
**CONFESSIONS OF A TEENAGE
DEFENDANT: WHY A NEW LEGAL
RULE IS NECESSARY TO GUIDE THE
EVALUATION OF JUVENILE
CONFESSIONS**

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INTRODUCTION

On April 19, 1989, the “bloody and almost lifeless” body of a female jogger was found in Central Park.¹ Five teenagers, ranging between ages fourteen and sixteen, were arrested in connection with the attack.² Despite the lack of any incriminating physical evidence and the boys’ persistent initial denials, after hours of coercive interrogation, the boys confessed to

1. Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 *LAW & PSYCHOL. REV.* 53, 58 (2007) (citation omitted).

2. *Id.* at 57–58; Sharon L. Davies, *The Reality of False Confessions—Lessons of the Central Park Jogger Case*, 30 *N.Y.U. REV. L. & SOC. CHANGE* 209, 215–16 (2006).

raping and beating the jogger.³ Each boy recanted his confession before trial, claiming to have falsely confessed because he believed it would allow him to go home.⁴ In 2002, after the boys served between six and thirteen years in prison, a convicted murderer and serial rapist confessed to the assault and rape of the jogger.⁵ Subsequent DNA evidence confirmed that he was the sole perpetrator, and the convictions against the five boys were vacated.⁶

On November 5, 2005, the remains of Teresa Halbach's body were found in Steven Avery's salvage yard; she was shot in the head and burned in a bonfire.⁷ The police arrested Avery and began interviewing his family members, including his sixteen-year-old nephew, Brendan Dassey.⁸ During Dassey's first interrogation, he denied any involvement in Halbach's death.⁹ However, after four interrogation sessions over two days with no attorney or parent present, Dassey confessed to helping his uncle rape, murder, and burn Halbach's body.¹⁰ There was no forensic evidence linking Dassey to the crime, and the details Dassey provided in his confession precisely matched those offered by investigators during his interrogation.¹¹ Dassey had an IQ of between 74 and 81, received special education services, and was characterized as more suggestible than 95% of the population.¹² Despite later recanting his confession and claiming he had been coerced by his interrogators, Dassey was convicted of first degree murder and sentenced to life in prison.¹³ In August 2016, a federal district court overturned Dassey's conviction, finding that the police had used manipulative tactics to elicit the confession.¹⁴ In June 2017, the Court of Appeals for the Seventh Circuit upheld the district court's decision to overturn Dassey's conviction.¹⁵ In December 2017, to the surprise of many following the case, an *en banc* panel of the Seventh Circuit reversed the district court's decision and upheld

3. Scott-Hayward, *supra* note 1, at 58.

4. Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 4 (2010).

5. Scott-Hayward, *supra* note 1, at 58; Jim Dwyer, *The True Story of How a City in Fear Brutalized the Central Park Five*, N.Y. TIMES (May 30, 2019), <https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us-real-story.html>.

6. Scott-Hayward, *supra* note 1, at 58.

7. *Dassey v. Dittmann*, 860 F.3d 933, 939 (7th Cir. 2017), *reh'g granted*, 2017 U.S. App. LEXIS 14374 (7th Cir. Aug. 4, 2017), *rev'd on reh'g*, 877 F.3d 297 (7th Cir. 2017).

8. *Id.* at 938–39.

9. *See id.* at 939–40.

10. *Id.* at 940–41.

11. *Id.* at 940–42.

12. *Id.* at 939.

13. *Id.* at 938.

14. *Id.*

15. *Id.* at 983.

Dassey's conviction.¹⁶ Although Dassey appealed this decision to the United States Supreme Court, the Supreme Court ultimately declined to hear Dassey's petition.¹⁷

The cases of the "Central Park Five" and Brendan Dassey are two of the highest profile criminal cases in the past three decades. Both cases unsurprisingly captured the nation's attention and became the subjects of several documentaries.¹⁸ Each case forces the public to consider how police officers could mistakenly identify and interrogate an innocent suspect, how an innocent person could feel compelled to falsely confess, and how our legal system could allow the false and coerced confession of a child to be the basis of a criminal conviction. While these two cases made national headlines, they are not unique. False confessions by juveniles are a common and even inevitable occurrence given the impact of the interrogation process on children and the inadequacies of the legal standard that currently exists to protect against juvenile false confessions.

Part I of this Note will discuss the prevalence of false confessions among juvenile suspects, and explain how juveniles' transient developmental weaknesses make them particularly vulnerable to specific coercive interrogation techniques. Part I will also emphasize the impact that a confession has on the outcome of a defendant's trial, thereby highlighting the weight that a false confession carries.

Part II of this Note will present the existing law governing the evaluation of the voluntariness of a confession—the procedural safeguards offered by *Miranda v. Arizona* and the totality of the circumstances test rooted in the concern for due process. Part II will also argue that the totality of the circumstances test is insufficient to protect juveniles because it does not give binding weight to a suspect's age, but rather considers age among several other characteristics.

Part III of this Note will propose a new legal rule to guide the evaluation of juvenile confessions. The proposed legal rule extends and expands upon the language and holding from *J.D.B. v. North Carolina*,¹⁹ and requires that age be the primary factor in courts' evaluations of juvenile confessions.

16. *Dassey v. Dittmann*, 877 F.3d 297, 301 (7th Cir. 2017) (4–3 decision).

17. *Dassey v. Dittmann*, 138 S. Ct. 2677, 2677 (2018).

18. Dwyer, *supra* note 5; Ken Burns, *The Central Park Five*, PBS (Nov. 23, 2019), <https://www.pbs.org/kenburns/the-central-park-five>; Mike Hale, *Review: 'Making a Murderer,' True Crime on Netflix*, N.Y. TIMES (Dec. 16, 2015), <https://www.nytimes.com/2015/12/17/arts/television/review-making-a-murderer-true-crime-on-netflix.html>.

19. *J.D.B. v. North Carolina*, 564 U.S. 261 (2011).

Confessions offered by children during interrogations in which coercive techniques are employed must be presumed involuntary, given the effect that manipulative interrogation techniques have on juveniles' likelihood to falsely confess. Moreover, given that courts often have no way of knowing the circumstances of an interrogation, confessions by all juveniles should be presumed involuntary until the prosecution can prove that no coercive interrogation techniques were used. Part III also proposes a series of policy reforms that aim to reduce the prevalence of false confessions.

I. BACKGROUND

A. WRONGFUL CONVICTIONS

Wrongful convictions expose and embody complex problems within the criminal justice system. A wrongful conviction represents an undeniable failure on the part of prosecutors, defense attorneys, judges, and jurors, not only because it condemns an innocent person, but also because it simultaneously allows a guilty person to escape punishment. There are several causes of wrongful convictions, including "false confessions," "eyewitness misidentification," inaccurate evidence gathered from jailhouse informants, and invalid forensic testing methods.²⁰ Each of these causes reflects serious errors made during the investigative phase of a case that ultimately produced the incorrect outcome at the adjudicatory phase.

This Note will focus on false confessions. A wrongful conviction based on a false confession results when an innocent person waives his or her *Miranda* rights, is wrongly subjected to interrogation based on an investigator's inaccurate perception of guilt, and is ultimately coerced into making a false confession that provides sufficient basis for a wrongful conviction.²¹

B. FALSE CONFESSIONS

A false confession is an admission to a criminal act that the confessor did not commit, and is often accompanied by specific details of the crime that would be known only by the real perpetrator.²² A confession may be deemed false if it is later discovered that no crime was actually committed, if additional evidence shows that it was impossible for the confessor to have

20. *Policy Reform*, INNOCENCE PROJECT, <https://www.innocenceproject.org/policy> (last visited Aug. 20, 2019).

21. Kassir et al., *supra* note 4, at 4.

22. *Id.* at 5.

committed the crime because he or she was physically elsewhere, if the real perpetrator is linked to the crime, or if scientific evidence establishes the confessor's innocence.²³

There are three forms of false confessions: voluntary, coerced-compliant, and coerced-internalized false confessions. A voluntary false confession occurs when an innocent person claims responsibility for a crime he or she did not commit without any pressure from police.²⁴ Voluntary false confessions may stem from a desire for notoriety, a conscious or unconscious need to punish oneself for prior acts, an inability to distinguish reality from fantasy, or a desire to protect the actual perpetrator.²⁵

Coerced-compliant false confessions occur as a result of relentless police interrogation.²⁶ This type of false confession occurs when a suspect, despite knowing that his or her confession is false, is unable to cope with the pressure of interrogation and concludes that the short-term benefits of falsely confessing outweigh the long-term costs.²⁷ The desire to eat, sleep, make a phone call, or simply go home are the most common causes of coerced-compliant false confessions.²⁸

A coerced-internalized false confession occurs when an innocent suspect becomes persuaded, through false evidence, that he or she has committed a crime.²⁹ Suspects who produce internalized confessions develop a "profound distrust of their own memory" and become vulnerable to police influence.³⁰ The primary difference between compliant and internalized false confessions is that a suspect often retracts a compliant confession after the interrogation is over, but may not retract an internalized confession because he or she has come to believe he or she committed the crime.³¹

C. THE PREVALENCE OF FALSE CONFESSIONS

False confessions are difficult to analyze because there is no

23. *Id.*

24. Saul M. Kassin, *False Confessions*, WIREs COGNITIVE SCI., May 9, 2017, at 1, 2.

25. Kassin et al., *supra* note 4, at 14.

26. *See* Kassin, *supra* note 24, at 2.

27. Gisli Gudjonsson, *Memory Distrust Syndrome, Confabulation and False Confession*, 87 CORTEX 156, 158 (2017).

28. Kassin et al., *supra* note 4, at 14.

29. Gudjonsson, *supra* note 27, at 158.

30. Kassin et al., *supra* note 4, at 15.

31. Scott-Hayward, *supra* note 1, at 55.

organization that documents their occurrence.³² Moreover, it is challenging to prove that false confessions are truly false without DNA evidence, making it impossible to discover how many false confessions have yet to be confirmed as false.³³ Despite being difficult to chronicle and inherently counterintuitive, false confessions are prevalent in the criminal justice system; even the Supreme Court has acknowledged that “there is mounting empirical evidence” demonstrating that pressures from custodial interrogations “can induce a frighteningly high percentage of people to confess to crimes they never committed.”³⁴

As of August 20, 2019, there were 2,480 exonerations on the National Registry of Exonerations.³⁵ Twelve percent of all exonerations involved false confessions, and 23% of exonerations in homicide cases involved false confessions.³⁶ The Innocence Project reports that 28% of the 365 DNA exonerations to date involved false confessions.³⁷ Of the 24 DNA exonerations in New York, 54% contained false confessions and two-thirds of the murder convictions later overturned by DNA evidence were based on false confessions.³⁸ Although these numbers suggest the role that false confessions have in producing wrongful convictions, the data set is limited to defendants that have been exonerated, and thus does not include false confessions that are disproved before trial, those that result in guilty pleas, those given to minor crimes, or those in cases where DNA evidence is unavailable.³⁹ As a result, the documented cases of false confessions likely represent “only the tip of a much larger iceberg,” and the true percentage of false confessions that lead to wrongful convictions remains unknown.⁴⁰

D. FALSE CONFESSIONS BY JUVENILES

The prevalence of false confessions is far more striking when the defendant’s age is considered. As mentioned above, 28% of the 365 DNA

32. Kassin et al., *supra* note 4, at 5.

33. *See id.*

34. Corley v. United States, 556 U.S. 303, 321 (2009).

35. % Exonerations by Contributing Factor, NAT’L REGISTRY EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> (last visited Aug. 20, 2019).

36. *Id.*

37. DNA Exonerations in the United States, INNOCENCE PROJECT, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states> (last visited Aug. 20, 2019).

38. Facts and Figures, FALSECONFESSIONS.ORG, <http://www.falseconfessions.org/fact-sheet> (last visited Aug. 20, 2019).

39. Kassin et al., *supra* note 4, at 3.

40. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 921 (2004).

exonerations reported by the Innocence Project involved a false confession.⁴¹ Of the false confessors, 49% “were [twenty-one] years old or younger at the time of arrest,” and 33% “were [eighteen] years old or younger”⁴² In another study of 125 proven false confessions, 40 of the false confessions were offered by juveniles under eighteen.⁴³ Of those 40 false confessions, 22 were offered by children aged fifteen and younger, and 33 were offered by children between the ages of fourteen and seventeen.⁴⁴

In a study of 340 exonerations, 33 of the exonerated defendants were under eighteen.⁴⁵ While only 13% of the exonerated adults falsely confessed, 42% of the exonerated juveniles falsely confessed—highlighting the prevalence of false confessions among juveniles.⁴⁶ The rate of false confession was even higher among the youngest juveniles exonerated—69% of the children between ages twelve and fifteen falsely confessed.⁴⁷ Despite the prevalence of false confessions by juveniles under eighteen, only 8% and 16% of all people arrested for murder and rape, respectively, are juveniles.⁴⁸

As is clear from the data, juveniles are disproportionately more likely than adults to falsely confess to a crime they did not commit. This Note will explore why children are especially prone to falsely confessing and how existing law has failed to account for or protect against this reality.

E. THE PROCESS OF PROCURING A FALSE CONFESSION

A false confession results from a sequential process involving misclassification, coercion, and contamination.⁴⁹ Misclassification occurs when police misclassify an innocent person as guilty during the Behavioral Analysis Interview, which will be discussed below.⁵⁰ Once an investigator has concluded that an innocent suspect is guilty, interrogation ensues.⁵¹

41. *DNA Exonerations in the United States*, *supra* note 37.

42. *Id.*

43. Drizin & Leo, *supra* note 40, at 944.

44. *Id.*

45. Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 (2005).

46. *Id.*; Megan Crane et al., *The Truth About Juvenile False Confessions*, INSIGHTS ON L. & SOC’Y, Winter 2016, at 12.

47. Gross et al., *supra* note 45, at 545.

48. *Facts and Figures*, *supra* note 38.

49. Richard A. Leo, *Police Interrogations, False Confessions, and Alleged Child Abuse Cases*, 50 U. MICH. J.L. REFORM 693, 714 (2017).

50. *Id.*

51. *Id.* at 714–16.

Thus, misclassification sets the stage to elicit a false confession.⁵²

The interrogation process is not designed to confirm the investigator's hypothesis of guilt, but is instead geared toward coercing a confession.⁵³ The most common technique used to elicit confessions is the Reid technique, which will be discussed below.⁵⁴ Although false confessions may seem counterintuitive, an analysis of interrogation methods and their pointed effect on innocent suspects reveals how interrogation techniques heighten the risk of false confessions.⁵⁵ Interrogation techniques have a particularly dangerous effect on juveniles, and greatly increase the risk that a child will falsely confess.⁵⁶

Contamination occurs when investigators provide suspects with specific details of the crime.⁵⁷ Innocent suspects incorporate these details into their false confessions, resulting in confessions that align with police evidence.⁵⁸ Investigators may offer these details inadvertently, but may also consciously pressure suspects to include certain details in their confessions.⁵⁹ Contamination results in "vivid and detailed" confessions "that contain cues" that later convince judges and juries of their authenticity.⁶⁰

F. INTERROGATION METHODS: THE REID TECHNIQUE

The Reid Technique of Interviewing and Interrogation was developed by John Reid and Fred Inbau in the 1940s.⁶¹ Their manual, *Criminal Interrogations and Confessions*, was first published in 1962,⁶² and is considered "to be the 'Bible' for interviewing and interrogation techniques."⁶³ The Reid technique is the most frequently used interrogation

52. See *id.* at 714.

53. Richard A. Leo, *Interrogation and Confessions*, in 2 REFORMING CRIMINAL JUSTICE: POLICING 233, 250 (Erik Luna ed., 2017).

54. Hayley M. D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40 LAW & HUM. BEHAV. 270, 271 (2016).

55. See Leo, *supra* note 53, at 250–51.

56. *Id.* at 248.

57. *Id.* at 252.

58. *Id.*

59. *Id.*

60. *Id.*

61. Saul M. Kassin, *False Confessions: From Colonial Salem, Through Central Park, and into the Twenty-First Century*, in THE WITNESS STAND AND LAWRENCE S. WRIGHTSMAN, JR. 53, 54 (Cynthia Willis-Esqueda & Brian H. Bornstein eds., 2015).

62. *Id.*

63. DAN SIMON, IN DOUBT: THE PSYCHOLOGY OF THE CRIMINAL JUSTICE PROCESS 122 (2012) (citation omitted).

method in the United States.⁶⁴ According to Reid & Associates, Reid-trained investigators can accurately identify liars 85% of the time.⁶⁵ The technique proposes a two-phase approach, consisting of a nonconfrontational interview to determine the suspect's guilt, followed by a highly confrontational interrogation designed to extract a confession.⁶⁶

G. THE REID TECHNIQUE: THE BEHAVIORAL ANALYSIS INTERVIEW

The first phase of the Reid technique, referred to as the Behavioral Analysis Interview ("BAI"), is intentionally nonconfrontational.⁶⁷ During the BAI, the investigator collects information, builds a rapport with the suspect, and, most importantly, determines the suspect's guilt.⁶⁸ Throughout the BAI, investigators observe the suspect's behavior in order to discern alleged indicators of guilt, such as slouching, gaze aversion, frozen posture, shifting posture, crossing legs, adjusting clothing, and slow response rate.⁶⁹ Investigators are trained to assume that honest suspects, in contrast, will have upright posture and lean forward.⁷⁰

The BAI protocol is deficient for several reasons, chiefly because it relies on the mistaken assumption that certain nonverbal behavior is conclusive of deceit.⁷¹ Studies have shown that "liars behave differently from truth tellers . . . in diverse and imperceptible ways," but that the few cues that are diagnostic of deceit are mostly verbal.⁷² Cues such as gaze aversion, however, are invariably unrelated to deceit.⁷³

The BAI's equation of anxiety with guilt is also dangerously unfounded because it fails to consider the possibility that innocent suspects being investigated for a crime they did not commit will almost certainly appear anxious.⁷⁴ While the Reid technique acknowledges that innocent suspects might be nervous, investigators are trained to believe that "[a]s the interview progresses, and the innocent subject understands that the questioning is

64. Cleary & Warner, *supra* note 54, at 271.

65. SIMON, *supra* note 63, at 122.

66. *Id.*

67. *Id.* at 122, 127.

68. *Id.*

69. SIMON, *supra* note 63, at 122–24, 127–28; Hayley M. D. Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice*, 23 PSYCHOL., PUB. POL'Y, & L. 118, 126 (2017); Kassin et al., *supra* note 4, at 6.

70. SIMON, *supra* note 63, at 128.

71. *Id.* at 124.

72. *Id.*

73. *Id.*

74. *Id.* at 130.

nonaccusatory, he becomes more relaxed and composed.”⁷⁵ This transformation supposedly allows investigators to confidently distinguish between the anxiety of innocent and guilty suspects.⁷⁶

Although investigators are trained to believe that they can accurately infer a suspect’s guilt from his or her body language, in general, people perform poorly when asked to distinguish between truth tellers and liars.⁷⁷ Investigators do not perform significantly better despite having more confidence, power, and responsibility.⁷⁸ In an analysis of 125 participants asked to judge the truthfulness of a suspect, 54% judged him to be telling the truth, while 46% concluded he was lying.⁷⁹ Despite their limited ability to detect deceit, people are overconfident in their characterizations; in an analysis of eighteen different studies, people believed they were accurate 73% of the time, despite being accurate only 57% of the time.⁸⁰ This overconfidence is likely higher among investigators given that the Reid technique claims to enable investigators to accurately identify liars 85% of the time.⁸¹

By the end of the BAI, if the investigator is “reasonably certain of the suspect’s guilt,” despite lacking any concrete evidence, the investigator commences the accusatory interrogation.⁸² The conclusion reached at the end of the BAI is therefore critical, as interrogation will likely yield a confession and “all but seal the fate of the defendant.”⁸³

H. THE REID TECHNIQUE: SPECIFIC INTERROGATION METHODS THAT MAY ELICIT A FALSE CONFESSION

The purpose of interrogation is not to confirm the suspect’s guilt, nor is it necessarily to elicit the truth.⁸⁴ Instead, “the singular purpose of . . . police interrogation is to elicit incriminating statements and admissions—ideally a full confession”⁸⁵ Investigators begin by isolating the suspect in a small room, which immediately increases the suspect’s anxiety, fear, and

75. *Id.* (citation omitted).

76. *Id.*

77. *Id.* at 125.

78. Kassir et al., *supra* note 4, at 6; Leo, *supra* note 53, at 251.

79. SIMON, *supra* note 63, at 125.

80. *Id.*

81. *See id.* at 122.

82. Cleary & Warner, *supra* note 54, at 271 (citation omitted); *see also* SIMON, *supra* note 63, at 122.

83. SIMON, *supra* note 63, at 122.

84. Drizin & Leo, *supra* note 40, at 911.

85. *Id.*

powerlessness.⁸⁶ The Reid technique prescribes a nine-step process, during which the interrogator incorporates psychologically coercive tactics, including “maximization and minimization.”⁸⁷

Maximization involves intimidating the suspect, threatening harsh punishment if he does not confess, repeatedly accusing him of guilt, and continually rejecting his denials.⁸⁸ In order to bolster accusations of guilt, police will use “false evidence ploys,” in which the investigator references incriminating evidence that does not exist.⁸⁹ Although false evidence ploys are not illegal, research warns that they render suspects especially vulnerable to manipulation because of how they exploit the psychology of inevitability and drive suspects into a state of hopelessness and compliance.⁹⁰ Presenting false evidence is also highly effective because many suspects are unaware that investigators can legally pretend to have incriminating evidence.⁹¹

In addition to maximization, investigators employ “minimization” techniques—minimizing the severity of the crime, offering the defendant moral justification or excuses for the crime, blaming the victim, showing sympathy for the suspect, and even making implicit promises of lenient treatment.⁹² Although minimizing tactics are not legally classified as promises of leniency, suspects often perceive them to be assurances of lenient treatment.⁹³

The combined use of maximization, false evidence, and minimization is “designed to persuade the suspect to perceive his situation, and thus his options, much differently than when he first entered the interrogation room.”⁹⁴ The power of these techniques to transform a suspect’s mindset helps explain why offering a false confession might seem inexplicable and counterintuitive prior to interrogation, but later becomes the suspect’s only conceivable option.⁹⁵

Paradoxically, innocence is a serious risk factor during interrogation because innocent suspects overestimate the extent to which their inner states

86. See Kassir, *supra* note 24, at 3.

87. *Id.*

88. Cleary & Warner, *supra* note 54, at 271; Crane et al., *supra* note 46, at 13.

89. Leo, *supra* note 49, at 711–12.

90. Kassir et al., *supra* note 4, at 12, 17.

91. Leo, *supra* note 49, at 712.

92. Cleary & Warner, *supra* note 54, at 271, 275; Crane et al., *supra* note 46, at 13.

93. SIMON, *supra* note 63, at 135.

94. Drizin & Leo, *supra* note 40, at 915–16.

95. *Id.* at 918.

are observable by others.⁹⁶ This “illusion of transparency” causes suspects to believe that their innocence will be obvious to interrogators and set them free.⁹⁷ One study showed that, because they believed they had nothing to hide, innocent participants were twice as likely as guilty participants to waive their *Miranda* rights and submit to interrogation.⁹⁸ Another study showed that innocent suspects were more likely to confess to committing acts they did not commit because they believed “the bluff represented a promise of future exoneration . . . which paradoxically made it easier to confess.”⁹⁹

Despite the high likelihood that the Reid technique will drive an innocent suspect to falsely confess merely as a way to end the “intolerable stress of continued interrogation,”¹⁰⁰ its promoters insist that “none of the steps is apt to make an innocent person confess” and assure interrogators that the steps “are legally [and] morally justifiable.”¹⁰¹

I. THE UNIQUE SUSCEPTIBILITY OF CHILDREN TO THE INTERROGATION PROCESS

As a result of the dispositional and situational factors unique to juveniles, the Reid technique discussed above is particularly likely to elicit false confessions from them.¹⁰² A primary dispositional factor underlying juveniles’ vulnerability to interrogation techniques is the developmental state of their brains.¹⁰³ The prefrontal cortex, the region responsible for decisionmaking, judgment, planning, and regulation of impulsive behavior, is not fully developed until the early twenties.¹⁰⁴ As a result, children are especially susceptible to interrogation tactics that implicate the prefrontal cortex.¹⁰⁵

Given their continuing cognitive and neurological development, adolescents struggle to regulate their behavior and often act impulsively—making them ill-equipped to handle the pressures of interrogation.¹⁰⁶ A 2014 study demonstrated that adolescents react impulsively to threat cues more

96. SIMON, *supra* note 63, at 140.

97. *Id.*

98. *Id.*

99. Kassir, *supra* note 61, at 66.

100. Leo, *supra* note 49, at 709.

101. SIMON, *supra* note 63, at 139 (citation omitted).

102. See Laurel LaMontagne, Note, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29, 35–36 (2013).

103. *Id.* at 34–36.

104. *Id.* at 35; Crane et al., *supra* note 46, at 14.

105. See Crane et al., *supra* note 46, at 14.

106. LaMontagne, *supra* note 102, at 35–36.

frequently than adults, even when instructed not to respond to the threat.¹⁰⁷ This impulsive reaction likely stems from their underdeveloped prefrontal cortex and reflects a “heightened sensitivity to emotional cues that may cause them to impulsively react rather than retreat from cues of potential threat.”¹⁰⁸ Further research indicates that adolescents’ regulatory behaviors are challenged more than adults’ in situations involving emotion and reward.¹⁰⁹ In the context of an interrogation, this impulsivity may manifest itself in a child’s decision to waive his or her *Miranda* rights, make unintentionally self-incriminating statements, or falsely confess.¹¹⁰

Juveniles also display a hypersensitivity to short-term rewards and an inability to consider long-term consequences—both of which make them particularly vulnerable to producing a false confession.¹¹¹ Juveniles’ focus on immediate rewards corresponds to adolescent hormone surges that “sensitize the reward-processing areas of the brain.”¹¹² As will be discussed below, this heightened sensitivity to short-term rewards affects the experience of police interrogation, as it can cause juveniles to produce a confession merely as a way to go home.¹¹³

Exacerbating the tendency to focus on immediate rewards is adolescents’ underdeveloped temporal perspective, which causes them to experience even short encounters, if they are stressful, as extremely long.¹¹⁴ Thus, even a relatively short police interrogation, which is rare, may feel endless to a child—leading the child to comply with interrogators’ requests to provide a confession.¹¹⁵ Additionally, juveniles’ deficient time perspective makes anticipating the long-term legal consequences of their actions particularly difficult.¹¹⁶

In sum, juveniles’ developing neurological and cognitive capacities place them at an inherent disadvantage in withstanding police interrogation. In the following sections, this Note will explore how specific interrogation

107. Michael Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat*, 36 DEVELOPMENTAL NEUROSCIENCE 220, 226 (2014).

108. *Id.* at 225.

109. Leah H. Somerville, *Searching for Signatures of Brain Maturity: What Are We Searching For?*, 92 NEURON 1164, 1166 (2016).

110. LaMontagne, *supra* note 102, at 35–36.

111. *Id.*

112. Cleary, *supra* note 69, at 120.

113. *Id.*

114. *Id.* at 121.

115. *Id.*

116. Brief of the Am. Med. Ass’n et al. as Amici Curiae in Support of Respondent at 6, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633) [hereinafter AMA Amicus Brief].

techniques seize on and exploit these temporary developmental weaknesses, thereby heightening juveniles' likelihood of falsely confessing.

J. THE EFFECT OF THE INTERROGATION PROCESS ON JUVENILE SUSPECTS:
THE BAI

The structure of the Reid technique, beginning with the BAI, immediately places juveniles at a disadvantage.¹¹⁷ As discussed above, during the BAI, investigators assess a suspect's guilt by observing behavioral cues.¹¹⁸ Many of these hallmark nonverbal cues that investigators perceive as indicators of guilt, such as slouching, gaze aversion, response latency, and biting fingernails, are merely examples of typical adolescent behavior.¹¹⁹ Gaze aversion, in fact, is used by children as young as six years old.¹²⁰ Thus, juveniles are particularly vulnerable to inadvertent self-incrimination during the BAI because of their instinctive behavior—the BAI of a child will likely result in a verdict of guilt and trigger an interrogation.¹²¹ Moreover, while the Reid technique claims that innocent suspects will recognize that the BAI questioning is nonaccusatory and relax, given their difficulty coping with stress and contemplating long-term consequences, juveniles are unlikely to deduce the purpose of the BAI and alter their behavior accordingly.¹²²

K. THE EFFECT OF THE INTERROGATION PROCESS ON JUVENILE SUSPECTS:
SPECIFIC INTERROGATION TECHNIQUES

The primary interrogation methods, namely false evidence ploys, lengthy interrogations, minimization, and maximization, directly prey on an adolescent's transient developmental deficiencies and increase the risk of a false confession.¹²³

False evidence ploys are especially likely to result in false confessions by juveniles.¹²⁴ In a study of 373 incarcerated juveniles, 17.1% reported making a false confession, 81.3% reported that interrogators used deceptive tactics, and many cited the perception of incriminating proof against them as a driving force in their decision to confess.¹²⁵ A 2003 study analyzed how

117. See LaMontagne, *supra* note 102, at 43–44.

118. *Id.* at 44.

119. Cleary, *supra* note 69, at 126.

120. SIMON, *supra* note 63, at 123.

121. See *id.*; Cleary, *supra* note 69, at 126.

122. See SIMON, *supra* note 63, at 130.

123. See Leo, *supra* note 49, at 709.

124. See *id.* at 709, 711–12.

125. Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious*

youth influences the effect of false evidence on the decision to falsely confess.¹²⁶ Participants in the study entered computer data and were told not to press the “Alt” key as it would result in data loss.¹²⁷ Some of the participants were later presented with a fabricated printout showing that they had hit the Alt key, and were asked to sign a statement admitting that they had pressed the key and agreeing to help restore the data.¹²⁸ The study determined that younger participants were significantly more likely to sign the statement than were older participants.¹²⁹ Among the participants presented with false evidence, 88% of fifteen to sixteen year-olds and 73% of twelve to thirteen year-olds signed the statement, compared to only 50% of adults.¹³⁰ These results indicate that presenting false evidence to younger suspects is more likely to result in a false confession.¹³¹ While this experiment was in a low-stakes environment, the effect of false evidence in real interrogations is likely even greater given the stressful conditions and simultaneous use of additional coercive tactics.¹³²

The length of interrogation also has a particularly strong influence on juveniles, as it preys on their sensitivity to immediate rewards, their impulsivity, and their inability to consider long-term consequences.¹³³ Most interrogations continue for at least two hours, with some averaging sixteen hours, and children may experience that time as even longer due to their underdeveloped temporal perspective.¹³⁴ Such prolonged interrogation heightens a juvenile’s distress, which in turn impairs his cognitive functioning—one study showed that juveniles who endured interrogations longer than two hours without a break were more likely to falsely confess as a way to end the interrogation.¹³⁵ Juveniles’ impulse to “prioritize an immediate outcome,” like ending the interrogation, over future negative consequences reflects adolescents’ developmental weaknesses.¹³⁶ A false confession, for the “myopic adolescent, . . . serve[s] as an expedient way out

Adolescent Offenders, 38 LAW & HUM. BEHAV. 181, 183, 186–87 (2014).

126. Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 142 (2003).

127. *Id.* at 146.

128. *Id.* at 146–47.

129. *Id.* at 151.

130. *Id.* at 148.

131. *Id.* at 152.

132. *Id.* at 154.

133. Cleary, *supra* note 69, at 121–22; Malloy et al., *supra* note 125, at 190.

134. Kassir, *supra* note 61, at 65.

135. Cleary, *supra* note 69, at 121–22; Malloy et al., *supra* note 125, at 190.

136. LaMontagne, *supra* note 102, at 36.

of a stressful situation” by allowing him or her to go home.¹³⁷ This simple desire to go home is one of the most common reasons children falsely confess.¹³⁸ Employing techniques such as lengthy interrogations “penalizes adolescents for making poor decisions influenced by transitory characteristics that they will likely outgrow.”¹³⁹

Minimization techniques such as showing sympathy or making implicit promises of leniency also seize on adolescents’ desire to escape interrogation as well as their inability to consider long-term consequences.¹⁴⁰ Knowing that juveniles’ decisionmaking is driven by a desire to go home, rather than an understanding of the long-term legal implications of their actions, interrogators minimize the severity of the crime, provide suspects with moral justification or excuses, and even make implicit promises of leniency.¹⁴¹ In a study of 373 incarcerated juveniles, 71.5% reported experiencing minimizing techniques from interrogators.¹⁴² Unsurprisingly, such techniques influence adolescents and often prompt false confessions.¹⁴³

Juveniles are also uniquely vulnerable to maximization techniques.¹⁴⁴ In order to resist techniques such as intimidation, repeated accusations, and threats of harsh punishment, a suspect must continually prioritize long-term interests over short-term impulses.¹⁴⁵ The combination of adolescents’ limited self-regulatory abilities, difficulty managing stress, and deficits in future orientation makes withstanding maximization techniques particularly difficult.¹⁴⁶ In the study of 373 juveniles, 81% reported being threatened and 59% reported being verbally insulted by the interrogator.¹⁴⁷ Of the juveniles who falsely confessed, 33% claimed they did so due to pressure and duress.¹⁴⁸ Maximization techniques also implicate juveniles’ propensity to comply with authority—the repeated demands for compliance from someone in a position of power may compel juveniles to fulfill interrogators’ desire for a confession.¹⁴⁹

137. *Id.* at 32, 36 (citation omitted).

138. *See* Scott-Hayward, *supra* note 1, at 55, 65.

139. Cleary, *supra* note 69, at 120 (internal quotation marks omitted).

140. *See* Cleary & Warner, *supra* note 54, at 271, 275; Crane et al., *supra* note 46, at 13.

141. *See* Cleary & Warner, *supra* note 54, at 271, 275; Crane et al., *supra* note 46, at 13.

142. Malloy et al., *supra* note 125, at 187.

143. *See id.*

144. *See* Cleary & Warner, *supra* note 54, at 271, 275; Crane et al., *supra* note 46, at 13.

145. *See* Cleary, *supra* note 69, at 121.

146. *Id.*

147. Malloy et al., *supra* note 125, at 187.

148. *Id.*

149. *See id.* at 182.

In sum, juveniles are extremely vulnerable throughout the interrogation process. Their natural behavior during the BAI is more likely to indicate guilt, and the resulting use of coercive interrogation techniques have a heightened effect on juveniles because of how those techniques implicate their still-developing cognitive capacities. Thus, a coercive interrogation of an innocent juvenile is almost guaranteed to produce a false confession.

L. THE SAME INTERROGATION METHODS ARE USED ON ADULTS AND JUVENILES

Despite the heightened impact that interrogation techniques have on children, police use the same tactics on juveniles as they do on adults.¹⁵⁰ In the thirty-two hours of a Reid technique training program, “only 10 minutes of instruction were dedicated to youth and this was to advocate the use of the same strategies with youth as with adults.”¹⁵¹ A 2016 study examining the use of interrogation techniques by investigators confirmed that “usage patterns were the same for adult and juvenile suspects”¹⁵² The study noted that over half the officers were trained to use psychologically coercive techniques on both adults and juveniles.¹⁵³ Moreover, officers were more likely to have received formal training in the use of specific techniques on adult suspects, suggesting that officers simply extend the adult-designed techniques to their interrogations of children.¹⁵⁴ The study determined that methods such as presenting false evidence, physically intimidating the suspect, discouraging denials of guilt, suggesting a narrative of the crime, minimizing the seriousness of the offense, and blaming the victim are all used with similar or higher frequency on juveniles compared with adults.¹⁵⁵ Thus, the “gradient of coercion police employ with adult suspects is nearly identical with juvenile suspects,” corroborating concerns that, despite the heightened impact they have on children, the same coercive interrogation techniques are used on juveniles and adults.¹⁵⁶

M. THE IMPACT OF FALSE CONFESSIONS ON THE LIKELIHOOD OF A WRONGFUL CONVICTION

The impact of a false confession on a defendant’s outcome at trial is inescapable; “the introduction of a confession makes the other aspects of a trial in court superfluous.”¹⁵⁷ Judges and jurors often struggle to discount a confession because common sense leads them to trust statements made against self-interest—many jurors believe that an innocent person will not falsely confess unless he is “physically tortured or mentally ill.”¹⁵⁸ Judges

150. Cleary & Warner, *supra* note 54, at 272.

151. *Id.* (citation omitted).

152. *Id.* at 270.

153. *Id.*

154. *Id.* at 275.

155. *Id.* at 277.

156. *Id.* at 281.

157. Joshua A. Tepfer, *Defending Juvenile Confessions After J.D.B. v. North Carolina*, CHAMPION, Mar. 2014, at 20, 21 (citation omitted).

158. Drizin & Leo, *supra* note 40, at 910.

and juries are often unaware of the risk factors that make false confessions so common, and are thus unable to understand why anyone would falsely confess.¹⁵⁹ Moreover, false confessions often include salient details of the crime that courts fail to realize may have been provided by interrogators.¹⁶⁰ Courts often fail to discount a confession even when the defendant is a juvenile and even in the face of exculpatory DNA evidence.¹⁶¹ As a result, “[t]he real trial is what occurs in the interrogation room.”¹⁶²

A confession can also spur forensic confirmation biases which can corrupt the collection of other evidence and cause investigators to ignore other suspects.¹⁶³ Among DNA exonerations containing a false confession, 78% contained one or more additional errors in evidence, including invalid forensic science, mistaken eyewitness identifications, and the use of unreliable informants.¹⁶⁴ In two-thirds of these cases, the false confessions were obtained before the subsequent errors in the investigation.¹⁶⁵ Thus, wrongful convictions rooted in false confessions are due in part to the impact of confessions on judges and juries and in part to the “confirmation biases triggered by these confessions,” that affect the collection of other evidence.¹⁶⁶

Roughly half the cases involving false confessions proceed to trial, and, within those, approximately nine out of ten resulted in wrongful convictions, many of which were later reversed through DNA evidence.¹⁶⁷ An analysis of 125 proven false confessions found that 81% of false confessors who went to trial were wrongfully convicted.¹⁶⁸ Thus, false confessions are “inherently prejudicial and highly damaging to a defendant even if it is the product of coercive interrogation, even if it is supported by no other evidence, and even if it is ultimately proven false beyond any reasonable doubt.”¹⁶⁹

159. See Kassir, *supra* note 24, at 6.

160. *Id.*

161. *Id.*; Kassir, *supra* note 61, at 67.

162. Leo, *supra* note 49, at 700.

163. Kassir, *supra* note 61, at 68; Leo, *supra* note 49, at 710.

164. Kassir, *supra* note 61, at 69.

165. *Id.*

166. *Id.* at 68.

167. Leo, *supra* note 49, at 702.

168. *Id.* at 702 n.64.

169. Kassir, *supra* note 61, at 68 (citation omitted).

II. THE CURRENT LEGAL FRAMEWORK IS INSUFFICIENT TO PROTECT AGAINST THE ADMISSION OF INVOLUNTARY AND FALSE CONFESSIONS BY JUVENILES

A. THE EXISTING LAW GOVERNING THE ADMISSIBILITY OF CONFESSIONS

The Constitution and the Supreme Court impose constraints on the criminal justice system's ability to obtain confessions from criminal defendants and later offer them as evidence. Under the Fifth Amendment, a criminal defendant has a right against self-incrimination.¹⁷⁰ In *Miranda v. Arizona*, the Supreme Court concluded that the security of the Fifth Amendment's privilege against self-incrimination requires the imposition of procedural safeguards prior to custodial questioning to protect suspects from the "interrogation atmosphere and the evils it can bring."¹⁷¹ For a statement to be admissible under *Miranda*, a suspect must "voluntarily, knowingly and intelligently" waive his right to remain silent and to consult with an attorney.¹⁷² Interrogation cannot proceed without a valid waiver of both rights, and any confession obtained in violation of *Miranda* must be suppressed as involuntary.¹⁷³ The Supreme Court expressly extended the privilege against self-incrimination and the right to counsel to juveniles in *In re Gault*,¹⁷⁴ and the privilege is now codified in the forthcoming Restatement of Children and the Law.¹⁷⁵

Even after a suspect has waived his or her *Miranda* rights, a confession is only admissible if it is voluntary¹⁷⁶ and "freely self-determined . . ."¹⁷⁷ Judicial review of confessions focuses mostly on the presence and validity of *Miranda* waivers, and courts devote less attention and scrutiny to the voluntariness of a confession after a *Miranda* waiver.¹⁷⁸ A confession procured involuntarily will be suppressed as a violation of constitutional due process.¹⁷⁹ A confession's voluntariness is determined using the "totality of

170. U.S. CONST. amend. V.

171. *Miranda v. Arizona*, 384 U.S. 436, 444, 456 (1966).

172. *Id.* at 444.

173. *Id.*

174. *In re Gault*, 387 U.S. 1, 55 (1967).

175. RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 14.20 (AM. LAW INST., Tentative Draft No. 1, 2018).

176. *Id.* § 14.21(a)(2).

177. *Rogers v. Richmond*, 365 U.S. 534, 544 (1961).

178. See Martin Guggenheim & Randy Hertz, J.D.B. and the Maturing of Juvenile Confession Suppression Law, 38 WASH. U. J.L. & POL'Y 109, 136 (2012).

179. Tepfer, *supra* note 157, at 21.

the circumstances” test.¹⁸⁰ Under this test, the factfinder must consider the totality of the circumstances in which the confession was given to determine if it was made “freely, voluntarily, and without compulsion or inducement of any sort.”¹⁸¹ This test is applied to both adults and juveniles.¹⁸² Under *Colorado v. Connelly*, “coercive police activity” is a constitutional prerequisite for suppressing a statement as involuntary, and this limitation extends to juvenile confessions as well.¹⁸³ Thus, if the court determines that a juvenile’s free will was “overborne” by the coercive circumstances of the interrogation, due process prohibits the admission of the confession regardless of whether the initial waiver of *Miranda* rights was valid.¹⁸⁴ A court may therefore uphold the validity of a juvenile’s *Miranda* waiver but suppress the subsequent confession as involuntary.¹⁸⁵ An involuntary confession, in spite of an earlier voluntary *Miranda* waiver, reflects the impact that prolonged and coercive interrogation has on a suspect’s ability to exercise his free will.¹⁸⁶

In considering the totality of the circumstances surrounding a confession, the factfinder must consider the “details of the interrogation,” as well as the individual characteristics of the suspect, such as age, intelligence, physical condition, and mental health.¹⁸⁷ The totality of the circumstances test requires a determination of whether police interrogation pressures, combined with a suspect’s personal disposition, renders a confession involuntary.¹⁸⁸ While the totality of the circumstances test affords judges significant discretion, it offers little protection to suspects, as there are no firm rules or guidelines that courts must follow regarding the appropriate weight or consideration to give to any of the suspect’s individual characteristics.¹⁸⁹ Moreover, because interrogations are rarely filmed, courts often do not know what happens during interrogations and therefore tend only to exclude “the most egregiously obtained confessions”¹⁹⁰

180. *Id.*

181. *Haynes v. Washington*, 373 U.S. 503, 513 (1963) (quoting *Wilson v. United States*, 162 U.S. 613, 623 (1896)).

182. Kevin Lapp, *Taking Back Juvenile Confessions*, 64 UCLA L. REV. 902, 928 (2017).

183. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). This holding was extended to juveniles in *State ex rel. Juvenile Dep’t of Washington Cty. v. O’Farrell*, 83 P.3d 931, 936 (Or. Ct. App. 2004).

184. *J.D.B. v. North Carolina*, 564 U.S. 261, 268 (2011) (citation omitted); RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 14.21 (AM. LAW INST., Tentative Draft No. 1, 2018).

185. *See Commonwealth v. Leon L.*, 756 N.E.2d 1162, 1167–69 (Mass. App. Ct. 2001).

186. *See id.*

187. *Id.* at 1167 (citation omitted); *J.D.B.*, 564 U.S. at 284 (Alito, J., dissenting) (citation omitted).

188. Kassin et al., *supra* note 4, at 11.

189. *Id.*

190. *Id.* (citation omitted).

B. THE *MIRANDA* SAFEGUARDS ARE INSUFFICIENT TO PROTECT JUVENILES

The safeguards set out in *Miranda* are ineffective at protecting juveniles from producing incriminating false confessions. A valid waiver of *Miranda* rights requires that police officers provide juvenile suspects with an understandable description of their rights before they make the decision to knowingly waive them.¹⁹¹ Juveniles, however, are likely unable to comprehend the legal language of *Miranda* warnings.¹⁹² A suspect needs a reading level varying between sixth and tenth grade, or higher, to understand the standard language in a *Miranda* warning.¹⁹³ Given that the vast majority of people arrested read below the sixth grade level and between 20% and 70% of juveniles in delinquency proceedings have learning disabilities, as compared to 5% in the general population, most juvenile suspects fail to understand concepts and phrases such as “appointment of counsel” and “use of statements against you.”¹⁹⁴ This lack of understanding helps explain why between 80% and 90% of juveniles in some jurisdictions waive their *Miranda* warnings—thereby exposing themselves to the pressure of interrogation and the risk of a false confession.¹⁹⁵

Even juveniles who do understand the words and concepts in a *Miranda* warning may struggle to exercise their rights effectively.¹⁹⁶ Children have difficulty “conceiving of a right as an absolute entitlement that they can exercise without adverse consequences.”¹⁹⁷ Instead, they perceive a right as something they are allowed to do, “but which officials can unilaterally retract or withhold.”¹⁹⁸ Invoking one’s rights clearly and unambiguously in the face of an authority figure is contrary to most juveniles’ verbal styles and interferes with their instinct to comply with authority.¹⁹⁹ Innocent suspects, including juveniles, are even more likely to waive their *Miranda* rights because they believe that they have nothing to hide and fear that the police will infer guilt from a refusal to waive their rights.²⁰⁰ Given the likelihood

191. RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 14.21 cmt. e (AM. LAW INST., Tentative Draft No. 1, 2018).

192. *Id.*

193. LaMontagne, *supra* note 102, at 40.

194. *Id.* at 40–41.

195. *Id.* at 39.

196. RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 14.21 cmt. c. (AM. LAW INST., Tentative Draft No. 1, 2018).

197. Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 229–30 (2006).

198. *Id.* at 230.

199. *Id.*; Kassir et al., *supra* note 4, at 8–9.

200. Kassir, *supra* note 24, at 7.

that children will waive their *Miranda* rights, *Miranda* warnings are considered “little more than a speed-bump for officers when questioning adults and even less of an obstacle when interrogating juveniles.”²⁰¹

Furthermore, although the *Miranda* Court included an example of the suggested phrasing of *Miranda* warnings, the Court did not impose mandatory language, leaving police departments free to devise their own warnings.²⁰² A study of 560 *Miranda* warnings administered by police departments showed immense variety in content and format.²⁰³ An analysis of the warnings’ wording revealed reading level requirements ranging from “third-grade level to the verbal complexity of postgraduate textbooks.”²⁰⁴ Additionally, only 32% of the warnings informed suspects that legal counsel could be obtained at no cost.²⁰⁵ The vast differences among these warnings suggest that any waiver by a juvenile suspect may not be adequately “knowing” or “intelligent.”²⁰⁶

Certain states acknowledge the reality that juveniles are incapable of waiving their rights voluntarily, knowingly, and intelligently, and require juveniles under fifteen to consult with an attorney before waiving their rights.²⁰⁷ Although these reforms reflect an attempt to limit the number of waivers, many children still waive their rights.²⁰⁸ The majority of *Miranda* waivers are deemed proper and very few confessions are excluded on the basis of a *Miranda* violation²⁰⁹—“giving the warnings and getting a waiver has generally produced a virtual ticket of admissibility”²¹⁰ Courts have upheld waivers given by children as young as eight years old.²¹¹ Thus, the “survival of those protections” against involuntary statements “and the vindication of the *Miranda* court’s concern about the increasing number of false confessions,” depends on “the willingness of trial judges to engage in vigorous individual assessment of the voluntariness of a statement *despite* the suspect’s *Miranda* waiver.”²¹² As explained above, in order to assess the

201. LaMontagne, *supra* note 102, at 42 (citation omitted).

202. Kassin et al., *supra* note 4, at 7.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. RESTATEMENT OF THE LAW: CHILDREN AND THE LAW § 14.22 (AM. LAW INST., Tentative Draft No. 1, 2018).

208. *See* SIMON, *supra* note 63, at 138.

209. *Id.*

210. *Missouri v. Siebert*, 542 U.S. 600, 608–09 (2004).

211. Lapp, *supra* note 182, at 929.

212. *In re Elias V.*, 188 Cal. Rptr. 3d 202, 225 (Ct. App. 2015) (emphasis added).

voluntariness of a confession, courts must apply the totality of the circumstances test.²¹³

C. THE TOTALITY OF THE CIRCUMSTANCES TEST IS INSUFFICIENT TO PROTECT JUVENILES

Given that confessions are unlikely to be suppressed due to a *Miranda* violation, the only remaining legal basis for challenging a false confession as involuntary is to invoke the totality of the circumstances test rooted in the concern for due process. However, the totality of the circumstances test is vague and prone to inconsistent application. Attempting to suppress a confession as involuntary using this test has been deemed futile even by the Supreme Court, which declared that arguing that a statement is involuntary after a “voluntary waiver of [*Miranda*] rights requires unusual stamina.”²¹⁴ Thus, the totality of the circumstances test is an “inadequate barrier” against the dangers of interrogation and fails to provide a meaningful basis for challenging a defendant’s, and in particular a juvenile’s, confession as involuntary.²¹⁵ While the test gives discretion to courts and flexibility to interrogators, it strips juvenile suspects of the additional protection they require and increases the likelihood that a false confession will be admitted into evidence and seal the fate of a juvenile defendant.²¹⁶

The totality of the circumstances test purports to require courts to consider the suspect’s age when determining if his or her will was “overborne”²¹⁷—thereby giving the illusion that the test diligently and consistently accounts for youth in its evaluation of confessions. However, courts have provided no guidance regarding the appropriate weight to give a suspect’s age in their consideration of whether his or her confession was voluntary and have failed to articulate a specific test for determining if a suspect’s confession was voluntary.²¹⁸ As a result, the totality of the circumstances test is merely an indeterminate concept that courts apply in a “haphazard manner”—allowing confessions from highly vulnerable suspects to be deemed voluntary.²¹⁹ In addition, courts may be unaware of how specific coercive interrogation techniques exploit the vulnerabilities and developmental deficiencies of juveniles, and thus fail to realize how easily a

213. Tepfer, *supra* note 157, at 21.

214. *Seibert*, 542 U.S. at 609.

215. *J.D.B. v. North Carolina*, 564 U.S. 261, 281 (2011).

216. *See id.*

217. *Id.* at 268 (citation omitted).

218. *See Leo*, *supra* note 53, at 249.

219. *Guggenheim & Hertz*, *supra* note 178, at 160–61.

juvenile's will can be overborne by the use of such tactics.²²⁰

Moreover, as the test stands now, in evaluating the totality of the circumstances in which a confession was given, courts can overlook the use of coercive interrogation tactics when they are paired with noncoercive police behavior, such as providing food, water, or a break.²²¹ In doing so, courts acknowledge the use of deceptive tactics but ultimately conclude that "it is the totality of the circumstances underlying a juvenile confession, rather than the presence or absence of a single circumstance, that determines whether or not the confession should be deemed voluntary."²²² This approach effectively allows courts to ignore the detrimental effect that coercive tactics have on juveniles, so long as noncoercive methods were also used to procure the confession. However, manipulative interrogation techniques unquestionably maintain their influence on a child's likelihood to falsely confess regardless of the simultaneous use of any noncoercive tactics.

In *People v. Gonzalez*, the confession of a sixteen-year-old boy who was unable to read beyond a first-grade level was deemed voluntary under the totality of the circumstances test.²²³ The court concluded that the boy failed to offer any proof that he was unable to understand his *Miranda* rights and that his age and intellectual deficiency could not alone render his confession involuntary.²²⁴ The proof of the boy's inability to understand his rights or give a voluntary confession, however, is indisputably present simply by nature of being intellectually disabled and only sixteen years old. Despite these factors, the totality of the circumstances test allowed the court to feign consideration of his youth and intellectual deficiency but avoid being bound or governed by their undeniable impact on the boy's decision to confess.

Similarly, in *Dassey v. Dittmann*, the confession of Brendan Dassey, a sixteen-year-old boy with extreme intellectual deficiencies, who was characterized as more suggestible than 95% of the population, was deemed voluntary by the Wisconsin state court.²²⁵ The Court of Appeals for the Seventh Circuit admonished the state court for failing to evaluate the coercive effect of the interrogation techniques in light of Dassey's age and

220. *See id.* at 166–67.

221. RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 14.21 cmt. h (AM. LAW INST., Tentative Draft No. 1, 2018).

222. *Gilbert v. Merchant*, 488 F.3d 780, 793 (7th Cir. 2007).

223. *People v. Gonzalez*, 813 N.E.2d 299, 308–09, 311 (Ill. App. Ct. 2004).

224. *Id.*

225. *Dassey v. Dittmann*, 860 F.3d 933, 946–47 (7th Cir. 2017), *reh'g granted*, 2017 U.S. App. LEXIS 14374 (7th Cir. Aug. 4, 2017), *rev'd on reh'g*, 877 F.3d 297 (7th Cir. 2017).

intellect.²²⁶ The Seventh Circuit noted that “[n]owhere is the risk of involuntary and false confessions higher than with youth and the mentally or intellectually disabled,” and accordingly suppressed Dassey’s confession as involuntary.²²⁷ Although an *en banc* panel of the Seventh Circuit recently reversed the district court’s decision and upheld Dassey’s conviction, a vigorous dissent argued that the court failed to consider Dassey’s age in their evaluation of his confession, and maintained that the effect of the “myriad” of “psychologically coercive techniques” used during Dassey’s interrogation precluded his confession from being voluntary.²²⁸ Although Dassey submitted a writ of certiorari before the United States Supreme Court, the Supreme Court has declined to hear the case.²²⁹

As these cases help illustrate, given the heightened impact that coercive interrogation techniques have on juvenile suspects, no statement obtained from a juvenile defendant during a coercive interrogation can “truly be the product of his free choice.”²³⁰ The totality of the circumstances test ignores this reality and raises the risk of “overlooking [and admitting] an involuntary custodial confession,” as was done in the recent *Dassey* decision.²³¹ Although the initial *Dassey* Seventh Circuit decision declared that the “logical conclusion” of the totality of the circumstances test is that coercive interrogation and suspect suggestibility are “on inverse sliding scales,” in that “the more vulnerable or suggestible a suspect, the less coercion it will take to overcome her free will,”²³² courts, including the *en banc* panel, do not consistently reach this “logical conclusion” in their evaluation of the voluntariness of juveniles’ confessions. The failure to reach this conclusion results in the admission of involuntary confessions into evidence, and results in “profound miscarriage[s] of justice.”²³³ Thus, a new legal rule is necessary to ensure that juvenile confessions are examined with the “special caution” they require and that a suspect’s youth is duly accounted for in the evaluation of his or her confession.²³⁴

226. *Id.* at 960–62.

227. *Id.* at 952, 982–83.

228. *Dassey v. Dittmann*, 877 F.3d 297, 318, 336–37 (7th Cir. 2017) (4-3 decision) (Rovner, J., dissenting).

229. *Dassey v. Dittmann*, 138 S. Ct. 2677, 2677 (2018).

230. *See Miranda v. Arizona*, 384 U.S. 436, 458 (1966).

231. *J.D.B. v. North Carolina*, 564 U.S. 261, 281 (2011) (citation omitted).

232. *Dassey*, 860 F.3d at 959.

233. *Dassey*, 877 F.3d at 337 (Rovner, J., dissenting).

234. *See In re Gault*, 387 U.S. 1, 45 (1967).

D. JUSTIFICATIONS FOR THE CURRENT STANDARD

As mentioned above, the totality of the circumstances test allows and encourages judges to consider a defendant's individual characteristics and vulnerabilities in the evaluation of his or her confession.²³⁵ Thus, the literal interpretation of the totality of the circumstances test enables and requires courts to account for a defendant's age in the analysis of whether a confession was voluntary.²³⁶ However, the test contains no concrete provision detailing the weight to give a defendant's age.²³⁷ Thus, the insufficiency and danger of the current legal standard is rooted in the flexibility and discretion with which it can be applied—the test's lack of specificity allows courts to avoid directly considering a defendant's age.

III. A PROPOSED NEW LEGAL STANDARD TO EVALUATE JUVENILE CONFESSIONS

A. THE LAW DIRECTLY PROTECTS JUVENILES IN OTHER CRIMINAL CONTEXTS

The Supreme Court has recognized and specifically accounted for the unique aspects of adolescence in other criminal contexts. In *Roper v. Simmons*, the Court held that capital punishment was unconstitutional for juveniles who committed a crime when they were under the age of eighteen.²³⁸ Justice Kennedy acknowledged the scientific studies that prove juveniles' "lack of maturity and . . . underdeveloped sense of responsibility," that often result in "impetuous and ill-considered actions and decisions."²³⁹ The Court concluded that, because juveniles are categorically different from adults, the criminal justice system must treat them as such.²⁴⁰

In *Graham v. Florida*, the Court extended *Roper's* reasoning and concluded that it was unconstitutional to impose life without parole sentences for nonhomicide crimes if the defendant was under eighteen at the time of the crime.²⁴¹ The Court incorporated psychological research on behavioral control and determined that the "features that distinguish juveniles from adults . . . can lead to poor decisions [by juveniles]" and "put

235. *J.D.B.*, 564 U.S. at 284 (Alito, J., dissenting); *Commonwealth v. Leon L.*, 756 N.E.2d 1162, 1167–69 (Mass. App. Ct. 2001).

236. *J.D.B.*, 564 U.S. at 280–81 (Alito, J., dissenting).

237. *Leo*, *supra* note 53, at 249.

238. *Roper v. Simmons*, 543 U.S. 551, 575 (2005).

239. *Id.* at 569 (citation omitted).

240. *Id.* at 572–73.

241. *Graham v. Florida*, 560 U.S. 48, 79 (2010).

them at a significant disadvantage in criminal proceedings.”²⁴² In *Miller v. Alabama*, the Supreme Court deemed mandatory life without parole sentences unconstitutional as applied to all juveniles.²⁴³

Although these decisions reflect the Court’s understanding of the distinct cognitive and developmental characteristics of juveniles in the context of punishment, they do not extend to directly protect juveniles from the dangers of interrogation. The vulnerability of juveniles to the pressures of interrogation and their resulting tendency to falsely confess has been acknowledged, but a concrete rule has not been formed to supplant or modify the totality of the circumstances test. In *Haley v. Ohio*, the Court concluded that because interrogation methods that “would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens,” courts must take “special care in scrutinizing” the confession of a “mere child—an easy victim of the law”²⁴⁴

The Court reiterated this sentiment in *In re Gault*, urging future courts to examine the confessions of juveniles with “special caution” to ensure that confessions are “not the product of ignorance of rights or of adolescent fantasy, fright or despair.”²⁴⁵ Although these cases recognize the impact of interrogation techniques on a child’s likelihood of falsely confessing, they fail to prescribe a specific way in which a suspect’s age must guide the evaluation of his confession. Even the Supreme Court has acknowledged that “[t]here is no guide to the decision of cases [involving juvenile confessions], except the totality of circumstances” test.²⁴⁶ As a result, these cautionary statements, while accurate, have had little effect on the application of the totality of the circumstances test and have thus failed to prevent the admission of false confessions into evidence.

In 2011, the Court decided *J.D.B. v. North Carolina*, in which a thirteen-year-old boy was questioned at his school by two police officers in a “closed-door conference room” regarding a robbery he was suspected of committing.²⁴⁷ The boy was not given an opportunity to speak to his legal guardian, was not read his *Miranda* rights, and was not told “that he was free to leave the room.”²⁴⁸ After learning of the prospect of juvenile detention,

242. *Id.* at 78.

243. *Miller v. Alabama*, 567 U.S. 460, 489 (2012).

244. *Haley v. Ohio*, 332 U.S. 596, 599 (1948).

245. *In re Gault*, 387 U.S. 1, 45, 55, (1967).

246. *Gallegos v. Colorado*, 370 U.S. 49, 55 (1962).

247. *J.D.B. v. North Carolina*, 564 U.S. 261, 265 (2011).

248. *Id.* at 266.

the boy confessed to the robbery.²⁴⁹ He later argued that his statements should be suppressed as involuntary because he had been interrogated without properly waiving his *Miranda* rights.²⁵⁰ In her majority opinion, Justice Sotomayor declared that because “children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave . . . a child’s age properly informs the *Miranda* custody analysis.”²⁵¹ The Court reasoned that ignoring “the very real differences between children and adults,” would “deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.”²⁵² Effectively, the Court adopted a “reasonable juvenile” standard to determine if a child is in custody for purposes of administering *Miranda* warnings.²⁵³ This standard is now codified in the forthcoming Restatement of Children and the Law, which states that *Miranda* warnings must be given if “a reasonable juvenile of the suspect’s age would feel that [he] or [she] . . . was not at liberty to terminate the interview.”²⁵⁴

Although Justice Sotomayor referred to the differences between children and adults as a “commonsense reality,” officers, interrogators, and courts often ignore these differences.²⁵⁵ By requiring officers to consider a suspect’s youth in their custody analysis, *J.D.B.* ensures that more juveniles will be informed of their *Miranda* rights, even if they are not being questioned in a police station. However, given that most juveniles waive their *Miranda* rights, for reasons described above, many confessions are still evaluated for voluntariness under the totality of the circumstances test. Thus, the progress made by *J.D.B.* does little to alleviate the inadequacies of the totality of the circumstances test.

B. A CHANGE IN THE LEGAL STANDARD ASSESSING THE VOLUNTARINESS OF A JUVENILE’S CONFESSION IS NEEDED

The current legal standard governing the evaluation of confessions allows courts to give a mere perfunctory acknowledgment of a suspect’s youth in their evaluation of the voluntariness of his or her confession—thereby allowing coerced confessions to enter easily into evidence and

249. *Id.* at 267.

250. *Id.* at 267–68.

251. *Id.* at 264–65.

252. *Id.* at 281.

253. RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 14.20 cmt. a (AM. LAW INST., Tentative Draft No. 1, 2018).

254. *Id.* § 14.20(b)(1).

255. *J.D.B.*, 564 U.S. at 265.

inevitably dictate the outcome of a defendant's trial. In order to accord juveniles the proper protection from the "inherently compelling pressures" of interrogation and prevent the admission of compelled confessions into evidence, "more rigorous judicial scrutiny" of juvenile confessions is necessary.²⁵⁶ In order to ensure such increased judicial scrutiny, the Court must, as it did in *Roper*, *Graham*, *Miller*, and *J.D.B.*, incorporate the scientific and psychological research demonstrating juveniles' heightened susceptibility to interrogation into a new legal rule governing the evaluation of juvenile confessions. Such a rule will not only extend, but also expand upon the holding and language from *J.D.B.*, and establish an improved standard to guide courts' evaluations of juvenile confessions.

Given the effect that manipulative interrogation techniques have on adolescents' likelihood to falsely confess, age should be the primary and guiding factor in assessing the voluntariness of a juvenile's confession. A child's age and all the accompanying vulnerabilities are inseparable from the voluntariness of his or her confession; the suspect's age affects all his or her responses and dictates his or her decision to confess. As a result, age cannot merely be one of many characteristics considered in the evaluation of the totality of the circumstances surrounding a confession; it must be the primary factor considered. Just as a child's age must "properly inform[]" the custody analysis for purposes of *Miranda* warnings,²⁵⁷ a child's age must "properly inform" the court's evaluation of the voluntariness of his or her confession.

In order to adequately protect children from the impact of the Reid technique and to ensure that a defendant's youth is the primary factor guiding the evaluation of his or her confession, it is imperative that confessions obtained from juveniles through the use of coercive interrogation techniques be presumed involuntary. However, because interrogations are rarely videotaped, courts often have no way of knowing whether coercive interrogation methods, such as the Reid technique, were used. As a result, an additional rule is necessary to ensure that children are adequately protected from the impact of the potential use of these techniques. Thus, if the court is unsure what interrogation methods were used, juvenile confessions should be presumed to be involuntary, regardless of whether noncoercive tactics were used, until the prosecution can prove that the police's interrogation methods were not coercive. If the prosecution is unable to prove that no coercive interrogation techniques were used, the child's confession should be suppressed. These two proposed rules would both ensure that age

256. *In re Elias V.*, 188 Cal. Rptr. 3d 202, 225 (Ct. App. 2015).

257. *J.D.B.*, 564 U.S. at 265.

becomes courts' guiding factor in the evaluation of juvenile confessions and guarantee that the impact of coercive techniques on juvenile suspects' likelihood to produce a false confession is not underestimated, despite any simultaneous employment of noncoercive tactics. Additionally, the adoption of such a proposed legal rule would not only help prevent the admission of involuntary juvenile confessions, but would also discourage the use of deceptive interrogation methods by investigators, as confessions procured through such tactics would be consistently suppressed. The proposed rule dictating that confessions be presumed involuntary whenever the court is unsure if coercive methods were used would also incentivize police officers to record all interrogations so as to prove that no manipulative interrogation methods were used.

In re Elias V. demonstrates the logical application of a legal rule requiring that age be the primary consideration in the evaluation of a juvenile's confession. In *Elias*, a thirteen-year-old defendant's confession was suppressed as involuntary on the grounds that his "youth . . . rendered him most susceptible to influence" and due to the likelihood that the "use of deception and overbearing tactics would induce involuntary and untrustworthy incriminating admissions."²⁵⁸ This reasoning applies to all coercive interrogations of juveniles and their resulting confessions. Although the totality of the circumstances test currently allows courts to consider a child's age among many other characteristics, in order to sufficiently account for the complexities of youth and its impact on the likelihood of a confession, courts should treat a defendant's age as the primary factor in their analysis. If courts are forced to directly account for a child's age, they will inevitably conclude, as the *Elias* court did, that juveniles' inculpatory statements made in response to coercive interrogation tactics "cannot be deemed a product of his free will," and must be suppressed.²⁵⁹ The *Elias* court's reasoning embodies the "commonsense reality" that children and adults are different, and that their resulting confessions must be evaluated in light of those differences. However, unless that commonsense reality is codified in a concrete rule requiring age to guide the evaluation of confessions and requiring juvenile confessions resulting from coercive interrogation techniques to be presumed involuntary, compelled confessions by juveniles will continue to be deemed voluntary and admitted into evidence.

258. *Elias*, 188 Cal. Rptr. 3d at 217 (citation omitted) (internal quotation marks omitted).

259. *Id.* at 225.

C. OTHER SIMULTANEOUS REFORMS

1. The Recording Requirement

The feasibility of a rule instructing courts to suppress juvenile confessions obtained through coercive techniques depends on a simultaneous requirement that interrogations be recorded. Recording interrogations has been a longstanding proposed reform to discourage coercive interrogation tactics and enable courts to understand the context of a defendant's confession.²⁶⁰ Many police officers support recording interrogations—in a survey of 600 officers, more than 80% claimed that they believed all interrogations, regardless of the suspect's age, should be recorded.²⁶¹ Officers believe recording interrogations would allow them to focus on the suspect rather than taking notes, provide instant replay, and reduce the time they spend defending their interrogation methods in court.²⁶²

Although recording juvenile interrogations would undoubtedly reduce instances of overt coercion and “provide documented evidence of known false confession risk factors,” electronic recording would not entirely eliminate the risk of involuntary and false confessions.²⁶³ The tendencies that render juvenile suspects particularly prone to producing false confessions, such as their difficulty with self-regulation, sensitivity to short-term rewards, limited future orientation, and tendency to comply with authority may not be readily observable on camera.²⁶⁴ Thus, additional safeguards are necessary to reduce the frequency of juveniles' false confessions.

2. Implementing the PEACE Method

In addition to requiring the recording of interrogations, there are several other possible reforms that might reduce the prevalence of false confessions and thus eliminate the need for any analysis of the confession's voluntariness. The most direct of these reforms is to alter the permissible interrogation method for juveniles. As discussed above, the Reid technique is wholly inappropriate for use on children, and yet is still consistently used on juvenile suspects. Police must be taught that they cannot reliably intuit

260. Kassin, *supra* note 24, at 7.

261. Robert J. Norris et al., *Preventing Wrongful Convictions: An Analysis of State Investigation Reforms*, 30 CRIM. JUST. POL'Y REV. 597, 613 (2019).

262. Kassin, *supra* note 24, at 7. Recording interrogations would also likely increase the public's faith in law enforcement. *Id.*

263. Cleary, *supra* note 69, at 126.

264. *Id.* at 127.

whether an adolescent is guilty based on their behavioral cues, because their typical behavior may be inadvertently indicative of guilt. Investigators should also be prohibited from using maximization, minimization, and false evidence techniques on children, as research proves that they cannot withstand such psychological manipulation.

Rather than employing the Reid technique on juveniles, interrogators should adopt the PEACE technique, a method used by countries such as England, Germany, and Australia.²⁶⁵ The PEACE technique is a nonconfrontational approach to interrogation developed by police officers, lawyers, and psychologists.²⁶⁶ The technique consists of five stages: “preparation and planning,” “engage and explain,” “account,” “closure,” and “evaluate.”²⁶⁷ The PEACE method instructs interrogators to use a nonaccusatory approach, in which new information is compared to the suspects’ previous statements and other available evidence.²⁶⁸ PEACE does not permit police to lie to suspects and prioritizes obtaining accurate information over eliciting confessions.²⁶⁹ This approach would prevent interrogators from using coercive techniques on juveniles and help reduce the risk of false confessions.²⁷⁰ The goal of PEACE is not to decrease the rate of confession, but merely to improve the accuracy of the confessions obtained.²⁷¹

3. Legislative Reforms

Legislation aimed at protecting juveniles in the criminal justice system is another effective way to reduce the prevalence and admission of false confessions. California recently passed a bill requiring that juveniles “15 years of age or younger consult with legal counsel” before waiving their *Miranda* rights and submitting to an interrogation.²⁷² The bill requires courts to “consider the effect of the failure to comply with the . . . requirement in adjudicating the admissibility of statements” made by juvenile defendants.²⁷³ This bill reflects the legislature’s attempt to supplement the insufficient existing legal protections for juveniles. The bill will likely prevent many

265. Kassin, *supra* note 61, at 59.

266. *Id.*

267. *Id.*

268. Cleary & Warner, *supra* note 54, at 271.

269. *See id.*; Kassin et al., *supra* note 4, at 28.

270. *See* Cleary & Warner, *supra* note 54, at 271.

271. *See* Kassin et al., *supra* note 4, at 28.

272. S. 395, 2017 Leg., Reg. Sess. (Cal. 2017).

273. *Id.*

juvenile suspects from inadvertently or unwisely waiving their *Miranda* rights before consulting with an attorney. However, the bill only protects juveniles aged fifteen and younger; a prior version of the bill also applied to sixteen- and seventeen-year-old suspects and children, whose age certainly requires extra procedural safeguards as well. Moreover, this bill only requires consultation with an attorney prior to the waiver of *Miranda* rights, but does not offer protection to juveniles who have waived their *Miranda* rights and face the perils of the interrogation process.

4. Presence of Attorneys During Interrogation

A requirement that an attorney be present throughout the interrogation to help combat the use of manipulative techniques would also help reduce the risk of false confessions. Such a proposition, however, has been rejected by some states because of the high cost of providing attorneys at the interrogation stage.²⁷⁴ Law enforcement agencies would also undoubtedly oppose providing attorneys at this stage, as most attorneys would likely instruct their client not to answer any questions and simply terminate the interrogation. In order to assuage some concerns, a distinction could be made depending on the seriousness of the offense—perhaps requiring attorneys to be present during the interrogations of juveniles accused of felonies, but not those accused of misdemeanors. It is imperative that the requirement be for an attorney to be present during interrogation, rather than a parent. A parent's presence during interrogation has not proven to necessarily be an effective form of protection—all five boys in the Central Park jogger case were interrogated in the presence of a parent, as is required by New York law, and each still waived his *Miranda* rights and falsely confessed.²⁷⁵

D. DISTINCTIONS AMONG JUVENILES BY AGE

Although all juveniles under eighteen are legally considered children, courts and legislators often distinguish between adolescents of different ages, particularly among fifteen, sixteen, and seventeen-year-olds. In *Thompson v. Oklahoma*, the Court ruled capital punishment unconstitutional for defendants under the age of sixteen.²⁷⁶ Later, in *Roper v. Simmons*, the Court concluded that the death penalty was unconstitutional for all defendants under the age of eighteen.²⁷⁷ In its determination that sixteen- and

274. Scott-Hayward, *supra* note 1, at 70.

275. *Id.*

276. *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988).

277. *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005).

seventeen-year-olds warranted the same protection from capital punishment as younger adolescents, the Court incorporated research regarding the neurological and cognitive development of all adolescents.²⁷⁸ The Court relied on research revealing that brain regions associated with impulse control, emotion regulation, and moral reasoning “do not reach a fully mature state until after the age of [eighteen],”²⁷⁹ to conclude that while sixteen- and seventeen-year-olds are closer to adulthood than younger children, and may even think of themselves as adults, they “do not have adult levels of judgment, impulse control, or ability to assess risks.”²⁸⁰ Thus, the Court recognized that, because sixteen- and seventeen-year-old defendants suffer from the same developmental immaturity as younger juveniles, they accordingly warrant the same exemption from the death penalty.²⁸¹

While the Supreme Court has addressed the disparate treatment of juveniles of different ages in the context of capital punishment and life without parole sentences, concluding that both are unconstitutional as applied to all children under eighteen, the Court has not addressed whether the legal standard used to evaluate confessions should differ based on a juvenile’s age.

The proposed legal rules detailed above should not distinguish between adolescents of different ages, and should instead apply to all suspects under eighteen. In *Roper*, the Court reasoned that the transient characteristics of youth that merited different punishment for juveniles and adults, such as recklessness, inability to consider long-term consequences, and impulsivity, were present among all adolescents under eighteen.²⁸² Similarly, the characteristics that make juveniles more susceptible to interrogation techniques and more prone to falsely confessing, such as impulsivity, heightened sensitivity to short-term rewards, difficulty contemplating long-term consequences, and underdeveloped temporal perspective, are pervasive among all juveniles. Thus, age should be the guiding factor in the analysis of all juvenile confessions and coerced confessions by all children under eighteen should be presumed involuntary.

On the other hand, a limited application of the proposed legal rule to younger adolescents might highlight the impact that coercive interrogation techniques have on younger children. In a study of 125 false confessions, out

278. See AMA Amicus Brief, *supra* note 116, at 2, 4.

279. *Id.* at 2.

280. *Id.* at 4.

281. *Roper*, 543 U.S. at 570–71.

282. *Id.*; AMA Amicus Brief, *supra* note 116, at 4.

of the 40 confessions offered by juveniles under eighteen, 22 were offered by children aged fifteen and under.²⁸³ Given that more than half of the juveniles who falsely confessed were aged fifteen or under, it is likely that children in this age range are particularly vulnerable to the pressures of interrogation and prone to falsely confessing.²⁸⁴ Limiting the proposed legal rule to children aged fifteen and under would help directly protect these younger children from the dangers of interrogation. Similarly, the proposed policy reforms, such as requiring the filming of interrogations and the implementation of the PEACE method, could be limited to the interrogations of younger juveniles. A limited application of these reforms to younger children would align with the recent California bill that requires children fifteen and under to consult with an attorney before waiving their *Miranda* rights.²⁸⁵

While children aged fifteen and younger are undoubtedly vulnerable to coercive interrogation tactics, older adolescents are also susceptible to these techniques. In the same study of 125 false confessions, 33 of the 40 juveniles who falsely confessed were between ages fourteen and seventeen—suggesting that legal and policy reforms are necessary to protect older adolescents as well.²⁸⁶ Moreover, many juvenile defendants transferred to adult court are between ages fourteen and seventeen.²⁸⁷ Given that the potential criminal charges and sentences for juveniles tried as adults are far more punitive than those imposed in juvenile court, it is crucial that reforms extend to protect older adolescents as well. Thus, the revised legal rule and the proposals to record interrogations, implement the PEACE method, and require attorney presence at the interrogation stage should apply to all suspects under eighteen. Implementing these reforms may help prevent the admission of a sixteen- or seventeen-year-old's false confession in adult court and the resulting conviction and harsh sentence that would inevitably follow.

Extending legal and policy reforms to older adolescents would not impose an unreasonable burden on courts, legislators, or law enforcement. While the California legislature may have been concerned about the high cost of providing attorneys to consult with all juveniles under eighteen before waiving their *Miranda* rights, and thus reduced the recent bill's reach to

283. Drizin & Leo, *supra* note 40, at 944.

284. *Id.*

285. S. 395, 2017 Leg., Reg. Sess. (Cal. 2017).

286. *See* Drizin & Leo, *supra* note 40, at 944.

287. *Id.*

children aged fifteen and under, implementing a new legal standard to govern the evaluation of all juvenile confessions, adopting a comprehensive change in the permissible interrogation technique for all juvenile interrogations, and requiring the recording of all interrogations would not be more burdensome than if those reforms were limited to younger adolescents.

In sum, the developmental deficiencies that differentiate juveniles from adults and increase the likelihood that juveniles will falsely confess are present among all children under eighteen. Thus, in order to adequately protect adolescent suspects, it is crucial to extend the new legal standard and policy reforms suggested in this Note to all juveniles under eighteen.

CONCLUSION

Given their continuing cognitive and neurological development, children tend to prioritize short-term rewards, struggle to regulate their behavior, fail to consider long-term consequences, and have an underdeveloped temporal perspective. As a result of these transient developmental deficiencies, juveniles are extremely vulnerable to coercive interrogation techniques that implicate these weaknesses, and are thus very likely to falsely or involuntarily confess.

The existing totality of the circumstances test that dictates the evaluation of a defendant's confession merely requires that age be one of several factors considered, but assigns no binding weight to a defendant's youth. In order to account for the impact of coercive interrogation techniques on children, courts should implement a new legal rule requiring that a juvenile's age be the primary and guiding factor in the evaluation of the voluntariness of his or her confession. In order to ensure that age becomes the guiding factor in the evaluation of juvenile confessions, confessions obtained through the confirmed use of coercive techniques must be presumed to be involuntary. Moreover, in cases in which the interrogation tactics used are not clear, juvenile confessions should be presumed involuntary until the prosecution can prove that no manipulative methods were used during the interrogation. A legal rule that clearly requires juvenile confessions to be evaluated differently from adult confessions will account for the distinct effect that coercive interrogation techniques have on children as opposed to adults. Moreover, such proposed rules align with the Court's differential treatment of juveniles and adults in other criminal contexts and reflect the obvious reality that children and adults are different.

