.*

susceptible to the deceptive and coercive practices.[43] Juveniles already have a cognitive and psychological disadvantage when faced with law enforcement officials trained to elicit confessions in deceptive manners.[44] A further vulnerability exists when they have an intellectual disability that likely places them at a disadvantage for comprehending and answering questions.[45] This, coupled together with the young age of the individual, highlights the vulnerabilities and imbalance in power dynamics present in the interrogation room. [46]

Also, linguistic diversity among juveniles impacts how they respond and act in the interrogation room. Research has shown that individuals from diverse racial and ethnic groups tend to use indirect modes of expression.[47] This affects how law enforcement interprets verbal and nonverbal responses; in this way, juvenile speech responses in the interrogation context may be viewed by law enforcement as ambiguous, evasive, or even incriminating.[48] For example, differences in speech responses among groups—such as the use of hedges like "maybe," "perhaps," or "I think"—are used more frequently among women and communities of color.[49] Similarly, the use of modal verbs such as "should," "might," or "could" are more frequently used by women than men,[50] and research suggests that individuals are more likely to use this type of speech when there is an

[43] In Brendan Dassey's confession video, one can observe that law enforcement officials, at times, construct the story that Brendan ultimately confesses to by utilizing paternalistic approaches and minimizing the crime to get Brendan to agree to confess. MAKING A MURDERER, *supra* note 40.

[44] Leo, *supra* note 14, at 336. The purpose of an interrogation is to elicit a confession, not the truth. Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 6 (2009).

[45] "The leading interrogation manual, *Criminal Interrogation and Confessions* . . . briefly acknowledges the need to adjust some of the normal procedures for individuals with intellectual disabilities. But even if an officer were to follow this manual verbatim, adjusting the interrogation process for a suspect with intellectual disabilities requires knowing that the suspect *has* intellectual disabilities." Schatz, *supra* note 36, at 660.

[46] "First, interrogation in and of itself creates a power disparity between the person asking the question and the person being questioned. The questioner has the right to control the subject matter, tempo, and progress of the questioning, to interrupt responses to questions, and to judge whether the responses are satisfactory. The person questioned, on the other hand, has no right to question the interrogator, or even to question the propriety of the questions the interrogator has posed." Janet E. Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259, 287 (1993).

[47] *Id.* at 319.

[48] *Id.* at 267–68.

[49] *Id.* at 261, 276.

[50] *Id.* at 280.

"imbalance of power" in communicative dynamics[51]—like in an interrogation room. Further, individuals are more likely to use indirect speech across diverse racial and ethnic groups, especially if they are in a situation where they are or feel powerless.[52] In all, law enforcement may view this type of language as ambiguous, and wrongly identify it as an indicator of guilt or evasiveness.

The linguistic difference rooted in various cultures and geographic locations across America[53] will always be present in the interrogation room for those who speak certain dialects, who utilize community or region-specific slang, or who ultimately speak English as a second language. Such linguistic and speech patterns impact a juvenile's experience when confronted with an interrogator. For example, Black individuals in the United States may utilize African-American Vernacular English (AAVE)[54] and Latinx communities may adopt linguistic patterns from both Spanish and English that co-exist in their daily lexicons.[55] Juveniles from other ethnicities and cultures and who speak other languages as a first language may utilize distinct linguistic patterns.[56] Other populations from lower-socioeconomic backgrounds may adopt community-specific slang terms. Finally, youths continuously use new slang-terms adults are not privy to or may not legitimize as standard English.

Certain linguistic patterns may not be wholly recognized, understood, or embraced in the interrogation room.[57] Law enforcement officials, who in many contexts may be older, white

---

[51] *Id.* at 285.

[52] *Id.* at 286–88.

[53] *See* Kiyoko Kamio Knapp, *Language Minorities: Forgotten Victims of Discrimination?*, 11 GEO. IMMIGR. L.J. 747, 752 (1997) (explaining that "[l]anguage is the lifeblood of every ethnic group").

[54] Sharese King & Katherine D. Kinzler, *Op-Ed: Bias Against African American English Speakers is a Pillar of Systemic Racism*, L.A. TIMES (July 14, 2020, 3:00 AM), https://www.latimes.com/opinion/story/2020-07-14/african-american-english-racism-discrimination-speech.

[55] *See* Araceli Osorio, The Role of Spanglish in the Social and Academic Lives of Second Generation Latino Students: Students' and Parents' Perspectives, (May 2010) (D. Ed. thesis, University of San Francisco) (on file with Gleeson Library, University of San Francisco) (exploring the ways in which "learning to speak more than one language often involves putting together material from two languages").

[56] *Id.*

[57] Jacqueline F. Mowbray, *Linguistic Diversity and Social Justice: An Introduction to Applied Sociolinguistics*, 15 INT'L J. CONST. L. 875, 875–76 (2017) (reviewing Ingrid Piller's argument that "linguistic diversity creates the conditions for language to function as a basis for disadvantage and discrimination" and that "social arrangements which implicitly or explicitly favor certain linguistic repertoires over others, together with public discourses . . . justify that differential treatment").

men[58] may not understand or validate diverse linguistic patterns. These patterns are likely rooted in various cultures[59] and utilized by juveniles both as young people and also as a part of their racial or cultural identities.[60] Law enforcement's inability to recognize these linguistic differences can be harmfully misinterpreted as vagueness, disrespect, evasion, lies, or guilt.

B. *Juvenile Understanding of the Law*

Juveniles do not understand the law or the legal implications of their actions.[61] This can be attributed to both a still-developing prefrontal cortex, which regulates executive functions, and the amygdala, which regulates emotional and instinctive behavior[62]—behavior that is relevant in the interrogation context where juveniles have to make legal decisions.[63] While significant cognitive development occurs by mid-adolescence,[64] adolescents still struggle with analyzing risk and decision-making in "emotionally charged" situations.[65] This reality compromises juveniles' ability to comprehend the law and their legal rights,[66] as well as future consequences of their actions;[67] this is true even if on the surface it may seem as if they understand them, including the *Miranda* rights.[68]

---

[58] 85.2% of police officers are men, and 67% of police officers are white. Further, the average age of all police officers is about thirty-nine to forty-years-old. *DATA USA: Police Officers*, DATA USA, https://datausa.io/profile/soc/police-officers#demographics (last visited Oct. 3, 2021).

[59] *See* Mowbray, *supra* note 57, at 876 (noting Ingrid Piller's argument that language can be seen as a basis for "inclusion or exclusion," where some members of a society and the language they use are seen as "legitimate," while others are excluded due to the language(s) that they utilize).

[60] "Cultural background becomes very important in the application of semantics. Words gain their meaning from their use in a person's social and cultural environment." Osorio, *supra* note 55, at 15.

[61] Dobrowolsky, *supra* note 23, at 8.

[62] Feld, *supra* note 26, at 406–07.

[63] *See infra* Part III *(*explaining that only a handful of states require parental or guardian presence in the interrogation room with a juvenile).

[64] Naomi E. S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, *Waving Good-Bye to Waiver: A Developmental Argument Against Youths' Waiver of* Miranda *Rights*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 20 (2018).

[65] *Id.* at 22.

[66] *See id.* at 24 (explaining that "making a knowing, intelligent, and voluntary waiver of *Miranda* rights requires capacities most youth in early- and mid-adolescence do not adequately possess").

[67] *See id.* at 25 (emphasizing that "[waiving *Miranda* rights] requires an understanding of both short- and long-term consequences of a waiver and a deliberate decision-making process . . . [but that children and adolescents] overemphasize the probability of short-term benefits over long-term consequences and are prone to act impulsively rather than make thought-out decisions").

[68] *See* Barry C. Feld*, Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 228 (2006) (noting that "[d]evelopmental psychologists strongly

There is doubt that juveniles can make knowing, intelligent, and voluntary *Miranda* waivers due to their developmental capacity.[69] Also, legal terms and concepts are difficult to grasp, especially the *Miranda* warnings;[70] they are often expressed in complex or unfamiliar terms, and the definitions are not always explained.[71] Further, when juveniles *do* experience exposure to law enforcement, studies have shown that when their legal rights are explained to them, they still do not truly understand them.[72]

II. JUVENILE INTERROGATIONS AND BEYOND

All juveniles who are subjected to interrogations are also exposed to psychological interrogation tactics. Custodial interrogations are "intentionally structured to promote isolation, anxiety, fear, powerlessness, and hopelessness."[73] The Reid Technique guides thousands of local law enforcement agencies in conducting custodial interrogations and advises use on adults and juveniles.[74] The technique outlines maximization and minimization tactics that confuse, overwhelm, and pressure the suspect.[75] On the one hand, maximization techniques prompt law enforcement to overstate a crime's seriousness, exaggerate the strength of incriminating evidence, suggest that the prosecutor will not be lenient, and urge the suspect to "give up,"[76] all of which are designed to instill hopelessness.[77] On the other hand, minimization techniques downplay the seriousness of the crime, "offer sympathy," suggest leniency or clemency, and allow the suspect to "shift [the] blame to others."[78] This

question whether juveniles are competent to make 'knowing, intelligent, and voluntary' waiver decisions").

[69] *Id.*

[70] Susan R. Klein, *Transparency and Truth During Custodial Interrogations and Beyond*, 97 B.U. L. REV. 993, 1010–11 (2017).

[71] *Id.*

[72] Feld, *supra* note 26, at 429.

[73] Drizin & Leo, *supra* note 21, at 911.

[74] Feld, *supra* note 26, at 412–13. Minimization and maximization techniques are the most common forms and practices of the Reid Technique, and it is advised that they are equally appropriate for juveniles. *Id.* at 413–15.

[75] *Id.* at 435–39.

[76] *Id.* at 435.

[77] Drizin & Leo, *supra* note 21, at 911. *See also* Charles D. Weisselberg, *Mourning* Miranda, 96 CALIF. L. REV. 1521, 1537–38 (2008) ("[I]nterrogation . . . is a carefully designed, guilt-presumptive process. It works by increasing suspects' anxiety, instilling a feeling of hopelessness, and distorting suspects' perceptions of their choices . . . .").

[78] Feld, *supra* note 26, at 433.

tactic is designed to make the suspect feel as if the only "way out" is to confess.[79] Further, law enforcement can encourage the suspect to tell the true "story" of what happened,[80] suggesting that if the suspect tells officials what happened, their version of events will ultimately make a difference. Some of the most common tactics observed are to undermine the suspect's confidence in denial of guilt, contradict their story, appeal to their moral conscience, use praise or flattery, and appeal to the official's authority and knowledge.[81]

Psychological coercion from these techniques can occur and becomes the primary cause of false confessions, and juveniles are "more vulnerable" to those pressures in the interrogation room.[82] Since common interrogation tactics are also used on juveniles,[83] they are exposed and more susceptible to rationalizations for their behavior when maximization and minimization techniques are used.[84] They are also more responsive to suggestions of losing control and excitement as reasons for their accused behavior.[85] Also, juveniles' "reduced cognitive ability, immaturity, and increased susceptibility to manipulation" are present in the interrogation room,[86] so these practices must be understood in the context of the juvenile experience when they have fewer life experiences and are taught to obey authority.[87] In this manner, aggressive questioning, lying, leading questions, and deception are dangerous to the juvenile's self-interests.[88] Even teenagers, the age-group most disposed inside an interrogation room,[89] are grappling with the requirement that they routinely answer to adult authority figures and are held accountable

[79] *See* Drizin & Leo, *supra* note 21, at 916–17 (detailing the fact that interrogators use an array of tactics to induce the suspect to confess, including appealing to their morality, using implicit threats or promises, suggesting leniency, appearing to be the suspect's ally, or threatening a longer prison sentence).

[80] Feld, *supra* note 26, at 432.

[81] Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 293–94 (1996). These tactics were most commonly observed by Richard A. Leo in his groundbreaking study inside interrogation rooms to observe tactics and practices by law enforcement. *Id.* at 266–303.

[82] Drizin & Leo, *supra* note 21, at 919.

[83] Feld, *supra* note 26, at 438.

[84] Feld, *supra* note 26, at 434–35, 437–38.

[85] *Id.* at 437–38.

[86] *Id.* at 454–55.

[87] *Id.* at 454–56.; *See* Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1457 (2018) (discussing children's dependency on adults in part derived from a lack of life experience and maturity).

[88] Feld, *supra* note 26, at 456.

[89] *Id.* (reiterating youth's cognitive ability, maturity, and judgment).

by those figures.[90] The risk of coerced false confessions from juveniles becomes palpable.[91]

When considering interrogation tactics, various juvenile demographics and experiences, and the effects of interrogation on juveniles, law enforcement agencies should prioritize getting to the truth, rather than eliciting a confession.[92] Developing and utilizing an approach that is designed to elicit truthful confessions from juveniles should be rooted in recognizing their unique differences and vulnerabilities so as to mitigate coercion that leads to false confessions,[93] abuse of power, and wrongful convictions.[94] Reforming both how interrogations occur and their ultimate goal addresses systemic concerns and creates a more equitable justice system.[95] Currently, the goal of a custodial interrogation is not to cut to the truth of a crime or to ascertain whether a crime occurred,[96] but to get a confession from the suspect whom law enforcement may already presume to be guilty based on the initial investigation.[97] This practice cuts into the larger systemic and practical obstacles which make it difficult to treat juveniles differently in the interrogation room. First, the public may not understand interrogation practices and

[90] Dailey & Rosenbury, *supra* note 86, at 1457, 1459–60, 1463–64, 1466.

[91] Drizin & Leo, *supra* note 21, at 944. Research data supports just how many false confessions involve juveniles. In the early 2000s, Steven A. Drizin and Richard A. Leo analyzed 125 interrogation-induced, proven false confession cases. Out of the 125 cases, the authors noted that 33% of the sample were juveniles when they falsely confessed. Twenty-two out of forty of the false confessors were fifteen-years-old or younger when they falsely confessed, and thirty-three out of forty were ages fourteen to seventeen. *Id.*

[92] The purpose of an interrogation is to get a confession. Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo, & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 6 (2010).

[93] "The primary psychological cause of most false confessions is . . . the investigator's use of improper, coercive interrogation techniques." Drizin & Leo, *supra* note 21, at 918.

[94] "[T]he methodologically sound studies that have systematically aggregated and quantified case data have found false confession to be the primary cause of wrongful conviction in 14–25% of the documented cases." *Id.* at 920. Also, "of the first 200 DNA exonerations in the U.S., 35% of the false confessors were 18 years or younger and/or had a developmental disability." Kassin et al., *supra* note 92, at 19.

[95] *See infra* Part IV (arguing that shifting to neutral specialists would help to address systemic inequities in the criminal justice system).

[96] "The purpose of interrogation is therefore not to discern the truth, determine if the suspect committed the crime, or evaluate his or her denials. Rather, police are trained to interrogate only those suspects whose culpability they 'establish' on the basis of their initial investigation." Kassin et al., *supra* note 92, at 6.

[97] In essence, the purpose of interrogation is to get a guilty suspect's confession. Drizin & Leo, *supra* note 21, at 911.

tactics;[98] they are done in private, shrouding them in secrecy.[99] Law enforcement officials who conduct interrogations employ psychological tactics designed to elicit confessions from guilty suspects, even if those tactics inadvertently amount to psychological coercion and lead innocent individuals to falsely confess.[100] Second, the number of interrogations that occur every year—both for adults and juveniles—is a mystery.[101] It is impossible to measure, either loosely or perhaps speculatively, how many interrogations occur every year[102] and, therefore, impossible to track over time.[103] Third,

[98] "Because police interrogation is beyond the common knowledge of individuals who have neither experienced it firsthand as a criminal suspect nor performed it as a trained police officer— i.e., the vast majority of the American public—most people are ignorant of the psychologically manipulative methods and strategies of police interrogators." *Id.* at 910.

[99] The Warren Court emphasized in *Miranda v. Arizona* that "interrogation . . . takes place in privacy." 384 U.S. 436, 448 (1966). *See* Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 267 (1996) (explaining that there are "no contemporary descriptive or analytical studies of routine police interrogation practices in America").

[100] "Psychological interrogation methods are, of course, designed only to be used on guilty suspects. When misapplied to the innocent, however, the methods can, and sometimes do, lead to false confessions." Leo & Liu, *supra* note 17, at 382.

[101] "[N]o organization collects statistics on the annual number of interrogations and confessions or evaluates the reliability of confession statements." Richard A. Leo & Richard J. Ofshe, *Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 431 (1998); Drizin & Leo, *supra* note 21, at 931. But there are some ways to measure the prevalence of false confessions born out of interrogations. The Innocence Project has reported that since the 1980s, over 360 wrongful convictions that have been overturned by DNA evidence involved a false confession. *False Confessions & Recording of Custodial Interrogations*, INNOCENCE PROJECT, https://innocenceproject.org/false-confessions-recording-interrogations/ (last visited Mar. 14, 2021).

[102] The same can be said for how many false confessions are given across the United States. *See* Drizin & Leo, *supra* note 21, at 921 ("Most false confessions are not easily discovered and are rarely publicized: they are likely to go unnoticed by researchers, unacknowledged by police and prosecutors, and unreported by the media.").

[103] There may be some ways to collect local, state, or national data on the number of interrogations that happen every year, but these methods do not yet exist. This concern is beyond the scope of this Note; however, one consideration is to record data on how many police interrogation recordings are documented every year from the jurisdictions that currently mandate, to some degree, the recording of interrogations. *See infra* Part III (explaining in more detail the jurisdictions which require interrogation recording). However, only about half of the states require that law enforcement record interrogations, which would leave any meaningful national data an endeavor that would result in incomplete numbers. *Id.* Additionally, not all interrogations are actually recorded in jurisdictions that require it. For example, in Connecticut, Conn. Gen. Stat. section 54-1*o* requires that for capital felonies or all class A and B felonies, interrogations be electronically recorded. CONN. GEN. STAT. § 54-1*o*(b) (2014). But the state can overcome exclusion of a confession if the interrogation is not recorded if it shows, by a preponderance of the evidence, that the statement "was voluntarily given and is reliable, based on the totality of the circumstances." *Id.* § 54-1*o*(h).

What is more, most jurisdictions have extensive laws that protect the confidentiality of juvenile records, which may include interrogation recordings; trying to imagine just how many interrogations occur, or trying to reach a number based on recordings, is a data-driven inquiry with several practical obstacles. *Law Enforcement Records, Interrogation Reports, and Public Access*, FIRST AMEND. COAL.

law enforcement officials use the same techniques for juveniles and adults.[104] Whether local agencies have policies that dictate whether there is an entirely separate practice for interrogating juveniles has not been quantified,[105] and there is evidence that juveniles are routinely interrogated in the same manner as adults.[106] This exemplifies the fact that the criminal justice system has treated juveniles like adults,[107] despite the formal recognition that they are not simply "miniature adults."[108] For example, the American public often thinks of older juveniles, especially those of color, as being just like adults[109] and therefore deserving of the same treatment, or punishment, as adults.

(June 14, 2009), https://firstamendmentcoalition.org/2009/06/law-enforcement-records-interrogation-reports-and-public-access/. Or, alternatively, state laws may bar recording disclosure under the Freedom of Information Act. CONN. GEN. STAT. § 54-1*o*(h)(i) (2014).

[104] Feld, *supra* note 26, at 432–33.

[105] But the International Association of Chiefs of Police (IACP), along with the Center for Wrongful Convictions at Northwestern University, released a guidebook in 2014 that provides more developmentally appropriate methods for interviewing and interrogating juveniles. *Juvenile Interview and Interrogation*, INT'L ASS'N OF CHIEFS OF POLICE, https://www.theiacp.org/resources/document/juvenile-interview-and-interrogation (last visited Mar. 7, 2021). The IACP has provided training to over 2,000 law enforcement professionals in the United States and abroad in practices appropriate for interrogating juveniles. *Id.* It still offers two online training courses in this area. *Id.*

[106] The Feld study, would suggest that law enforcement officials routinely employ the same tactics in juvenile interrogations. *See generally* Feld, *supra* note 26. Also, a powerful recreation of juvenile interrogations can be viewed in the Netflix miniseries *When They See Us*. This miniseries, directed by Ava DuVernay, spends several minutes recreating the illegal interrogations that led to the wrongful convictions of the Central Park Five, five young boys who were wrongfully convicted of a gruesome rape. *When They See Us: Part One* (Netflix 2019).

[107] Automatic transfer laws, harsh sentences for juveniles convicted of crimes in adult court, juveniles sentenced to death, and mandatory life without parole laws for juveniles who commit certain crimes are historical legal practices in America that have treated juveniles like adults, despite the separate juvenile justice system. Feld, *supra* note 26, at 396–97.

[108] J.D.B. v. North Carolina, 564 U.S. 261, 275 (2011) (noting that a child's age is "different" and that children are "susceptible to influence" and "outside pressures").

[109] This national mindset has its roots in hyper-criminalization and mass incarceration in the modern era, or from the 1970s and onward. During that time, an increase in crime and criminalization propelled a harsher and resolute national "tough-on-crime" morale. JAMES FORMAN JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 38–46 (2017). Coupled with this morale is that hyper-criminalization and mass incarceration are rooted in systemic racism, and while beyond the scope of this Note, it bears recognition: juveniles, particularly juveniles of color, have borne the brunt of this criminal-shift in America, from the War on Drugs to being referred to as "super-predators" and an increase in the number of incarcerated juveniles both in the juvenile justice system and in adult prisons. Tamar R. Birckhead, *The Racialization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C. L. REV. 379, 410–12 (2017). Essentially, arising from this national trend, albeit with crushing racial injustice, is the "adult time for adult crime" mantra. *Id.* at 409–10. In fact, a 2003 Gallup poll reported that 59% of poll participants, all above the age of eighteen, thought that juveniles between the ages of fourteen and seventeen should be treated the same as adults when they commit violent crimes. Julie Ray, *Public: Adult Crimes Require Adult Time*, GALLUP (Nov. 11, 2003), https://news.gallup.com/poll/9682/public-adult-crimes-require-adult-time.aspx.

In at least some circumstances, this adult-like treatment begins in the interrogation room.

Finally, even if local law enforcement agencies implement policies to alter interrogation tactics when faced with a young suspect, there are institutional realities that would still make complete reform difficult under the current law enforcement scheme. The policing origin story, as a slave patrol mechanism[110] and then as a frontline defender of Jim Crow laws,[111] has been a centralized theme in both reckoning with the historical relationship that law enforcement has had with marginalized communities and in the demand for police reform.[112] Historical law enforcement practices and its presence in communities, and the disproportionate, harmful, and generational effects that its actions and mass incarceration have on communities of color, especially young Black men,[113] is a force that has catapulted into local and national community action.[114] But as stakeholders—

[110] FORMAN, *supra* note 109, at 133.

[111] *Id.*

[112] Law enforcement authority "comes not only from the laws and rights the police are there to protect, but also from the badge on their uniform, the weapons they carry, and when applicable . . . their authority comes, at least in part, from the person(s) who called them to the scene in the first place. A police officer is seen as a compelling force; someone who has the authority to coerce another person's behavior." STEPHANIE M. MYERS, DEP'T OF JUST., POLICE ENCOUNTERS WITH JUVENILE SUSPECTS: EXPLAINING THE USE OF AUTHORITY AND PROVISION OF SUPPORT DJ1, 16 (2004).

[113] Kim Barker, Michael H. Keller & Steve Eder, *How Cities Lost Control of Police Discipline*, N.Y. TIMES (Mar. 10, 2021), https://www.nytimes.com/2020/12/22/us/police-misconduct-discipline.html (noting secrecy, disciplinary issues, and police unions as forces that make the tracking of and accountability for police misconduct difficult); Cheryl W. Thompson, *Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns*, NPR (Jan. 25, 2021, 5:00 AM), https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns ("The deadly shootings of unarmed Black men and women by police officers in the U.S. have increasingly garnered worldwide attention over the last few years. The 2014 killing of Michael Brown in Ferguson, Mo., sparked a week of protests that catapulted the Black Lives Matter movement into the national spotlight. Since then, tens of thousands of people across the country have taken to the streets to protest police brutality of Blacks by mostly white officers."); Elle Lett, Emmanuella Ngozi Asabor, Theodore Corbin, & Dowin Boatright, *Racial Inequity in Fatal U.S. Police Shootings*, *2015–2020*, 75 J. EPIDEMIOLOGY & CMTY. HEALTH 394–95 (2020) (showing that the rate of fatal police shootings for Black, indigenous, and people of color (BIPOC) remained constant for at least five years, and that BIPOC have significantly higher death rates compared with Whites in police shootings).

[114] Black Lives Matter, a global political and social movement rooted in protesting racially-motivated violence, particularly police brutality, has been a significant force in creating national attention and conversation against violence towards Black people. BLACK LIVES MATTER 2020 IMPACT REPORT, https://blacklivesmatter.com/wp-content/uploads/2021/02/blm-2020-impact-report.pdf. Further, the killing of several innocent Black people—including but not limited to the deaths of Breonna Taylor, George Floyd, Elijah McClain, and Ahmaud Arbery—at the hands of law enforcement has gained national attention and strengthened national action. Action has also occurred at the local level. The Louisville Metro Council, for example, banned no-knock search warrants after Breonna Taylor's death. Alisha Haridasani Gupta & Christine Hauser, *New Breonna Taylor Law Will Ban No-Knock Warrants in Louisville, Ky.*, N.Y. TIMES (Sept. 15, 2020), https://www.nytimes.com/2020/06/12/us/breonna-taylor-

state legislatures, city councils, law enforcement agencies, and community members—begin to shift the concept of policing fund appropriation,[115] the treatment of juveniles in the interrogation room must be framed as an issue that is a part of that impending reform. Despite the need for reform, there are current measures seeking to protect juveniles' interests in the interrogation context and in the criminal justice system. They warrant discussion both for their strengths and shortcomings, and they help to shed light on the necessary and proposed structure of institutional reform in the interrogation context.

III. CURRENT PROTECTIONS

Several state legislatures and courts have implemented protections for both adults and juveniles in the interrogation room. These protections have varying degrees of success and all face shortcomings that make them less likely to ignite systemic change in the current interrogation scheme. Various state protections are highlighted throughout, particularly Connecticut, as a model representative of national trends.

A. *Electronic Video Recording*

In 2014, Connecticut passed a law requiring the audiovisual electronic recording of custodial interrogations,[116] largely to reduce the prevalence of false confessions and wrongful convictions.[117] It

law-passed.html. Several other cities are considering banning no-knock search warrants. Ray Sanchez, *Laws Ending No-Knock Warrants After Breonna Taylor's Death Are a 'Big Deal' But Not Enough,* CNN (Oct. 10, 2020, 6:03 AM), https://www.cnn.com/2020/10/10/us/no-knock-warrant-bans-breonna-taylor/index.html.

[115] Dionne Searcey, *What Would Efforts to Defund or Disband Police Departments Really Mean?*, N.Y. TIMES (Dec. 10, 2020), https://www.nytimes.com/2020/06/08/us/what-does-defund-police-mean.html.

[116] CONN. GEN. STAT. § 54-1*o*(b) (2014).

[117] The Connecticut Supreme Court was concerned about false confessions. "It is apparent, therefore, that a recording requirement would dramatically reduce the number of wrongful convictions due to false confessions, and it also would protect against the use of confessions that are involuntary and, therefore, inherently unreliable. Because a confession constitutes such persuasive evidence of guilt, the value of having a recording of that confession and the interrogation that leads to it cannot be overstated." State v. Lockhart, 4 A.3d 1176, 1209 (Conn. 2010) (Palmer, J., concurring). The Connecticut legislature shared the same concern when passing § 54-1*o.* State v. Christopher S., 257 A.3d 912, 933 (Conn. 2021) ("See 54 H.R. Proc., Pt. 28, 2011 Sess., p. 9481, remarks of Representative Gary Holder-Winfield (. . . "This [b]ill seeks to put in place [an audiovisual] recording of the interrogation such that we can capture and see whether . . . those threats, coercions or intimidations happen[ed].")).

requires class A and B felonies interrogations be recorded[118] and dictates that an unrecorded confession is presumed inadmissible against the defendant.[119] The presumption of inadmissibility, however, may be overcome by a preponderance of the evidence that the confession was "voluntarily given and reliable, based on a totality of the circumstances."[120] Most recently, the Connecticut Supreme Court has held that trial courts are not required to instruct juries to evaluate admitted confessions with "particular caution"[121] obtained out of compliance with the statute.[122] In other words, unrecorded confessions in contravention of state law can be admitted without a curative measure to ensure that a jury considers law enforcement conduct out of statute compliance. Only serious felony crimes must be recorded, leaving out a swathe of interrogations.

Besides Connecticut, over half of the states and the District of Columbia statutorily require that custodial interrogations be recorded, both for adults and juveniles, and most commonly interrogations of felony crimes. Most of those states, like Connecticut, require that only certain serious felonies be recorded.[123] A small minority of states take it further: Indiana, New Mexico, Utah, and Wisconsin require it for all *felony* offenses,[124] while Alaska, Arkansas, Minnesota, and Montana require electronic recording for *all* offenses.[125] But California and Oregon only require recording for specific offenses, leaving most interrogations of felony crimes unrecorded.[126]

Video recording interrogations aid in law enforcement accountability[127] and may in fact help to "lift the veil of secrecy from

---

[118] CONN. GEN. STAT. § 54-1*o*(b).

[119] *Id.* at § 54-1*o*(d).

[120] *Id.* at § 54-1*o*(h). *See also Christopher S.*, 257 A.3d at 923 (noting that the defendant's confession must be given "pursuant to a knowing, intelligent, and voluntary waiver of the defendant's *Miranda* rights" and the second part of the voluntariness test and the determination of reliability is based on a totality of the circumstances.)

[121] *Christopher S.*, 257 A.3d at 938. The trial court, however, may give an instruction at its discretion. *Id.* at 941.

[122] *See id.* at 296. ("We do not believe that it is necessary to mandate a jury instruction in all cases, when the state must already overcome the presumption of inadmissibility.").

[123] *The Past, Present, and Future of Interrogation Recording Requirements in the U.S.*, CASECRACKER (Jan. 15, 2019), https://www.casecracker.com/2019/01/15/the-past-present-and-future-of-interrogation-recording-requirements-in-the-u-s/.

[124] *Id.*

[125] *Id.*

[126] *Id.* "California only mandates recording if a juvenile is suspected of murder, and in Oregon, only when a) someone is suspected of aggravated murder, is b) facing a mandatory minimum offense, or is c), a juvenile who will be processed in adult criminal court." *Id.*

[127] *Id.*

the interrogation process in favor of the principle of transparency."[128] All states should statutorily require the video recording of custodial interrogations for most offenses to aid in promoting transparency,[129] yet this measure falls short in a critical way. Statutes provide only retroactive relief if an interrogation is not recorded, usually by excluding that confession from evidence, after some harm has already occurred.[130] Yet many state statutes, like Connecticut's, provide that an unrecorded confession in contravention of state law can still be admitted into evidence.[131] Michigan, New York, North Carolina, and Wisconsin do, however, require that trial courts give a cautionary jury instruction if an unrecorded confession is admitted (in some cases, where the state overcomes a presumption of inadmissibility).[132] Finally, while recording interrogations may keep law enforcement on high alert of their conduct, it does not necessarily prevent coercive methods, such as deception and lying; these harms still uniquely affect juveniles.[133] In short, video recording interrogations is a necessary tool, but it is one that would aid, not drive, critical reform.

---

[128] Kassin et al., *supra* note 92, at 25.

[129] *See* Saul Kassin & David Thompson, *Videotape All Police Interrogations*, N.Y. TIMES (Aug. 1, 2019), https://www.nytimes.com/2019/08/01/opinion/police-interrogations-confessions-record.html. (discussing the benefits to the requirement that custodial interrogations be video-recorded).

[130] The failure to record an interrogation in contravention of state law may result in the exclusion of a confession, but suspects or criminal defendants must convince a court to exclude it, after charges have already been filed as a result of the confession. A confession itself can and likely will trigger the adversary criminal process, such as the filing of criminal charges, the attachment of the right to counsel, and an arraignment. At that point, many harms can occur, such as arrest and jailing, the loss of income, the inability to care for a child or other family members, and stigma from arrest.

[131] *See* CONN. GEN. STAT. § 54-1*o*(h) (2014) (codifying that the presumption of inadmissibility of an unrecorded interrogation can be overcome by requiring that the state show by a preponderance of the evidence that a statement "was voluntarily given and is reliable, based on the totality of the circumstances."); People v. Clark, 948 N.W.2d 604, 624 (Mich. Ct. App. 2019) (noting that for unrecorded interrogations in violation of state statute, the trial court, as a remedy, will provide a jury instruction in lieu of exclusion); VT. STAT. ANN. tit. 13, § 5585(c)(2) (2015) (providing that unrecorded interrogations are generally admissible, where the trial court shall provide "cautionary instructions to the jury"); N.Y. CRIM. PROC. LAW § 60.45(3)(b) (McKinney 2018) (providing that the failure to record an interrogation is not the sole basis for exclusion); *see* Kassin & Thompson, *supra* note 129 ("At a time when just about everyone is armed with a portable video camera, and false confessions are a known stark reality, there are no excuses. Yet many states fail to implement this remedy. And in some states that do, you could drive a truck through the loopholes that excuse the failure to do so.").

[132] Michigan, New York, North Carolina, and Wisconsin require cautionary jury instructions. State v. Christopher S., 257 A.3d 912, 940 (Conn. 2021).

[133] *See supra* note 17 (discussing the Brendan Dassey case, where his confession was recorded, and the coercive tactics were apparent).

B. *"Raise the Age" Laws*

Another legislative protection, which almost every state has adopted, is a "raise the age" law.[134] These laws increase the age at which a youth is automatically transferred to the adult criminal justice system—usually eighteen.[135] When an older youth commits a crime and would normally be shepherded into the adult criminal justice system, a "raise the age" law allows them to remain in the juvenile justice system, family court, or other courts.[136]

For example, in North Carolina, most eighteen-year-olds are eligible to remain solely within the juvenile justice system.[137] Vermont allows most youths up to the age of eighteen, and some youths up to the age of twenty-two, to go to family court for certain crimes.[138] California Senate Bill 889 proposed that eighteen *and* nineteen-year-olds stay within the juvenile justice system for most charged offenses.[139] In 2007, Connecticut "raised the age" to eighteen.[140] Since 2010, when the legislation went into effect, there has been a drop in juvenile arrests in Connecticut,[141] but while juvenile crime has decreased, it is still unknown if "raise the age laws" have been a primary driver in that trend.[142] Schools have also seen a reduction in suspensions, arrests, incarceration, and juvenile case

---

[134] At least forty-three states have "raise the age" laws. Eli Hager, *In Some States, Raising the Age for Adult Court Is the Easy Part*, MARSHALL PROJECT (Sept. 27, 2016, 10:00 PM), https://www.themarshallproject.org/2016/09/27/in-some-states-raising-the-age-for-adult-court-is-the-easy-part.

[135] Dana Goldstein, *Who's a Kid?*, MARSHALL PROJECT (Oct. 27, 2016, 6:00 AM), https://www.themarshallproject.org/2016/10/27/who-s-a-kid (noting that most typically, states raise the age to eighteen when passing this legislation).

[136] For example, in New York, there are various non-criminal courts that hear juvenile criminal cases. For many sixteen- and seventeen-year-olds in New York, their cases are heard in family court. *Raise The Age: Fact Sheet*, N.Y.C. MAYOR'S OFF. OF CRIM. JUST. (Jan. 2019), http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/01/RTA-Fact-Sheet_January-2019.pdf.

[137] *Raise the Age - NC*, N.C. DEP'T OF PUB. SAFETY, https://www.ncdps.gov/our-organization/juvenile-justice/key-initiatives/raise-age-nc#what-changes-will-raise-the-age-bring (last visited Mar. 16, 2021).

[138] Goldstein, *supra* note 135.

[139] *Sen. Nancy Skinner Announces Bill to Raise the Age to Be Tried as an Adult.*, SEN. NANCY SKINNER (Jan. 28, 2020), https://sd09.senate.ca.gov/news/20200128-sen-nancy-skinner-announces-bill-raise-age-be-tried-adult.

[140] Goldstein, *supra* note 135.

[141] Charles E. Loeffler & Aaron Chalfin, *Estimating the Crime Effects of Raising the Age of Majority*, 16 CRIMINOLOGY & PUB. POL'Y 45, 50 (2017).

[142] *Id.*

transfers to the adult criminal system.[143] Still, youth between fifteen and eighteen who are charged with committing certain A and B felony crimes automatically have their cases transferred to adult court, with few exceptions to this automatic transfer.[144] In 2016, then-governor Dannel Malloy proposed to raise the age to twenty-one.[145]

But Georgia, Texas, and Wisconsin draw the line at sixteen, and are the last three states in the country to draw the line at such a young age.[146] That might soon change. Georgia's "raise the age" House Bill 272 is moving forward in the state House, and will go to the full House for further debate in 2021.[147] The bill would permit most seventeen-year-olds (except those who commit certain violent crimes) to remain in the juvenile justice system.[148] Texas State Rep. Harold Dutton of Houston has reintroduced House Bill 967, which, "in all but the most serious cases," would keep seventeen-year-olds in the juvenile justice system.[149] Finally, Wisconsin Governor Evers included a plan in his 2021 state budget proposal to "raise the age" to eighteen for most crimes and to close certain juvenile detention facilities, as fewer juveniles enter both the juvenile and adult justice systems.[150]

Traction for "raise the age" laws has increased in part because punitive consequences are passed on in favor of rehabilitation and services geared toward recidivism, which are aimed at serving juvenile needs.[151] "Raise the age" laws are a critical example of how

---

[143] Brian Evans, *Celebrating Ten Years of 'Raising the Age' in Connecticut*, CAMPAIGN FOR YOUTH JUST. (Feb. 10, 2020), http://campaignforyouthjustice.org/news/blog/item/celebrating-ten-years-of-raising-the-age-in-connecticut.

[144] CONN. GEN. STAT. § 46b-127(a)(1) (2021).

[145] Goldstein, *supra* note 135.

[146] Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONF. STATE LEGISLATURES (Apr. 8, 2021), https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx.

[147] Jeff Amy, *House Bill Would Raise Age for Adult Crimes to 18 in Georgia*, U.S. NEWS (Feb. 18, 2021), https://www.usnews.com/news/best-states/georgia/articles/2021-02-18/house-bill-would-raise-age-for-adult-crimes-to-18-in-georgia.

[148] *Id.*

[149] *Bill Would Raise Age of Criminal Responsibility to 18 in Texas*, IMPRINT (Jan. 8, 2021, 6:55 AM), https://imprintnews.org/justice/bill-raise-age-criminal-responsibility-18-texas/50774.

[150] *ACLU of Wisconsin Endorses Budget Proposal to Raise the Age for Adult Criminal Charges to 18*, ACLU WIS. (Feb. 17, 2021, 9:45 AM), https://www.aclu-wi.org/en/news/aclu-wisconsin-endorses-budget-proposal-raise-age-adult-criminal-charges-18; Briana Reilly, *Gov. Tony Evers Proposes New Framework to Close, Replace Youth Prisons in the Budget*, CAP. TIMES (Feb. 18, 2021), https://madison.com/ct/news/local/govt-and-politics/gov-tony-evers-proposes-new-framework-to-close-replace-youth-prisons-in-his-budget/article_5a2d26ed-911e-5b1c-be31-42b3e30289dd.html.

[151] *Raising the Age: Shifting to a Safer and More Effective Juvenile Justice System*, JUST. POL'Y INST. 1, 8–9 (Mar. 7, 2017), http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf.

state legislatures are beginning to recognize youth vulnerabilities and exposure to harm in the adult criminal system.[152] The laws have also contributed to the decrease in the number of juveniles and young people generally in the criminal justice system.[153] In this way, several state leaders have vocalized goals to keep youthful defendants out of prison and have addressed efforts to mitigate mass incarceration and racial inequality in the justice system.[154]

While there have been several successes with these laws recently, their shortcomings have caused concern among policy advocates. They may prevent juvenile cases from being *automatically* transferred to adult criminal court in some cases, but there are typically exceptions.[155] Many sixteen and seventeen-year-olds are still routed to the adult criminal justice system if they commit certain violent felonies. Also, while "raise the age" laws prevent many youthful defendants from awaiting trial in a local jail and prevent adult prison terms, they may simply re-route youthful offenders to juvenile detention centers which function similarly to adult prisons or do not provide adequate education, rehabilitation services, and job training, which are necessary to avoid recidivism.[156] For example, South Carolina's main juvenile detention center utilizes solitary

[152] "People under the age of 25 who are sentenced as adults have been found to have worse outcomes and are put in far greater danger than those processed in the juvenile system . . . a child is five times more likely to be sexually assaulted in prison than in a juvenile facility and nine times more likely to attempt suicide." ACLU WIS., *supra* note 150.

[153] *See* JUST. POL'Y INST., EXECUTIVE SUMMARY: RAISING THE AGE: SHIFTING TO A SAFER AND MORE EFFECTIVE JUVENILE JUSTICE SYSTEM 9 (2017), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/raisetheagesummary_final_3_6_16.pdf (documenting that juvenile crime has declined, especially in states that have "raised the age"). "Raise the age" laws have helped to decrease both the youth who are excluded from juvenile justice centers as well as those who end up in adult prison. *Id.* at 4.

[154] Former Connecticut Governor Dannel Malloy, has supported "raise the age" legislation and has tracked its progress in reducing the number of juvenile criminal cases. *Id.* at 5. Former Louisiana Governor John Bel Edwards has lauded "raise the age" laws' success at mitigating recidivism. *Gov. Edwards Praises Committee Passage of Raise the Age Act*, OFF. OF THE GOVERNOR (Apr. 12, 2016), https://gov.louisiana.gov/news/edwards-praises-committee-passage-of-raise-the-age-act. California State Senator Nancy Skinner has been a long-time advocate of "raise the age" laws and introduced a bill which sought to raise the age to twenty in some cases. *Sen. Nancy Skinner Announces Bill to Raise the Age to Be Tried as An Adult*, *supra* note 139.

[155] For example, in North Carolina, juveniles charged with certain felony offenses are transferred to adult court. RAISE THE AGE, *supra* note 136.

[156] *See* Hager, *supra* note 134 (detailing how youths are funneled into juvenile detention centers); Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, PRISON POL'Y INITIATIVE (Dec. 19, 2019), https://www.prisonpolicy.org/reports/youth2019.html (explaining how the majority of youth in detention facilities are in "locked" facilities and are restrictively confined); Lori L. Hall, *Correctional Education and Recidivism: Toward a Tool for Reduction*, 66 J. CORR. EDUC. 4, 13, 25 (2015) (concluding that education and educational programs for youth mitigate recidivism).

confinement and shackling on the juveniles held there, and has "small, concrete cells."[157] Further, the Prison Policy Initiative tracks the data: most juveniles held in juvenile detention facilities are held in large and "locked" facilities, which frequently use handcuffs, shackles, cells, and isolation-like punishment, such as solitary confinement.[158] Finally, and most critical for the scope of this Note, "raise the age" laws do not redirect youthful suspects away from the interrogation room or concern law enforcement conduct in that context. The reform that is being sought after through "raise the age" laws should not simply reshape the punishment-driven justice system but should seek to reform the concept of that system entirely.[159]

C. *The "Special Care" Standard*

In the judicial context, the United States Supreme Court has carved out critical protections for juveniles in the confession context, and not just in the broader criminal justice context. In addition to determining that *Miranda* warnings are a Fifth Amendment right for juveniles,[160] the Supreme Court has adopted a "special care" standard[161] as a judicial safeguard in determining the voluntariness of juvenile confessions. Under the "special care" standard, courts use a totality of the circumstances approach[162] to evaluate the circumstances around a juvenile confession, such as law enforcement

---

[157] Hager, *supra* note 134.

[158] Sawyer, *supra* note 156.

[159] *See infra* Part IV (arguing that neutral specialists, such as social workers, should be involved in the interrogation process, and that the concept of interrogation should shift to a less adversarial process).

[160] *See* Feld, *supra* note 68, at 223 n.12 (noting that *Fare v. Michael C.* assumed without deciding that *Miranda* warnings apply to juveniles).

[161] The Supreme Court has carved out this standard over time in various cases. The Court first articulated this standard in *Hayley v. Ohio*, where Justice Douglas, writing the plurality opinion, acknowledged that the interrogation tactics were inappropriate for the fifteen-year-old suspect. 332 U.S. 596, 599 (1948). In *Gallegos v. Colorado*, the Court determined that a suspect's age is a "crucial factor" in determining the voluntariness of a confession. 370 U.S. 49, 53 (1962). Then, in *Fare v. Michael C.*, the Court reiterated that "evaluation of the juvenile's age, experience, education, background, and intelligence" are factors in evaluating a juvenile's understanding and waiver of the *Miranda* rights. 442 U.S. 707, 725 (1979). Finally, and most recently, the Court further reaffirmed the special care standard in *J.D.B. v. North Carolina*, holding that age is a critical factor in a *Miranda* analysis. 564 U.S. 261, 265 (2011).

[162] "The most common features of the states' formulations of the totality test are: consideration of the child's age, intelligence, education and mental condition; whether a parent or other adult advisor is present; prior experience with courts or law enforcement, if any; and the nature of the questioning (including the length, tone, accusatory nature, police tactics, and time and place of questioning)." Kenneth J. King, *Waving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of* Miranda *Rights*, 2006 WIS. L. REV. 431, 455 (2006).

conduct and a youth suspect's own unique circumstances and abilities.[163] While state and federal judges consider relevant factors in determining the voluntariness of a confession and whether a juvenile made a "voluntar[y], knowing[], and intelligent[]" *Miranda* waiver,[164] as with all judicial remedies, it is retrospective and applied varyingly by judges across states and circuits.[165] A juvenile confession could be deemed "voluntary" in one court but perhaps would not in the one next door. This approach does represent a concerted effort by the Supreme Court to strengthen and protect juvenile vulnerabilities and rights in a way that recognizes and highlights their unique differences from adults.[166] Further, the advent of the "special care" standard has led to more strident statements by the Supreme Court in contexts outside of Fifth Amendment jurisprudence,[167] which can serve as the basis for a more robust and expansive approach to reforming how those under eighteen are treated in the criminal justice system. A more robust and expansive approach can reshape how juveniles are treated within the criminal context and would leave more room to reconsider other critical aspects of how the criminal justice system functions.[168]

The aforementioned measures are not an exhaustive list of protections aimed to serve juvenile interests in the interrogation context, but they do serve as the foundational exemplars for institutional reform.

IV. LOOKING AHEAD AT INSTITUTIONAL REFORM

Outside of Fifth Amendment jurisprudence, the Supreme Court has provided a basis for instituting reform for juveniles in the interrogation context. In the Eighth Amendment punishment context, the Court has drawn clearer distinctions between adults and juveniles,

---

[163] *Id.* at 455, 469–70.

[164] *J.D.B.*, 564 U.S. at 270.

[165] In a "totality of the circumstances" approach to judicial standards, state and circuit courts inevitably will put various weight on different factors on a case-by-case basis.

[166] "We have observed that children 'generally are less mature and responsible than adults[;]' that they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them[;]' that they 'are more vulnerable or susceptible to . . . outside pressures' than adults[;] and so on." *J.D.B.*, 564 U.S. at 272 (citations omitted) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115–16 (1982); *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

[167] *See infra* Part IV (explaining the importance of Eighth Amendment jurisprudence in the juvenile context).

[168] For example, the perpetuation of violence in prisons, law enforcement official misconduct, systemic inequality, trauma, and mass incarceration should be further dismantled through the window of reimaging juvenile justice.

which suggests that the unique juvenile status and interests can be recognized in a more nuanced way.[169] The Supreme Court's trifecta of Eighth Amendment juvenile cases, *Roper v. Simmons*,[170] *Graham v. Florida*,[171] and *Miller v. Alabama*[172] have begun to lay that framework; in each decision, the Court offers, briefly, the illuminating psychological, cognitive, social, and behavioral distinctions between adults and juveniles[173] in order to draw a line in sentencing and punishing under the Eighth Amendment. These cases cast juveniles in a more vulnerable and distinct light[174] to show that they should not be overly punished given their age.[175] Various state legislatures and courts have implemented broader juvenile protections in the criminal justice system in light of these cases.[176] These three key decisions represent how the Supreme Court is beginning to more seriously consider how juveniles are treated in the criminal justice system, and

[169] Dailey & Rosenbury, *supra* note 90, at 1564–65.

[170] 543 U.S. 551 (2005).

[171] 560 U.S. 48 (2010).

[172] 567 U.S. 460 (2012).

[173] "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573. "[P]arts of the brain involved in behavior control continue to mature through late adolescence . . . . Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. . . [f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed" (internal quotations omitted). *Graham*, 560 U.S. at 68.

[174] "[W]e require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 480. *Graham* discusses how juveniles have difficulty weighing the long-term consequences of their actions and their rebellion. *Graham*, 560 U.S. at 78.

[175] "By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory-sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." *Miller*, 567 U.S. at 489.

[176] These decisions have sprung a national shift in how juveniles are treated in the criminal justice system when it comes to punishment. For example, *Montgomery v. Louisiana* held that the rule announced in *Miller* was substantive, rendering it retroactive. 577 U.S. 190, 212 (2016). This was a key win for juveniles who were sentenced to life without the possibility of parole pre-*Miller. Id.* at 736 ("[H]owever, prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored."). Further, the Supreme Court of Nebraska has held that the *Miller* rule applies to prisoners whose convictions were upheld on appeal. State v. Mantich, 842 N.W.2d 716, 731–32 (Neb. 2014). Lastly, state legislatures have implemented reform. California passed the "Fair Sentencing for Youth Act," which eliminated life without the possibility of parole for juveniles and allowed prisoners convicted of a crime as juveniles to petition for a sentence review after serving fifteen years, if they were sentenced to life in prison without the possibility of parole pre-*Miller.* CAL. PENAL CODE § 1170 (West 2013).

how legislatures, agencies, and other entities can follow suit and expand that concept.

This is especially meaningful when considering the current national reckoning that the United States is facing.[177] Summer 2020 presented a wave of protests, where thousands of people united against violence against Black individuals, and particularly violence perpetrated by the state and law enforcement.[178] Critically, the criminal justice system is a fundamental perpetrator in institutional violence against historically vulnerable communities, especially Black individuals, who are overrepresented in prison and disproportionately targeted by the criminal justice system.[179] So, when framing this reckoning alongside the shift that the three Eighth Amendment cases represent and their efforts to limit state power in punishing juveniles, [180] there is momentous opportunity to ask: what else must be reimagined? Viewing juvenile interrogations through *that* lens puts interrogation tactics, power dynamics, and the harmful and disproportionate consequences of juvenile interrogations in a different light.

Reforming how juvenile interrogations take place and their purpose is not far-removed from the current reconceptualization of law enforcement function. There is a current push to have individuals like social workers and other professionals respond to social issues that do not solely rely or necessarily rely on armed law enforcement.[181] Across the United States, dozens of cities are

---

[177] These protests mounted after the killing of George Floyd by law enforcement officer Derek Chauvin, where afterward several protests arose in Minneapolis, demanding that the officer be charged and for institutional reform against the justice system. Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Oct. 2, 2021), https://www.nytimes.com/article/george-floyd-protests-timeline.html. Protests around the country followed suit (and across the world) and also honored the lives of other innocent Black victims, such as Breonna Taylor and Ahmaud Abery. *Id.*

[178] Helier Cheung, *George Floyd Death: Why US Protests Are So Powerful this Time Around*, BBC NEWS (June 8, 2020), https://www.bbc.com/news/world-us-canada-52969905; *Criminal Justice Fact Sheet*, NAACP, https://www.naacp.org/criminal-justice-fact-sheet/ (last visited Nov. 4, 2021).

[179] *Criminal Justice Fact Sheet*, NAACP , https://www.naacp.org/criminal-justice-fact-sheet/ (last visited Oct. 11, 2021)

[180] Daryl V. Atkinson, *A Revolution of Values in the U.S. Criminal Justice System*, CTR. AM. PROGRESS (Feb. 27, 2018), https://www.americanprogress.org/issues/criminal-justice/news/2018/02/27/447225/revolution-values-u-s-criminal-justice-system/ (arguing that over time, the purported purpose of the criminal justice system has shifted from rehabilitation to harsh punishment).

[181] "A city-by-city review by VICE News turned up several examples. New Orleans has outsourced its response to minor traffic accidents to a private company. Eugene, Oregon, sends a small team consisting of a medic and a crisis worker to one-fifth of all 911 calls. Florida's Miami-Dade County puts a tax on restaurants and uses the proceeds to help move the homeless into shelters and on to permanent housing." Greg Walters, *These Cities Replaced Cops with Social Workers, Medics, and People Without*

transforming who responds to certain social issues and how they are addressed.[182] Other trained specialists and community-specific programs now respond to and address mental health crises, homelessness issues, and minor drug possession or other petty offenses instead of law enforcement officials.[183] While reform is happening across the United States, most notably in scenarios outside of issues of serious crime, it does not mean that addressing crime directly (i.e., through interrogations) cannot adopt a similar approach. As society considers a massive reconceptualization of law enforcement, it can also reconsider how it thinks about crime and how it is addressed, especially in the juvenile context. In this way, law enforcement officials should not act as the sole gatekeepers of juvenile custodial interrogations. Fully rethinking how juveniles are interrogated and changing that on a fundamental level serves significant societal interests. It reshapes the purpose of interrogations, at least in the juvenile context, and can mitigate harmful interrogation consequences.[184] It can also create a framework for accountability and data-driven results that can be used to improve and alter interrogation methods.

Instead, neutral specialists, such as social workers or other specialists who have training in psychological development and behavior should have a primary role in the process. These specialists should work *with* law enforcement, but not *for* it, and remain employees of the state, city, or other third-party agencies. They would maintain a professional relationship with law enforcement officials in order to both understand the facts of the crime that the juvenile is suspected of committing, and also understand the integrity and seriousness both of juvenile vulnerability and interests, the risk of coercion that is inherent in the interrogation process, and the criticalness of the truth-seeking process. But these specialists would conduct the interview process themselves; to that effect, transparency would be critical. The truth of the process should be shared with juveniles so that they understand that the specialists will ask questions about the crime in question, but law enforcement officials will be able

Guns, VICE (June 12, 2020), https://www.vice.com/en/article/y3zpqm/these-cities-replaced-cops-with-social-workers-medics-and-people-without-guns.

[182] *Id.*

[183] *Id.*

[184] *See supra* Part III (discussing the prevalence of false confessions and wrongful convictions).

to observe from another room. In this way, officials will be able to fully observe and use this information for their investigation.

This critical change would also aid in shifting the purpose of interrogations from getting a confession to getting to the truth.[185] More specifically, trained specialists should conduct direct questioning of juveniles, and not be permitted to lie or use deceptive tactics. Specialists would not be permitted to use the Reid Technique, but rather utilize their specialized training to elicit truthful statements. This would mean asking open-ended questions,[186] avoiding suggestiveness,[187] and acting as an investigative interviewer rather than an interrogator. The purpose of this reformed "interrogation" would be to get to the truth of a crime or incident, and the youth suspect's involvement (if any), rather than only to elicit a confession. Further, such a questioning process would have a chief goal of avoiding psychological coercion and eliminate coercive tactics. Lying and deception should be disallowed as tactics, and instead, specialists should rely on psychological and behavioral training that is appropriate for the juvenile's age and abilities. Since interrogation tactics are designed to be used on guilty suspects, they can severely be misapplied to innocent individuals.[188] To eliminate their use on those who are younger than eighteen would be a step to recognize juvenile vulnerability in the interrogation context. While a comprehensive policy would be moving away from the use of psychologically coercive tactics (and specialists would be trained to *not* use those tactics), state legislatures or the courts should create laws or judicial standards that would officially disallow deception and lying to a juvenile in the interrogation room. Reshaping how interrogations happen and the language used would both ensure that innocent individuals do not falsely confess and protect juvenile interests by eliminating coercive techniques.

Further, specialists who work outside of the law enforcement arena, and who have training in social work or psychology would also

---

[185] "The purpose of interrogation is therefore not to discern the truth, determine if the suspect committed the crime, or evaluate his or her denials. Rather, police are trained to interrogate only those suspects whose culpability they 'establish' on the basis of their initial investigation." Kassin et al., *supra* note 44, at 6.

[186] "Closed-ended questions state what the interviewer thinks rather than what the [juvenile] knows." DONALD N. DUQUETTE, ANN M. HARALAMBIE & VIVEK S. SANKARAN, CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 92 (3d ed. 2016).

[187] *Id.* at 88 (noting that avoiding suggestiveness maximizes productivity).

[188] Leo & Liu, *supra* note 18, at 382.

be exposed to differences among juveniles and distinct groups. Racial, gender, various age, cognitive, intellectual, and cultural differences which exist among juveniles would be recognized and not misunderstood or work against a juvenile who is suspected of committing a crime. Specialists can consciously engage in a practice that will not exploit those differences and can help to reform juvenile interrogations and even how society thinks about youth and crime. In this way, another element of the criminal justice system can be reimagined, and help mitigate the harmful effects of that system, such as false confessions, wrongful convictions, and disproportionate effects on certain groups.

Even more, an accountability proponent to document the success of the use of specialists will also bring the practice of interrogations out into the open, providing research and data. It will allow for new interrogation, or interviewing, practices to evolve in an informed way over time. This would require that local law enforcement agencies keep a record of how many juvenile interviews or questioning occur every year, and how many result in a confession. While this data should be limited to protect the identity of juveniles, the actual log could track other pertinent information as well. This data should be uploaded to a national database for further research and accountability. Further, all interrogations should be recorded in order to ensure specialist accountability, and those recordings could be used (by protecting the identity of the suspect) to learn and evolve best practices determined by specialists in the field.

Between and among jurisdictions, neutral specialists should be available for various local law enforcement agencies and be called in when law enforcement is preparing to question a juvenile; ideally, these specialists should be notified before the juvenile is brought in by law enforcement, or as soon as possible. Practically, they would be geographically near and available at the time of the interrogation, so as to not unnecessarily delay the process or violate state or constitutional laws and protections. Further, specialists will practice a strict code of professionalism and confidentiality when law enforcement officials share sensitive information about a case, just as social workers, teachers, and other specialists adhere to similar rules of confidentiality; this serves to protect juvenile interests and identities as well as investigations. A national model of confidentiality and professionalism would be easily structured and implemented because of its wide use and common existence. Also, just as the Reid

Technique provides a guide for law enforcement interrogation practices, a comprehensive policy and rules should be developed, maintained, and amended as needed, which would dictate acceptable practices and interviewing techniques that are rooted in recognizing juvenile vulnerabilities and other, pertinent issues, such as intellectual disabilities, mental illnesses, language barriers, and more. In turn, this policy should be taught in standalone training and classes that are a mandatory prerequisite to any juvenile interrogation; law enforcement officials should also be trained as to their role during this process.

CONCLUSION

It is crucial to re-conceptualize juvenile interests, legal rights, and vulnerabilities to reform the practice of juvenile custodial interrogations. Policies must be reformed on a national level to recognize juvenile interests and differences due to the pervasiveness of custodial interrogations, how juveniles are treated, how law enforcement comports itself, and the policies that dictate that comportment. This means that law enforcement must not be the sole arbiter of what happens behind the closed doors of an interrogation room. Neutral specialists who are educated, trained, and practiced in eliciting truthful statements from juveniles should be on the frontline.

States and governmental agencies have the power to implement manageable reform within the same goal framework that this Note proposes. As noted above, there should be a national database recording the number of juvenile interrogations, and whether those interrogations resulted in any confession or otherwise signed statement. Law enforcement agencies should be required to upload their agency's statistics, providing reliable data and protecting the identity of the juvenile. This data will help to concretize how many juvenile interrogations occur and will provide more opportunity for research and accountability. Also, state legislatures or courts should begin to carve out a framework for distinct and acceptable law enforcement questioning techniques that officials may use with juveniles and disallow lying and deception for all juveniles.[189]

[189] In May 2021, Illinois became the first state to pass a law banning the use of deception during juvenile interrogations. Law enforcement is prohibited from making false promises of leniency and false claims about incriminating evidence. *Historic Deception Bill Passes Illinois Legislature, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT, (May 30, 2021) https://innocenceproject.org/historic-deception-bill-passes-illinois-legislature-banning-police-from-lying-to-youth-during-interrogations/.

Juvenile interrogations can be envisioned under national conversations around legal reform; re-imagining juvenile treatment in the interrogation context can be a lens into criminal justice reform, in recognizing unique juvenile interests, inequities that stem from what occurs in the interrogation room and moving away from law enforcement-controlled practices into a more community-centered approach to crime.