A BLIND SPOT IN MIRANDA RIGHTS: JUVENILES' LACK OF UNDERSTANDING REGARDING MIRANDA LANGUAGE

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I. INTRODUCTION

A fourteen-year-old boy was suspected of armed robbery.[1] The police then knocked at his door, arrested him, booked him, placed him in an interrogation room, handcuffed him to a wall, and left him alone.[2] After two hours, the detectives read him his Miranda rights and questioned him about the robbery.[3] Although the minor told them he had nothing to do with the robbery, the police yelled at him, telling him to be "truthful and

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1. *See* State v. Jerrell C.J. (*In re* Jerrell C.J.), 699 N.W.2d 110, 113 (2005); *see also Juvenile interrogations must be recorded*, WIS. L. J. (July 13, 2005, 1:00 AM), https://wislawjournal.com/2005/07/13/juvenile-interrogations-must-be-recorded/ (explaining that in 2001, three young boys robbed a McDonald's restaurant wearing a ski mask and holding a gun).

2. *See In re Jerrell C.J.*, 699 N.W.2d at 113 (noting that Jerrell, a fourteen-year-old boy, was arrested at his home); *see also More Young Children Getting Arrested,* ABC NEWS (July 31), http://abcnews.go.com/GMA/story?id=126807&page=1 .(highlighting that "[t]he Florida Department of Juvenile Justice reported that more than 100 children aged 5 and 6 have been arrested in Florida in the past 12 months."); Jean Trounstine, *Keep Kids Out of Handcuffs*, TRUTHOUT (May 15, 2015), http://www.truth-out.org/news/item/30713-keep-kids-out-of-handcuffs/ (explaining that even when the charges are dismissed against a minor, the sole act of being handcuffed, being driven in a police car, or sitting alone in a cell creates more harm for children); Steven Drizin et. al., *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, INT'L ASS'N OF CHIEFS OF POLICE (Sept. 2012), http://www.theiacp.org/Portals/0/pdfs/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf (explaining that law enforcements, in general, are not adequately trained to interrogate juveniles).

3. *See* Miranda v. Arizona, 384 U.S. 436, 467–73 (1966) (establishing that before questioning starts in a custodial interrogation, accused persons must be made aware of their right to remain silent, that anything they say can be used against them, that they have the right to have counsel present during the questioning, and the right to have counsel appointed to them if they cannot afford to retain counsel for themselves); *see also In re Jerrell C.J.*, 699 N.W.2d at 118 (explaining that "[t]he failure to promptly notify parents and the reasons therefore may be a factor in determining whether a juvenile's confession was coerced or voluntary."); Drizin, *supra* note 2 (explaining that several states require police to attempt to contact the parents of a minor before beginning an interrogation, and the states that don't require it still view the absence of a parent negatively).

honest," and to assume the consequences of his actions.[4] Frightened and confused, he asked several times to call his parents, but his requests were denied.[5]

This is something that happens to many juveniles[6] who lack the sufficient ability to comprehend the consequences of waiving[7] their Miranda rights as adult people do.[8] Due to the complexity of the Miranda

4. *See* Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 230 (2006) (explaining that children are more vulnerable than adults when it comes to obeying authority figures during interrogation); *see also* Amber Keefer, *Can a Cop Talk to a Minor Without a Parent?*, LIVESTRONG.COM (June 13, 2017), https://www.livestrong.com/article/1003264-can-cop-talk-minor-parent/ (explaining that even though the police cannot force a minor to talk against their will, in some states the police are permitted to deceive a minor during questioning).

5. *See In re Jerrell C.J.*, 699 N.W.2d at 116 (highlighting that when assessing the voluntariness of a juvenile confession, special caution must be exercised, especially "when there is prolonged or repeated questioning or when the interrogation occurs in the absence of a parent, lawyer, or other friendly adult."); *see also* Fare v. Michael C., 442 U.S. 707, 725 (1979) (noting that where the age of a juvenile indicates that his request for his probation officer or his parents is an invocation of his right to remain silent, the court will allow the necessary flexibility to take this into consideration in making a waiver determination); People v. Burton, 491 P.2d 793, 798 (1971) (holding that a minor's request during custodial interrogation to see his or her parents constituted an invocation of the minor's Fifth Amendment rights); Commonwealth v. A Juvenile (No. 1), 449 N.E.2d 654, 657 (Mass. 1983) (requiring "that a parent or interested adult was present, understood the warnings, and had the opportunity to explain his rights to the juvenile" in order for the juvenile to understand the meaning of these rights); Theriault v. State, 223 N.W.2d 850, 857 (1974) (stating that failure to call the parents of the minor for the sole purpose of depriving him or her of the opportunity to receive guidance will be considered as strong evidence that coercion was used in order to obtain the juvenile's statements); *Juvenile interrogations must be recorded, supra* note 1 (stating that a detective not only repeatedly denied Jerrell's requests, but he testified that in his twelve years he had "never" allowed a juvenile to speak to his parents because it might stop the flow and jeopardize his control of the interrogation).

6. *See* FLA. STAT. § 985.03(7) (2018) (defining juvenile as "any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years."); *see also Juvenile*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining juvenile as "[s]omeone who has not reached the age (usu. 18) at which one should be treated as an adult by the criminal-justice system").

7. *See* 22 FLA. JUR. 2D *Estoppel and Waiver* § 111 (2018) (defining waiver as "the intentional relinquishment of a known right, the voluntary relinquishment of a known right, or actions or conduct which warrants or gives rise to a reasonable inference of relinquishment of a known right"); *see also* Moran v. Burbine, 475 U.S. 412, 421 (1986) (explaining that "the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception[,]" and "the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it").

8. *See In re Jerrell C.J.*, 699 N.W.2d at 113 (emphasizing the particular vulnerability of children to false confessions; therefore, the Wisconsin Supreme Court ordered that all custodial interrogations of youth under the age of eighteen must be electronically recorded, when feasible, from start to finish); *see also* Brown v. Crosby, 249 F. Supp. 2d 1285, 1292 (S.D. Fla. 2003) (stating that "[a] court need only inquire into whether the defendant understood that he had a right 'not to talk to law enforcement officers, to talk only with counsel present or to discontinue talking

language, minors are waiving their right to counsel while being the subjects of coercive interrogations.[9] As a result, many other juveniles have experienced, are currently experiencing, and will continue to experience this lack of understanding if nothing is done to fix this problem.[10]

In its current state, Miranda warnings cause fear and confusion in juveniles.[11] Today, juveniles are kept handcuffed and alone while being presented with language that they are not yet mentally, or cognitive, able to understand at such a young age.[12] Juveniles tend to believe that, if they comply with what an adult is demanding, they will be guaranteed to go

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at any time,' and that 'whatever he chooses to say may be used as evidence against him'").

9. *See* Haley M. D. Cleary & Sarah Vidal, *Miranda in Actual Juvenile Interrogations: Delivery, Waiver, and Readability*, 41 CRIM. JUST. REV. 98, 98 (2014), (explaining that research suggests that juveniles inadequately comprehend the Miranda warnings to a degree that could compromise the validity of their Miranda waiver); *see also* Jessica Glenza, *The Wisconsin Girls, Miranda Rights and Minors: a Blind Spot in US Law*, THE GUARDIAN (June 4, 2014, 6:00 PM), https://www.theguardian.com/law/2014/jun/04/wisconsin-girls-stabbing-miranda-rights-minors-us-law (highlighting that Steven Drizin, the legal director at Northwestern University's Center on Wrongful Conviction., stated that "[t]he Miranda rights are often words without meaning to juveniles").

10. *See In re Jerrell C.J.*, 699 N.W.2d at 117 (describing that luckily for Jerrell the Supreme Court of Wisconsin recognized his written confession to the police as involuntary under the totality of the circumstances); *see also* Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1134 (1980) (stating that waivers by juveniles merit special consideration and scrutiny different than adults).

11. *See* Barry C. Feld, *Juveniles' Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26, 27 (2006) (stating that "[t]he United States Supreme Court has decided more cases involving the interrogation of juveniles than any other aspect of juvenile justice administration."); *see also In re Jerrell C.J.*, 699 N.W.2d at 117 (highlighting that "youth remains a critical factor for our consideration, and the younger the child the more carefully [the court] will scrutinize police questioning tactics to determine if excessive coercion or intimidation or simple immaturity that would not affect an adult has tainted the juvenile's confession"); Jean Pierce, *Juvenile Miranda Waivers: A Reasonable Alternative to the Totality of the Circumstances Approach*, 2017 BYU L. REV. 195, 213 (2017) (noting that the Supreme Court of Wisconsin recognized that age is an important factor for determining the voluntariness of a confession).

12. *See Guidance on the Use Of Handcuffs*, ASS'N OF CHIEF POLICE OFFICER OF ENGLAND, WALES & NORTHERN IRELAND (Apr. 11, 2010), http://www.npcc.police.uk/documents/FoI%20publication/Disclosure%20Logs/Uniformed%20Operations%20FOI/2013/003%2013%20Att%2015%20of%2015%20Guidance%20on%20the%20Use%20of%20Handcuffs.pdf (stating that police officers "[s]hould be prepared to justify the period of time the handcuffs were applied before their eventual removal."); *see also* Ed Pilkington, *Kentucky sheriff's department sued over handcuffing of eight-year-old boy*, THE GUARDIAN (Aug. 3, 2015, 5:37 PM), https://www.theguardian.com/us-news/2015/aug/03/kentucky-sheriffs-department-sued-over-handcuffing-of-eight-year-old-boy (emphasizing that an eight-year-old-boy, who was handcuffed for only fifteen minutes suffered "pain, fear, and emotional trauma").

home.[13] Juveniles are more likely to feel required to sign a written statement admitting guilt since they do not know any better.[14]

This Comment addresses the negative implications of juveniles who waive their Miranda rights due to lack of knowledge, fear, and lack of cognitive capabilities.[15] First, this Comment will provide insight regarding the Fifth Amendment, the history of *Miranda*, and key cases that lead to the reform of *Miranda*.[16] Second, this Comment will discuss juveniles' perspective of the Miranda language along with the police's perspective.[17] In particular, it will emphasize the complexity of the language as it stands today and how juveniles' cognitive abilities are insufficiently developed to understand it.[18] Lastly, this Comment will propose guidelines to prevent minors from giving false confessions due to their lack of knowledge and/or comprehension of their constitutional rights by implementing a new policy for police officers.[19]

II. BACKGROUND

A. FIFTH AMENDMENT

The Fifth Amendment protects defendants in criminal proceedings.[20] This significant right was established in nine state constitutions and was

13. *See Juvenile interrogations must be recorded*, *supra* note 1 (explaining Jerrell's experiences taught him that admitting involvement in an offence allowed him to return home); *see also In re Jerrell C.J.*, 699 N.W.2d at 117–18 (explaining that Jerrell was arrested twice prior to his interrogation regarding the robbery for misdemeanor offenses, and in those previous encounters with the police, he was allowed to go home after answering questions and admitting involvement).

14. *See* Brown v. Crosby, 249 F. Supp. 2d 1285, 1308 (S.D. Fla. 2003) (holding that although a juvenile's confession was given voluntarily, his waiver of Miranda rights was not knowingly and intelligently made because the juvenile lacked an understanding of his rights or the consequences of his waiver); *see also* Drizin, *supra* note 2 (stating that adolescents are highly likely to respond to interrogations out of fear and stress of the environment by making involuntary or false statements).

15. *See infra* Part III; *see also* Grisso, *supra* note 10, at 1159–60 (noting that there is a clear distinction regarding the abilities to understand the Miranda warnings between a juvenile and an adult).

16. *See infra* Part II.

17. *See infra* Part II–III.

18. *See infra* Part III.

19. *See infra* Part IV.

20. *See* U.S. CONST. amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life

part of the common law throughout most of the colonies until it was incorporated in the U.S. Constitution.[21] The Fifth Amendment "was created in reaction to the excesses of the Courts of Star Chamber and High Commission—British courts of equity that regulated from 1487 to 1641."[22] Once the Courts of Star Chamber and High Commission were abolished, the common law courts of England incorporated the principle of "nemo tenetur" that no man should be bound to accuse himself.[23]

> or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Id.; *see also* Lauren Pearle, *Flynn's Refusal to Turn Over Documents by Claiming the 5th Amendment Stirs Legal Debate*, ABC NEWS (May 22, 2017, 6:31 PM), http://abcnews.go.com/Politics/5th-amendment-applies-flynn/story?id=47568937 (stating that criminal defendants have the right to decline to testify at trial); *Fifth Amendment*, SHMOOP, https://www.shmoop.com/constitution/fifth-amendment.html (explaining the different variety of protections the Fifth Amendment offers).

21. *See* Dahlia Lithwick, *Where Did the Fifth Amendment Come From?*, SLATE (Feb. 12, 2002, 3:36 PM), http://www.slate.com/articles/news_and_politics/explainer/2002/02/where_did_the_fifth_amendment_come_from.html (explaining that the Fifth Amendment was created due to the excesses of Courts of Star Chamber and High Commission, which used "the inquisitorial method of truth-seeking as opposed to the prosecutorial, meaning that prosecutors did not bear the burden of proving a case"); *see also* Andresen v. Md., 427 U.S. 463, 470 (1976) (mentioning the methods of the ecclesiastical inquisitions and the Star Chamber); Griffin v. Cal., 380 U.S. 609, 620 (1965) (stating that a person refusing to testify in front of the Star Chamber suffered "incarceration, banishment and mutilation").

22. *See* Lithwick, *supra* note 21; *see also Star Chamber*, ENCYCLOPEDIA.COM, https://www.encyclopedia.com/history/modern-europe/british-and-irish-history/star-chamber (last visited Nov. 21, 2018) (explaining that the court "met in secret, extracting evidence by torturing witnesses and handing out punishments that included mutilation, life imprisonment, and enormous fines."); Melissa Snell, *Court of Star Chamber*, THOUGHTCO. (Mar. 13, 2018), https://www.thoughtco.com/court-of-star-chamber-1789073 ("The Long Parliament abolished the Star Chamber in 1641."); Peter Bowen, *Burden of Proof, A Look at the Challenges Posed by English Libel Laws*, BLEECKER STREET, https://bleeckerstreetmedia.com/editorial/denial-burden-of-proof (last visited Nov. 21, 2018) (explaining that in English courts, the burden of proof was on the defendant).

23. *See* Lithwick, *supra* note 21 (explaining that the accused was also required to respond to any question without advance notice of his accusers, the charges against him, or the evidence gathered); *see also Foot Torture and the Star Chamber*, FOOT TALK (Apr. 11, 2006), http://foottalk.blogspot.com/2006/04/foot-torture-and-star-chamber.html (describing that the proof came from coercive confessions out of the accused by using torture to extract confessions and to obtain evidence; however, "the activities were disguised, euphemized or justified under the name of punishment or as a discipline"); Robert Cipes, *Crimes, Confessions, and the Court*, THE ATLANTIC ONLINE (Sept. 1966), https://www.theatlantic.com/past/docs/unbound/flashbks/oj/cipesf.html (noting that a defendant could be forced to testify under oath at his trial for the purpose of obtaining a confession because "little or nothing may be found" by other means of investigation); Luis E. Chiesa, *Beyond Torture: The Nemo Tenetur Principle in Borderline Cases*, 30 B.C. THIRD WORLD L.J. 35, 35 (Nov. 1, 2010), http://lawdigitalcommons.bc.edu/twlj/vol30/iss1/3 (explaining that this principle "protects against three practical problems associated with confessions: (1) untrustworthy

By the 18th century, English law provided that neither coerced confessions during the trial, nor pretrial confessions obtained through torture could be used based on the belief that coerced confessions were inherently unreliable.[24] Since then, the Fifth Amendment has been expanded to apply, not only to criminal proceedings and pretrial proceedings in criminal matters including police interrogations, but also to "any other proceeding, civil or criminal, formal or informal, where his answers might incriminate him in future criminal proceedings."[25]

The main function of the Fifth Amendment has been to protect a "natural individual from compulsory incrimination through his own testimony or personal records."[26] It provides a suspect the right to remain silent in order to avoid perjury, contempt, and self-incrimination.[27] By the 1960s, the Fifth Amendment was recognized in *Malloy v. Hogan* as "the

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confessions; (2) involuntary confessions; and (3) confessions provoked through unacceptable force").

24. *See* Lithwick, *supra* note 21; *see also* Lyons v. Okla., 322 U.S. 596, 605 (1944) (holding that coerced confessions are offensive "not because the victim has a legal grievance against the police" but because guilt cannot be inferred based on confessions obtained through torture); Watts v. Ind. 338 U.S. 49, 55 (1949) (holding that three convictions were reversed resting on coerced confessions, stating that the Due Process Clause bars improper police conduct); Julie T. Siegel, *Confessions in an International Age: Re-Examining Admissibility Through the Lens of Foreign Interrogations*, 115 MICH. L. REV. 277, 282 (2016) (noting that coerced confessions were excluded because the tactics were more likely to produce "false or unreliable confessions").

25. *See* Lithwick, *supra* note 21; *see also* Michael J. Zydney Mannheimer, *Ripeness of Self-Incrimination Clause Disputes*, 95 J. CRIM. L. & CRIMINOLOGY 1261, 1267 (2005) (highlighting that the self-incrimination clause privileges a witness not to respond to questions that will incriminate him in future criminal proceedings).

26. *See* United States v. White, 322 U.S. 694, 698 (1944) (explaining further that the Fifth Amendment "grows out of the high sentiment of our jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality"); *see also* William M. Beccher et al., *Education and the Fifth Amendment, Old Privilege Seeks New Meaning In Wake of Legislative Probes*, THE HARV. CRIMSON (June 10, 1953), http://www.thecrimson.com/article/1953/6/10/education-and-the-fifth-amendment-pno/?page=2 (stating that a refusal to testify is not an admission of guilt); Murphy v. Waterfront Comm'n of N.Y. Harbor, 378 U.S. 52, 80 (1964) (holding that the privilege against self-incrimination protects a witness in a federal court from being compelled to give testimony, which could be used against him in a state court).

27. *See* Micah Schwartzbach, *What's the Reason for the Fifth Amendment Privilege Against Self-Incrimination?*, NOLO, https://www.nolo.com/legal-encyclopedia/what-s-the-reason-the-fifth-amendment-privilege-against-self-incrimination.html (last visited Nov. 21, 2018) (explaining that someone who might have committed a crime and who is forced to answer questions about it, has the option of lying and commit perjury, decline to answer and be held in contempt, or provide evidence, which could lead to a conviction); *see also* Robert Barnes, *Supreme Court: Suspects Must Invoke Right to Remain Silent in Interrogations*, WASH. POST (June 2, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/06/01/AR2010060102114.html (highlighting that in order for individuals to exercise their Fifth Amendment right, they should speak up during interrogations).

essential mainstay of our adversary system."[28] As a mainstay of our legal system, the Fifth Amendment must be granted a liberal construction in favor of the right it was intended to secure.[29] A person's decision to testify or remain silent must be the consequence of an "unfettered exercise of his own will."[30] Consequently, the invocation of the Fifth Amendment cannot be discouraged by the imposition of any penalty for its assertion.[31]

In *Murphy v. Waterfront Comm'n of New York Harbor*, a set of the fundamental values of the Fifth Amendment was laid out to justify the privilege against self-compelled incrimination.[32] Additionally, the Fifth Amendment protects people from arbitrary government action.[33] It ensures

28. *See* Miranda v. Arizona, 384 U.S. 436, 460 (1966); *see also* Malloy v. Hogan, 378 U.S. 1, 8 (1964) (stating that the Government is "constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth").

29. *See* Joel M. Flaum & Jayne A. Carr, *Public Service: Self-Incrimination vs. The Public's Right to an Accounting*, 63 J. CRIM. L. CRIMINOLOGY 325, 325 (1972) (explaining that the privilege may be asserted in any proceeding such as: civil, criminal, administrative, judicial, investigatory, or adjudicatory); *see also* Counselman v. Hitchcock, 142 U.S. 547, 562 (1892) (stating the right was intended to have a broad construction); *The Purpose and Scope of the Fifth Amendment Right Against Compulsory Self-Incrimination*, AM. B. ASS'N, http://apps.americanbar.org/abastore/products/books/abstracts/5090120chap1_abs.pdf (last visited Nov. 21, 2018) (noting that regardless of the fact that the Fifth Amendment equivalently interferes with the general principle that society is entitled to every man's evidence, it promotes certain fundamental values justifying such interference).

30. *See* Flaum & Carr, *supra* note 29; *see also Miranda*, 384 U.S. at 509; *May the Court Force Me to Testify?*, FIND L., http://litigation.findlaw.com/going-to-court/may-the-court-force-me-to-testify.html (last visited Nov. 21, 2018) (highlighting that criminal defendants cannot be forced to testify).

31. *See* Flaum & Carr, *supra* note 29; *see also* Ullmann v. United States, 350 U.S. 422, 426 (1956) (noting that this constitutional protection must not be interpreted in a hostile or niggardly spirit, and must not be viewed as a shelter for wrongdoers).

32. *See* Murphy v. Waterfront Comm'n of N.Y. Harbor, 378 U.S. 52, 55 (1964).

> [The Fifth Amendment] reflects many of our fundamental values and most noble aspirations, such as our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates 'a fair state-individual balance by requiring the government to leave the individual alone until good cause is shown for disturbing him and by requiring the government in its contest with the individual to shoulder the entire load,'; our respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life,'; our distrust of self-deprecatory statements; and our realization that the privilege, while sometimes 'a shelter to the guilty,' is often 'a protection to the innocent.'

Id.

33. *See What is the Importance and Significance of the Fifth Amendment?*, ENOTES, https://www.enotes.com/homework-help/what-importance-significance-fith-amendment-281349 (last visited Nov. 21, 2018) (emphasizing that the Fifth Amendment prevents the Government

that one cannot be punished without the government legitimately proving that one committed a crime.[34]

B. MIRANDA'S HISTORY

Minors and adults share many of the same rights under the law, but most juveniles lack the maturity to truly understand what having those rights actually entails.[35] Before the twentieth century, juveniles were treated and sentenced as adults.[36] The juvenile court established in the 1900s was very different from the adult court because it had informal proceedings, proceedings based on civil law, closed proceedings, emphasis

from arbitrarily killing, imprisoning, or confiscating property from anyone without fair and legal measures); *see also Crime and Due Process*, AM. GOV'T, http://www.ushistory.org/gov/10c.asp (last visited Nov. 21, 2018) (explaining that the "Fifth Amendment protects people from actions of the federal government, and the Fourteen Amendment protects people from actions by state and local governments").

34. *See What is the Importance and Significance of the Fifth Amendment?*, *supra* note 33; *see also* B. Todd Jones, *Know Your Rights, A Guide to the United States Constitution*, U.S DEP'T. OF JUST., https://www.justice.gov/sites/default/files/usao-ne/legacy/2012/04/27/Civil%20Rights%20Book-NE-2.pdf (last visited Nov. 21, 2018) (highlighting that the Fifth Amendment protects the rights of those accused of crimes by stating that people cannot be tried for a crime without an indictment or other formal charge being led against them by a group of citizens known as a grand jury).

35. *See* Chanel Lee, *Do children and teenagers have constitutional rights?*, HOWSTUFFWORKS, https://people.howstuffworks.com/do-children-teenagers-have-constitutional-rights1.htm (last visited Nov. 21, 2018) (explaining that the law recognizes that minors are not physically and emotionally mature enough to handle the responsibility attached to legal activities such as drinking, voting, or running for public office); *see also What are the Legal Rights of Children?*, FINDLAW, http://family.findlaw.com/emancipation-of-minors/what-are-the-legal-rights-of-children.html (last visited Nov. 21, 2018) (explaining that minors are not typically granted the rights of adults until they reach the age of eighteen).

36. *See Juvenile Justice Guide Book for Legislators*, ADOLESCENT DEV. & COMPETENCY, 2 http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf (last visited Nov. 21, 2018) (noting that under common law, any children younger than six could not be held liable for their actions, but all others were not distinguished from adults); *see also Juvenile Justice History*, CTR. ON JUV. AND CRIM. JUST., http://www.cjcj.org/education1/juvenile-justice-history.html (last visited Nov. 21, 2018) (explaining that until the twentieth century, courts punished and confined youth in jails and penitentiaries where "youth of all ages and genders were often indiscriminately confined with hardened adult criminals and the mentally ill in large overcrowded and decrepit penal institutions").

on helping the child, and lack of jury trials.[37] "In fact, prior to the 1960s juveniles had few Due Process rights."[38]

The juvenile court system remained unchanged until the landmark Supreme Court decision, *In Re Gault*, which held that the Due Process Clause of the Fourteenth Amendment applied to juvenile court proceedings.[39] Decided just one year before, *Miranda v. Arizona* held that adults apprehended by the police must be informed of the elements of the right to remain silent and of the right to counsel before interrogation.[40] The landmark decision created a system where the accused must be allowed certain rights, and in order for them to be effective, the suspect must be informed of those rights and understand their meaning.[41]

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37. *See The History of Juvenile Justice,* AM. B. ASS'N, 5 https://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf (last visited Nov. 21, 2018) (emphasizing that the new juvenile court system was a non-adversarial and flexible approach to cases, which were treated as civil actions, and the principal goal was to guide a juvenile offender toward life as a responsible, law-abiding adult); *see also* NAT'L RES. COUNCIL AND INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE 154 (Joan McCord, et al. eds., 2001) (explaining that this new juvenile system was informal, with broad discretion left to the juvenile court judge, and "[i]t was to focus on the child or adolescent as a person in need of assistance, not on the act that brought him or her before the court").

38. *See* Kathleen Michon, *Constitutional Rights in Juvenile Cases*, NOLO, https://www.nolo.com/legal-encyclopedia/constitutional-rights-juvenile-proceedings-32224.html (last visited Nov. 21, 2018) (describing the different due process rights a juvenile has); *see also Juvenile Justice: Juvenile Court - Juvenile Rights,* LAW LIBR. – AM. L. AND LEGAL INFO., http://law.jrank.org/pages/1520/Juvenile-Justice-Juvenile-Court-Juvenile-rights.html (last visited Nov. 21, 2018) (highlighting that "[j]uveniles arrested for delinquency had no right to an attorney unless they happened to live in a jurisdiction where this was granted to them by state or local law").

39. *See* In re Gault, 387 U.S. 1, 41 (1967) (explaining that that juveniles have (1) a right to notice, (2) a right to counsel, (3) a right to confront witnesses, and (4) a privilege against self-incrimination in hearings that could result in them being confined to an institution); *see also* NAT'L RES. COUNCIL AND INST. OF MED., *supra* note 37 (describing that the goal of this new juvenile justice system was for "diverting youthful offenders from the destructive punishments of criminal courts and encouraging rehabilitation based on the individual juvenile's needs").

40. *See* Miranda v. Arizona, 384 U.S. 436, 461 (1966) (emphasizing that the history of the right against self-incrimination makes it clear that this right applies not only at trial, but any time a suspect is in police custody); *see also* Grisso, *supra* note 10, at 1136 (explaining that the Miranda case prescribed the "form, wording, and non-coercive approaches" that permitted the police to inform suspects of these rights and in seeking a waiver, which had to be "voluntarily, knowingly, and intelligently" made in order for it to be valid).

41. *See Miranda*, 384 U.S. at 444 (holding that the "prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."); *see also* Kimberly Larson, *Improving The "Kangaroo Courts": A Proposal For Reform In Evaluating Juveniles' Waiver Of Miranda*, 48 VILL. L. REV. 629, 635 (2003) (emphasizing that any statement obtained by violating the Miranda rules is considered inadmissible against the accused in court, and only after the interrogator informs the suspect of these rights, the suspect may validly waive them and agree to speak with the police).

In *Escobedo v. Illinois*, the Court outlined the fundamental principles that would become the backbone of the *Miranda* decision.[42] The Court held that the absence of counsel after the right has been invoked is itself a violation of a constitutional right and is justification for reversal of any subsequent conviction.[43] Nonetheless, the *Miranda* holding may be seen as a departure from the due process analysis established in *Malloy* and *Escobedo* cases.[44]

The Supreme Court has broadened the use of the Miranda warning by extending it to minors questioned by police at schools.[45] In *J.D.B. v. North Carolina*, the Court split on the question of whether a suspect's age must be taken into consideration in deciding to issue Miranda warnings.[46]

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42. *See* Escobedo v. Ill., 378 U.S. 478, 490–91 (1964) (affirming a suspect's Sixth Amendment right to counsel during in custody interrogations, and holding that one's Fifth Amendment privilege against self-incrimination applied to in-custody interrogations); *see also* Roscoe C. Howard Jr. & Lisa A. Rich, *A History of Miranda and Why It Remains Vital Today*, 40 VAL. U. L. REV. 685, 688–89 (2006) (explaining that in this case the defendant was taken into custody and interrogated for four hours for the purpose of gaining a confession without the notice of his right to remain silent or his right to have an attorney present).

43. *See The Curious Confusion Surrounding Escobedo v. Illinois*, 32 U. CHI. L. REV. 560, 561 (1965) (emphasizing that "[t]he Court in Escobedo was primarily concerned with protecting the rights of the accused by guaranteeing a right to counsel."); *see also* Davis v. N.C., 339 F.2d 770, 781 (4th Cir. 1964) (Sobeloff and Bell, JJ., dissenting) ("The doctrinal importance of Escobedo is found in its recognition that the interrogation of a suspect in police custody is a critical juncture in the criminal process, and that the inquisition may not be persisted in without according him the right to counsel.").

44. *See* Howard & Rich, *supra* note 42, at 692. In *Malloy* and *Escobedo*, the defendants' statements were not necessarily involuntary in traditional terms. The concern for adequate safeguards to protect the Fifth Amendment rights is not lessened in the slightest. The fact remains that in none of these cases the officers undertook the necessary safeguards during the interrogations to insure that the statements were truly the product of free choice. *See also* John E. Nowak, *Back to the Future Due Process Analysis*, 45 ST. LOUIS U. L. J. 455, 461 (2001). The cases that followed Miranda "ended the Supreme Court inquiry into the principles of fairness, respect for individual dignity, and the needs of society for efficient law enforcement that would have followed from a due process methodology."

45. *See* Nina Totenberg, *High Court: Age Must Be Considered In Interrogation*, NAT'L PUB. RADIO (June 16, 2011, 9:21 PM), https://www.npr.org/2011/06/17/137236801/high-court-age-must-be-considered-in-interrogation (noting that age must be considered in determining whether a suspect is aware of his or her rights); *see also* Peter W.D. Wright & Pamela Wright, *J. D. B. v. North Carolina In Custody or Free to Leave? Supreme Court Clarifies Miranda Rights*, WRIGHTSLAW (June 19, 2011), http://www.wrightslaw.com/law/art/jdb.nc.scotus.analysis.htm (noting that the J.D.B. Court held that age is a relevant factor to consider when determining whether Miranda warnings should be issued before questioning a minor).

46. *See* J. D. B. v. N.C., 564 U.S. 261, 272 (2011) (emphasizing that a minor's age "is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception, [which] applies broadly to children as a class"); *see also* Adam Liptak, *Does Suspect Need Miranda Warning? It May Depend on Age, Justices Rule*, THE N. Y. TIMES (June 16, 2011), http://www.nytimes.com/2011/06/17/us/17scotus.html (stating that the majority ruled that greater care must be taken with respect to minors when the police questions them).

Writing for the five-member Court majority, Justice Sonia Sotomayor stated there is "no reason for police officers or courts to blind themselves to [the] commonsense reality" that minors "will often feel bound to submit to police questioning when an adult in the same circumstances" would feel free to leave.[47] Until this date, *Miranda* remains a vital component of the American criminal justice system; however, for several years the Supreme Court had considered issues regarding custodial interrogations and confessions leading up to the Court's opinion in *Miranda* that must be addressed.[48]

C. KEY CASES LEADING TO MIRANDA REFORM

The decision from *J.D.B. v. North Carolina* was drawn from two other Supreme Court cases.[49] In *Roper v. Simmons*, Justice Anthony M. Kennedy declared that people who kill at age sixteen or seventeen cannot be executed.[50] Similarly, in *Graham v. Florida*, Justice Kennedy explained

47. *See J. D. B.*, 564 U.S. at 264, 271–72 (explaining that in certain instances, a minor's age could affect how a reasonable person in the suspect's position "would perceive his or her freedom to leave"); *see also* Totenberg, *supra* note 45 (emphasizing that "a student required by law to attend school, and who is subject to disciplinary action for disobedience, might well believe that he or she must answer all police questions").

48. *See* Howard & Rich, *supra* note 42, at 686 (explaining that the "Federal Bureau of Investigation routinely gave Miranda-type warnings before they were required under Miranda," and it was those warnings upon which the Miranda Court based its holdings); *see also* Totenberg, *supra* note 45 (explaining that "the Supreme Court specifically left unanswered the question of whether a formal Miranda warning will suffice when given to a child, and what, if anything, police must do to make sure kids who are questioned do understand their rights"); Andrew Guthrie Ferguson & Richard A. Leo, *The Miranda App: Metaphor And Machine*, 97 B.U. L. REV. 935, 937 (2017) (noting that one of the main problems after Miranda has been "the coercive pressure of custodial interrogation, [which] has remained largely unchanged.").

49. *See* Graham v. Florida, 560 U.S. 48, 68 (2010) (emphasizing that "no recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles . . . developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"); *see also* Roper v. Simmons, 543 U.S. 551, 569 (2005) (describing that there are three general differences between juveniles under eighteen and adults that demonstrate that juvenile offenders cannot be classified among the worst offenders); Hillary B. Farber, *J.D.B. v. North Carolina: Ushering in a New "Age" of Custody Analysis Under Miranda*, 20 J. L. & POL'Y 117, 126 (2011) (highlighting that "Roper and Graham are the keys to understanding Justice Kennedy's vision of childhood and the distinct qualities of children that differentiate them from adults").

50. *See Roper*, 543 U.S. at 569 (explaining that "a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults"); *see also Supreme Court Bars Death Penalty for Juvenile Killers*, THE N.Y. TIMES (March 1, 2005), http://www.nytimes.com/2005/03/01/politics/supreme-court-bars-death-penalty-for-juvenile-killers.html (reasoning that "prohibiting the execution of juvenile killers is a natural and logical conclusion to the court's . . . ruling in 2002 that executing mentally retarded offenders is unconstitutional").

that barring life imprisonment without parole sentences "gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform."[51] In these cases, the Court explained that juveniles lack maturity, have difficulty weighing long-term consequences, and may not understand the criminal justice system or the role of police.[52]

In *J.D.B. v. North Carolina*, the Court analyzed that the test for custody under *Miranda* limits itself to consideration of objective circumstances in determining how a reasonable person in the suspect's position would understand his freedom to end the questioning and leave.[53] The Court also reasoned that "police officers and judges can recognize age without doing any damage to the objective nature of the custody analysis."[54] This landmark sentencing decision has led to calls for systematic changes to many other aspects of the juvenile justice system.[55] In actuality, the Miranda warnings are too complex for a juvenile to

51. *See Graham*, 560 U.S. at 79 (noting that juveniles "should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential"); *see also Graham v. Florida*, EQUAL JUSTICE INITIATIVE, https://eji.org/graham-v-florida (last visited Nov. 21, 2018) (highlighting that "juvenile[s] should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential").

52. *See* Bellotti v. Baird, 443 U.S. 622, 635 (1979) (noting that during the childhood and adolescence years, minors usually lack "the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them"); *see also* Farber, *supra* note 49, at 118 (resulting from these two cases, "which embraced the scientific evidence revealing fundamental differences between juvenile and adult minds, juveniles can no longer be classified among the worst offenders, deserving of the most serious punishment").

53. *See* J. D. B. v. N.C., 564 U.S. 261, 277 (2011) (explaining that "unlike a child's youth, an officer's purely internal thoughts have no . . . effect on how a reasonable person in the suspect's position would understand his freedom"); *see also* Farber, *supra* note 49, at 136 (highlighting that due to a minor's deference to authority, "a juvenile . . . is likely to feel he must comply with a police officer's request to talk to him, especially where he is surrounded by school personnel in the principal's office").

54. *See J. D. B.*, 564 U.S. at 272 (noting that minors are usually less mature and responsible than adults); Farber, *supra* note 49, at 135.

55. *See* Joshua A. Tepfer, *Defending Juvenile Confessions After J.D.B. v. North Carolina*, NAT'L ASS'N OF CRIM. DEF. LAW.: THE CHAMPION, (Mar., 2014), https://www.nacdl.org/Champion.aspx?id=32655 (explaining that the language in J.D.B. serves as a guide for litigators to challenge the circumstances of when a seasoned law enforcement officer questions an immature minor); *see also* RICHARD J. BONNIE, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 34–35, 37–38, 41–42 (2013), https://www.nap.edu/read/14685/chapter/4#34 (explaining the challenges that eventually led to successive waves of reform of juvenile justice policy in the last third of the 20th century, turning from the Rehabilitative method in the 1960s, instituting the Due Process reforms of the 1970s, establishing the Punitive reforms of the 1980s and 1990s, and finally reemerging the Rehabilitative method reinforced with scientific knowledge).

understand.[56] Unfortunately, a juvenile's difficulty in exercising these rights is only one of the many issues and consequences they experience.[57]

III. DISCUSSION

A. JUVENILES' PERSPECTIVE

While Miranda warnings do exist, the purpose of their existence is not being achieved when it comes to juveniles.[58] As minors age, they continue to develop cognitive, social, and emotional skills, which leads to an increased ability to take part in logical decision-making.[59] Juveniles who have yet to develop such faculties may encounter difficulty remembering

56. *See* Alan Greenblatt, *Research Says Juveniles Need Their Own Miranda Rights*, GOVERNING THE STATES AND LOCALITIES (Dec. 2017), http://www.governing.com/topics/public-justice-safety/gov-miranda-rights-juveniles.html (explaining that the American Academy of Child and Adolescent Psychiatry determined that Miranda warnings are "too complex and advanced for most juveniles," so they recommended that police and other law enforcement authorities should use simplified Miranda warnings for juvenile suspects); *see also Interviewing and Interrogating Juvenile Suspects*, AM. ACA. OF CHILD & ADOLESCENT PSYCHIATRY (Mar. 7, 2013), https://www.aacap.org/aacap/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx (noting that when administering Miranda warnings, several jurisdictions use the adult version, but research demonstrates that these warnings are often too complex and advanced for most juveniles).

57. *See* Larry E. Holtz, *Miranda in a Juvenile Setting: A Child's Right to Silence*, 78 J. CRIM. L. & CRIMINOLOGY 534, 535 (1987) (emphasizing that "the issues faced by the juvenile court are not "criminal culpability, determinations of guilt or innocence, and punishment, but are instead sensitivity, understanding, guidance, and protection"); *see also* David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL'Y REV. 13, 15 (2003) (explaining that social learning theory along with developmental neurobiology are relevant for framing developmental issues of children and adolescents who are still developing because one of the main concerns of the juvenile justice system is social behavior).

58. *See* Carl Zimmer, *You're an Adult. Your Brain, Not So Much.*, N. Y. TIMES (Dec. 21, 2016) https://www.nytimes.com/2016/12/21/science/youre-an-adult-your-brain-not-so-much.html ("It's not enough to compare people using simple categories, such as labeling people below age 18 as children and those older as adults [because] 'nothing magical occurs at that age.'"); *see also Juvenile Justice Guide Book for Legislators, supra* note 36, at 4 (explaining that "it is routine and socially acceptable to treat youth differently in many settings" since both federal and state laws restrict minors' rights and activities).

59. *See* Allison D. Redlich et. al., *The Police Interrogation of Children and Adolescents*, *in* INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 107, 114 (G. Daniel Lassiter, ed. 2004), https://www.albany.edu/scj/documents/Chapter05Lassiter.pdf (noting that these skills are important "to reliably remember and report events, to extend [the juveniles'] thinking into the future and consider the long-term consequences, and to engage in advanced social-perspective taking"); *see also* Sarah B. Johnson, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 219–20 (2009) (explaining that the American Medical Association stated that juveniles' behavioral immaturity reflects "the anatomical immaturity of their brains.").

and articulating their experience during a police interrogation.[60] In general, juveniles lack certain skills that adults possess, such as the psychosocial and cognitive maturity to consider the consequences of a waiver of rights, or the ability to reason how to make such a decision.[61]

In *Commonwealth v. Truong*, a Massachusetts trial court suppressed the confession of an almost-seventeen-year-old girl to the murder of her daughter, despite being validly read the Miranda warnings because she did not have the requisite intelligence, knowledge, experience, or sophistication to understand her rights.[62] Similarly, in *Haley v. Ohio*, the Supreme Court overturned the original conviction of a fifteen-year-old boy concluding that teens like Haley are no match for adult interrogators.[63] The Court reasoned that a teenager is too young to exercise or even comprehend his or her rights.[64] As a result, the teenager becomes an "easy victim of the law."[65]

60. *See* Redlich, *supra* note 59, at 108, 110–12, 114, 122; *see also Juvenile Justice & the Adolescent Brain*, MASS. GEN. HOSP.: CTR. L. BRAIN & BEHAV., http://clbb.mgh.harvard.edu/juvenilejustice/ (last visited Nov. 21, 2018) (highlighting that "[s]cientists know that the adolescent brain is still developing, that it is highly subject to reward- and peer-influence, and that its rate of development varies widely across the population").

61. *See* Justin Ashenfelter, *Coming Clean: The Erosion of Juvenile Miranda Rights in New York State*, 56 N.Y. L. REV. 1503, 1505 (2011) (explaining that state courts have expanded the protections of the Fifth Amendment "to juveniles because the U.S. Supreme Court has 'underscored the need for special protections for youths, due to their presumed greater vulnerability and lesser capacity to understand or assert their rights during police contact'"); *see also* Thomas Grisso, *Adolescents' Decision Making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 3, 5 (2006) (highlighting "the need for special protections for youths," especially since "during the 1990s, we learned of instances when youths' immaturity seemed actually to be used as a tool to obtain their confessions").

62. *See* Commonwealth v. Nga Truong, No. CV200090385, 2011 WL 1886500 at *9–10 (Mass. Feb. 25, 2011) (holding that confronting the suspect with knowingly false statements about her child's cause of death, coupled with suggestions that she would be treated leniently if she confessed because of her juvenile status and more harshly if she did not, rendered the interrogation coercive and the confession involuntary); *see also* Feld, *supra* note 11, at 27 (reasoning that "psychological research . . . indicates that younger and mid-adolescent youths are not equal to adults in the interrogation room and that they require procedural protections beyond Miranda [in order] to protect them" and to enable them to exercise their constitutional rights).

63. *See* Haley v. Ohio, 332 U.S. 596, 599–601 (1948) (explaining that the same characteristics of adolescence that would cause a youth to feel overwhelmed during an interrogation would similarly cause a reasonable youth to feel that he or she could not leave the interrogation room); *see also* Redlich, *supra* note 59, at 111..

64. *See Haley*, 332 U.S. at 599–600 (explaining that a fifteen-year-old boy, "questioned through the dead of night by relays of police, is a ready victim of the inquisition"); *see also* Jan Hoffman, *In Interrogations, Teenagers Are Too Young to Know Better*, N.Y. TIMES (Oct. 13, 2014, 4:49 PM), https://well.blogs.nytimes.com/2014/10/13/in-interrogations-teenagers-are-too-young-to-know-better/ (noting that juveniles are very suggestible during an interrogation, which makes them more likely than adults to change their answers in response to interviewers).

65. *See Haley*, 332 U.S. at 599; *see also* JUVENILE CRIME, JUVENILE JUSTICE, *supra* note 37 (noting that legal reforms and policy changes include more aggressive policing of juveniles,

The justices contemplated whether youthful suspects have the maturity to provide voluntary confessions when faced with police authority.[66]

Another important example is shown in *Gallegos v. Colorado*, where the Court upheld the decision in *Haley*, and overturned the conviction of a fourteen-year-old boy because he "[could not] be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions."[67] The Court concluded that a juvenile "is unlikely to have any conception of what will confront him" during an interrogation or how to get the benefits of his constitutional rights.[68] Today, both *Haley* and *Gallegos* emphasize the youthfulness and immaturity of teenaged defendants.[69]

As a result of their lack of understanding and lack of cognitive mental abilities regarding Miranda warnings, juveniles experience difficulties understanding the language and suffer the consequences.[70] Due to juveniles' inability to properly assess their situation when the Miranda language is read to them, they are likely to waive their right to counsel.[71]

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making it easier, or in some cases mandatory, to treat a juvenile who has committed certain offenses as an adult).

66. *See* Redlich, *supra* note 59, at 111, 114; *see also Interrogations and Confessions*, SAGE PUB., https://in.sagepub.com/sites/default/files/upm-binaries/36065_8.pdf (last visited Nov. 21, 2018) (highlighting that a number of suspects waive their Miranda rights because of an inability to fully comprehend the warnings resulting from youth, a lack of intelligence or education, or an inability to understand their rights).

67. *See* Gallegos v. Colorado, 370 U.S. 49, 54–55 (1962) (reasoning that without some adult protection against this inequality, a fourteen-year-old boy would not be able to know, let alone assert his constitutional rights, and to allow this conviction to stand would be to treat him as if he had no constitutional rights); *see also* Graham v. Fla., 560 U.S. 48, 72 (2010) (emphasizing that adolescents' lack of maturity affects their decision-making capacity such that youth must be treated differently from adults for sentencing purposes).

68. *See Gallegos*, 370 U.S. at 54; *see also* Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J. L. & PUB. POL'Y 395, 405–06 (2013) (emphasizing that juveniles and adults differ in knowledge, experience, and impulse control, which contributes to poorer decisions).

69. *See* Redlich, *supra* note 59, at 111, 114; *see also* Etherly v. Schwartz, 649 F. Supp. 2d 892, 896 (N.D. Ill. 2009) (noting that *Haley* and *Gallegos* analyze the use of coerced confessions with reference to the Due Process Clause of the Fourteenth Amendment).

70. *See* Martin Guggenheim & Randy Hertz, *J.D.B. and the Maturing of Juvenile Confession Suppression Law*, 38 WASH. U. J. L. & POL'Y 109, 134 (2012) (suggesting the need for a more exacting analysis in juvenile cases by stating that the circumstances to be considered in the totality analysis should include the juvenile's age, experience, education, background, and intelligence, and into 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); *see also* Feld, *supra* note 4, at 229–30 (explaining that juveniles have greater difficulty than adults conceiving of a right as an absolute entitlement that they can exercise without adverse consequences).

71. *See Gallegos*, 370 U.S. at 54 (explaining that without advice as to their rights or the benefit of more mature judgment, the Court found that juveniles "would have no way of knowing

In *Fare v. Michael C.*, the Court addressed the broad question of how to administer the Miranda waiver rule in juvenile cases.[72] The Court held that the totality of the circumstances approach is appropriate to determine whether a juvenile has waived his rights even when an interrogation is involved.[73] However, courts later determined that the test was too vague to provide a clear standard for admissibility.[74] Therefore, the Supreme Court created a new standard in *Colorado v. Connelly*.[75]

Under *Connelly*, confessions may only be excluded if the inculpatory statements are produced at least in part by coercive police conduct.[76] The Court held that the Due Process Clause of the Fourteenth Amendment requires "coercive police activity" in order to find a confession not voluntary.[77] However, the Court did recognize that "mental condition is

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what the consequences of [their] confession[s] were" or "the steps [they] should take in the predicament in which [they] found [themselves]"); *see also* Robert E. McGuire, *A Proposal to Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355, 1382 (2000) (arguing that without adult assistance, juveniles will comply with authority figures, misunderstand the warnings given, and fail to assert their rights).

72. *See Fare*, 442 U.S. at 725 (holding that the totality-of-the-circumstances analysis is sufficient to ascertain whether the juvenile has waived his rights); *see also* Guggenheim & Hertz, *supra* note 70, at 134–35 (providing factors to consider in the totality of the-circumstances analysis, such as the juvenile's age, intelligence, background, and experience).

73. *See Fare*, 442 U.S. at 724–25; *see also* Schneckloth v. Bustamonte, 412 U.S. 218, 224–26 (1973) (noting that the concept of voluntariness "has reflected an accommodation of the complex of values implicated in police questioning" and that the Court has assessed "the totality of all the surrounding circumstances" in making determinations as to whether a defendant's will was overborne).

74. *See Siegel*, *supra* note 24, at 284 (noting that the subjective and fact intensive totality of the circumstances test resulted in case-by-case adjudication, and failed to provide clear guidance to both law enforcement and courts); *see also* Barry C. Feld, *Police Interrogation Of Juveniles: An Empirical Study Of Policy And Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 222, 225 (2006) (noting that legal training does not teach judges how to assess juvenile development and how to weigh the factors that make juveniles uniquely vulnerable during interrogations); Barbara Kaban & Ann E. Tobey, *When Police Question Children: Are Protections Adequate?*, 1 J. CTR. FOR CHILD. & CTS. 151, 153 (1999).

75. *See* Colorado v. Connelly, 479 U.S. 157, 163–68 (1986) (involving a mentally ill defendant who, walked up to a patrol officer on the streets of Denver and confessed to having murdered a young woman several months earlier).

76. *See Siegel*, *supra* note 24, at 280; *see also Connelly*, 479 U.S. at 166–67 (explaining that even though the Court found that the aim of due process is to prevent fundamental unfairness and did not directly mention an interest in deterring police misconduct, the Court referenced the Fourth Amendment, stating that evidence seized by the police is excluded only if it would deter future violations of the Constitution); *Coerced & False Confessions: Wrongful Conviction in California,* SHOUSE CAL. L. GROUP, https://www.shouselaw.com/confessions.html#1 (last visited Nov. 21, 2018) (explaining the meaning of a coerced confession).

77. *See Connelly*, 479 U.S. at 164 (emphasizing that "absent police conduct causally related to the confession, there is no basis for concluding that any state actor has deprived a criminal defendant of due process"); *see also* Katherine Sheridan, *Excluding Coerced Witness Testimony to Protect a Criminal Defendant's Right to Due Process of Law and Adequately Deter Police*

surely relevant to an individual's susceptibility to police coercion."[78]

Not only are youth more susceptible to coercion than adults, their limited understanding of the criminal justice system itself puts them at a disadvantage.[79] Despite whether juveniles are guilty or innocent, they are more prone to confess in response to psychologically oriented interrogation tactics.[80] Juvenile false confessions are a serious and significant problem requiring urgent attention.[81] The extreme suggestibility of juveniles and their desire to please adult authority figures makes enforcing a safeguard against coerced or false confessions necessary.[82]

Misconduct, 38 FORDHAM URB. L.J. 1221, 1257 (2011) (highlighting that prohibiting the use of all inherently unreliable statements provides courts with a bright line rule in cases of police coercion that is easy to enforce, and more importantly, accomplishes the Supreme Court's purpose of the exclusionary rule: "to deter police misconduct adequately and efficiently"); *Colorado v. Connelly (1986)*, CLINICAL FORENSIC PSYCHOL. (June 7, 2011), http://www.clinicalforensicpsychology.org/colorado-v-connelly-1986/ (explaining that while mental condition can be a part of the voluntariness assessment, if there is no official coercion it is irrelevant).

78. *See Connelly*, 479 U.S. at 165; *see also* Daniel Harkins, *Revisiting Colorado v. Connelly: The Problem of False Confessions in The Twenty-First Century*, 37 S. ILL. U. L. J. 319, 329 (2013) (explaining that mere examination of the confessant's state of mind cannot conclude the due process inquiry, but it is one factor to consider in the totality-of the circumstances assessment of whether coercion overcame a defendant's will to resist).

79. *See* Elizabeth Scott et. al., *The Supreme Court and the Transformation of Juvenile Sentencing*, JUV. L. CTR., (Sept. 2015) http://www.jlc.org/sites/default/files/publication_pdfs/The_Supreme_Court_and_the_Transformation_of_Juvenile_Sentencing%20(1).pdf (explaining that the Supreme Court pointed to three characteristics of adolescence that distinguish youths from those of adults: "immature and impetuous decision-making with little regard for consequences, vulnerability to external coercion (particularly by peers), and unformed character, which made it difficult to judge an adolescent's crime as 'irretrievably depraved'"); *see also* Laurel LaMontagne, *Children under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. ST. U. L. REV. 30, 36 (2013) (explaining that when juveniles are faced with options in an interrogation, they tend to act impulsively and prioritize an immediate outcome without balancing it against future consequences); Malcolm C. Young & Jenni Gainsborough, *Prosecuting Juveniles in Adult Court An Assessment of Trends and Consequences*, THE SENT'G PROJECT (Jan. 2000), https://www.prisonpolicy.org/scans/sp/juvenile.pdf (describing the different disadvantages juveniles face).

80. *See Redlich*, *supra* note 59, at 114; *see also* Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, J. AM. ACAD. PSYCHIATRY & L. (Sept. 2009), http://jaapl.org/content/37/3/332 (reasoning that "police are more likely to elicit false confessions under certain conditions of interrogation, however, and individuals with certain personality traits and dispositions are more easily pressured into giving false confessions").

81. *See* LaMontagne, *supra* note 79, at 32; *see also* Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, SAGE JOURNALS (2014), http://journals.sagepub.com/doi/pdf/10.1177/2372732214548678 (reasoning that to understand and prevent the false confession behavior, researchers try to identify risk factors present in vulnerable suspects and in the use of certain dangerous interrogation tactics).

82. *See* Roper v. Simmons, 543 U.S. 551, 569 (2005) (noting that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,

All of these cases show that juveniles are giving false confessions because they do not fully understand their rights.[83] In addition, police officers take advantage of them by using improper questioning techniques during interrogations.[84] Due to their lack of cognitive and mental abilities, juveniles are subject to coercive interrogations and they become easy targets to waive their constitutional rights.[85] As a result, because juveniles are more vulnerable to agree with a request from a police officer, they are more prone to give false confessions.[86] This undoubtedly shows that if

compared to adults); *see also* Jessica R. Meyer & N. Dickon Reppucci, *Police Practices And Perceptions Regarding Juvenile Interrogation And Interrogative Suggestibility*, WILEY ONLINE LIBR., (Nov. 28, 2007), https://onlinelibrary.wiley.com/doi/pdf/10.1002/bsl.774 (highlighting that even though juveniles may be highly suggestible and easily influenced by authority than adults, police use the same psychologically coercive and deceptive tactics with juveniles as with adults). *See generally* LaMontagne, *supra* note 79, at 32 (noting that voluntary false confessions are given for different reasons, such as desire for attention or fame, an attempt to protect the real offender, or difficulty distinguishing fantasy and reality).

83. *See* In re B.M.B., 264 Kan. 417, 432–33 (1998) (holding that a confession of a ten-year-old boy to sexual assault was involuntary after an expert witness testified that the boy was questioned using tactics that are only appropriate for adult suspects); *see also* A.M. v. Butler, 360 F.3d 787, 800–01 (7th Cir. 2004) (finding that the confession of an eleven-year-old-boy to the murder of an elderly woman was involuntary, even with the presence of a youth officer since the young boy falsely confessed to the crime because the police repeatedly accused him of lying); People v. Rivera, 962 N.E. 2d 53, 67 (Ill. App. Ct. 2011) (finding that a teenager's detailed confession to sexual assault and murder was not enough to prove him guilty beyond a reasonable doubt).

84. *See* Crowe v. Cty. of San Diego, 608 F.3d 406, 424 (9th Cir. 2010) (noting that the police used techniques such as lying about the evidence and promising help rather than prison in exchange for an admission of guilt); *see also* LaMontagne, *supra* note 79, at 47 (questioning whether police lie when they apply for warrants or give testimony in court, since they are able to lie during the interrogation process).

85. *See Butler*, 360 F.3d at 800 (emphasizing that "the younger the child the more carefully the Court will scrutinize police questioning tactics to determine if excessive coercion, intimidation, or simple immaturity that would not affect an adult has tainted the juvenile's confession"); *see also* Patrick M. McMullen, *Questioning the Questions: The Impermissibility of Police Deception in Interrogations of Juveniles*, 99 NW. U. L. REV. 971, 973 (2005) (noting that "[p]olice deception—lying to suspects about the evidence and case against them is one critical element of such pressure tactics and is advocated by police training manuals and seminars").

86. *See* Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 FORDHAM URB. L.J.102, 132 (2006) (highlighting that most scholars are in agreement that coercion is more successful if the suspect is "especially vulnerable to manipulation," and that these factors include youth, naiveté, and lack of intelligence); *see also* Megan Crane et. al., *The Truth About Juvenile False Confessions*, A.B.A. (2016), https://www.americanbar.org/publications/insights_on_law_andsociety/16/winter2016/JuvenileConfessions.html (highlighting that "in a study of 125 proven false confessions, 63% of false confessors were under the age of twenty-five and 32% were under eighteen, a strikingly disproportionate result"); Steven A. Drizzin, *Interrogation Gone Bad: Juvenile False Confessions in the post-DNA Age*, NAT'L INST. JUST., https://www.nij.gov/topics/courts/indigent-defense/documents/drizin.pdf (last visited Nov. 21, 2018) (explaining that some of the techniques

juveniles were able to comprehend the Miranda warnings, the number of juveniles' false confessions would decrease.[87]

B. POLICE'S PERSPECTIVE

When a suspect is arrested, an officer usually reads the suspect his or her Miranda rights.[88] If a suspect voluntarily waives Miranda rights and talks, the confession almost certainly will be judged admissible.[89] By contrast, if a suspect invokes the right to remain silent, the police must "scrupulously honor" this right.[90] Accordingly, if a suspect requests a lawyer, no interrogation may occur without a lawyer present.[91]

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to motivate the suspect into confessing is overstating strength of case against suspect, interrupting denials, accusing suspect of lying, and false evidence ploys).

87. *See* Kassin, *supra* note 81 (showing that evidence from wrongful conviction cases suggests that innocence is accompanied by a mental state that can increase the risk of false confession because innocent people naively believe that truth and justice will prevail); *see also* Totenberg, *supra* note 45 (quoting Steven Drizen: "[t]he pressures of police interrogations weigh much more heavily on a juvenile suspect than they do on an adult suspect" leading to significant higher false confession rates between juveniles).

88. *See When Must The Police Read Me My Miranda Rights?*, RES. LIBR., https://resources.lawinfo.com/criminal-defense/when-must-the-police-read-me-my-miranda-right.html (last visited Nov. 21, 2018) (adding that Miranda warnings attach during any custodial interrogation even if the suspect has not been formally arrested); *see also* Michael Pandullo, *Arrested and Not Read Your Rights: Myth versus Fact,* PANDULLO L. (Jan. 30, 2015), https://www.pandullolaw.com/criminal-defense-blog/2015/january/arrested-and-not-read-your-rights-myth-versus-fa/ (explaining that the Miranda warning has to be given after arrest, but only when the police are trying to get a suspect to confess).

89. *See* Brooks Holland, *Miranda V. Arizona: 50 Years of Judges Regulating Police Interrogation,* A.B.A., https://www.americanbar.org/publications/insights_on_law_andsociety/15/fall-2015/miradavarizona_holland.html (last visited Nov. 21, 2018) (noting that "when the police take a suspect into custody for interrogation, that environment is inherently coercive, and the police must dispel that coercion by ensuring the suspect understands and waives his or her right against self-incrimination"); *see also* Gregory E. Spitzer, *Fifth Amendment—Validity of Waiver: A Suspect Need Not Know the Subjects of Interrogation*, 78 J. CRIM. L. & CRIMINOLOGY 828, 830 (1988) (explaining that the Miranda Court examines the totality of the circumstances surrounding the suspect's waiver of his rights to determine if his Fifth Amendment privilege was voluntarily waived).

90. *See* Holland, *supra* note 89; *see also* Andrew M. Hapner, *You Have the Right to Remain Silent, But Anything You Don't Say May Be Used Against You: The Admissibility of Silence as Evidence After Salinas v. Texas*, 66 FLA. L. REV. 1763, 1766 (2015) (stating that "[i]f Miranda warnings are not given to a suspect in custody, the suspect is not required to unambiguously invoke the privilege against self-incrimination during interrogation in order to assert the protection of the Fifth Amendment").

91. *See Police Questioning After the Suspect Claims Miranda*, NOLO, https://www.nolo.com/legal-encyclopedia/questioning-after-claiming-miranda.html (last visited Nov. 21, 2018) (noting that "if the detainee invokes only the right to remain silent, the police may reinitiate questioning at a later time, provided that they honor the right to remain silent"); *see also* Orin Kerr, *You have a right to a lawyer — but can't assert it yet*, WASH. POST (May 27, 2015),

The Supreme Court established the need for this protective rule in the essence of modern police interrogation.[92] Today, modern interrogation practices are "psychologically rather than physically oriented."[93] The police's goal is to isolate a suspect in order to deprive the suspect of every "psychological advantage" and "to subjugate the individual to the will of the examiner."[94] The Miranda warnings provide a plain and efficient template for prosecutors to demonstrate to courts that a confession was voluntary.[95]

After fifty-five years of *Miranda*, the Miranda warnings have become an embedded routine part of custodial interrogations.[96] During the 1960s, officers had strict orders to read any suspect they questioned their rights.[97] Today, Miranda warnings are ever changing in their application and

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https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/27/you-have-a-right-to-a-lawyer-but-cant-assert-it-yet/?noredirect=on&utm_term=.c49d190a162e (explaining that police cannot try to re-question a suspect until the suspect has been out of custody for fourteen days).

92. *See* Holland, *supra* note 89; *see also* Julia Layton, *How Police Interrogation Works*, HOW STUFF WORKS, https://people.howstuffworks.com/police-interrogation1.htm (last visited Nov. 21, 2018) (describing that the physical layout of an interrogation room is designed to maximize a suspect's discomfort and sense of powerlessness from the moment the interrogator steps inside the room).

93. *See* Holland, *supra* note 89; *see also* Jennifer K. Robbennolt & Elizabeth McNichols, *Court Considers Interrogation Techniques*, AM. PSYCHOL. ASS'N (Oct. 2003), http://www.apa.org/monitor/oct03/jn.aspx (explaining that the "Supreme Court intended the Miranda warning to advise suspects of their rights, guide police conduct and improve the reliability of admissions obtained through interrogation by countering the sometimes overwhelming psychological pressures of an interrogation").

94. *See* Holland, *supra* note 89; *see also* Marcus Jens Berghahn, *Miranda v. Arizona: Fifty Years Later*, ST. B. WIS. (June 1, 2016), https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=8&Issue=11&ArticleID=24865 (highlighting that the Supreme Court moved from a rule that prohibited coercive police behavior to a rule that requires the police to avoid coercion by providing a suspect specific legal warnings).

95. *See* Holland, *supra* note 89; *see also* Bryan Taylor, *You Have the Right to Be Confused! Understanding Miranda After 50 Years*, 36 PACE L. REV. 158, 168–70 (2015) (adding that the prosecution may not use statements arising from custodial interrogation of the defendant "unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination").

96. *See* Sol Watchler, *You Have the Right to Remain Constitutional*, N.Y. TIMES (May 12, 2010), https://www.nytimes.com/2010/05/13/opinion/13wachtler.html (highlighting that to compromise the Miranda rule would be counterproductive and destructive to the kind of freedom Americans enjoy); *see also* Dickerson v. United States, 530 U.S. 428, 443 (2000) (highlighting that Miranda warnings are so embedded in police practice that they have become a part of our national culture).

97. *See* Mark W. Clark, *50 Years After Miranda*, POLICE MAG. (May 21, 2013), http://www.policemag.com/channel/patrol/articles/2013/05/50-years-after-miranda.aspx (emphasizing that during the 1960s, officers felt they were talking suspects out of a confession rather than trying to get one because they were mandated to read Miranda rights to everyone they questioned).

interpretation, just like every other aspect of a police officer's job.[98] *Miranda* has now been defined to apply only when there is a custodial interrogation and the questions being asked are related to the crime charged.[99] Furthermore, the Supreme Court has also made the Miranda warning examination more facilitative to police interrogation strategies.[100] Therefore, the police can prime a suspect to confess before the suspect decides whether to waive Miranda rights.[101]

Miranda is expected to balance public safety with individual rights.[102] Nonetheless, this is not getting accomplished if juveniles do not understand the language that is providing them their rights.[103] Consequently, no balance is being achieved and something must be done to fix the current blind spot in *Miranda*.[104]

98. *See* Clark, *supra* note 97 (noting that police implementation of Miranda warnings has changed over the years and its application has grown more refined); *see also* Pandullo, *supra* note 88 (explaining that a police officer doesn't routinely read you your rights when he arrests you because it's not necessary in most cases).

99. *See* Clark, *supra* note 97; *see also* Jane Rydholm, *Miranda: The Meaning of "Custodial Interrogation,"* NOLO, https://www.nolo.com/legal-encyclopedia/miranda-the-meaning-custodial-interrogation.html (last visited Nov. 21, 2018) (defining the meaning of custodial interrogation and the factors courts analyze to determine if an individual is in custody).

100. *See* Holland, *supra* note 89 (noting that police may begin interrogating a suspect before obtaining a waiver of Miranda rights, so long as a Miranda waiver precedes the confession); *see also Miranda Warnings and Police Questioning*, FIND L., https://criminal.findlaw.com/criminal-rights/miranda-warnings-and-police-questioning.html (last visited Nov. 21, 2018) (explaining that if a suspect is not formally in police custody and not being interrogated, the police don't have to read him Miranda warnings and they can use anything he says as evidence against the suspect until the custodial interrogation requirement is fulfilled).

101. *See* Stephanie Francis Ward, *How Well Do People Actually Know Their Miranda Rights? (Podcast With Transcript)*, A.B.A. J. (May 23, 2016, 8:00 AM), http://www.abajournal.com/news/article/podcast_monthly_episode_75 (describing strategies that police have been shown to routinely use to minimize the significance of the Miranda warnings); *see also* Holland, *supra* note 89 (noting that "a suspect can waive his or her Miranda rights simply by confessing, whether they intend to do so or not, because a confession is seen as proof that the suspect does not want to remain silent").

102. *See* Miranda v. Ariz., 384 U.S. 436, 460 (1966) (highlighting that "the constitutional foundation underlying the privilege is the respect a government . . . must accord to the dignity and integrity of its citizens."); *see also* Ward, *supra* note 101 (explaining the purpose of Miranda).

103. *See Miranda*, 384 U.S. at 469 (explaining that it is only through an "awareness of consequences that there can be any assurance of real understanding and intelligent exercise of the privilege"); *see also* Ward, *supra* note 101 (explaining that both young people and older people do not really understand what having Miranda rights mean).

104. *See* Moran v. Burbine, 475 U.S. 412, 424 (1986) (providing that the Court believed "that [Miranda] as written strikes the proper balance between society's legitimate law enforcement interests and the protection of the defendant's Fifth Amendment rights").

IV. SOLUTION

Juveniles need reinforced language, comparable to their age and mental abilities, to ensure understanding of their constitutional rights when it is clear they do not fully comprehend the consequences involved.[105] While the *Miranda* decision is so established in police practices, courts should consider amending the procedure when Miranda warnings are read to juveniles.[106] When looking at data on the Miranda reading, two researchers concluded it was not the warning that reduced police effectiveness, but the procedures requiring suspects to waive rights before questioning.[107]

Giving equal weight to juveniles and adults regarding the Miranda warnings is not providing justice for juveniles.[108] Focusing on juveniles, the court should weigh their mental abilities and cognitive development in proportion to their ability to understand the complex Miranda language.[109] The language should be supplemented with additional explicit communication between the police officer and the juvenile.[110]

Consequently, the legislature should modify the procedure in which the Miranda warnings are given to juveniles by mandating police officers to explain to juveniles the meaning of Miranda warnings after they are read to them.[111] The legislature should first enact a new statute specifically for juveniles addressing Miranda warnings.[112] The new statute should dictate that police officers should explain to juveniles the consequences of not exercising their constitutional rights, and assure them that exercising their

105. *See supra* notes 59–61, 66, 70–71 and accompanying text (explaining the different consequences juveniles face due to their lack of understanding of Miranda).

106. *See supra* notes 92–94, 96 and accompanying text (noting that the solution to the problem of juveniles not understanding Miranda is not an amendment of the language itself, but an amendment of the police procedure when the Miranda warnings are read to juveniles).

107. *See* Elise Vandersteen Bailey, *Researchers Find Miranda Rights Hamper Police, Suggest Changes*, DAILY UTAH CHRON. (Aug. 28, 2017), http://dailyutahchronicle.com/2017/08/28/researchers-find-miranda-rights-hamper-police-suggest-changes/ (highlighting that: "[i]t is time for Miranda's defenders to acknowledge . . . and begin a frank discussion about how we can do better").

108. *See* Grisso, *supra* note 10, at 1151 (comparing two samples analyzed according to age and IQ between juveniles and adults).

109. *See supra* notes 59–61 and accompanying text.

110. *See* Lorelei Laird, *Police routinely read juveniles their Miranda rights, but do kids really understand them?*, A.B.A. J. (June 2016), http://www.abajournal.com/magazine/article/police_routinely_read_juveniles_their_miranda_rights_but_do_kids_really_und (noting that a little boy asked an officer what the "right to remain silent" meant, and the officer could not explain it beyond what was on his card).

111. *See id.* (showing that research demonstrates that "juveniles waive their Miranda rights at extremely high rates, with several studies putting it at roughly 90 percent").

112. *See supra* note 14 and accompanying text.

rights will not negatively affect them in any way.[113]

Additionally, the new statute should require police officers to question the juvenile to elicit responses that indicate the juvenile has clearly and unequivocally understood the breadth of the Miranda warnings and their implications.[114] The age and mental abilities of the minor should dictate the informality of the questioning.[115] For example, younger aged minors understand by simple words and sentences.[116] This procedure will help alleviate the juveniles' fear of police authority, and it will ensure the balance the Miranda language is meant to give is achieved.[117]

This implemented procedure falls within the intent of the legislature as it follows courts' differentiated treatment of juveniles within the court system.[118] Juveniles are charged and sentenced under different guidelines than adults.[119] Similarly, the Miranda warnings should follow different guidelines when being administered to juveniles.[120]

V. CONCLUSION

In *Miranda*, the Court stated: "[w]e encourage Congress and the States to continue their laudable search for increasingly effective ways of

113. *See supra* notes 12–14 and accompanying text.

114. *See* Feld, *supra* note 11, at 78 (noting that police and prosecutors may establish objectively that juveniles understand their rights by administering the Miranda warnings and obtaining an affirmative response).

115. *See* Pierce, *supra* note 11, at 196 (explaining that "for children between the ages of seven and fourteen, criminal liability depended on whether the court determined that the child understood the difference between right and wrong").

116. *See* Richard Rogers et. al., *The Language of Miranda Warnings in American Jurisdictions: A Replication and Vocabulary Analysis*, RES. GATE (June 28, 2007), https://www.researchgate.net/publication/6240930_The_Language_of_Miranda_Warnings_in_American_Jurisdictions_A_Replication_and_Vocabulary_Analysis (noting that for reading, complex sentences with dependent clauses and embedded phrases can compromise comprehension).

117. *See* Feld, *supra* note 11, at 73 (highlighting that the timing and administration of the Miranda warnings provide officers with opportunities to build rapport and subtly to predispose the suspect to waive her rights and confess to the police).

118. *See The History of Juvenile Justice*, *supra* note 37 (highlighting that juvenile courts tried to focus on the "best interests of the child").

119. *See Prison Is Too Violent for Young Offenders*, N.Y. TIMES (June 5, 2012), https://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/prison-is-too-violent-for-young-offenders (emphasizing that there should be a different place for youth offenders because prison is too violent, "[a]nd the necessary programs that can contribute to young prisoners' rehabilitation are underfunded").

120. *See* Holtz, *supra* note 57, at 547 (highlighting that "[t]he requirement of 'full and complete warnings' in the context of juvenile interrogation means not only that the law enforcement officer advise the youth of the full panoply of rights as delineated in Miranda, but also that those rights must be given in terms the youth can comprehend").

protecting the rights of the individual while promoting efficient enforcement of our criminal laws."[121] Recognizing that juveniles are the future of our generations, courts must take serious precautions in ensuring that juveniles' rights are being protected.[122] Juveniles do require a specific code of procedure for protecting their privilege against self-incrimination during custodial interrogation.[123]

"The developmental and social psychological literature suggests that many juveniles do not understand the contents of a Miranda warning or its legal ramifications and cannot exercise their rights ."[124] As a result, due to the way the current procedure and language of *Miranda* stands, juveniles are not obtaining the fullest protection of the law.[125] Therefore, because juveniles are standing in the blind spot of the Miranda warnings, courts need to provide them with additional explanations of what the complex language of *Miranda* entails.[126]

121. Miranda v. Ariz., 384 U.S. 436, 467 (1966).

122. *See* Howard & Rich, *supra* note 42, at 695 (explaining that "[w]hat the Miranda Court sought to recognize, therefore, was that with the changing scope and methods of law enforcement questioning, 'reliance on the traditional totality of the circumstances test raised a risk of overlooking an involuntary custodial confession . . . a risk [that is] unacceptably great when the confession is offered in the case in chief to prove guilt'").

123. *See* Feld, *supra* note 11, at 77 (noting that police officers have no incentive to emphasize the Miranda warning's significance or to encourage youths to exercise their constitutional rights).

124. *Id.* at 89; *see also* Robbennolt & McNichols, *supra* note 93 (highlighting that psychological research has assessed people's abilities to understand Miranda warnings and has demonstrated the potential for false confessions).

125. *See* Lauren Gottesman, *Protecting Juveniles' Right to Remain Silent: Dangers of The Thompkins Rule and Recommendations for Reform*, 34 CARDOZO L. REV. 2031, 2070–71 (2013) (highlighting that "[w]ithout courts and legislatures' recognition of juveniles' special susceptibility to coercion, juveniles' constitutionally protected privilege against self-incrimination will be highly vulnerable to abuse").

126. *See* Ricardo Lara, *Miranda Rights for Youth Senate Bill 1052, Legislative Fact Sheet*, FAIR SENT'G FOR YOUTH, http://fairsentencingforyouth.org/wp/wp-content/uploads/2009/04/SB-1052-Sen.-Lara-Factsheet.pdf (last visited Nov. 21, 2018) (emphasizing that "[t]he system is flawed and results in serious disproportionate negative consequences for youth who have the same rights as adults, but do not have the same capacity to understand their rights or the consequences of waiving them").