NOTES

CURTAILING COERCION OF CHILDREN: REFORMING CUSTODIAL INTERROGATIONS OF JUVENILES

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INTRODUCTION

On April 19, 1989, a young white woman was viciously beaten and raped in New York City's Central Park by convicted rapist and murderer Mathias Reyes.[1] Despite the presence of Reyes's DNA on the victim's body, he was not held accountable until

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1. *Exoneration Anniversary: Central Park Five*, INNOCENCE PROJECT (Dec. 19. 2012), https://innocenceproject.org/exoneration-anniversary-central-park-five/ [https://perma.cc/3VGC-LQB5]; Evan Nesterak, *Coerced to Confess: The Psychology of False Confessions*, BEHAV. SCIENTIST (Oct. 21, 2014), https://behavioralscientist.org/coerced-to-confess-the-psychology-of-false-confessions/ [https://perma.cc/NDN3-ZNJV].

he confessed in 2002.[2] Instead of investigating Reyes, the New York Police Department arrested five teenagers who had been in Central Park on the night of the crime.[3]

The boys were black and Hispanic and between the ages of fourteen and sixteen.[4] They were deprived of food, drink, and sleep for over twenty-four hours while in police custody.[5] All five boys were subjected to police interrogations that lasted up to thirty hours[6] and were led to believe that they would be allowed to go home if they confessed.[7] All five teenagers eventually confessed to the crime despite the fact that they were innocent.[8] Even though they quickly recanted their confessions, all five were convicted at trial and collectively spent forty-one years in prison for a crime they did not commit.[9]

Coerced false confessions are a leading cause of juvenile wrongful convictions. A Northwestern University study of all exonerations in the United States from 1989 to 2003 found that of the thirty-three exonerations of individuals younger than eighteen years old, fourteen, or forty-two percent, had falsely confessed.[10] Among the thirteen exonerees younger than fifteen years old, nine, or sixty-nine percent, had falsely confessed.[11] In contrast, only thirteen percent of adult exonerees had falsely confessed.[12] In a different study of cases involving false confessions, Professors Steven Drizin and Richard Leo found that thirty-three percent of the 125 cases they examined had involved defendants who were minors.[13] Professors Drizin's and Leo's

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2. Nesterak*, supra* note 1.

3. *See* Craig Wolff, *Youths Rape and Beat Central Park Jogger*, N.Y TIMES (Apr. 21, 1989), https://www.nytimes.com/1989/04/21/nyregion/youths-rape-and-beat-central-park-jogger.html [https://perma.cc/8JX4-BTLL].

4. Nesterak, *supra* note 1.

5. Yusef Salaam, *I'm One of the Central Park Five. Donald Trump Won't Leave Me Alone.*, WASH. POST (Oct. 12, 2016, 11:30 AM), https://www.washingtonpost.com/posteverything/wp/2016/10/12/im-one-of-the-central-park-five-donald-trump-wont-leave-me-alone/ [https://web.archive.org/web/20221215003627/https://www.washingtonpost.com/posteverything/wp/2016/10/12/im-one-of-the-central-park-five-donald-trump-wont-leave-me-alone/].

6. Nesterak, *supra* note 1.

7. *Id.* One detective admitted to using a "ruse" on the night after the rape to get a confession from one of the boys, telling him, "I don't care if you tell me anything" because police had already obtained physical evidence placing him at the scene of the crime. Sydney H. Schanberg, *A Journey Through the Tangled Case of the Central Park Jogger*, THE VILL. VOICE (Nov. 19, 2002), https://www.villagevoice.com/2002/11/19/a-journey-through-the-tangled-case-of-the-central-park-jogger/ [https://perma.cc/QB36-9MN6]. After telling him, "[Y]ou don't have to tell me anything. Because you're going down for rape," the fifteen-year-old dropped his initial claim that he was innocent and told the detective that he was there but did not commit the rape. *Id.*

8. Nesterak, *supra* note 1.

9. *Id.*; *see also* People v. Wise, 752 N.Y.S.2d 837 (N.Y. Sup. Ct. 2002) (granting postconviction relief to the Central Park Five).

10. Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 & tbl. 4 (2005). The study identified 340 total wrongful convictions. *Id.* at 524.

11. *Id.* at 545 & tbl. 4.

12. *Id.* at 545.

13. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 944, 945 tbl.3 (2004). In comparison, juveniles comprise only eight percent of individuals

finding was replicated in a 2010 study that found that just over thirty-one percent of 103 wrongfully convicted youths had falsely confessed.[14]

Yet, reforms to custodial interrogations of juveniles remain under-adopted, and reforms that are implemented remain under-inclusive of the leading factors that cause false confessions. Specifically, police use of deception in obtaining false confessions from juveniles is a topic that has only recently begun garnering the attention of state legislatures, despite voluminous research demonstrating juveniles' unique vulnerabilities to coercive interrogation tactics.[15] Protecting the constitutional rights of children is a much discussed but convoluted subject in both the federal and state legal landscapes. But the systemic issue of the contribution of deceptive police interrogation tactics to wrongful convictions for juvenile defendants is both urgent and equally applicable in all jurisdictions.

Part I of this Note articulates the causes of juvenile false confessions in custodial interrogations,[16] including the subject of the reforms advocated here: law enforcement deception.[17] Part II discusses the constitutional rights that have historically applied to children in custody and how states and other countries have responded to the risks that juveniles will falsely confess to crimes they did not commit. Last, Part III advocates for states to adopt legislative reforms to preventing officers from using deception in custodial interrogations of juveniles. These reforms will cause a decrease in juvenile wrongful convictions by eliminating a leading cause of such convictions.

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arrested for murder and sixteen percent of individuals arrested for rape in the United States. *See* HOWARD N. SNYDER, U.S. DEP'T OF JUST., NCJ 214563, JUVENILE ARRESTS 2004, at 4 tbl.38 (2006), https://rlsei.com/blog/wp-content/uploads/2007/02/juv_arrest.pdf [https://perma.cc/SAE9-T7J3].

14. Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 904 (2010).

15. *See* S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021); S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021).

16. This Note defines *custodial interrogation* as "express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody." WASH. REV. CODE ANN. § 10.122.020(1) (West 2023); *cf.* WIS. STAT. ANN. § 968.073(1)(a) (West 2022) ("'Custodial interrogation' means an interrogation by a law enforcement officer . . . of a person suspected of committing a crime from the time the suspect is or should be informed of his or her rights to counsel and to remain silent until the questioning ends, during which the officer or agent asks a question that is reasonably likely to elicit an incriminating response and during which a reasonable person in the suspect's position would believe that he or she is in custody or otherwise deprived of his or her freedom of action in any significant way.").

17. This Note defines *deception* as "the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer . . . to a subject of a custodial interrogation." 705 ILL. COMP. STAT. ANN. 405/5-401.6(a) (West 2022); *cf.* H.B. 0171 64th Leg. Assemb., Gen. Sess. (Utah 2022); DEL. CODE ANN. tit. 11, § 2021(2) (West 2022) ("'Deceptive tactics' means stating evidence presently exists, knowing that it does not, or communicating promises of leniency in sentencing, charging, or pretrial release in order to induce a confession or other incriminating evidence.").

I. JUVENILE SUSPECTS, DECEPTIVE OFFICERS, AND THE RISK OF FALSE CONFESSIONS

Psychologists Saul Kassin and Lawrence Wrightsman identified three distinct types of false confessions: voluntary, coerced-compliant, and coerced-internalized.[18] In voluntary false confessions, a juvenile confesses without coercion or pressure due to some externality, like a desire to protect the real offender or underlying mental illness.[19] In contrast, coerced-compliant and coerced-internalized confessions are attributable to "the coerciveness of the interrogation process."[20]

In coerced-compliant confessions, the juvenile confesses during a coercive police interrogation "despite knowing privately that he or she is truly innocent, but often retracts the confession later."[21] And coerced-internalized confessions occur "when the suspect—through the fatigue, pressures, and suggestiveness of the interrogation process—actually comes to believe that he or she committed the offense."[22] The important difference between the two kinds of coerced confessions is that in coerced-compliant confessions, the suspect maintains awareness that they are actually innocent, whereas in coerced-internalized confessions, the individual is convinced that they actually did perpetrate the crime.[23]

As discussed in Section I.A, juveniles are uniquely susceptible to both types of coerced confessions. And the risk that juveniles will falsely confess is further heightened when police utilize procedures like the Reid Technique and maximization, minimization, and contamination described in Section I.B.

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18. Saul M. Kassin & Lawrence S. Wrightsman, *Confession Evidence*, *in* THE PSYCHOLOGY OF EVIDENCE AND TRIAL PROCEDURE 76 (Saul M. Kassin & Lawrence S. Wrightsman eds., 1985); *see also* Laurel LaMontagne, Note, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 29, 32–33 (2013) (discussing Kassin's and Wrightsman's classification scheme).

19. Kassin & Wrightsman, *supra* note 18, at 76–77.

20. *Id.* at 77.

21. *Id.* at 77. Coerced-compliant confessions were extracted from several of the Central Park Five defendants. *See* Nesterak, *supra* note 1.

22. Kassin & Wrightsman, *supra* note 18, at 78. In a student note, Laurel LaMontagne pointed to the case of Michael C. as an example of a coerced-internalized confession. LaMontagne, *supra* note 18, at 31; *see also infra* notes 88–96 and accompanying text (discussing the Michael C. case). There, the fourteen-year-old defendant was interrogated by police for several hours after his younger sister was murdered. *See* John Wilkens, *'Haunted' by the Crowe Murder Case, Defense Attorney Proposes Children's Bill of Rights*, SAN DIEGO UNION TRIB. (Mar. 6, 2021, 6:00 AM), https://www.sandiegouniontribune.com/news/courts/story/2021-03-06/crowe-case-attorney-mcinnis-reforms [https://web.archive.org/web/20221228113841/https://www.sandiegouniontribune.com/news/courts/story/2021-03-06/crowe-case-attorney-mcinnis-reforms]. Michael confessed after police lied that they found blood in Michael's bedroom and that his parents believed he was guilty. *Id.* Promising leniency if he confessed, officers suggested that there were two sides to Michael's personality and that "bad Michael" took over in a rage and killed his sister, a theory Michael parroted in his confession. *Id.*

23. Kassin & Wrightsman, *supra* note 18, at 77–78; *see also* Marco Luna, Note, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, and Prosecutorial Discretion*, 18 NEV. L.J. 291, 305–06 (2018) (distinguishing coerced-compliant confessions from coerced-internalized confessions).

A. Juveniles' Susceptibility to False Confessions

The Supreme Court has recognized that "'[c]ustodial police interrogation, by its very nature, isolates and pressures the individual,' . . . and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed."[24] Juveniles are particularly susceptible to the pressures described by the Court.

It is readily apparent to any parent, guardian, or caretaker that youths have difficulty weighing and assessing risks, which can lead to unsafe decisions.[25] Juvenile decision-making also places emphasis on immediate rewards rather than long-term consequences, leading to difficulties in understanding and accounting for future negative effects.[26] Juveniles' inability to accurately assess decisionmaking risks and propensity for favoring immediate rewards creates an extreme risk that youths will "go along" with what interrogating officers want them to say, which may result in a coerced-compliant false confession.[27]

And juveniles are especially vulnerable to external pressure, increasing the likelihood of negative outcomes such as giving into peer pressure or joining gangs.[28] Additionally, juveniles have unique vulnerability to the *illusion of transparency*.[29] The illusion of transparency refers to a "tendency to overestimate the extent to which their internal [mental] states leak out and are detectable by others."[30] This overestimation can cause juveniles to believe that their internal mental processes and mental states are easily understood by others, despite the fact that people have a very limited ability to discern the true feelings of other individuals.[31] Juveniles' tendency to believe officers' false narratives over their own knowledge of events and tendency to overestimate the degree to which others understand their internal mental processes

24. Corley v. United States, 556 U.S. 303, 320–21 (2009) (citation omitted) (quoting Dickerson v. United States, 530 U.S. 428, 435 (2000)).

25. *See* INT'L ASS'N OF CHIEFS OF POLICE, U.S. DEP'T OF JUST., NCJ 240101, REDUCING RISKS: AN EXECUTIVE'S GUIDE TO EFFECTIVE JUVENILE INTERVIEW AND INTERROGATION 4 (2012) [hereinafter REDUCING RISKS], https://www.nationalpublicsafetypartnership.org/View/Clearinghouse-Documents/IACP%20ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf [https://perma.cc/3ZNW-SH65].

26. *Id.*

27. *See* Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 411 (2013) ("Children questioned by authority figures acquiesce more readily to suggestion during questioning. They seek an interviewer's approval and respond more readily to negative pressure. Under stress of a lengthy interrogation, they may impulsively confess falsely rather than consider the consequences." (footnotes omitted)).

28. *Id.*

29. Jason Mandelbaum & Angela Crossman, *No Illusions: Developmental Considerations in Adolescent False Confessions*, AM. PSYCH. ASS'N: CYF NEWS (Dec. 2014), https://www.apa.org/pi/families/resources/newsletter/2014/12/adolescent-false-confessions [https://perma.cc/ANP8-TRZ7].

30. Thomas Gilovich & Kenneth Savitsky, *The Spotlight Effect and Illusion of Transparency: Egocentric Assessments of How We Are Seen by Others*, 8 CURRENT DIRECTIONS PSYCH. SCI. 165, 165 (1999).

31. Mandelbaum & Crossman, *supra* note 29.

increases their susceptibility to coerced-internalized confessions.[32]

The unique vulnerabilities juveniles possess concerning their mental cognition and decision-making make them particularly vulnerable to coercion and pressure in the custodial interrogation environment. And the data show that these vulnerabilities make juveniles especially prone to false confessions.

B. Deceptive Interrogation Tactics

Police interrogation tactics can also greatly exacerbate the disadvantages that juveniles possess in a custodial interrogation environment. Several commonly utilized tactics that are known to produce false confessions are discussed in this Part.

1. The Reid Technique

One deceptive interrogation technique is the Reid Interrogation Technique, which has been the predominate method of interrogation in the United States since the 1960s; hundreds of thousands of police officers have been trained in its use.[33]

The method directs the interrogator to begin by completely isolating the suspect and conducting a non-accusatory informational interview.[34] The purpose of this stage, referred to as the Behavior Analysis Interview ("BAI"), is to determine if the suspect is innocent or guilty.[35] Once an officer determines that the suspect is guilty, the Reid Technique directs the interrogator to proceed into a nine-step questioning process that emphasizes the officer's belief in the suspect's guilt.[36] Interrogators are instructed to minimize the seriousness of the offense, offer a rationalization to make it easier for the suspect to confess, reject assertions of innocence, keep the suspect engaged, and turn an admission "into a "legally acceptable and substantiated confession that discloses the circumstances and details of the act."[37]

The BAI portion of the Reid Technique is heavily scrutinized because it assumes that an interrogator can deduce innocence or guilt from a suspect's verbal and nonverbal cues.[38] But multiple studies have shown that even trained interrogators are very poor at deducing whether an individual is lying through an interview process.[39]

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32. *Id.*

33. Wyatt Kozinski, Note *The Reid Interrogation Technique and False Confessions: A Time for Change*, 16 SEATTLE J. FOR SOC. JUST. 301, 301 (2018).

34. Ariel Spierer, Note, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, 92 N.Y.U. L. REV. 1719, 1725 (2017).

35. *Id.*

36. *Id.* at 1727 ("The interrogator confidently asserts that he is absolutely certain of the suspect's guilt . . . .").

37. FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 304 (Jones & Bartlett Learning, 5th ed. 2013).

38. Spierer, *supra* note 34, at 1726.

39. Alan Hirsch, *Going to the Source: The "New" Reid Method and False Confessions*, 11 OHIO ST. J.

One study in particular found that both laypeople and trained police officers had difficulty determining if an alleged criminal was lying during an interview, and both groups had a combined accuracy rate of 53.9%.[40]

Further, the lay participants in that study more accurately (but less confidently) detected truthfulness in suspect interrogations than the trained investigators had, while the trained investigators reported higher confidence in their less accurate assessments.[41] The investigators reported false alarms (false confessions reported as truthful confessions) in twenty percent more instances than the lay participants.[42] These results demonstrate the faulty and dangerous presumption the Reid Technique is premised on: that officers can and will accurately identify when a suspect is guilty.

The false premise upon which the BAI portion of the Reid Technique relies renders the post-BAI portion of Reid Technique interrogations unduly coercive. The undue coercion inherent in Reid Technique interrogations is even higher with respect to juveniles because interrogators do not modify it when questioning juveniles.[43]

2. Maximization, Minimization, and Contamination

Other techniques, such as maximization and minimization, can also exploit juveniles' psychological vulnerabilities. Maximization is a technique that employs a multitude of strategies "designed to show that there is an irrefutable belief that the suspect is guilty and all denials that the suspect states will fail."[44] This technique is designed to "corner" the suspect into believing that they must tell the truth and confess to the crime.

Conversely, minimization "give[s] the suspect a moral justification and face-saving excuses for having committed a crime."[45] The purpose of this technique is to make the suspect feel that the action they took was understandable or excusable, and therefore they should confess.

Both tactics exploit juveniles' susceptibility to influence by others, particularly those in authority, and their inability to account for long-term consequences. Therefore, creating feelings of hopelessness (that the interrogation will not end until the juvenile gives the officer what they are looking for) or giving rationalizations or implying leniency (what happened might not have been the juvenile's fault, so confessing will offer the quickest route to ending the interrogation) increase the likelihood

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CRIM. L. 803, 807–08 (2014).

40. Saul M. Kassin et al., *"I'd Know a False Confession if I Saw One": A Comparative Study of College Students and Police Investigators*, 29 LAW & HUM. BEHAV. 211, 216 (2005). This result paralleled the findings in previous, similar studies. *See id.*

41. *Id.* at 217 tbl.1.

42. *Id.*

43. Spierer, *supra* note 34, at 1729.

44. Luna, *supra* note 23, at 301.

45. *Id.* at 302.

of a false confession.

Another harmful interrogation technique is the use of contamination. This occurs when an interrogating officer has internally developed a theory of how the crime occurred, "and may. . . inadvertently—or deliberately—inform the suspect with facts of the crime."[46] These facts are then expected to appear in the suspect's confession and are often used to show a "façade of corroboration" since the suspect is then perceived as having knowledge of incriminating facts of the case.[47]

Along with the deceptive tactics employed in the Reid Technique, maximization, minimization, and contamination also exploit juveniles' vulnerability to social influence and increase the likelihood of coerced-compliance and coerced-internalized false confessions.[48]

This analysis of the unique vulnerabilities a juvenile possesses in custodial interrogation environments demonstrates the causes of their increased rate of false confessions. Additionally, the common use of police interrogation tactics that exploit these vulnerabilities through deception demonstrates the ways that custodial interrogation environments often encourage and promote false confessions in juveniles. Several authors and experts have called for significant overhauls or bans on deceptive interrogation methodologies like the Reid Technique, especially as applied to children.[49] The response to these risk factors of false confessions faced by juveniles has remained rare and disunified among states and local jurisdictions.[50] The Supreme Court's response, in addition to individual state responses, to these deceptive tactics and their propensity to produce false confessions are explored in detail in the following Parts.

46. *Id.* at 304.

47. *Id.*

48. *See id.* at 305.

49. *See* Nesterak, *supra* note 1; *see also* Spierer, *supra* note 34, at 1748; Kozinski, *supra* note 33, at 345. Additional recommendations include specific instructions tailored to juveniles to better ensure their understanding of their rights and privileges. *See, e.g.,* Mandelbaum & Crossman, *supra* note 29.

50. An example of one state reform is Washington's recent adoption of the Uniform Electronic Recordation of Custodial Interrogations Act, ch. 329, 2021 Wash. Sess. Laws 2765 (2021) (codified at WASH. REV. CODE. ANN. §§ 10.122.010–10.122.900 (West 2023)). However, this law applies to all interrogations and is not juvenile-specific in its application, though some provisions do pertain to only juveniles, particularly in defining custodial interrogations. *See, e.g.*, WASH. REV. CODE. ANN. § 10.122.030(1) (West 2023). For additional commentary on the law, see Steve Gross, *New Recording and Disclosure Requirements for Certain Law Enforcement Interrogations*, MUN. RSCH. & SERVS. CTR. (Mar. 7, 2022), https://mrsc.org/stay-informed/mrsc-insight/march-2022/recording-disclosure-requirements-interrogations [https://perma.cc/S4XP-SLYP].

II. COURTS AND STATES' CHANGING RESPONSES TO THE ADMISSIBILITY OF CONFESSIONS OBTAINED IN CUSTODIAL INTERROGATIONS

A. It Comes in Waves: The Supreme Court's Approach to Interrogated Juveniles

The relationship between courts and juveniles underwent a dramatic shift in the late nineteenth and early twentieth centuries.[51] Before then, courts had tried and convicted juveniles in ordinary courts of law and sentenced them to confinement in jails and penitentiaries with adult offenders.[52] However, toward the end of the ninteenth century, the emerging public school movement and compulsory education caused social reformers to direct increased attention and concern to the treatment of juveniles in the criminal justice system.[53]

Reformers called for new institutions that placed "greater emphasis on education" rather than on punishment.[54] These efforts culminated in the establishment of specialized juvenile courts, the first of which was created in 1899.[55] The legislation provided a civil-law model where reform, rather than criminality, was the focus for juveniles in custody.[56] This system was quickly adopted throughout the nation.[57]

Two basic legal principles underscored the operations of these juvenile courts. First, that the courts were to employ a philosophy of "individualized justice," meaning that the individuality of the child was to be recognized in the court's disposition of the case.[58] The second was that the courts should exercise the *parens patriae* authority of the state.[59]

Parens patriae is an ancient common-law doctrine[60] that invokes the principle of the state as "the father of the country."[61] Nineteenth-century reformers utilized this concept in a unique way, creating a legal fiction in hopes "to decriminalize

51. *See Juvenile Justice History*, CTR. ON JUV. & CRIM. JUST., https://www.cjcj.org/history-education/juvenile-justice-history [https://perma.cc/4LSF-JT64].

52. *Id.*

53. *Id.*

54. *Id.*

55. James E. Duffy, Jr., Comment, *In Re Gault and the Privilege Against Self-Incrimination in Juvenile Court*, 51 MARQ. L. REV. 68, 68 (1967).

56. Donald E. McInnis et al., *The Evolution of Juvenile Justice From the Book of Leviticus to Parens Patriae: The Next Step After* In Re Gault, 53 LOY. L.A. L. REV. 553, 563 (2020).

57. *Id.* at 564.

58. Duffy, *supra* note 55, at 69.

59. *See id.* at 70; *see also* George B. Curtis, *The Checkered Career of* Parens Patriae*: The State as Parent or Tyrant?*, 25 DEPAUL L. REV. 895, 900 (1976) ("Consequently, under the banner of *parens patriae*, reformers launched plans to save the delinquent, to relieve the circumstances of his development, and to set him once more on the path of righteousness.").

60. *See* McInnis et al., *supra* note 56, at 563.

61. Duffy, *supra* note 55, at 70.

juvenile delinquency."[62] Under the doctrine, dependent children and other persons deemed incompetent are subject to special protection by the state, which emphasizes the paternal and protective role of the state itself.[63]

While the two animating philosophies of the juvenile justice system were intended to focus on the child as an individual, this practice resulted in courts' treatment of juveniles becoming "uncoordinated and inconsistent."[64] Nevertheless, the Supreme Court has upheld the foundational principles of juvenile courts and the state's unique, protective role over juveniles under the *parens patriae* doctrine, which continues to animate court's and state's actions towards juveniles.[65]

It was against this historical background that the Supreme Court first analyzed what protections, if any, are afforded to juveniles in custodial interrogations in *Haley v. Ohio*.[66] In *Haley*, a fifteen-year-old boy was arrested in connection with a robbery of a confectionary store and the murder of its owner.[67] The juvenile was questioned without counsel from midnight to five o'clock in the morning, and five or six police officers questioned him in relays.[68] Additional evidence was offered that he may have been beaten.[69] After five hours of questioning, he signed a written confession that police officers had typed for him.[70]

In an opinion authored by Justice Douglas, a plurality of the Court concluded that "the methods used in obtaining this confession c[ould not] be squared with that due process of law which the Fourteenth Amendment commands."[71] Justice Douglas opined that The child "need[ed] counsel and support if he [was] not to become the victim first of fear, then of panic," and because he was denied the presence of counsel or a parent or guardian, his due-process rights were violated.[72] The state claimed that the boy was fully advised of his constitutional rights, but Justice Douglas averred that this defense rested on an assumption that it would not "indulge": that the defendant, "without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice."[73]

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62. McInnis et al., *supra* note 56, at 565.

63. *See Parens Patriae*, *in* ENCYCLOPEDIA OF CRIMINAL JUSTICE ETHICS 641 (Joseph P. Sanborn ed., 2014), https://doi.org/10.4135/9781452274102 ("Juvenile justice experts define *parens patriae* as the state's duty and license to raise children.").

64. McInnis et al., *supra* note 56, at 565.

65. *See In re* Gault, 387 U.S. 1, 30 (1967).

66. 332 U.S. 596, 597 (1948) (plurality).

67. *Id.* at 597.

68. *Id.* at 598.

69. *Id.* at 597.

70. *Id.* at 598.

71. *Id.*

72. *Id.* at 599–600.

73. *Id.* at 601. The plurality determined that it could not "give any weight to recitals which merely formalize constitutional requirements" because "[f]ormulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them." *Id.* In the plurality's view, the risk is too high that such formulas "may . . . become a cloak for inquisitorial practices and make an empty form of the due process of law for which

A majority of The Court reinforced this protectionist stance in *Gallegos v. Colorado*.[74] There, a fourteen-year-old was detained for five days in connection with a robbery and assault.[75] While the juvenile was not subject to long periods of questioning, the Court stated that his age and the detention itself, during which he was cut off from contact with his mother or an attorney, "put[] [the] case on the same footing as *Haley v. Ohio*."[76] The Court held that juveniles inherently enter into an interrogation on unequal footing with police officers, and "[w]ithout some adult protection against this inequality," children would not know, and therefore not be able to assert, their constitutional rights."[77] The court concluded that "[t]o allow [the defendant's] conviction to stand would, in effect, be to treat him as if he had no constitutional rights."[78]

The Court expounded to an unprecedented degree on the constitutionally risky environment present in custodial interrogations in the landmark decision of *Miranda v. Arizona*.[79] The *Miranda* Court stated that because the Fifth Amendment privilege against self-incrimination "is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple," it would discontinue case-by-case analyses of whether an individual defendant was aware of their constitutional rights while in custody. [80] Instead, the Court required that all individuals in custody receive a specific warning.[81]

Now colloquially known as the *Miranda* warning, police officers are required to advise individuals in custody of the constitutional rights afforded to them. Specifically, the warning must inform the individual that they have the right to remain silent, that any statements they give can and will be used against the individual in court, and that the individual has the right to the presence of counsel.[82] The Court added that it is necessary to advise the individual that they can exercise these rights at any time, recognizing that "[w]ithout the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked."[83]

Because of the separation of the juvenile justice system from the ordinary criminal justice system, it was not immediately certain that *Miranda* applied to juveniles.

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free men fought and died to obtain." *Id.*

74. 370 U.S. 49 (1962).

75. *Id.* at 49–50.

76. *Id.* at 53–54.

77. *Id.* at 54–55.

78. *Id.* at 55.

79. 384 U.S. 436 (1966); *see also* Robert McGuire, Note, *A Proposal to Strengthen Juvenile* Miranda *Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355, 1357 (2000).

80. 384 U.S. at 468.

81. *See id.* at 468–69.

82. *Id*. at 468–73.

83. *Id.* at 474.

The first time the Supreme Court addressed this issue was *In re Gault*.[84] The Court held that "the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults."[85] The Court reversed the judgment of the lower court and held that juveniles should be provided with the same constitutional safeguards as adults, namely *Miranda* warnings.[86]

While the Court "appreciate[d] that special problems may arise with respect to waiver of the privilege by or on behalf of children," it did not mandate any additional protective procedures to prevent false confessions or other forms of coercion in addition to the *Miranda* warning:

> If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.[87]

Twelve years later, the Court addressed this issue again in *Fare v. Michael C.*, where it held that "the determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation."[88] The Court stated that the totality of the circumstances approach was procedurally adequate and they could "discern no persuasive reasons" why the standard should differ from the standard for assessing "whether an adult had done so."[89]

The Court adopted the standard for its flexibility; it allowed courts to take into account the unique characteristics of an individual (such as age and education), but was not so strict that it imposed "rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record."[90] The Court noted that even though the juvenile alleged that the interrogating officers made him deceptive promises of leniency if he cooperated, their promises were not "threatening or coercive," so his statements were still admissible.[91]

The *Fare* decision was arguably a regression from the Court's previous

84. 387 U.S. 1 (1966); *see* Yekaterina Berkovich, Note, *Ensuring Protection of Juveniles' Rights: A Better Way of Obtaining A Voluntary* Miranda *Waiver*, 88 ST. JOHN'S L. REV. 561, 571 (2014).

85. *In re Gault*, 387 U.S. at 55.

86. Berkovich, *supra* note 84, at 571.

87. *In re* Gault, 387 U.S. at 55.

88. 442 U.S. 707, 724–25 (1979); *see also id.* at 725 (stating that the circumstances relevant to the coercion inquiry "include[] . . . the juvenile's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights").

89. *Id.* at 725.

90. *Id.*

91. *Id.* at 727–28.

jurisprudence on juvenile interrogations because its applicability of *Miranda*'s totality of the circumstances analysis left no room for additional protections against juveniles' vulnerabilities in interrogations or a consideration of the unique psychological factors that might influence the voluntariness of any statements or confessions produced.[92] The *Fare* opinion dropped previous discussions of the "special care" afforded to evaluating statements obtained during an interrogation, holding instead that juvenile confessions should be held to the same standards as adult confessions.[93]

A critical reading of *Fare* could interpret that it "accepted police interrogation as a legitimate law enforcement tool, posited coerciveness as a fact question in each case," and ultimately declined to restrict law enforcement officials.[94] Instead, *Fare* gave them significant latitude to exploit juveniles' unique vulnerabilities.[95] Because the Court did not provide any additional guidance as to how each factor listed in the totality of circumstances analysis should be weighed or address whether mental capacity and age should be co-factors, most state legislatures have "have taken it upon themselves" to decide how courts should determine whether juvenile confessions are voluntary.[96] As a result, states have been left to decide how to properly evaluate the voluntariness of a juvenile's confession.

B. Comparing State Responses to Police Deception and Juvenile False Confessions

Police deception is currently allowed in every state, which means that police officers in every state are permitted to use deception and other manipulative tactics to produce a confession.[97] This stands in contrast to best-practice guides issued by the International Association of Chiefs of Police.[98] Such calls for reform have resulted in legislative action in some states.[99]

Specifically, Oregon and Illinois enacted statutes in 2021 that limited officers' ability to use deception in interrogations of juveniles. Utah, California, and Delaware followed suit with similar legislation in 2022. Yet despite the largely bipartisan

92. McGuire, *supra* note 79, at 1373–74.

93. Nashiba F. Boyd, Comment, *"I Didn't Do It, I Was Forced to Say That I Did": The Problem of Coerced Juvenile Confessions, and Proposed Federal Legislation to Prevent Them*, 47 HOW. L.J. 395, 411 (2004).

94. BARRY C. FELD, CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION 216 (3d ed. 2000).

95. *Id.*

96. Boyd, *supra* note 93.

97. Nigel Quiroz, *Five Facts About Police Deception and Youth You Should Know*, INNOCENCE PROJECT (May 13, 2022), https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers/#:~:text=4.,legal%20in%20all%2050%20states [https://perma.cc/7JEQ-TXZ8].

98. REDUCING RISKS, *supra* note 25, at 8–9 ("The presentation of false evidence may cause a young person to think that the interrogator is so firmly convinced of his guilt that he will never be able to persuade him otherwise. In that event, the young person may think that he has no choice but to confess—whether guilty or innocent—in an effort to cut his losses.").

99. Quiroz, *supra* note 97.

support within these states' legislatures and their wider law enforcement and prosecutorial communities, these five states remain the only examples of states with limitations on police officers' abilities to use deception against juveniles in interrogations.[100] The history and content of these states' laws is examined in detail in this Section.

1. Oregon

Oregon Senate Bill 418 was introduced on January 11, 2021.[101] The bill came in the context of a large package of legislation introduced and passed throughout the 81st session of the Oregon Legislative Assembly that was aimed at reforming policing practices and community relations with law enforcement.[102] When it was introduced, the bill contained only one sentence: "A peace officer conducting an interview of a youth in connection with an investigation of an act that, if committed by an adult, would constitute a crime may not use deceit, trickery or artifice, or any other misleading interrogation technique, during the interview."[103]

The bill faced opposition based on its allegedly vague text and some even thought that it would "hamstring law enforcement's ability to adequately investigate juvenile crime."[104] Oregon Senate Bill 418's primary sponsor, Oregon Senator Chris Gorsek,[105] a former Portland police officer,[106] pushed back against these critiques and argued that "all youths, including witnesses, should be told the truth during questioning, and even older teens need their rights protected."[107] Nevertheless, the bill underwent significant amendments following its introduction.

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100. There are several other states considering similar legislation, including New York, which as of the time of the publication of this Note are at varying points in the legislative process. *See id.*

101. S. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021), https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB418/Introduced [https://perma.cc/7L4J-GVSQ] (Oregon Senate Bill 418 as introduced in Senate, January 11, 2021); SEC'Y OF THE SENATE'S OFFICE, OR. SENATE, JOURNAL OF THE SENATE: 2021 REGULAR SESSION, 2022 REGULAR SESSION, 2021 FIRST SPECIAL SESSION, 2021 SECOND SPECIAL SESSION, at RS1-S-78 (2022) (listing Senate Bill 418's date of introduction).

102. *See* Press Release, Tina Hotek, Speaker, Or. House of Representatives, Critical Policing and Criminal Justice Reforms Cross Finish Line (June 26, 2021), https://www.oregonlegislature.gov/bynum/Documents/2021%20Session%20-%20Criminal%20Justice%20and%20Police%20Reform.pdf [https://perma.cc/8PG2-LAUF] (summarizing criminal-justice reform legislation passed during Oregon's 81st Legislative Assembly).

103. S.B. 418, *supra* note 101, § 1.

104. Libby Dowsett, *Oregon Bill Would End Police Trickery and Deceit in Juvenile Interrogations*, STREET ROOTS (Apr. 7, 2021), https://www.streetroots.org/news/2021/04/07/oregon-bill-would-end-police-trickery-and-deceit-juvenile-interrogations [https://perma.cc/KV87-ZTPP].

105. *See* S.B. 418, *supra* note 101 (listing Oregon Senator Gorsek as the bill's sponsor).

106. *See Oregon Deception Bill is Signed into Law, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (June 16, 2021) [hereinafter *Oregon Deception Bill*], https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/ [https://perma.cc/XA2E-JNU3] (quoting Senator Gorsek, who said, "As a criminal justice educator and former police officer, this is a professional standard I teach and we have reliable data showing that untruthfulness used in interviews can lead to false confessions").

107. Dowsett, *supra* note 104.

The sweeping ban on deceptive interrogations changed to a presumption of involuntariness, and therefore of inadmissibility, over statements obtained from juveniles during interrogations where deceit was used.[108] Statements elicited through deceit were made admissible if the state proves "by clear and convincing evidence that the statement was voluntary and not made in response to the false information used by the peace officer to elicit the statement."[109] Additionally, the kind of dishonest law enforcement behavior addressed by the original bill was changed to an "intentional[] use[] [of] information known by the officer to be false" that was used "to elicit the statement"[110] from any "deceit, trickery or artifice, or any other misleading interrogation technique, during [an] interview," regardless of whether such conduct actually elicited the statement.[111]

The amended bill was approved by the Oregon Legislative Assembly on June 14, 2021,[112] and was signed into law by Governor Kate Brown on July 14, 2021.[113] A press release issued by Oregon Senator Gorsek after the amended bill passed in the Oregon Senate highlighted that "[s]cience, ethics and good law enforcement all agree, lying to kids during an investigation is a bad practice" that erodes public trust in the legal system.[114]

Oregon Senate Bill 418 passed with bipartisan support and encouragement "from medical professionals, justice advocates and law enforcement," and will likely cause significant changes to police practices in Oregon.[115] However, more data are necessary to test the law's effectiveness. It will also be important to analyze whether the presumption of involuntariness will constitute an adequate protection against false

108. *See* Act of July 14, 2021, ch. 487, § 1(1), 2021 Or. Laws 1301, 1301 (codified at OR. REV. STAT. ANN. § 133.403(1) (West 2022)).

109. *Id.*

110. *Id.*

111. S.B. 418, *supra* note 101, § 1.

112. CHIEF CLERK'S OFFICE, OREGON HOUSE OF REPRESENTATIVES, JOURNAL OF THE HOUSE OF THE HOUSE OF REPRESENTATIVES: 2021 ORGANIZATIONAL SESSION, 2021 REGULAR SESSION 144 (2021) (Oregon Senate Bill 418 as enrolled in the Senate passed in House).

113. Act of July 14, 2021 (codified at OR. REV. STAT. ANN. § 133.403 (West 2022)). The bill went into effect on January 1, 2022. *See* Act of July 14, 2021, 2021 Or. Laws at 1301.

114. Press Release, Chris Gorsek, Senator, Oregon Senate, Senate Votes to Protect Youth from Deceptive Interrogation Tactics (May 24, 2021), https://www.oregonlegislature.gov/senatedemocrats/Documents/PRESS%20RELEASE%20Senate%20Votes%20to%20Protect%20Youth%20from%20Deceptive%20Interrogation%20Tactics.pdf [https://perma.cc/5RBM-4RW4]. The release added that "tactics that include lying to youth during an investigation is not in the interest of justice." *Id*.

115. *Id.* The Oregon Association of Chiefs of Police and the Oregon State Sheriffs' Association both offered support of the bill. *See Oregon Deception Bill*, *supra* note 106. The bill was also supported by the Oregon Office of Public Defense Services. *See* Jacob Barrett, *Oregon Bans Police Lying to Obtain Confessions from Juveniles*, CRIM. LEGAL NEWS, Apr. 2022, at 49, https://www.criminallegalnews.org/news/2022/mar/15/oregon-bans-police-lying-obtain-confessions-juveniles/ [https://perma.cc/U39W-EBM3] ("'False confessions that contribute to wrongful convictions do not serve the interests of justice: they harm victims, erode public trust in the legal system, and waste public resources,' said Bridget Budbill, Legislative Director of the Oregon Office of Public Defense Services.").

confessions or whether a complete ban on deception as initially proposed will be necessary.

2. Illinois

Oregon is not the only state that has recently curbed the use of deception in juvenile interrogations. A similar bill, Illinois Senate Bill 2122, was introduced in Illinois in 2021.[116] Like Oregon Bill 418, the Illinois bill was introduced in the same legislative session as other legislation that was, according to Illinois Governor J. B. Pritzker, designed to create a more "holistic criminal justice system, one that builds confidence and trust in a system that has done harm to too many people for far too long."[117]

Illinois Senate Bill 2122 as introduced bore many similarities to the Oregon law. Like Oregon's law, the Illinois bill created a presumption of inadmissibility for any "statement" by a minor procured during a custodial interrogation where a law enforcement officer "knowingly engage[ed] in deception."[118] And this presumption of inadmissibility was made defeasible by "clear and convincing evidence that the statement was voluntary given."[119]

But the Illinois bill differed in some ways from the Oregon law as well. The Illinois bill provided that courts must evaluate clear and convincing evidence of admissibility "based on the totality of the circumstances."[120] And the Illinois bill defined deception more broadly as the Oregon law: "'Deception' means the knowing communication of false facts about evidence *or unauthorized statements regarding leniency* by a law enforcement officer or juvenile officer to a subject of custodial interrogation."[121]

Many of Illinois Senate Bill 2122's similarities to the Oregon law were removed in the amendment process. The presumption of inadmissibility was made to apply

116. S.B. 2122, 102d Gen. Assemb., Reg. Sess. (Ill. 2021), https://www.ilga.gov/legislation/102/SB/PDF/10200SB2122.pdf [https://perma.cc/9PJZ-SFVZ] (Illinois Senate Bill 2122 as introduced in Senate, February 26, 2021).

117. Press Release, J. B. Pritzker, Governor, State of Illinois, Pritzker Signs Landmark Legislation Advancing Rights of Most Vulnerable in Illinois Justice System (July 15, 2021), https://www.illinois.gov/news/press-release.23581.html [https://perma.cc/MTB9-9TY3]. A notable piece of background information to the passage of this legislation is that in the past three decades in Illinois alone there have been one-hundred wrongful convictions relying on false confessions. *See* Eileen O'Gorman, *Illinois 1st State to Ban Lying to Minors During Interrogation*, PATCH, https://patch.com/illinois/springfield-il/illinois-first-state-ban-lying-minors-during-interrogation [https://perma.cc/B3GU-B8GK] (July 16, 2021, 1:20 PM).

118. S.B. 2122, *supra* note 116, §§ 5, sec. 5-401.6(b), 10, sec. 103-2.2(b). Sections 5 and 10 of Senate Bill 2122 proposed identical changes to Illinois's Juvenile Court Act of 1987, 705 ILL. COMP. STAT. ANN. §§ 405/1-1 to 405/701 (West 2022), and Code of Criminal Procedure of 1963, 725 ILL. COMP. STAT. ANN. §§ 5/100-1 to 5/106g-5 (West 2022), respectively.

119. S.B. 2122, *supra* note 116, §§ 5, sec. 5-401.6(c), 10, sec. 103-2.2(c).

120. *Id.*

121. *Id.* §§ 5, sec. 5-401.6(a), 10, sec. 103-2.2(a) (emphasis added).

only to "confessions" made by minors during custodial interrogations, as opposed to any statements.[122] And the state's burden to overcome the presumption of inadmissibility for such confessions was reduced from a clear-and-convincing evidence standard to a preponderance-of-the-evidence standard.[123] And the enacted version of the bill also retained the totality-of-the-circumstances test and a presumption of inadmissibility for juvenile confessions secured during interviews where unauthorized statements regarding leniency were made.[124]

The bill was approved by the Illinois General Assembly on May 30, 2021—two weeks before the Oregon General Assembly approved Oregon Senate Bill 418—and was signed by the Governor on July 15, 2021.[125] Despite the amendments, the bill's approval by the state legislature marked a tremendous leap forward as Illinois became the first state to pass a law limiting the use of deception against juveniles.[126]

Particularly, it was hoped that the law would "encourage law enforcement members to adopt alternative interrogation techniques," as opposed to relying on the types of psychologically coercive, deceptive techniques that increase the risk of false confessions.[127] However, because the law is so new, whether its behavior-changing purpose for law enforcement will be accomplished is not yet known. It also remains to be seen whether the law's applicability to only confessions and lower standard of proof for overcoming the presumption of inadmissibility will hamper its ability to effectively prevent deception from being used against juveniles in custody.

3. Utah

In 2022, the State of Utah also considered a bill, Utah House Bill 171, that addressed the use of deceptive police interrogation against juveniles in custody.[128] The Utah bill as introduced resembled the Illinois bill as introduced insofar as it created

122. *See* Act of July 15, 2021, Pub. Act No. 102-0101, § 5, sec. 5-401.6(b), 2021 Ill. Laws 4733, 4733–34; *see also infra* note 124 for codification information.

123. Act of July 15, 2021 §§ 5, sec. 5-401.6(c), 10, sec. 103-2.2(c); *see also infra* note 124 for codification information.

124. Act of July 15, 2021 §§ 5, sec. 5-401.6(a), 10, sec. 103-2.2(a). For the codified version of the Act, see 705 ILL. COMP. STAT. ANN. 405/5-401.6 (West 2022) (section 5 of the Act), and 725 ILL. COMP. STAT. ANN. 5/103-2.2 (West 2022) (section 10 of the Act).

125. *See* Act of July 15, 2021, Ill. Laws at 4735. Though the Illinois bill passed sooner than the bill in Oregon, the Governor of Oregon signed the Oregon law the day before the Illinois law was approved by the Governor of Illinois. *See* Act of July 15, 2021, 2021 Ill. Laws at 4735; Act of July 14, 2021, ch. 487, 2021 Or. Laws 1301, 1301. But both laws had the same effective date: January 1, 2022. *See* Act of July 15, 2021, 2021 Ill. Laws at 4735; Act of July 14, 2021, 2021 Or. Laws at 1301.

126. *See Illinois Becomes the First State to Ban Police from Lying to Juveniles During Interrogations*, INNOCENCE PROJECT (July 15, 2021), https://innocenceproject.org/illinois-first-state-to-ban-police-lying/ [https://perma.cc/8T6L-4WWU].

127. *Id.*

128. H.R. 171, 64th Leg., Gen. Sess. (Utah 2022), https://le.utah.gov/~2022/bills/hbillint/HB0171.pdf [https://perma.cc/2F8N-FHPL] (House Bill 171 as introduced in House, January 18, 2022).

a rebuttable presumption of inadmissibility for statements by juveniles given during interrogations where deception was used.[129] But the Utah bill as introduced also resembled the enacted version of the Illinois law because it endorsed a totality-of-the-circumstances preponderance-of-the-evidence standard of admissibility.[130]

Later, a substitute for Utah House Bill 171 was proposed that, like the Oregon bill as introduced, imposed a total ban on the use of deceptive practices for law enforcement:

> If a child is subject to a custodial interrogation for an offense, a peace officer, or an individual interrogating a child on behalf of a peace officer or a law enforcement agency, may not knowingly provide false information about evidence that is reasonably likely to elicit an incriminating response from the child.[131]

This substitute bill was ultimately enacted, and the enacted bill, like the Illinois law, also applied not only to false information but also to unauthorized statements of leniency.[132] However, the bill as enacted did not contain detail whether "an incriminating response" meant all statements, like in the Oregon law, or only confessions, as is the case in Illinois.

The bill was signed into law on March 24, 2022,[133] and had extremely strong bipartisan support; it passed both the House and Senate unanimously.[134] The overwhelming support for the measure is also reflected in the House Law Enforcement and Criminal Justice Standing Committee hearing, held prior to its passage, where testimony from representatives of the Rocky Mountain Innocence Center, Statewide Association of Prosecutors, Utah Chiefs of Police Association, Commission on Criminal and Juvenile Justice, Center of Wrongful Convictions at Northwestern University Pritzker School of Law, among other organizations, were heard by members of the Committee.[135]

One of the bill's co-sponsors, Utah Representative Ryan Wilcox, echoing the

129. *Id.* § 7(b).

130. *Id.* § 7(c).

131. H.R. 171, 64th Leg., Gen. Sess. (Utah 2022), https://le.utah.gov/~2022/bills/hbillint/HB0171S01.pdf [https://perma.cc/YC3R-ZLF5] (substitute for Utah House Bill 171 proposed in House, February 3, 2022).

132. Act of Mar. 24, 2022, ch. 312, § 7, 2022 Utah Laws 2330, 2331 (codified at Utah Code Ann. § 80-6-206(7) (West 2022) (amended 2023)).

133. *See* Act of Mar. 24, 2022, 2022 Utah Laws at 2330.

134. UTAH LEGIS. PRINTING OFFICE, JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF UTAH: SIXTY-FOURTH LEGISLATURE, 2021 SPECIAL SESSION 480–81 (2021) (listing vote in House); UTAH LEGIS. PRINTING OFFICE, STATE OF UTAH SENATE JOURNAL: THIRD EXTRAORDINARY SESSION OF THE SIXTY-FOURTH LEGISLATURE 679–80 (2021) (listing vote in Senate).

135. *House Law Enforcement and Criminal Justice Committee—March 01, 2022*, UTAH STATE LEGISLATURE, https://le.utah.gov/av/committeeArchive.jsp?mtgID=18183 (audio recording of committee meeting); *see also* STAFF OF H. L. ENFORCEMENT & CRIM. JUST. STANDING COMM., MINUTES (Utah 2022), https://le.utah.gov/interim/2022/pdf/00002081.pdf [https://perma.cc/DV5Y-W547].

language of Illinois Governor J. B. Pritzker, stated, in reference to Utah House Bill 171's prohibitions, that the use of deception by police officers "undermines confidence in law enforcement itself when it's done incorrectly, so that's where we have to walk that fine line."[136] Given the broad language of the law and its prohibition on deceptive tactics without exception, it appears likely that it will have a substantial positive impact on reducing the number of juvenile false confessions. However, its limited applicability to only incriminating statements, as opposed to all statements, leaves room for doubt concerning whether it will be effective in preventing officers from using deception against juveniles in general.

4. California

One month before Utah passed its law on this subject, California introduced a similar bill, California Assembly Bill 2644, in response to the severe risk of harm to juveniles in custodial interrogations.[137] Like the Oregon law, Assembly Bill 2644 made statements by juveniles during interrogations where "threats, physical harm, deception, or psychologically manipulative interrogation tactics" were utilized admissible only if the state could prove "by clear and convincing evidence that the statement was voluntary."[138] Further, the bill as introduced applied to interrogations of individuals that were twenty-five years old and younger.[139] (Although the California bill did not require that the state's evidence in favor of admissibility be evaluated under the totality of the circumstances.) And the bill defined deception as including tactics such as "the knowing communication of false facts about evidence, material omissions, [and] false statements regarding leniency."[140]

The month after California Assembly Bill 2644 was introduced, an amendment was enacted that, like the Utah law, changed the bill's presumption against admissibility to a total prohibition on the use of deception against juveniles.[141] The total ban on deceptive interrogation tactics in the amended bill was signed by Governor Gavin

136. Ashley Imlay*, Utah Legislature Passes Bills to Prevent Street Racing, Police Deception in Youth Interrogations*, KSL.COM (Feb. 24, 2022, 4:45 PM), https://www.ksl.com/article/50355525/utah-legislature-passes-bills-to-prevent-street-racing-police-deception-in-youth-interrogations [https://perma.cc/MW8M-XZNX].

137. A.B. 2644, 2021–2022 Leg., Reg. Sess. (Cal. 2022), https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202120220AB2644&version=20210AB264499INT [https://perma.cc/7X7A-39WR] (Assembly Bill 2644 as introduced, February 18, 2022).

138. *Id.* § 1, sec. 625.7(a).

139. *Id.*

140. *Id.* sec. 625.7(b)(1).

141. A.B. 2644, 2021–2022 Leg., Reg. Sess. (Cal. 2022), https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202120220AB2644&version=20210AB264498AMD [https://perma.cc/8C85-8LBG] (Assembly Bill 2644 as amended, March 22, 2022); *see also* Press Release, Cal. Innocence Coal., Juvenile Interrogations Reform Bill Signed by Governor Newsom, Makes California the Fourth State to Adopt Anti-Deceptive-interrogation Reforms, https://ncip.org/wp-content/uploads/2022/09/AB-2644-Press-Release.pdf [https://perma.cc/6FNR-QHEV].

Newsom in September 2022,[142] along with a definition of deception that went much further than the Oregon, Illinois, and Utah laws. However, the law's applicability was limited to interrogations of individuals seventeen years old and younger.[143]

As described, the California law included "psychologically manipulative interrogation tactics" in its definition of deception. The law specifically identifies "[m]aximization and minimization and other interrogation practices that rely on a presumption of guilt or deceit"; "[m]aking direct or indirect promises of leniency, such as indicating the person will be released if the person cooperates"; and "[e]mploying the 'false' or 'forced' choice strategy, where a person is encouraged to select one of two options, both incriminatory, but one is characterized as morally or legally justified or excusable" as psychologically manipulative.[144]

Two exceptions to the general prohibition outlined in the law are included: officers are allowed to use the prohibited techniques (1) if they believe the information sought is "necessary to protect life or property from an imminent threat," or (2) if the questions are "limited to those questions that were reasonably necessary to obtain information related to the imminent threat."[145]

The law will become effective prospectively on July 1, 2024.[146] Though the changes made by the law will not take effect for another twenty-two months, California's Commission on Peace Officer Standards has started work on a new interrogation training program scheduled for launch in 2023.[147]

5. Delaware

On October 10, 2022, Delaware Governor John Carney signed Delaware House Bill 419, which prohibited deceptive tactics in custodial interrogations of juveniles.[148] Like Oregon and Illinois, Delaware opted to create a presumption of inadmissibility for any statement produced by deception during a custodial interrogation

142. Act of Sept. 13, 2022, ch. 289, § 1, 2022 Cal. Stat. 4749, 4750–51 (to be codified at CAL. WELF. & INST. CODE § 625.7); *see also* Annie Warr, *Governor Newsom Signs AB 2644, a Bill Prohibiting Deceptive Interrogation of Youth, Backed by Santa Clara Law's Northern California Innocence Project*, SANTA CLARA UNIV. SCH. OF L. (Oct. 12, 2022), https://law.scu.edu/news/governor-newsom-signs-ab-2644-a-bill-prohibiting-deceptive-interrogation-of-youth-backed-by-santa-clara-laws-northern-california-innocence-project/ [https://perma.cc/JP7Y-RE4J].

143. Act of Sept. 13, 2022 § 1, sec. 625.7(a) (to be codified at CAL. WELF. & INST. CODE § 625.7(a)).

144. *Id.* sec. 625.7(b)(2) (to be codified at CAL. WELF. & INST. CODE § 625.7(b)(2)).

145. *Id.* sec. 625.7(d) (to be codified at CAL. WELF. & INST. CODE § 625.7(d)).

146. Act of Sept. 13, 2022, 2022 Cal. Stat. at 4749.

147. Annie Sciacca, *California Bill Would Bar Police From Lying to Kids During Interrogations*, THE IMPRINT (Aug. 11, 2022, 6:14 PM), https://imprintnews.org/justice/juvenile-justice-2/california-bill-police-lying-to-during-interrogations/67101 [https://perma.cc/8MDM-S5UM]. At least one exoneree is involved with developing this new program. *Id.*

148. Act of Oct. 10, 2022, ch. 447, 83 Del. Laws, https://legis.delaware.gov/SessionLaws/Chapter/GetPdfDocument?fileAttachmentId=573866 [https://perma.cc/7VQE-EHP8] (codified at DEL. CODE ANN. tit. 11, §§ 2021, 2022 (2022)).

by any person under the age of eighteen.[149]

The bill as introduced explicitly cited "the increasing number of false confessions recorded by the National Registry of Exonerations and recent science around adolescent brain development" and the fact that several other states had recently passed legislation to combat wrongful convictions caused by these types of false confessions as reasons for proposing the new law.[150] The draft also noted that, while Delaware "has yet to have a wrongful conviction case involving a false confession," according to experts "such as the Innocence Project, wrongful convictions can often take decades to be revealed."[151] Therefore, the legislature designed this Act to "mirror[] efforts in other states by prohibiting the knowing use of false statements about evidence, or false or misleading promises of leniency during custodial interrogations of persons under the age of 18."[152]

The Delaware law has many similarities to the Illinois law, namely, the presumption of inadmissibility can be overcome by the state if it is shown "by a preponderance of the evidence that the statement is reliable and was not induced by the use of deceptive tactics."[153] Delaware's law also includes a unique impeachment provision that is not present in any of the other four laws passed on this subject. If the state "proves by a preponderance of the evidence that the statement is reliable and not induced by the use of deceptive tactics," then the statement may be used to impeach the defendant even if otherwise inadmissible.[154] The law also added that any evidence obtained as a result of an inadmissible statement under the section will remain admissible if the evidence "would have been discovered through independent lawful means or if knowledge of the evidence was acquired through an independent source."[155]

These exceptions were carved into the initial draft with the help of local state prosecutors to allow prosecutors to "pursue using that particular statement if there are certain safeguards in place and there's an analysis that the court can engage on whether that statement should ultimately come into evidence."[156]

Allowing these exceptions could have an eroding effect on the efficacy of the law if it ultimately does not adequately dissuade officers from using deception in interrogations to procure other evidence or statements that can ultimately be used in

149. *See id.* § 1, sec. 2022 (codified at DEL. CODE ANN. tit. 11, § 2022 (2022)).

150. H.R. 419, Synopsis, 151st Gen. Assemb., Reg. Sess. (Del. 2022), https://legis.delaware.gov/json/BillDetail/GeneratePdfDocument?legislationId=109488&legislationTypeId=1&docTypeId=2&legislationName=HB419 [https://perma.cc/32FP-2WK6] (House Bill 419 as introduced in House, May 10, 2022).

151. *Id.*

152. *Id.*

153. Act of Oct. 10, 2022 § 2022(b)(2) (codified at DEL. CODE ANN. tit. 11, § 2022(b)(2) (2022)).

154. *Id.* § 2022(b)(3) (codified at DEL. CODE ANN. tit. 11, § 2022(b)(3) (2022)).

155. *Id.* § 2022(b)(1) (codified at DEL. CODE ANN. tit. 11, § 2022(b)(1) (2022)).

156. Charles Megginson, *Lawmakers Aim to Ban Deceptive Tactics in Juvenile Interrogations*, TOWN SQUARE LIVE (May 23, 2022), https://townsquaredelaware.com/lawmakers-aim-to-ban-deceptive-tactics-in-juvenile-interrogations/ [https://perma.cc/64V8-636F].

court. However, considering that the law still requires that deceptive tactics either not be the primary cause of the statement or that the deception was not the officers' only means of discovering other evidence, it is still possible that officers will be adequately deterred from using deceptive tactics if they are required to employ other investigative means anyway.

III. INTERNATIONAL PRACTICES FOR JUVENILE INTERROGATIONS

As discussed in Part I, the Reid Technique and similar deceptive interrogation techniques have been the predominate methods used by law enforcement in the United States since the 1960s.[157] However, while these techniques have remained entrenched in American criminal investigations, several countries have moved away from them in recent decades.

For example, after several infamous miscarriages of justice, the United Kingdom dramatically changed its police interviewing practice by moving from interrogations to investigative interviews.[158] A working group of senior police officers was established in 1991 by the government and charged with reforming interview training for police officers.[159] This resulted in the development of the PEACE method.[160]

The PEACE model is driven by two fundamental goals: (1) "to obtain accurate and reliable information from suspects, witnesses, or victims in order to establish the truth about the matter under investigation," and (2) to approach interviews "with an open mind, with information elicited from the interviewee tested against other available evidence known or capable of being reasonably established."[161] These goals are implemented through "a five-step interrogation process: planning and preparation, engage and explain, account (clarification and challenge), closure, and evaluation."[162]

The first stage centers on the officer obtaining as much background information as possible, assessing what evidence is available and what evidence is necessary, and defining the objectives of the interview.[163] The second stage requires officers to build

157. *See also* Allison Stillinghagan, Comment, *The Kids Aren't Alright: The Road to Abandoning Deceptive Interrogation Techniques for Juvenile Suspects in Maryland*, 81 MD. L. REV. 1084, 1116 (2022).

158. Colin Clarke et al., *Interviewing Suspects of Crime: The Impact of PEACE Training, Supervision and the Presence of a Legal Advisor*, 8 J. INVESTIGATIVE PSYCH. & OFFENDER PROFILING 149, 149–50 (2011).

159. John Halley et al., Structured Models of Interviewing 5 (Aug. 2022) (unpublished manuscript), https://www.researchgate.net/profile/John-Halley-5/publication/363044273_Structured_Models_for_Police_Interviewing_UK_and_Norway-_PEACE_PRICE_KREATIV/links/630b712a1ddd447021162ba1/Structured-Models-for-Police-Interviewing-UK-and-Norway-PEACE-PRICE-KREATI [https://web.archive.org/web/20220828135156/https://www.researchgate.net/publication/363044273_Structured_Models_for_Police_Interviewing_UK_and_Norway-_PEACE_PRICE_KREATIV].

160. Stillinghagan, *supra* note 157, at 1114.

161. Halley et al., *supra* note 159, at 6.

162. Stillinghagan, *supra* note 157, at 1114.

163. Mary Schollum, *Bringing PEACE to the United States: A Framework for Investigative Interviewing*, POLICE CHIEF, Nov. 2017, at 30, 33.

and maintain a rapport with the interviewee by showing respect and patience and by meeting basic needs, along with explaining the interview process to them.[164] The third stage centers around the officer obtaining the interviewee's uninterrupted account of events, using various cognitive interviewing techniques to expand and clarify the narrative.[165]

"Officers are trained to concentrate on probing a suspect's account, seeking to confirm or negate by comparison with other known information."[166] The final two stages focus on the officer clearly evaluating the content of the interview with the interviewee, explaining what will happen next, and then personally examining whether the aims of the interview were achieved.[167]

The new technique was implemented in England and Wales,[168] and studies have found evidence that the PEACE model results in a similar rate of confessions as interrogations, despite confessions not being the primary focus of the technique.[169] Other studies found that the PEACE technique produced a "greater number of comprehensive accounts, including exculpatory ones as well as admissions/confessions."[170] Additionally, confessions obtained from an individual while using the PEACE method are more likely to be authentic confessions than those arising from an interrogational interview.[171]

Several countries have taken notice of the advantages the PEACE method provides and have begun adopting it across their own police forces. The government of New Zealand directly incorporated the UK's PEACE model "as a uniform protocol to interview suspects."[172] This came after a comprehensive review and analysis, the results of which strongly rejected American interrogation methods and recommended investigative interviewing like the PEACE model as more suitable for New Zealand's police forces.[173]

The PEACE method has also been incorporated in some Australian jurisdictions,[174] as well agencies in Canada, Hong Kong, Singapore, Malaysia, United Arab

164. *Id.*

165. *Id.*

166. Andy Griffiths, *How the UK Police Interview Suspects*, INNOCENCE PROJECT (Dec. 21, 2012), https://innocenceproject.org/how-the-uk-police-interview-suspects/ [https://perma.cc/R8E4-2B79].

167. Schollum, *supra* note 163.

168. Clarke et al., *supra* note 158, at 149.

169. Schollum, *supra* note 163.

170. Ray Bull, *PEACE-ful Interviewing/Interrogation*, *in* DIVERSITY IN HARMONY—INSIGHTS FROM PSYCHOLOGY: PROCEEDINGS OF THE 31ST INTERNATIONAL CONGRESS OF PSYCHOLOGY 191, 199 (Kazuo Shigemasu et al. eds., 2018).

171. Stillinghagan, *supra* note 157, at 1117; Schollum, *supra* note 163.

172. Lisanne Adam & Celine van Golde, *Police Practice and False Confessions: A Search for the Implementation of Investigative Interviewing in Australia*, 45 ALT. L.J. 52, 56 (2020).

173. *Id.*

174. *Id.*

Emirates and the Republic of Ireland.[175] Several other countries have banned deceptive practices either directly or by introducing alternative investigative interviewing procedures.[176] Similar changes will likely continue to become the norm.

In 2016, the United Nations special rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Juan E. Méndez, submitted a report that was then released by the U.N. secretary general to the U.N. General Assembly.[177] In the report, the special rapporteur stated that "[a]ccusatorial models of questioning tend to be confession driven and characterized by a de facto presumption of guilt," and that these "[c]ommon manipulative techniques are coercive in nature and likely to impair the free will, judgment and memory of interviewees."[178] The special rapporteur also noted that "[c]oercive techniques, even when not amounting to torture or ill-treatment, are means to the same ends, administered by State agents to confirm their presumption of guilt."[179]

The report then detailed the methodology behind investigative interviewing techniques, explicitly highlighting the PEACE model, citing that many other jurisdictions, including the International Criminal Court, have adopted models fashioned after it.[180] The special rapporteur continued on to state that "[r]esearch and experienced practitioners agree that ethical information-gathering approaches similar to those employed in the criminal justice system lead to greater information gains and offer a more effective model than coercive intelligence interviewing."[181] Some have interpreted the special rapporteur's statements as recommending to the members of the U.N. that a model of investigative interviewing based on modern psychological research ought to replace interrogations in law enforcement agencies entirely.[182]

All jurisdictions that have implemented the PEACE methodology, or other investigative interviewing models based on the PEACE framework, have applied it to all interrogations, not just juveniles. While there are calls for investigative

175. FORENSIC INTERVIEWING SOLUTIONS, THE SCIENCE OF INTERVIEWING: P.E.A.C.E. A DIFFERENT APPROACH TO INVESTIGATIVE INTERVIEWING 4 (2009), https://www.fis-international.com/assets/Uploads/resources/PEACE-A-Different-Approach.pdf [https://perma.cc/BG7R-T6DP].

176. *See* Lakshmi Gandhi, *Lying to Police Suspects is Banned in Several Countries. Why is it Still Legal in the U.S.?*, PRISM (Aug. 30, 2021), https://prismreports.org/2021/08/30/lying-to-police-suspects-is-banned-in-several-countries-why-is-it-still-legal-in-the-u-s/ [https://perma.cc/9CBC-HL37] ("'Lots of other countries have long banned deceptive interrogation practices,' Sklansky said. 'Germany has banned it for decades, so there's lots of precedent around the world.'"); *see also* IVAR A. FAHSING & ASBJRON RACHLEW, U.S. DEP'T OF JUST., NCJ 228329, INVESTIGATIVE INTERVIEWING IN THE NORDIC REGION (2009).

177. Bull, *supra* note 170, at 206.

178. Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Interim Report of the Special Rapporteur on Torture and Other Cruel, Unhuman, or Degrading Treatment or Punishment*, ¶ 39, U.N. Doc. A/71/298 (Aug. 5, 2016).

179. *Id.* ¶ 42.

180. *Id.* ¶ 47.

181. *Id.* ¶ 55.

182. Bull, *supra* note 170, at 207.

interviewing practices to become standard in the United States,[183] they have not resulted in any legislative action outside of the juvenile context. Even then, the only reforms implemented to date are constrained to limiting the use of deception,[184] not all coercive interrogation methods that rely on guilt presumption and psychological manipulation. Whether the reforms to juvenile interrogations might result in wider reforms to interrogations of adults in American jurisdictions remains to be seen.

IV. REFORMS TO VOLUNTARINESS STANDARDS FOR ADMISSIBILITY TESTS

As previously stated, deceptive tactics in custodial interrogations remain the norm in the United States, whether the subject is a juvenile or not.[185] Yet, despite evidence clearly demonstrating juveniles' susceptibility to falsely confessions under coercive, deceptive interrogation tactics,[186] and evidence that a "suspect's age is strongly correlated with the likelihood of eliciting a false confession," reforms to law enforcement practices are under-discussed and under-implemented.[187]

Different reforms to increase protections afforded to juveniles in custodial interrogations have been discussed in academia and implemented by individual states, particularly through methods such as the "interested adult test," among others.[188] Other policy reforms, such as limiting the length of interrogations or mandating the recording of all conversations police have with juveniles,[189] could have the effect of preventing false confessions from being admitted into evidence. However, none of these changes impact what police officers are *doing* to extract false confessions to begin with.

More states will likely follow the lead of the pioneering legislatures in Oregon, Illinois, and other states discussed in Part II.[190] In New York, similar bills are under

183. *See* Schollum, *supra* note 163, at 35.

184. Except for California, where the law limits threats and other psychological coercive techniques in addition to deception. *See supra* Section II.B.4.

185. *See* Section I.B.

186. *See* Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. HUM. BEHAV. 1, 28 (2009) ("There is a strong consensus among psychologists, legal scholars, and practitioners that juveniles and individuals with cognitive impairments or psychological disorders are particularly susceptible to false confession under pressure. Yet little action has been taken to modulate the methods by which these vulnerable groups are questioned when placed into custody as crime suspects."); *see also supra* Part I.

187. Drizin & Leo, *supra* note 13, at 945.

188. *See* McGuire, *supra* note 79, at 1379–80 (arguing that the implementation of these tests by state courts do not always effectively protect the constitutional rights of juveniles).

189. *See* Feld, *supra* note 27, at 458–61.

190. Kyle Stucker, *Illinois Banned Lying to Minors in Police Interrogations. Will New England States Follow?*, THE PROVIDENCE J., https://www.providencejournal.com/story/news/2021/07/28/law-enformcement-lying-children-leniency-coercion-ma-vt-nh-me-ct-consider-ban-interrogation-tactic/8073470002/ [https://perma.cc/D4S3-77V3] (July 30, 2021, 8:45 AM). One study has found that there is regional correlation to false confession rates, with forty-one percent of false confessions occurring in southern states, thirty-two percent in midwestern states, twenty percent in northeastern states and seven percent in western states. *See* Drizin & Leo, *supra* note 13, at 945. While a sense of urgency should be felt in all states regardless of these statistics, states

consideration as of the time of publication of this Note.[191] However, there will likely be significant variations among the reforms passed due to varying political climates and appetites for change. Even when introduced in the context of a larger legislative movement to increase accountability, state attempts to combat the use of deception in custodial interrogations have been curtailed in their scope when comparing their authors' initial proposed bills to the final versions.

While some argue that states should prohibit the use of deception per se in all juvenile interrogations,[192] such sweeping legislation is not necessary to meaningfully mitigate the harm caused by deceptive tactics; there are reforms available that can more easily garner support, and therefore be implemented quicker.[193] Additionally, jurors are extremely likely to convict in cases where there is a confession later to be proven to be false due to perceptions that no one would confess to a crime they did not commit.[194] Changing these presumptions will aid in combatting this false perception that infects all individuals with decision-making authority in the criminal justice system.

To effectuate meaningful change, state legislatures should create presumptions of inadmissibility for statements given by juveniles in the context of custodial interrogations where deception is utilized. The totality of the circumstances test that was reinforced by the *Fare* decision has been ineffective in preventing false confessions as shown by the fact that false confessions remain a leading cause of wrongful convictions.[195] In the small sample of these presumptions of inadmissibility available, already there is wide variation as to how a state can choose to design the operation of these tests.

From differentiating standards of proof on the part of the state to different scopes of statements that are covered under the standard, the flexibility a state legislature can incorporate into a presumption of inadmissibility makes it a compelling tool to introduce some reform in an effective manner. It is also an important step in changing the level of scrutiny and skepticism applied to confessions extracted from juveniles. The belief that increasing protections for juveniles under interrogation will hamstring law enforcement investigative efforts are prevalent and block reformation efforts. Therefore, these perceptions must be accounted for in creating any plan for reforming the practice.

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in highly afflicted regions should especially expedite their efforts for reform.

191. S.B. S5786, 2023–2024 Legis. Sess., 2023–2024 Reg. Sess. (N.Y. 2023); A.B. A2584, 2023–2024 Legis. Sess., 2023–2024 Reg. Sess. (N.Y. 2023)

192. *See generally* Gina Kim, Note, *The Impermissibility of Police Deception in Juvenile Interrogations*, 91 FORDHAM L. REV. 247 (2022).

193. Given the immediacy of the issue and the irreparable harm done to the victims of these deceptive tactics, the speed at which a given reform can be implemented is a necessary category to consider and give great weight to when choosing between methods of change.

194. Paula A. Bernhard & Rowland S. Miller, *Juror Perceptions of False Confessions Versus Witness Recantations*, 25 PSYCHIATRY PSYCH. L. 539, 540 (2018).

195. *See* Drizin & Leo, *supra* note 13, at 902–04.

By introducing presumptions of inadmissibility, prosecutors will have to defend their interrogation practices rather than defendants being forced to prove that they were coerced. Additionally, these types of evidentiary inquiries could increase judicial knowledge of the coercive effects of common interrogation practices since these issues will be argued with increased frequency if deception continues to prevail. Further, it is reasonable to assume that a presumption of inadmissibility will cause a decrease in the use of deceptive tactics in custodial interrogations of juveniles.

Even where a given statute might afford wide exceptions, such as California's law, the real (or likely, depending on the strength of the statute) possibility of the confession being excluded from evidence will incentivize investigators to use alternative methods to obtain statements and confessions. The real purpose of these reforms is reducing the prevalence of deceptive and coercive interrogation tactics used against juveniles. Therefore, states should prioritize implementing reforms that best achieve this overarching goal in practice.

CONCLUSION

False confessions and wrongful convictions are inextricably related,[196] and the occurrence of both represent catastrophic failings of the criminal justice system. Former Israel Supreme Court justice Dalia Dorner made a poignant statement on the issue of false confessions:

> "A defendant's confession is suspect evidence, even if it was made without any external pressure being exerted on the defendant. The reason for this is that in the absence of other solid evidence that would prove the guilt of the defendant even without a confession, making a confession is in many cases an irrational act, and taking the irrational step of making a confession gives rise to a suspicion as to whether the confession is true. This suspicion is not merely theoretical, but it has been proved on more than once [sic] occasion by experience . . . ."[197]

Interrogation tactics that encourage irrational behavior or subvert the free will of a subject, such as those that involve deception, must be eliminated to preserve the integrity of the criminal justice system. Further, tactics that are known to exploit vulnerable populations such as juveniles must also be eliminated before members of such populations can be truly afforded the equal protection of the laws.[198]

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196. *See False Confessions Happen More Than We Think*, THE INNOCENCE PROJECT (Mar. 14, 2011), https://innocenceproject.org/false-confessions-happen-more-than-we-think/ [https://perma.cc//C493-DGSP].

197. LCrimA 4142/04 Milstein v. Chief Military Prosecutor (Isr.) (quoting CrimC 4342/97 El Abeid v. Israel, 50(1) PD 736 (1997) (Isr.) (Dorner, J., dissenting)), *translated in* [2006(2)] ISRAEL LAW REPORTS 534, 557 (2006).

198. U.S. CONST. amend. XIV, § 1.

Legislators in the remaining forty-five states that have not created presumptions of inadmissibility for confessions extracted from juveniles subject to police deception ought to feel a sense of urgency for preventing the irreparable harm of wrongful convictions. The reforms advocated in this Note would directly mitigate the risk of wrongful convictions and flexible enough to be adopted in polarized political climates. Reforms that are easy, effective, and urgent, such as creating a rebuttable presumption of inadmissibility for statements deceptively coerced from juveniles, should be prioritized.