The Limits of "Children Are Different": How Juvenile Interrogation Procedures Fail to Protect Children with Intellectual Disabilities

CAROLINE CONNOR*

The U.S. legal system has long regarded individuals with intellectual disabilities and children as requiring special protections, including in criminal contexts. However, judicial and statutory consideration of the particular needs of children with intellectual disabilities—who are in some senses doubly vulnerable compared to either population in isolation—has been insufficient in the realm of criminal procedure. When involved in a criminal investigation, children with intellectual disabilities require tailored protections due to the increased likelihood that they will either falsely confess to a crime they did not commit or confess because of undue coercion. This population of children is particularly susceptible to pressure from authority figures, likely to err in recalling events, and suggestible.

While many states have recently enacted limited protections for individuals with intellectual disabilities, lawmakers and judges at both the state and federal level have yet to implement criminal legal standards that are directly tailored to the needs of children with intellectual disabilities. This Note proposes a baseline standard for all juvenile interrogations that accommodates the specific vulnerabilities of children with intellectual disabilities. A general standard that accounts for those needs circumvents common logistical challenges, such as expecting law enforcement to be able to identify when a child has an intellectual disability and then appropriately depart from typical procedures in juvenile interrogations.

Part I of this Note outlines the development of criminal legal standards for uniquely vulnerable populations, constitutional requirements for

* Managing Editor, Colum. J.L. & Soc. Probs., 2025–2026. J.D. Candidate 2026, Columbia Law School. The author thanks her Note advisor, Professor Josh Gupta-Kagan, for his guidance and feedback and the staff of the *Columbia Journal of Law & Social Problems* for their diligent editorial work.

interrogations, and the current prevailing approach to interrogations. Part II examines existing state legislation and policy proposals and discusses their limitations in effectively protecting children with intellectual disabilities in interrogations. Part III recommends a package of reforms that would reduce false confessions and protect the constitutional rights of children and asserts that these comprehensive reforms are best implemented through state statutes.

CONTENTS

INTRODUCTION

In prohibiting mandatory life without parole sentences for children, the Supreme Court proclaimed that "children are different."[1] Indeed, the U.S. legal system generally regards children as more vulnerable and in greater need of protection than adults, particularly in criminal contexts.[2] For this reason, the Court has established separate standards for children in various areas of law, including criminal law.[3] *Roper v. Simmons* and subsequent Supreme Court cases that outlawed the death penalty

1. Miller v. Alabama, 567 U.S. 460, 480 (2012); *see also* Montgomery v. Louisiana, 577 U.S. 190, 208 (2016) (quoting *Miller*, 567 U.S. at 480) (giving the holding in *Miller* retroactive effect).

2. *See infra* Part I.A (outlining federal case law to increase criminal procedural protections for children in recent decades).

3. *See, e.g.*, Roper v. Simmons, 543 U.S. 551, 569–71, 78 (2005) (outlawing the death penalty for children on the grounds that they have "diminished culpability" and a limited grasp of impulse control and ability to reason); Graham v. Florida, 560 U.S. 48, 82 (2010) (barring life without parole for children for crimes other than homicides); Miller v. Alabama, 567 U.S. 460, 465 (2012) (banning mandatory life without parole for children regardless of crime committed).

for juvenile offenders and limited other extreme sentences for children reflect this child-specific approach.[4]

The criminal legal system also acknowledges that adults with intellectual disabilities should be held to different criminal legal standards than the broader adult population.[5] Most notably, in *Atkins v. Virginia*, the Supreme Court ruled that sentencing adults with intellectual disabilities to the death penalty violates the Eighth Amendment due to their reduced "moral culpability" and the ways that disabilities affecting "reasoning, judgment, and control of . . . impulses . . . can jeopardize the reliability and fairness of capital proceedings."[6]

Individuals with intellectual disabilities and children are more susceptible to giving false confessions in interrogations—and consequently are more likely to be wrongfully convicted—due to their desire to please authority figures, limited attention span, language impairment, lack of understanding of their rights, and limited comprehension of the consequences of a confession.[7] It follows that the category of defendants at the intersection of these two populations—children with intellectual disabilities—are particularly suggestible, likely to err in recalling events, and vulnerable to coercion or pressure.[8] But despite widespread

---

4. *See Roper*, 543 U.S. at 578; *Graham*, 560 U.S. at 82; *Miller*, 567 U.S. at 489; *Montgomery*, 577 U.S. at 208 (giving *Miller* retroactive effect); Jones v. Mississippi, 593 U.S. 98, 116 (2021) (holding that *Miller*'s allowance for discretionary life without parole sentences for juveniles does not require finding a juvenile is "permanently incorrigible" to issue such a sentence); Joshua Rovner, *Juvenile Life Without Parole: An Overview*, THE SENT'G PROJECT (Apr. 7, 2023), https://www.sentencingproject.org/policy-brief/juvenile-life-without-parole-an-overview/ [https://perma.cc/6NGJ-CG7Q].

5. *See, e.g.*, Atkins v. Virginia, 536 U.S. 304, 321 (2002) (holding that sentencing adults with intellectual disabilities to the death penalty violates the Eighth Amendment).

6. *See id.* at 306–07 (also explaining that capital punishment for people with intellectual disabilities would not create a deterrent effect, and in these cases, the risk of wrongful execution is higher because a client may be unable to assist their attorney in their defense, serve as a witness, or demonstrate remorse before a jury).

7. *See* Hana M. Sahdev, *Juvenile* Miranda *Waivers and Wrongful Convictions*, 20 U. PA. J. CONST. L. 1211, 1213 (2018); Julia Feron, Note, *Missing the Mark: How Miranda Fails to Consider a Minor's Mind*, 52 HOFSTRA L. REV. 785, 816 (2024).

8. *See* A.W. Griego et al., *Suggestibility and False Memories in Relation to Intellectual Disability and Autism Spectrum Disorder: a Meta-Analytic Review*, 63 J. INTELL. DISABILITY RSCH. 1464, 1464 (2019) ("[F]or participants diagnosed with [intellectual disability] . . . [researchers found] increased susceptibility toward memory suggestibility and false memories when compared with the general population."); Valeria Giostra & Monia Vagni, *Interrogative Suggestibility and Ability to Give Resistant Responses in Children with Mild Intellectual Disabilities and Borderline Intellectual Functioning*, 13 SOC. SCIS. 77, 77 (2024) ("Children with [intellectual disabilities] showed more errors in distortions, inventions, and confabulations at the recall task and higher levels of suggestibility.").

acknowledgement that "children are different"[9] in criminal law contexts, prevailing interrogation procedures fail to extend this principle to children with intellectual disabilities. Some states have partially responded to this shortcoming with laws that ban police deception, require videotaping of interrogations, or mandate the presence of a parent or attorney during juvenile interrogations, among other protections.[10] Even taken together, however, these efforts fail to account for the distinctive and varied needs of children with intellectual disabilities and thereby fail to adequately protect these children.[11]

To best protect children with intellectual disabilities during criminal interrogations, states should set a baseline standard for treatment of all children that includes accommodations for the needs of children with intellectual disabilities. Setting a uniform standard for all children, rather than creating one standard for children with intellectual disabilities and another for children without, circumvents problems in application, such as expecting law enforcement officers to determine whether a child has an intellectual disability—a determination for which officers lack expertise—before implementing the appropriate standard.[12] It also accounts for the variability of children's abilities and needs, regardless of disability status. And ultimately, such a standard

---

9. Miller v. Alabama, 567 U.S. 460, 480 (2012); *see also* Montgomery v. Louisiana, 577 U.S. 190, 208 (2016) (giving *Miller* retroactive effect).

10. *See infra* Part II; *see, e.g.*, WASH. REV. CODE § 13.40.740 (2022) (requiring that children consult with an attorney before police questioning and mandating that statements made to an officer prior to attorney consultation be treated as inadmissible).

11. *See infra* Part II.

12. *See, e.g.*, Leigh Ann Davis, *Shining a Light on Traditionally Hidden Disabilities*, NAT'L CTR. ON CRIM. JUST. & DISABILITY (Dec. 2014), https://cops.usdoj.gov/html/dispatch/12-2014/shining_a_light_on_hidden_disabilities.asp [https://perma.cc/R4LV-JHDC] (observing that "[p]olice officers often receive little or no training about hidden disabilities and often don't know what to look for" and "[a]nywhere from 85 to 89 percent of people with intellectual disability have a 'mild' intellectual disability that is not recognizable by outward appearance"); DUSTIN A. RICHARDSON ET AL., LAW ENFORCEMENT RESPONSE TO PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES 2 (2024), https://www.rand.org/content/dam/rand/pubs/research_reports/RRA100/RRA108-26/RAND_RRA108-26.pdf [https://perma.cc/27EQ-NSNR] ("[M]ost [law enforcement agencies] lack [intellectual and developmental disability (IDD)]-related training and response programs, leaving law enforcement officers (LEOs) unaware of how to best respond to their local IDD community . . . . [E]ffective training and response do not require LEOs to diagnose individuals, but they must be able to recognize IDD symptoms . . . and interact accordingly. . . .").

more effectively safeguards the Fifth,[13] Sixth,[14] and Fourteenth[15] Amendment rights of children with intellectual disabilities, while bolstering protections for all children.

Part I of this Note presents the development of distinct criminal legal standards for uniquely vulnerable populations, outlines the constitutional requirements for interrogations, and assesses the current status of interrogation procedures. Part II explains the insufficiency of recent attempts to address the harm that prevailing interrogation techniques inflict upon children with intellectual disabilities. Part III proposes a comprehensive framework that state legislatures should adopt to more meaningfully protect children with intellectual disabilities. This framework promotes clarity, accountability, and reviewability through: (i) banning deception, (ii) mandating attorney consultation and presence during interrogations, (iii) requiring simplified *Miranda*[16] warnings and recording of all interrogations, (iv) implementing officer training on interrogating children who may or may not have intellectual disabilities, (v) capping the length of child interrogations, and (vi) limiting or eliminating adversarial questioning. Further, implementing criminal juvenile interrogation reform through state legislative action, rather than federal legislative or judicial action, is the best way to reduce false confessions and protect the Fifth, Sixth, and Fourteenth Amendment rights of children with intellectual disabilities.

---

13. U.S. CONST. amend. V ("[N]or shall any person be subject for the same offence to be twice put in jeopardy of life 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. . . .").

14. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.").

15. U.S. CONST. amend. XIV, § 1 (protecting due process and applying most of the protections included in the Bill of Rights to state and local governments, including the Fifth Amendment's provisions regarding double jeopardy, self-incrimination, and due process, and the Sixth Amendment's right to a speedy trial, a jury trial, notice, calling and confronting witnesses, and assistance of counsel).

16. *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966) (holding that statements made in a custodial interrogation are inadmissible if the law enforcement officer administering the interrogation does not give the subject of the interrogation specific warnings advising them of their right to remain silent and right to counsel). There is no scholarly consensus on the use of terms such as "*Miranda* warning" and "*Miranda* rights" with or without italics. This Note uses italics in the Author's text. In quotations, this Note preserves the source author's style.

I. INATTENTION TO INTELLECTUAL DISABILITY IN THE DEVELOPMENT OF CHILD-SPECIFIC CRIMINAL LEGAL STANDARDS

Despite the Supreme Court's increased focus over the last several decades on criminal procedural protections for individuals with intellectual disabilities and children, the Court has directed little attention toward the overlap of these groups.[17] Children with intellectual disabilities are especially vulnerable in the criminal legal process,[18] and yet few protections have been implemented with their specific needs in mind. While the Court has implemented some additional safeguards for individuals with intellectual disabilities and children during interrogations,[19] law enforcement officers continue to use the most common methods of interrogation[20] on these populations despite their vulnerabilities.[21] This Part outlines the development of criminal legal standards specific to people with intellectual disabilities and children and discusses the current insufficient constitutional requirements for interrogations. It then explains the shortcomings of prevailing interrogation techniques and the ways that those techniques harm people with intellectual disabilities and children. Finally, it highlights the particular vulnerabilities of the overlap of those two populations—children with intellectual disabilities. The failure of prevailing interrogation methods to account for the vulnerabilities of people with intellectual disabilities and children undermines these populations' rights and contributes to false confessions and wrongful convictions.[22]

---

17. *See, e.g.*, Atkins v. Virginia, 536 U.S. 304, 320–21 (2002) (holding that sentencing adults with intellectual disabilities to the death penalty violates the Eighth Amendment due to their "reduced capacity"); Roper v. Simmons, 543 U.S. 551, 553 (2005) (applying the logic of *Atkins* regarding "diminished culpability" to outlaw the death penalty for children). These two cases address the need for protections for people with intellectual disabilities and children separately but do not address the overlap between the two populations.

18. *See* Leona D. Jochnowitz & Tonya Kendall, *Analyzing Wrongful Convictions Beyond the Traditional Canonical List of Errors, for Enduring Structural and Sociological Attributes, (Juveniles, Racism, Adversary System, Policing Policies)*, 37 TOURO L. REV. 579, 591 (2021) (finding that "[t]he risk factors for false confessions are age, 'suggestibility, heightened obedience to authority, and immature decision-making'" (quoting Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 3 (2010))).

19. *See* Fare v. Michael C., 442 U.S. 707, 725 (1979) (holding judges must use a "totality of the circumstances" approach to determine if a child voluntarily waived their rights); J.D.B. v. North Carolina, 564 U.S. 261, 264–65 (2011) (finding that a child's confession in an interrogation conducted at his school was inadmissible because a reasonable child in these circumstances would not understand that they were free to leave).

A. HISTORICAL DEVELOPMENT OF CHILD- AND INTELLECTUAL DISABILITY-SPECIFIC CRIMINAL LEGAL STANDARDS

Particularly in the last 25 years, the Court has recognized that when assessing the culpability of a person with an intellectual disability or a child, judges should consider brain development.[23] Often, this recognition has arisen in the context of sentencing standards. In *Atkins v. Virginia* and *Roper v. Simmons*, the Court outlawed the death penalty for individuals with intellectual disabilities and children on the grounds that they have reduced "moral culpability," less impulse control, and limited ability to reason.[24] In fact, the Court in *Roper* explicitly noted that *Atkins*' reasoning for barring the death penalty for people with intellectual disabilities parallels arguments for a ban on juvenile executions.[25] More recently, the Court has expanded sentencing limitations for children by first barring life without parole for non-homicide

---

20. The Reid Technique is a widely used method of interrogation among U.S. law enforcement officials. It entails use of deception to convince a suspect to confess to a crime in an interrogation. For a detailed discussion of the Reid Technique, see *infra* Part I.B.2.

21. *See* 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, 1724 (2017) (explaining that while the Court has recognized that children should be treated differently than adults in custodial interrogations, it has not articulated how treatment of children should differ, nor has it held that the Reid Technique is unconstitutional as applied to children).

22. *See* Gina Kim, Note, *The Impermissibility of Police Deception in Juvenile Interrogations*, 91 FORDHAM L. REV. 247, 266 (2022); *see also* Jochnowitz & Kendall, *supra* note 18, at 591 (finding that "[t]he risk factors for false confessions are age, 'suggestibility, heightened obedience to authority, and immature decision-making'" (quoting Kassin et al., *supra* note 18, at 3)). For more information about the heightened risk of false confessions and wrongful convictions for children and people with intellectual disabilities, see *infra* note 95.

23. *See* Atkins v. Virginia, 536 U.S. 304, 306 (2002); Roper v. Simmons, 543 U.S. 551, 553 (2005); *Fare*, 442 U.S. at 725; *J.D.B.*, 564 U.S. at 273; Graham v. Florida, 560 U.S. 48, 68 (2010); Miller v. Alabama, 567 U.S. 460, 471–72 (2012); Montgomery v. Louisiana, 577 U.S. 190, 212 (2016); Jones v. Mississippi, 593 U.S. 98, 101 (2021). The Court has held that certain severe sentences violate the Eighth Amendment's cruel and unusual punishment clause and are categorically barred for people with intellectual disabilities and children. *See Atkins*, 536 U.S. at 320–21; Roper, 543 U.S. at 553. However, the Court has not explicitly touched on the needs of children with intellectual disabilities.

24. *See Atkins*, 536 U.S. at 319; *Roper*, 543 U.S. at 569–71, 78.

25. *See Roper*, 543 U.S. at 567 ("As in *Atkins,* the objective indicia of consensus in this case—the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice—provide sufficient evidence that today our society views juveniles, in the words *Atkins* used respecting [individuals with intellectual disabilities], as 'categorically less culpable than the average criminal.'" (quoting *Atkins*, 535 U.S. at 316)).

crimes[26] and later banning mandatory life without parole regardless of the crime committed (with rare exceptions).[27]

While the Court has focused most on protections for children in the sentencing context, it has also implemented some interrogation-related protections. For example, the Court has held that judges must apply distinct standards to determine if a child's *Miranda* waiver in an interrogation was valid.[28] In *Fare v. Michael C.*, the Court ruled that judges must use a "totality of the circumstances" approach—which includes accounting for the child's age and ability to understand their *Miranda* rights—when determining if a child voluntarily waived those rights.[29] More recently, in *J.D.B. v. North Carolina*, the Court noted that age is a relevant factor for law enforcement officers to consider when determining if a reasonable child would understand whether they are "in custody" or free to leave.[30] Especially in recent decades, as neuroscience continues to highlight the reduced capacity of individuals with intellectual disabilities and children to understand consequences, control impulses, and exercise judgment, the Court has become increasingly active in protecting these individuals from unduly harsh sentencing and unfair standards for *Miranda* waivers.[31] Despite developments in science and the Court's treatment of people with intellectual disabilities and children, prevailing standards for juvenile interrogations fail to put these understandings into practice to protect children with intellectual disabilities.[32]

---

26. *See Graham*, 560 U.S. at 79 (banning life without parole sentences for children who have committed crimes other than homicides).

27. *Miller*, 567 U.S. at 489 (banning mandatory life without parole sentences for crimes children commit, with some exceptions). This ruling was given retroactive effect in *Montgomery*, 577 U.S. at 200. *But see* Jones v. Mississippi, 593 U.S. 98, 100–01 (2021) (rejecting the defendant's argument that a court is required to specifically find that a child is "permanently incorrigible" before sentencing them to life without parole, and instead holding that it is within a court's discretion when to implement *Miller*'s allowance for discretionary life without parole sentences, whether an explicit finding of "permanent incorrigibility" is made or not).

28. *See* Fare v. Michael C., 442 U.S. 707, 724–25 (1979) (holding courts must consider the "totality of the circumstances" when determining if a child's Miranda waiver was valid); J.D.B. v. North Carolina, 564 U.S. 261, 264–65 (2011) (holding courts must consider age in determining if a child understood whether they were in custody or free to leave an interaction with law enforcement).

29. *Fare*, 442 U.S. at 725.

30. *See J.D.B.*, 564 U.S. at 264–65 (finding that a child's confession in an interrogation conducted at his school was inadmissible because a reasonable child in these circumstances would not understand that they were free to leave).

31. *See Fare*, 442 U.S. at 725; *J.D.B.*, 564 U.S. at 264–65.

32. *See infra* Part I.C.3.

B. SHORTCOMINGS OF LONGSTANDING INTERROGATION PROCEDURES

Existing interrogation standards are insufficient to protect children and individuals with intellectual disabilities because they fail to adequately account for how these populations understand and respond to interrogations.[33] These shortcomings are present even in foundational standards for interrogations. For example, children are permitted to give implied waivers of their *Miranda* rights,[34] and in many states they can do so without an attorney or parent present.[35] Additionally, common interrogation methods used in U.S. police departments are widely criticized as coercive and include little guidance about modifying procedures to account for the suggestibility and vulnerability of people with intellectual disabilities and children.[36] Although state lawmakers and nonprofits have advocated for more protective interrogation standards for children,[37] even these improved standards often do not adequately address the needs of children with intellectual disabilities.[38]

1. *The Lack of Robust Constitutional Requirements for Interrogations*

While the Court has implemented some protections for children in interrogations, children and adults are largely subject to the

---

33. Gisli H. Gudjonsson & Lucy Henry, *Child and Adult Witnesses with Intellectual Disability: The Importance of Suggestibility*, 8 LEGAL & CRIMINOLOGICAL PSYCH. 241, 241 (2003) (finding that children with intellectual disabilities are "more susceptible to altering their answers under pressure" than adults with similar disabilities).

34. *See* Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) ("Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent.").

35. *See infra* Part I.B.1; *see, e.g.*, IND. CODE. § 31-37-4-3.5 (2023) (simply requiring that a law enforcement officer "make a reasonable attempt to notify" a child's parent or guardian that the child is in custody before questioning the child).

36. *See* Jochnowitz & Kendall, *supra* note 18, at 613 (quoting Hayley M.D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40 LAW & HUM. BEHAV. 270, 280 (2016)) (explaining that the Reid Technique manual merely "suggest[s] caution when interpreting youthful behavior" and allows the Technique to be used on children from the ages of 10 to 15).

37. *See infra* Part II.

38. *See, e.g.*, N.J. STAT. ANN. § 2A:4A-39 (West 2024) (stating that "a juvenile who is found to lack mental capacity may not waive any right" but failing to define "lack[ing] mental capacity").

same constitutional interrogation standards.[39] The rights of criminal defendants have been recognized in the United States since the founding era, most notably in the form of (i) the Fifth Amendment's provisions regarding double jeopardy, self-incrimination, and due process[40] and (ii) the Sixth Amendment's right to a speedy trial, notice, a jury trial, confront and call witnesses, and receive the assistance of counsel.[41] *Miranda v. Arizona* significantly expanded these rights by extending Fifth Amendment protections to apply in custodial interrogations.[42] *Miranda* requires that law enforcement inform a suspect of their right to remain silent and to have an attorney present and that any statements they make could be used against them.[43] Further, *Miranda* held that an interrogation may only proceed without an attorney present if the suspect waives those rights voluntarily, knowingly, and intelligently.[44] For adult and child suspects alike, this waiver can be either express or implied.[45] If a suspect is deemed to have understood the *Miranda* warning and continued to speak voluntarily, they have given an implied waiver.[46] Although the Court has established a "totality of the circumstances" standard to determine if a child's waiver was

39. The Court has specifically carved out several child-specific standards for interrogations, but aside from these accommodations, the same standards apply for both children and adults. *See* Roper v. Simmons, 543 U.S. 551, 567 (2005) (finding that society views juveniles as "categorically less culpable" than adults (quoting Atkins v. Virginia, 535 U.S. 304, 316 (2002))); Fare v. Michael C., 442 U.S. 707, 725 (1979) (requiring consideration of "the totality of the circumstances" in determining if a child's *Miranda* waiver was voluntary); J.D.B. v. North Carolina, 564 U.S. 261, 265 (2011) (requiring consideration of a child's age in determining whether they understood if they were "in custody" or free to leave when being questioned by police).

40. U.S. CONST. amend. V. For the full text of the amendment, see *supra* note 13.

41. U.S. CONST. amend. VI. For the full text of the amendment, see *supra* note 14.

42. Miranda v. Arizona, 384 U.S. 436, 467 (1966) ("[T]here can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves."); *see also* Rhode Island v. Innis, 446 U.S. 291, 301 (1980) ("[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.").

43. *See Miranda*, 384 U.S. at 444.

44. *See id.*

45. *See* Berghuis v. Thompkins, 560 U.S. 370, 385 (2010).

46. *See id.* ("Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent").

voluntary,[47] this is one of only a few child-specific modifications the Court has made to interrogation procedures.[48]

2. *The Current State of Interrogation Procedures*

Given the lack of affirmative protections for children, they remain subject to coercive interrogation practices. One such practice is "the Reid Technique of Interviewing and Interrogation," developed in 1947 by former police officers.[49] Over the last 75 years, U.S. law enforcement officers have widely adopted this approach to criminal interrogations,[50] despite the Reid Technique facing criticism for being "inherently coercive."[51] In the first stage of the Reid Technique, officers analyze the available facts about the crime and the suspect to assess their likely guilt or innocence prior to the interrogation.[52] The second stage is a Behavioral Analysis Interview that is conducted with an "objective, neutral, fact-finding demeanor."[53] Here, the investigator seeks to "render an opinion about the suspect's truthfulness" and establish "a working rapport with the suspect."[54] Only after the investigator has determined the suspect's likely involvement in the crime does

---

47. *See* Fare v. Michael C., 442 U.S. 707, 725 (1979) (holding that courts should consider a child's age and ability to understand their *Miranda* rights in assessing the voluntariness of a waiver).

48. *See* J.D.B. v. North Carolina, 564 U.S. 261, 281 (2011). This case includes one other modification to assessing interrogation procedures for children: considering whether a reasonable child in an interrogation at their school would understand that they were free to leave. *Id.* at 265.

49. *See The Reid Technique – Celebrating 77 Years of Excellence*, JOHN E. REID & ASSOCS. (2022), https://reid.com/75-years-of-excelence [https://perma.cc/3QRY-NWKT].

50. *See* Cleary & Warner, *supra* note 36, at 271 ("the Reid technique is the most popular and frequently used police interview technique in the United States") (quoting Gisli H. Gudjohnsson & John Pearse, *Suspect Interviews and False Confessions*, 20 CURRENT DIRECTIONS IN PSYCH. SCI. 1, 33–37 (2011)); James Orlando, *OLR Research Report: Interrogation Techniques*, CONN. GEN. ASSEMBLY (2014), https://www.cga.ct.gov/2014/rpt/2014-R-0071.htm [https://perma.cc/UP7A-UH3F] (noting also that "over 500,000 law enforcement and security professionals have attended the company's interview and interrogation training programs since they were first offered in 1974").

51. *See* Spierer, *supra* note 21, at 1722 (asserting that "[i]t is no secret that police interrogations are inherently coercive" and describing the Court's decision in *Miranda v. Arizona* regarding custodial interrogations as including "inherently compelling pressures").

52. *See Don't Be Fooled – They use the core elements of the Reid Technique*, REID (2019), https://reid.com/resources/whats-new/2019-don-t-be-fooled-they-use-the-core-elements-of-the-reid-technique [https://perma.cc/9B9R-X8YD] [hereinafter *Don't Be Fooled*]. This analysis includes assessing the crime scene, characteristics of the suspect such as "social status," and the suspect's potential motive.

53. *See id.*

54. Orlando, *supra* note 50. The investigator makes this determination through asking a combination of background questions and "behavior provoking questions." *Id.*

the interrogation begin.[55] The interrogation includes nine steps,[56] beginning with a "confrontation" in which the investigator asserts that the evidence shows the suspect was involved in the crime, followed by efforts to encourage the suspect to admit to the crime.[57] After this, the investigator presents an "alternative question" which provides the suspect with two distinct characterizations of the crime in the hopes that the suspect will latch onto the "better justification for the crime."[58] If this is successful, meaning that the suspect decides to attach themselves to the less morally reprehensible option presented, the investigator treats this as an admission of guilt and seeks to extract details of the crime from the suspect before "converting the verbal confession to a written or recorded document."[59]

While the creators of the Reid Technique maintain that this method aims to "use empathy, sound reasoning and logic to elicit the truth,"[60] the Reid Technique has been widely criticized as coercive and faulty due to its contentious nature, presumption of guilt, and lack of sufficient safeguards to protect the subject.[61] It also relies on an expectation that law enforcement officers can accurately determine suspects' truthfulness, despite humans not being reliable "lie detectors."[62] Several countries have abandoned use of the Reid Technique for these reasons and replaced it with the PEACE model, a non-confrontational approach.[63]

---

55. *See id.*

56. *See Don't Be Fooled*, *supra* note 52. These nine steps are (1) the initial confrontation, (2) theme development, (3) handling denials, (4) overcoming objections, (5) procurement of the suspect's attention, (6) handling the suspect's passive mood, (7) presenting an alternative question, (8) developing the details of the admission, and (9) converting the verbal confession to a written or recorded document.

57. *See id.* This part of the process includes several steps focused on how to overcome a suspect's denial, inattention, or "passive mood." *Id.*

58. *See id.*

59. *See id.*

60. *Don't Be Fooled*, *supra* note 52.

61. *See, e.g.*, Jochnowitz & Kendall, *supra* note 18, at 592; Spierer, *supra* note 21, at 1750.

62. *See* Spierer, *supra* note 21 at 1726 ("[S]tudies have consistently demonstrated that 'humans, trained interrogators included, are poor lie detectors' and that 'virtually no one[ ] can determine a person's guilt through the interviewing process at the heart of the Reid approach'" (quoting Alan Hirsch, *Going to the Source: The "New" Reid Method and False Confessions*, 11 OHIO ST. J. CRIM. L. 803, 807–08 (2014))).

63. *See* Lauren Rogal, *Protecting Persons with Mental Disabilities from Making False Confessions: The American Disabilities Act as a Safeguard*, 47 N.M. L. REV. 64, 91–92 (2017) (explaining "[u]nder the PEACE [Preparation and Planning, Engage and Explain, Account, Closure, and Evaluate] method, investigators allow a suspect to tell his or her story without interruption, before presenting the suspect with any inconsistencies or contradictions

The Reid Technique raises particular concerns in the context of interrogating children. Although recent updates to the Reid manual have been "marginally more sensitive to adolescent developmental issues,"[64] the creators of the Reid Technique assert that its confrontational elements and focus on detecting perceived deception are still "permissible with adolescents."[65] Advocates for reform continue to object to the use of the Reid Technique on children due to concerns that an investigator's reliance on "behavioral inferences used to detect deception" may incorrectly categorize a child's anxiety-driven behavior as evidence of guilt.[66] This inaccurate assessment of guilt could lead investigators to coerce false confessions from children.[67]

Under the current framework for interrogation procedures across the United States, few protections exist for individuals with intellectual disabilities or children.[68] There is no universal statutory requirement that an attorney—or even a parent or guardian—be present for the interrogation of a person with an intellectual disability or a child if the individual waives their *Miranda* rights.[69] There is also no widespread requirement that police record these interrogations.[70] Further, the only mandated interrogation accommodation for individuals with intellectual disabilities is the Americans with Disabilities Act's requirement that law enforcement make "reasonable modifications . . . unless making such modifications would fundamentally alter the program or service involved."[71] Given the lack of meaningful

between the story and other evidence" and investigators are prohibited from using deception during these interviews); Orlando, *supra* note 50.

64. Cleary & Warner, *supra* note 36, at 280) (explaining that the manual "suggest[s] caution when interpreting youthful behavior").

65. *Id.* The manual defines "adolescents" as children between the ages of 10 and 15. *See id.*

66. Spierer, *supra* note 21, at 1727.

67. *See id.* at 1729 ("[T]he Reid Technique—particularly the presumption of guilt and the use of deceptive tactics—results in unreliable statements and false confessions when applied to children.").

68. Many existing proposals to bolster criminal procedural protections for people with intellectual disabilities and children have not been passed into law. *See infra* Part II.

69. *In re Gault* requires that children be represented by a lawyer in court, and the Sixth Amendment includes a right to counsel in criminal proceedings, 387 U.S. 1, 41 (1967), but there is no specific requirement to provide legal representation in an interrogation.

70. *See National Organizations – Recording Custodial Interrogations*, NAT'L ASS'N OF CRIM. DEF. LAWS. (Feb. 25, 2019), https://www.nacdl.org/Content/NationalOrgsonRecording CustodialInterrogations#:~:text=a%20resulting%20statement.-,Innocence%20Project, citizen%20complaints%20against%20the%20police [https://perma.cc/EQ8H-7WCG].

71. *Commonly Asked Questions About the ADA and Law Enforcement*, U.S. DEP'T JUST. C.R. DIV. (Feb. 28, 2020), https://www.ada.gov/resources/commonly-asked-questions-

procedural protections for individuals with intellectual disabilities and children, it is no surprise that these populations falsely confess at disproportionately high rates during interrogations.[72]

C. HOW INTERROGATION PROCEDURES PARTICULARLY HARM VULNERABLE GROUPS

Prevailing interrogation techniques are built on deception and pressure, which can be especially damaging to individuals with intellectual disabilities and children.[73] The vulnerabilities of each of these groups compound to render children with intellectual disabilities—defined as those with "[d]eficits in intellectual functioning . . . [and] . . . adaptive functioning that significantly hamper conforming to developmental and sociocultural standards for . . . independence and ability to meet . . . social responsibility"[74]—especially likely to falsely confess during an interrogation.[75] The following sections detail specific ways in which people of all ages with intellectual disabilities, children of

---

lawenforcement/#:~:text=A:%20The%20ADA%20requires%20law,the%20program%20or%20service%20involved [https://perma.cc/W8D9-7S2C] (providing a "reasonable accommodation" example of a police officer giving a simplified *Miranda* warning to a person with an intellectual disability and "check[ing] for understanding" by asking them questions). This policy does not address if or how it should be applied when a law enforcement officer is not aware that the suspect has an intellectual disability.

72. *See* Sheri Lynn Johnson et al., *Convictions of Innocent People with Intellectual Disability*, 82 ALB. L. REV. 1031, 1043–1044 (2018) (reviewing empirical studies which found that children with intellectual disabilities were especially likely to falsely confess); Sahdev, *supra* note 7, at 1213 ("[C]ompared to adults, juveniles disproportionately falsely confess to crimes they did not commit" (citing Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 944 (2004))).

73. *See* Samson J. Schatz, Note, *Interrogated with Intellectual Disabilities: The Risks of False Confession*, 70 STAN. L. REV. 643, 647 (2018) ("[M]any individuals with intellectual disabilities are exceptionally desirous of pleasing authority figures . . . [which] may follow from the necessary reliance on authority figures for solutions to what an individual with typical abilities would consider everyday problems.").

74. COMM. TO EVALUATE THE SUPPLEMENTAL SEC. INCOME DISABILITY PROGRAM FOR CHILD. WITH MENTAL DISORDERS ET AL., MENTAL DISORDERS AND DISABILITIES AMONG LOW-INCOME CHILDREN 169–70 (Thomas F. Boat & Joel T. Wu eds., 2015). The most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5") defines intellectual disability. *See id.* These deficits in functioning include those in "reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience." *Id.* The DSM-5 also requires that these deficits arise "during childhood," meaning "in the first two decades of life." *Id.*

75. *See* Giostra & Vagni, *supra* note 8, at 77 (finding that "children with [intellectual disabilities] showed more errors in distortions, inventions, and confabulations at the recall task and higher levels of suggestibility").

all ability statuses, and especially children with intellectual disabilities are vulnerable to coercion in interrogations.

1. *People of All Ages with Intellectual Disabilities*

The risk of wrongful conviction is especially high for people with intellectual disabilities, in large part due to this population's vulnerability to coercion.[76] People with intellectual disabilities are especially suggestible and likely to develop false memories because of their "reliance on authority figures, desire to please people[,] . . . eagerness for friendship," limited attention spans, tendency to take responsibility for "negative actions" and overestimate their own competence, and reduced impulse control.[77] And during an interrogation, people with intellectual disabilities are more likely to "succumb to social pressure" or question their own memories and consequently confess to crimes they did not commit.[78]

A disproportionate number of individuals with intellectual disabilities have been exonerated due to wrongful convictions stemming from false confessions.[79] The National Registry of Exonerations (NRE),[80] which compiles thousands of wrongful convictions and subsequent exonerations across the United States, uses a social science coding scheme to track hundreds of variables in each exoneration case. While the NRE does not publish its data on the mental health status of exonerees at the time of conviction as part of its public table,[81] a 2018 analysis utilizing NRE data found that 25.7% of individuals who falsely confessed showed some

---

76. *See* Johnson et al., *supra* note 72, at 1044–45.

77. Griego et al., *supra* note 8, at 1465; *see id.* at 1464 (concluding that the results of two empirical analyses found "increased susceptibility toward memory suggestibility and false memories [among people with intellectual disabilities] when compared with the general population").

78. *See* Johnson et al., *supra* note 72, at 1044.

79. *See Explore Exonerations*, NAT'L REGISTRY EXONERATIONS, https://exoneration registry.org/cases?f%5B0%5D=n_pre_1989%3A0 [https://perma.cc/67M4-PC7S] (last visited Dec. 26, 2025).

80. *See id.* The NRE only pertains to people who have been formally exonerated, and the data available prior to 1989 is limited. *Understanding the Registry*, NAT'L REGISTRY EXONERATIONS, https://exonerationregistry.org/understanding-registry, [https://perma.cc/2MFP-ZETL] (last visited Dec. 26, 2025).

81. The NRE codes cases for "mental health/competency/literacy," but this data is not public and was not consulted for this Note. E-mail from Jessica Weinstock Paredes, Exec. Dir., Nat'l Registry Exonerations, to Caroline Connor, Author (Jan. 9, 2026) (on file with author).

indicia of intellectual disability.[82] This is dramatically higher than the percentage of people with intellectual disabilities in the United States.[83] Importantly, the vast majority of exonerated individuals who have since been identified as having an intellectual disability did not have a diagnosis when they were arrested.[84]

Individuals with intellectual disabilities face heightened risk throughout every stage of an interrogation. This begins with their first contact with an interrogating officer, followed by the *Miranda* waiver and then "the preadmission interrogation, in which the police employ various strategies to get a suspect to admit [they] 'did it,'" and finally during the "postadmission development of a fluid narrative of guilt."[85] People with intellectual disabilities are especially susceptible to giving a false confession after officers create a favorable environment during the early stages of the Reid Technique, likely because they want to please the officers.[86] Likewise, people with intellectual disabilities may not fully understand their rights, including what it means to waive their *Miranda* rights in an interrogation,[87] leaving them vulnerable to coercion.

---

82. *See* Schatz, *supra* note 73, at 646–47 (analyzing data from the NRE); *see id.* at 680 (defining indicia of intellectual disability as terms like "intellectual disability, cognitive disability, mental handicap, mental retardation, mental impairment, learning disability, and IQ [intelligence quotient]" in court documents, news articles, or other sources related to the case of a person who falsely confessed).

83. *See id.* at 647. This analysis, which reviewed a snapshot of the NRE's data from 2017, found that 63 of the 245 people then-listed as having falsely confessed displayed some indicia of intellectual disability. *See id.* at 682. This percentage of people with intellectual disabilities who falsely confessed (25.7%) is considerably larger than the rate of individuals with intellectual disabilities both among the general U.S. population (between 1% and 3%) and within the U.S. prison population (between 4% and 19.5%). *See id.* at 647.

84. *See* Schatz, *supra* note 73, at 659 ("[T]hree-quarters of offenders later identified to have intellectual disabilities were not identified as such at the time of arrest." (citing JOAN PETERSILIA, DOING JUSTICE?: CRIMINAL OFFENDERS WITH DEVELOPMENTAL DISABILITIES 6 (2000))).

85. Schatz, *supra* note 73, at 646.

86. *See id.* at 661.

87. *See id.*; *see also* Nicole Tackabery, Note, *The Inadequacy of Constitutional and Evidentiary Protections in Screening False Confessions: How Risk Factors Provide Potential for Reform*, 14 U.C. IRVINE L. REV. 693, 702 (2024) ("[I]ndividuals with intellectual disabilities may face similar challenges as children do in regards to comprehension and understanding of their legal rights, only further heightening their vulnerability to falsely confessing.").

2. *Children of All Ability Statuses*

Children of all ability statuses are vulnerable to false confessions during interrogations for similar reasons, including their lack of understanding of *Miranda* rights, vulnerability to the influence of authority, desire to please others, and inability to meaningfully weigh consequences.[88] Studies have found that minors are "less competent decision-makers";[89] "'more vulnerable . . . [in] coercive circumstances . . . such as provocation, duress, or threat'";[90] "more susceptible to negative feedback";[91] and "more likely to alter their accounts simply to please authority."[92] These traits stem from the fact that children's brains are still developing.[93] Children are even more likely to falsely confess in circumstances typical of interrogations, including "physical custody and isolation, false evidence, and implied promises."[94] This is especially concerning because children falsely confess at disproportionately high rates compared to adults.[95]

---

88. *See* Jochnowitz & Kendall, *supra* note 18, at 591 ("[T]he prefrontal cortex of the brain is not developed for planning, and [children] are prone to sensation seeking and emotional arousal that may induce false confessions.").

89. Kim, *supra* note 22, at 264.

90. *Id.* (omission in original) (quoting Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Development Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCH. 1009, 1011 (2003)).

91. Kim, *supra* note 22, at 266.

92. *Id.*; s*ee also* Jochnowitz & Kendall, *supra* note 18, at 591 (finding that "[t]he risk factors for false confessions are age, suggestibility, heightened obedience to authority, and immature decision-making" (internal quotation marks omitted)).

93. *See* Jochnowitz & Kendall, *supra* note 18, at 591 (explaining this occurs, in part, because children's brains are not equipped for long-term planning).

94. *Id.* at 591–92.

95. *See* NAT'L REGISTRY EXONERATIONS, *supra* note 79. As of the data available on October 20, 2024, there were 3,586 people listed in the NRE. This data has since shifted because the NRE is updated on an ongoing basis. 324 of those 3,586 exonerees—or 9.04%—were juveniles. While 453 people in the NRE, or 12.63% of the total, were convicted in part due to a false confession, 109 of them—or 24.06%—were juveniles. Equally concerningly, 33.64% of all juveniles listed in the NRE (or 109 out of 324) falsely confessed, while only 10.55% of adults listed in the NRE (or 344 out of 3,262) did so. Furthermore, of the 109 juveniles whose cases are coded as including a false confession, 64 of them—or 58.72%—are also coded by the NRE for "Misconduct in Interrogation of Exoneree." *Id.*; *see also* Tackabery, *supra* note 87, at 701 (stating that "34% of exonerated juvenile defendants falsely confessed" while "only 10% of exonerated adult defendants" did so, according to the NRE); Melanie Clark Mogavero, *An Exploratory Examination of Intellectual Disability and Mental Illness Associated with Alleged False Confessions*, 38 BEHAV. SCIS. & L. 299, 309 (2020) (finding that "those under the age of 18 showed disproportionately higher rates of false confessions than adults, and the odds of falsely confessing decreased with age"). Mogavero's article also summarizes the following findings in the NRE: (1) since 1989, 12% of all exonerated people gave false confessions; (2) the rate of false confessions in these cases was higher for children and people with mental illnesses or intellectual disabilities; (3) as

Another vulnerability of children arises in the context of *Miranda* rights, which can only be waived "voluntarily, knowingly and intelligently."[96] Children's limited understanding of the legal system, failure to grasp long-term consequences, and emotional challenges associated with law enforcement interactions raise the question of whether it is possible for a child to meet this standard.[97] On top of the challenges these predispositions of children create, law enforcement officers' *Miranda* warnings to children can vary vastly in their content and complexity.[98] A 2008 study investigating *Miranda* warnings found that many of them include "vocabulary and reading levels . . . far beyond [children's] understanding" because there is no general requirement that *Miranda* warnings be modified for children.[99] If a child is not able to comprehend an officer's *Miranda* warning, they are not able to knowingly and intelligently waive their *Miranda* rights, as *Miranda* itself requires.

3. *Children with Intellectual Disabilities*

The vulnerabilities of individuals with intellectual disabilities and children compound for children with intellectual disabilities, which renders them even more susceptible to the pitfalls of interrogation.[100] Like adults with intellectual disabilities and children of all ability statuses, children with intellectual disabilities tend to be suggestible, misunderstand language, aim to please others, and submit to pressure.[101] Children with

---

of 2019, 36% of the 210 exonerees who were under 18 when the crime was reported had given a false confession, compared to only 10% of all exonerees who were adults when the crime was reported; and (4) out of 138 individuals of all ages with a mental illness, intellectual disability, or both, 69% gave a false confession. *See id.* at 300.

96. *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966).

97. *See* Feron, *supra* note 7, at 789 (arguing that it is "virtually impossible for people under the age of eighteen to meet this standard").

98. Richard Rogers et al., *The Comprehensibility and Content of Juvenile Miranda Warnings*, 14 PSYCH., PUB. POL'Y, & L. 63, 64 (2008) ("The Court has not specified any structure or content for Miranda waivers, which vary across jurisdictions from a few words (e.g., 'Would you like to talk to us?') to highly elaborated statements exceeding 100 words. . . .").

99. *Id.* at 84.

100. *See, e.g.*, Gudjonsson & Henry, *supra* note 33, at 241 (finding that children with intellectual disabilities are more likely than adults with intellectual disabilities to succumb to pressure to change their responses).

101. *See* Griego et al., *supra* note 8, at 1471 (building upon findings from Gudjonsson & Henry, *supra* note 33, and outlining vulnerabilities of children with intellectual disabilities

intellectual disabilities, however, are more vulnerable than either population in isolation; for example, a 2019 study found that "when compared with participants from a chronological age comparison group, [children with intellectual disabilities] displayed decreased memory performance," as well as a higher likelihood of false memories.[102] As a result, children with intellectual disabilities are often viewed as less reliable in investigations than children without intellectual disabilities due to "inaccurate recall, greater memory errors, and greater suggestive vulnerability."[103] Likewise, children with intellectual disabilities have been found to be "more susceptible to altering their answers under pressure" than adults with similar disabilities.[104] Courts already recognize heightened protections when these two vulnerabilities exist independently: *J.D.B. v. North Carolina* treats age as relevant to a custody analysis[105] and *Atkins v. Virginia* treats intellectual disability as a bar on the imposition of capital punishment.[106] Together, these cases suggest that courts should be *most* skeptical when age and intellectual disability intersect. These vulnerabilities interact in exponential ways: developmental immaturity amplifies intellectual disability's limitations on perception and reasoning, producing interrogation outcomes more coercive than either factor in isolation, particularly given officers' inability to reliably detect intellectual disability.

Children with intellectual disabilities are also especially vulnerable because of systemic issues like lack of diagnoses.[107]

---

including misunderstanding language, desiring to please others, submitting to pressure, reduced "memory performance," and increased false memories).

102. *Id.* at 1465 (building upon findings from Gudjonsson & Henry, *supra* note 33).

103. Giostra & Vagni, *supra* note 8, at 77 (finding that "children with [intellectual disabilities] showed more errors in distortions, inventions, and confabulations at the recall task and higher levels of suggestibility").

104. *See* Gudjonsson & Henry, *supra* note 33, at 241.

105. *See* J.D.B. v. North Carolina, 564 U.S. 261, 264–65 (2011) (finding a child's confession at an in-school interrogation inadmissible because a reasonable child would not understand that they were free to leave).

106. *See* Atkins v. Virginia, 536 U.S. 304, 321(2002) (holding that sentencing adults with intellectual disabilities to the death penalty violates the Eighth Amendment).

107. *See* Schatz, *supra* note 73, at 659. In an analysis of 2017 data, Schatz found that 63 of the 245 people in the NRE who falsely confessed displayed indicia of intellectual disabilities. *See id.* at 680–82. Of those 63 people who showed indicia of intellectual disabilities, 21 of them—or one third—were children between ages 14 to 17, despite less than 10% of all exonerees listed in the NRE being children. *See* Samson J. Schatz, *Analysis of False Confessors in the National Registry of Exonerations* (2018) [https://perma.cc/XDV3-TEPH] (a supplement to Schatz's Note outlining all individuals listed on the NRE as of June 2, 2017 whose convictions were based, at least in part, on a false confession). And given that as many as "three-quarters of offenders later identified to have intellectual disabilities

Law enforcement officers also do not have expertise in identifying intellectual disabilities, and therefore may be unaware of the effect of a child's intellectual disability on the interrogation.[108] Additionally, studies have found that "the risk of mild [intellectual disabilities] is highest among children of low socioeconomic status"[109] and children of low socioeconomic status are also more likely than other children to come into contact with the criminal legal system.[110]

These heightened vulnerabilities have demonstrable consequences for children with intellectual disabilities who interact with the criminal legal system. High profile examples of injustice resulting from the failure to accommodate children with intellectual disabilities include the interrogations of Korey Wise and Brendan Dassey.[111] Wise, a "hearing impaired and learning disabled" teenager whose "intellectual capabilities equaled those

---

were not identified as such at the time of arrest" (*see* Schatz, *supra* note 73, at 659 (citing JOAN PETERSILIA, DOING JUSTICE?: CRIMINAL OFFENDERS WITH DEVELOPMENTAL DISABILITIES 6 (2000)), this data suggests that the heightened vulnerabilities that intellectual disabilities create for children were not accounted for during their arrests or interrogations, and thus that they may have been subjected to interrogation tactics that increased the likelihood that they falsely confessed or confessed under coercion. *Id.*

108. *See* Tackabery, *supra* note 87, at 702 (citing Schatz, *supra* note 73, at 659–60) ("Though officers are instructed to adjust their tactics when interrogating individuals with intellectual disabilities, this requires that the officer *actually be aware* that the individual has an intellectual disability prior to interrogation . . . thus, an officer may unknowingly—or knowingly—use leading questions and other suggestive techniques on an intellectually disabled individual who is unequipped to combat those techniques." (emphasis added)).

109. COMM. TO EVALUATE THE SUPPLEMENTAL SEC. INCOME DISABILITY PROGRAM FOR CHILD. WITH MENTAL DISORDERS ET AL, *supra* note 74, at 267; *id.* at 174 (referencing studies which found that "poverty is one of the most consistent risk factors for [intellectual disability (ID)] . . . the prevalence of ID among children of low [socioeconomic status (SES) is] more than twice as high as that among middle- or high-SES children"); *see also* Pallab K. Maulik et al., *Prevalence of Intellectual Disability: A Meta-analysis of Population-based Studies*, 32 RSCH. DEVELOPMENTAL DISABILITIES 419, 423 (2011) (finding in a meta-analysis of studies published from 1980 to 2009, which included an estimate of the rate of intellectual disabilities across the world, that "the highest prevalence was seen in low-income countries . . . [a] decreasing trend in prevalence was seen with increasing affluence of countries").

110. *See* Jaboa Lake, *Criminal Records Create Cycles of Multigenerational Power*, CTR. FOR AM. PROGRESS (Apr. 15, 2020), https://www.americanprogress.org/article/criminal-records-create-cycles-multigenerational-poverty [https://perma.cc/73RY-DF73] (explaining that the criminal legal system especially harms particular groups such as people of color, people with disabilities, and people in poverty because it "fuel[s] systemic inequalities, burden[s] families for generations and perpetuat[es] a cycle of poverty" and can increase families' likelihood of continued involvement with the criminal legal system).

111. *See* Jochnowitz & Kendall, *supra* note 18, at 627–61 (covering the interrogation and conviction of Korey Wise); *see generally* Michele LaVigne & Sally Miles, *Under the Hood: Brendan Dassey, Language Impairments, and Judicial Ignorance*, 82 ALB. L. REV. 873 (2019) (covering the interrogation and conviction of Brendan Dassey).

of a twelve-year-old," was a member of the Exonerated Five.[112] Wise voluntarily spoke to police the morning after the attack without a family member or legal counsel present and was kept awake for hours with little food or drink.[113] During his interrogation, Wise was told that "he could go home if he could tell the officers the story they wanted to hear."[114] Seventeen years later, Brendan Dassey, a "developmentally-delayed special education student" with significant language processing impairments, falsely confessed to helping his uncle commit rape and murder after investigators asked him numerous leading questions.[115] The injustices these children faced are unfortunately just two of numerous instances in recent decades in which law enforcement officers have coerced children with intellectual disabilities during interrogations.

The failure of prevailing interrogation methods to account for the needs of children with intellectual disabilities undermines their rights and contributes to false confessions and wrongful convictions. Fortunately, in recent years, state lawmakers, nonprofits, and advocacy organizations have proposed reforms to better protect children during interrogations, and some of these proposals have been enacted into law.[116] While these laws are an improvement compared to current requirements and would benefit children with intellectual disabilities to some degree, almost none of them include provisions that suggest that policymakers specifically considered the needs or developmental differences of children with intellectual disabilities in formulating reforms.

II. INSUFFICIENT RECENT ATTEMPTS TO PROTECT CHILDREN IN INTERROGATIONS

In the last several decades, state legislatures and the broader legal community have proposed reforms to the custodial interrogation process to protect children subjected to police

112. Jochnowitz & Kendall, *supra* note 18, at 631 (summarizing the conditions under which police picked up and interrogated Wise as part of an analysis of the structural problems that lead to wrongful convictions). The Exonerated Five were previously called the Central Park Five and were convicted of raping a jogger in Central Park in 1989. The teenagers falsely confessed and eventually were exonerated. *See id.* at 585.

113. *See id.* at 631.

114. *Id.*

115. *See* LaVigne & Miles, *supra* note 111, at 874–75.

116. *See infra* Part II.

questioning. While several pieces of legislation that aim to better protect children in interrogations have been signed into law in a select number of states, many proposed protections for children—including some that police and prosecutor advocacy organizations support—remain merely proposals.[117] Even enacted laws often fall short because they set standards based on the needs and norms of children who do not have a disability, rather than accounting for how the needs of children with intellectual disabilities might differ from the broader population.[118] Very few reforms include any specific language about enhancing procedural protections with the intention of better protecting children with intellectual disabilities, and even proposals that acknowledge the importance of accounting for the heightened needs of children with intellectual or other disabilities are brief and vague.[119] This Part will highlight recent reform efforts in three sections: (A) efforts to improve transparency during interrogations through police deception bans, mandatory attorney or parent presence, and simplified *Miranda* warnings; (B) interrogation recording requirements; and (C) updates to officer training requirements, time limits, and use of the Reid Technique.

A. STEPS TOWARD TRANSPARENCY: POLICE DECEPTION BANS, ATTORNEY OR PARENT PRESENCE, & SIMPLIFIED *MIRANDA* WARNINGS

Existing reforms and proposals prioritize many of the most pressing risks associated with interrogating children, but standards that would adequately ensure children with intellectual disabilities understand interrogations while they occur are

117. *See infra* Part II.

118. *But see* COLO. REV. STAT. ANN. § 24-31-303 (West 2023). This statute requires the creation of and appropriation of funding for a training program focused on "[u]nderstanding juvenile development" which would include "[a]lternative communication methods for juveniles with intellectual and developmental disabilities as required by the federal 'Americans with Disabilities Act,'" as well as other child- and intellectual disability-specific training. *Id.*

119. *See, e.g.*, N.J. STAT. ANN. § 2A:4A-39 (West 2024). This provision states that "[a] juvenile who is found to lack mental capacity may not waive any right. A guardian ad litem shall be appointed for the juvenile who may waive rights after consultation with the juvenile and the juvenile's counsel." *Id.* Mental capacity is not defined. *Id.*; *see also, e.g.*, COLO. REV. STAT. ANN. § 24-31-303 (West 2023) (requiring law enforcement training programs about "[c]onstructing age-appropriate statements and questions" for juvenile interrogations, and "[c]autions and considerations . . . including how to reduce the likelihood of false or coerced confessions").

lacking. Current proposals and state legislation to improve clarity for children subject to interrogations include (1) banning police deception in interrogations of minors, (2) requiring that a parent or attorney be present for a child's interrogation or requiring that the child consult an attorney before the interrogation, and (3) implementing simplified *Miranda* explanations that children are better able to comprehend.

1. *Police Deception Bans*

Every state allows law enforcement officers to lie to adults in interrogations about incriminating evidence against the suspect and potential leniency if they confess.[120] While most states also allow officers to lie to children, some legislatures have moved in recent years to bar deception of minors during interrogations.[121] In May 2021, Illinois became the first state to enact such a statute when it established a presumption of inadmissibility in court for any statement a minor makes in response to an officer who "knowingly engages in deception," including lying about evidence or making false promises.[122] Several weeks later, Oregon enacted a similar law banning deception of children, creating a rebuttable presumption of inadmissibility for statements made as a result of deception, and encouraging the use of non-adversarial

120. *See* Meg Anderson, *It's Legal for Police to Use Deception in Interrogations. Advocates Want That to End*, NPR (Nov. 8, 2024, at 16:48 ET), https://www.npr.org/2024/10/21/nx-s1-4974964/police-deception-bans#:~:text=Ten%20states%20have%20recently%20passed,Novikov/Getty%20Images%20hide%20caption [https://perma.cc/D2D9-3K4Z].

121. *See id.*

122. *See* Anderson, *supra* note 120; 705 ILL. COMP. STAT. ANN. 405 / 5-401.6 (West 2024). This Act defines deception as "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." 705 ILL. COMP. STAT. ANN. 405 / 5-401.6 (West 2024). According to the Act, the presumption of inadmissibility can only be overridden if the state can demonstrate "a preponderance of the evidence that the confession was voluntarily given, based on the totality of the circumstances." *Id.* Effective in 2024, Illinois added additional language to this law when it passed House Bill 3253, which bans use of deception in interrogations of people with "severe or profound intellectual disability" regardless of their age. *See* Jim Covington, *2023 Legislative Roundup*, Illinois State Bar Assoc. (August 2023), https://www.isba.org/ibj/2023/08/2023legislativeroundup [https://perma.cc/4L33-9AW8]. The bill defines the category of people with intellectual disabilities based on intelligence quotient and, in some circumstances, whether the person has a mental illness that affects their judgment. *See Illinois Bans Police Deception in Juvenile Interrogations*, EQUAL JUST. INST. (July 18, 2021), https://eji.org/news/illinois-lawmakers-ban-police-deception-in-juvenile-interrogations/ [https://perma.cc/L4S9-U7BU] (emphasizing the disproportionate rate at which children falsely confess and are wrongfully convicted).

interrogation approaches like the PEACE model used abroad.[123] In the wake of those statutes, Utah,[124] California,[125] Delaware,[126] Colorado,[127] Indiana,[128] Nevada,[129]

123. *See Deception in Juvenile Interrogations in Oregon*, INNOCENCE PROJECT, https://innocenceproject.org/policies/deception-in-juvenile-interrogations-in-oregon/ [https://perma.cc/GDW3-FGM9]; Innocence Staff, *Oregon Deception Bill is Signed into Law, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (June 16, 2021), https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/ [https://perma.cc/8LAN-ZPXD]; Press Release, State Sen. Chris Gorsek, Oregon Legislature Passes Bill Banning Police from Lying to Youth During Interrogations (June 15, 2021) (announcing the passage of Senate Bill 418A and summarizing it as prohibiting "the use of deception interrogation tactics, including making false promises of leniency and untruthful claims about the existence of incriminating evidence"); *see also* Rogal, *supra* note 63, at 91–92 (explaining the PEACE model used in the United Kingdom, New Zealand, and Norway to reduce use of "psychologically manipulative tactics" in interrogations).

124. Utah enacted House Bill 171 in March 2022 requiring that a parent, guardian, or "friendly adult" be present during an interrogation and banning an officer "knowingly (a) provid[ing] false information about evidence that is reasonably likely to elicit an incriminating response from the child; or (b) mak[ing] an unauthorized statement about leniency for the offense." UTAH CODE ANN. § 80-6-206 (West 2024).

125. California enacted Assembly Bill 2644 in September 2022 requiring that "[d]uring a custodial interrogation of a person 17 years of age or younger relating to the commission of a misdemeanor or felony, a law enforcement officer shall not employ threats, physical harm, deception, or psychologically manipulative interrogation tactics." CAL. WELF. & INST. CODE § 625.7 (West 2024).

126. Delaware enacted House Bill 419 in October 2022 to prohibit "[d]eceptive tactics in a custodial interrogation of a person under 18 years of age," including "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." DEL. CODE ANN. tit. 11, §§ 2021–2022 (West 2022).

127. In May 2023 Colorado enacted House Bill 1042 establishing presumptive inadmissibility of statements made during a juvenile custodial interrogation where the law enforcement official "knowingly communicated any untruthful information or belief to obtain the statement or admission. . . ." COLO. REV. STAT. ANN. § 19-2.5-203 (West 2023). This includes information about evidence or statements suggesting leniency in the case. *See id.* The presumption can be overcome if the state provides "a preponderance of the evidence . . . based on the totality of the circumstances" to show that the child's statement was voluntary. *Id.*

128. Indiana passed Senate Bill 415 in May 2023 banning knowing use of false statements about evidence or leniency in interrogations of children and requiring a "reasonable attempt to notify" a parent of the child being in police custody. *See* IND. CODE. ANN. § 31-37-4-3.5 (West 2023); *see also* Amanda Seidel, *Should Deception Be Allowed in Police Interrogation of Juveniles? The Question Is Being Raised in Legislatures; Two Midwest States Ban the Practice*, COUNCIL OF STATE GOV'TS MIDWEST (Jan. 8, 2024), https://csgmidwest.org/2024/01/08/should-deception-be-allowed-in-police-interrogation-of-juveniles-the-question-is-being-raised-in-legislatures-two-midwest-states-ban-the-practice/ [https://perma.cc/VM75-ZSCK] (summarizing the then-proposed pieces of legislation in Indiana and Illinois to ban deception in interrogations of children).

129. In June 2023 Nevada enacted Assembly Bill 193 barring officers from knowingly making false promises of leniency or false statements about evidence and establishing a presumption of invalidity and inadmissibility of any statements a child makes in violation of this rule. *See* NEV. REV. STAT. ANN. § 62C.014 (West 2024).

Connecticut,[130] and Minnesota[131] passed their own laws banning deceptive interrogations of children. Common themes across these recent laws are (i) a ban on "knowing" or intentional deception or misconduct, including false statements about evidence and promises of leniency,[132] and (ii) the establishment of a presumption of inadmissibility at trial for a minor's statements or admissions that arose based on deception.[133] Generally, the government can overcome the presumption by demonstrating through a preponderance of the evidence that based on the totality of the circumstances, the child's statements were voluntary, regardless of any deception that occurred.[134]

130. Connecticut enacted Senate Bill 1071 in June 2023 to establish a presumption of involuntariness and inadmissibility for any statement made in response to an officer who "engaged in deception or coercive tactics during such interrogation." CONN. GEN. STAT. ANN § 54-86q (West 2023). This law is not specific to children. It covers coercion and deception tactics including deprivation of food, sleep, medication, or access to a restroom; threats of force or heightened consequences; "undue pressure;" constitutional violations; false promises of leniency or explanations of the law; or false information about evidence. *See id.*

131. In 2025, a Minnesota statute took effect establishing that a juvenile's statements during a custodial interrogation would be "presumed to have been made involuntarily and [ ] is inadmissible" if an officer shared information that they "knew to be false" or "communicated statements regarding leniency" that they were not permitted to share. MINN. STAT. ANN. § 634.025 (West 2025). The presumption can be overcome under a preponderance of the evidence standard. *Id.*

132. Some states include exceptions and caveats. For example, Nevada allows an officer to knowingly deceive a child suspect if the officer "reasonably believed the information sought was necessary to protect life or property from imminent threat." NEV. REV. STAT. ANN. § 62C.014 (West 2024).

133. *See supra* notes 122–131 and accompanying text (describing state statutes enacted since 2022 to protect children in interrogations).

134. *See, e.g.*, COLO. REV. STAT. ANN. § 19-2.5-203 (West 2023) (establishing that the presumptive inadmissibility of statements made during a juvenile custodial interrogation in which a law enforcement officer knowingly lied can be overcome if the state provides "a preponderance of the evidence . . . based on the totality of the circumstances" to show that the child's statement was voluntary).

Several states including New York,[135] Massachusetts,[136] and Michigan[137] introduced bills in their 2025–2026 legislative sessions to implement similar bans on deception. Massachusetts' proposed bill would include the greatest protections—it only permits the presumption of inadmissibility to be overcome with evidence beyond a reasonable doubt that the statement was voluntary and not made due to deception.[138] While less protective than Massachusetts' bill, Michigan's 2025 bill heightened the standard of proof required to overcome the presumption of inadmissibility compared to the 2023 version of the bill.[139]

Major nonprofit organizations have also put forward state-level proposals for blanket bans on deception of children.[140] The NAACP put forth a resolution in 2022 calling for the passage of "anti-deception legislation in all 50 states."[141] This would cover interrogations of suspects of all ages, with a particular focus on the "recognized vulnerabilities and susceptibilities" of children and their tendency to falsely confess at "unacceptably high rate[s]."[142] While the American Psychological Association ("APA") does not explicitly suggest banning deception in interrogations, it

135. New York lawmakers reintroduced Senate Bill 6646, which would render "[a] confession, admission or other statement by a defendant who is under eighteen years of age" inadmissible because it is "presumed to be involuntarily made" if an officer engaged in "knowing communication of false facts about evidence or unauthorized statements regarding leniency." S. 6646, 2025–2026 Reg. Sess. (N.Y. 2025). This presumption can be overcome by a preponderance of the evidence that the statement was voluntary. *See id.*

136. Massachusetts lawmakers introduced House Bill 1979 to "prohibit the use of deception during juvenile custodial interrogations" and to presume inadmissibility of resulting statements, which can only be overcome if "the Commonwealth proves, beyond a reasonable doubt, that the statement was voluntary and not made due to any deception." H.R. 1979, 194th Gen. Ct. (Mass. 2025). This bill was previously introduced in the 2023–2024 session. *See* H.R. 1756, 193rd Gen. Ct. (Mass. 2023).

137. Michigan lawmakers introduced House Bill 4174 establishing a presumption of inadmissibility for a "self-incriminating response of a juvenile" if the law enforcement officer "knowingly engage[d] in deception" during a custodial interrogation. The standard to overcome this presumption is clear and convincing evidence. *See* H.R. 4174, 103rd Leg. (Mich. 2025). This bill was previously introduced in the 2023–2024 session, but the standard for overcoming the presumption of inadmissibility in that version of the bill was preponderance of the evidence. *See* H.R. 4436, 102nd Leg. (Mich. 2023).

138. *See* H.R. 1979, 194th Gen. Ct. (Mass. 2025).

139. The burden has been heightened from preponderance of the evidence in the 2023 bill to clear and convincing evidence in the 2025 bill. *See* H.R. 4174, 103rd Leg. (Mich. 2025); H.R. 4436, 102nd Leg. (Mich. 2023).

140. *See, e.g.*, *Resolution: Police Deception in Interrogations*, NAACP (2022), https://naacp.org/resources/police-deceptions-interrogations [https://perma.cc/6MD9-YALQ]; *Resolution on Interrogations of Criminal Suspects*, AM. PSYCH. ASS'N (2022), https://www.apa.org/about/policy/interrogations [https://perma.cc/M9HQ-QPUL].

141. *See Resolution: Police Deception in Interrogations*, *supra* note 140.

142. *Id.*

"recommends that police, prosecutors, and judges recognize the risks of eliciting a false confession [by interrogations] that involve minimization 'themes' that communicate promises of leniency."[143] And even law enforcement organizations, like the International Association of Chiefs of Police ("IACP"), also caution against law enforcement officers' use of deception.[144] While there is some opposition among other law enforcement organizations,[145] a wide range of interest groups support implementing policies that at least discourage deception.

However, nearly all the state-level enacted and proposed legislation that would ban police deception applies only when an officer "knowingly" or intentionally misleads a suspect.[146] Demanding a mental state of intentionality raises the burden to establish that an officer deceived a child during an interrogation,[147] and requiring proof that an officer acted in bad faith could encourage officers to claim they believed the statements they made about leniency promises or evidence against the suspect.[148]

---

143. AM. PSYCH. ASS'N, *supra* note 140.

144. *See* INT'L ASS'N OF CHIEFS OF POLICE, REDUCING RISKS: AN EXECUTIVE'S GUIDE TO EFFECTIVE JUVENILE INTERVIEW AND INTERROGATION 8–9 (2012) (noting that while use of deception is currently permissible, it may lead children to "think that [they have] no choice but to confess—whether guilty or innocent" and therefore the organization advises against use of false evidence "with young children and individuals who have significant mental limitations").

145. *See* Anderson, *supra* note 120 (quoting a statement from the Washington Association of Sheriffs and Police Chiefs opposing blanket bans on deception because the current approach to interrogation "yields 'many more true confessions' than false ones").

146. *See, e.g.*, 705 ILL. COMP. STAT. ANN. 405 / 5-401.6 (West 2024) (defining deception as "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"); COLO. REV. STAT. ANN. § 19-2.5-203 (West 2023) (establishing presumptive inadmissibility of statements made during a juvenile custodial interrogation where the law enforcement official "knowingly communicated any untruthful information or belief to obtain the statement or admission"). *But see* CAL. WELF. & INST. CODE § 625.7 (West 2024) (requiring that "[d]uring a custodial interrogation of a person 17 years of age or younger relating to the commission of a misdemeanor or felony, a law enforcement officer shall not employ threats, physical harm, deception, or psychologically manipulative interrogation tactics").

147. *Cf.* Harmeet Kaur, *Videos Often Contradict What Police Say in Reports. Here's Why Some Officers Continue to Lie*, CNN (June 6, 2020, at 8:55 ET), https://www.cnn.com/2020/06/06/us/police-reports-lying-videos-misconduct-trnd [https://perma.cc/TZA4-MJWQ] (explaining that, generally speaking, in allegations of police misconduct, officers' claims carry more weight than other parties). "Even if there is video of the incident showing otherwise, many officers believe that their word will mean more than the tape," according to Professor and retired police officer David Thomas. *Id.*

148. *Id.* (noting also that when individuals complain about a police officer's misconduct, "[t]here's often a presumption, whether intentional or not, that the people making the complaints are probably at fault").

Deception bans would then become ineffective. The preponderance of the evidence standard for overcoming the presumption of inadmissibility in nearly all existing deception ban proposals already makes it easier for the state to introduce statements made due to deception into evidence.[149] Additionally, requiring the child's attorney to prove that officers knowingly or intentionally lied would admit far more statements made due to deception because the burden of proof for the child's attorney would be higher, thereby directly undermining the goal of a deception ban.[150]

2. *Presence of or Consultation with a Parent, Guardian, or Attorney*

There is no universal standard across the states that children be permitted or required to consult with or be accompanied by a parent, guardian, attorney, or other trusted adult during an interrogation.[151] States' requirements regarding the level of parent or attorney supervision in a child's interrogation vary widely.[152] Only eight states—Florida,[153] Texas,[154]

149. *See* Kim, *supra* note 22, at 269 (expressing concern about qualifications that the presumption of admissibility can be overcome by a preponderance of the evidence and recommending that states ban interrogation per se for children).

150. *Cf.* Jennifer Sellitti, *Breaking Blue: Challenging Police Officer Credibility at Motions to Suppress*, NAT'L ASSOC. CRIM. DEF. LAWS. (Aug. 31, 2022), https://www.nacdl.org/Content/Breaking-Blue-Challenging-Police-Officer-Credibili#:~:text=This%20extends%20to%20the%20court's [https://perma.cc/K4DQ-B3N4] (noting "it is rare that calling a witness to directly contradict a police officer proves a winning strategy," and noting that law enforcement officers have a "presumption of trustworthiness" that is hard to overcome without clear evidence to the contrary).

151. *See, e.g.*, Kate Bryan, *Recent State Laws Strengthen Rights of Juveniles During Interrogations*, NAT'L CONF. STATE LEGISLATURES (Jan. 10, 2024), https://www.ncsl.org/state-legislatures-news/details/recent-state-laws-strengthen-rights-of-juveniles-during-interrogations [https://perma.cc/STF5-XU4H] ("In many states, lawyers are not guaranteed for every child during police interrogation, and most states allow children to waive their right to legal counsel—even if they are unclear about what that means.").

152. *Compare* CAL. WELF. & INST. CODE § 625.6 (West 2024) (requiring children age 15 or younger to consult any attorney before waiving their rights) *with* IND. CODE. ANN. § 31-37-4-3.5 (West 2023) (requiring only that officers make an attempt to notify a parent of the child's interrogation).

153. "Waiver of counsel can occur only after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. This waiver shall be in writing." FLA. STAT. ANN. § 8.165 (West 2016).

154. A child's waiver is valid if it is "made by the child and the attorney for the child," "the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it," and the "waiver is voluntary" and "made in writing or in court proceedings that are recorded." TEX. FAM. CODE ANN. § 51.09 (West 2023).

Vermont,[155] California,[156] Washington,[157] New Jersey,[158] Maryland,[159] and Illinois[160]—either require or guarantee that a child has access to an attorney during an interrogation or has the opportunity to consult an attorney before they are read their *Miranda* rights.[161] At the other end of the spectrum, some states

---

155. "[A] ward or a guardian ad litem" can waive a child's right to an attorney if "there is a factual and legal basis for the waiver or admission," an attorney has consulted the guardian and child, and the "waiver or admission is being entered into knowingly and voluntarily by the ward and also by the guardian ad litem." VT. R. FAM. PROC § 6.

156. CAL. WELF. & INST. CODE § 625.6 (West 2024). In 2017, California enacted Senate Bill 395 to mandate that children ages 15 and younger consult an attorney regarding their rights before law enforcement can interrogate them. *See Miranda Rights for Youth (2020)*, NAT'L CTR. FOR YOUTH L. (2020), https://youthlaw.org/laws-policy/miranda-rights-youth-2020#:~:text=In%202017%2C%20California%20passed%20SB,SB%20395%20sunsets%20January% 202025 [https://perma.cc/S2ZQ-A3TS]. In 2020, California expanded this protection to all children under the age of 18 by enacting Senate Bill 203. *Id.* Specifically, the 2020 bill requires that children be advised of their *Miranda* rights and the meaning of a *Miranda* waiver. *Id.*

157. In 2021, Washington state passed House Bill 1140, which (1) requires that individuals under the age of 18 consult with an attorney (in-person or by phone or video call) before police questioning and (2) renders statements a child makes prior to attorney consultation inadmissible (with rare exceptions). *See* WASH. REV. CODE ANN. § 13.40.740 (West 2022).

158. N.J. STAT. ANN. § 2A:4A-39 (West 2024). In 2024, New Jersey enacted a bill establishing that children have a right to representation in all stages of a court proceeding including an interrogation. *See* Press Release, Governor Phil Murphy, Governor Murphy Signs Bill Clarifying Juveniles' Rights to Attorney Representation (Jan. 12, 2024), https://www.nj.gov/governor/news/news/562024/20240112i.shtml#:~:text=Governor%20Murphy%20Signs%20Bill%20Clarifying%20Juveniles'%20Rights%20to%20Attorney%20Representation,-01%2F12%2F2024&text=TRENTON%20%E2%80%93%20Governor%20Phil%20Murphy%20today,stage%20of%20a%20court%20proceeding [https://perma.cc/8LCQ-Z34W]. The law also requires that (1) a child consult with an attorney and (2) the child's parent have an opportunity to consult with the attorney and their child before the child can waive their rights. *See id.*

159. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-14.2 (West 2022). In 2022, Maryland enacted the Child Interrogation Protection Act, which requires that (1) an attorney be consulted and (2) parents be informed if their child is taken into police custody. *See* Neydin Milián, *Child Interrogation Protection Act Goes Into Effect Saturday*, ACLU MD (Sep. 29, 2022, at 1:30 PM), https://www.aclu-md.org/en/press-releases/child-interrogation-protection-act-goes-effect-saturday [https://perma.cc/6EWZ-SE4J]. It also establishes a rebuttable presumption of inadmissibility for a child's statements during an interrogation where officers "willfully" did not fulfill these requirements. *See id.* One of the goals of the law is to prevent children from waiving their *Miranda* rights without legal counsel. *See id.*

160. Illinois enacted a law in 2016 (1) requiring that a child under age 15 at the time of certain crimes be able to consult an attorney during an interrogation and (2) barring minors from waiving the right to counsel. *See* 55 ILL. COMP. STAT. ANN. 5 / 3-4006 (West 2023). Illinois is the only state with a total bar on minors waiving their right to counsel. *See* NAT'L JUV. DEF. CTR., ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES' FAILURE TO PROTECT CHILDREN'S RIGHT TO COUNSEL 26–27 (2017) (explaining Illinois' "absolute prohibition on waiver").

161. Some of these states also require that a parent be notified or consulted, along with an attorney. *See* N.J. STAT. ANN. § 2A:4A-39 (West 2024); Press Release, Governor Murphy, *supra* note 158 (announcing the new law granting children the right to representation in all

including Maine,[162] Utah,[163] and Indiana[164] merely require officers to make a "reasonable" effort to contact the child's parent or guardian before proceeding with an interrogation. Many states do not require that the child be afforded the opportunity for legal consultation, and some will allow a parent to serve as the child's representative.[165] Parental involvement in the interrogation process is concerning, however, because parents often lack a sufficient grasp of the legal process or their child's rights.[166] Parents are simply not equipped to act as a proxy for legal representation and can unintentionally undermine their child's interests while trying to protect their child.[167]

---

stages of a court proceeding and giving a child's parent an opportunity to consult with the attorney and the child before the child can waive their rights); CAL. WELF. & INST. CODE § 627 (West 2023) (requiring that a parent or guardian be notified when their child is taken into custody and also requiring that a public defender be notified when a child is taken into custody).

162. Maine's law states that an officer must notify a parent or guardian of their plan to question a child, but caveats that officers may interrogate a child without parental knowledge or consent if they "make 'a reasonable effort to contact the legal custodian' and cannot reach them." Todd C. Warner & Hayley M.D. Cleary, *Parents' Interrogation Knowledge and Situational Decision-Making in Hypothetical Juvenile Interrogations*, 28 PSYCH. PUB. POL'Y & L. 78, 79 (2022) (citing ME. REV. STAT. ANN. tit 15 § 3203-A (1999)).

163. "A child's parent or guardian, or a friendly adult if applicable . . . is not required to be present during the child's waiver . . . or to give permission to the interrogation of the child if . . . [the officer] has made reasonable efforts to contact the child's parent or legal guardian." UTAH CODE ANN. § 80-6-206 (West 2024).

164. Indiana law states that "[a] law enforcement officer who arrests a child or takes a child into custody . . . shall make a reasonable attempt to notify, or request a school administrator to make a reasonable attempt to notify" the child's parent or guardian. IND. CODE. ANN. § 31-37-4-3.5 (West 2023).

165. *See, e.g.*, UTAH CODE ANN. § 80-6-206 (West 2024) (requiring that a child in a custodial interrogation be given the opportunity to have a parent, guardian, or "friendly adult"—meaning an adult "who has an established relationship with the child to the extent that the adult can provide meaningful advice and concerned help to the child should the need arise" and "who is not hostile or adverse to the child's interest"—with them during the interrogation). Utah also requires that the child have a "meaningful opportunity" to consult with an attorney before an interrogation and allows the attorney to be present during the interrogation. *Id.* Once they have consulted with an attorney, however, Utah allows the child to waive their rights. *Id.*

166. *See* Warner & Cleary, *supra* note 162, at 78 (concluding that while the goal of parental notification and presence laws seems to be an effort to compensate for children's lack of decision making abilities and limited understanding of the legal system, "parents are poorly situated to play a protective role in juvenile interrogations" due to their inability or unwillingness to "act in their child's legal best interest"); *see also* Feron, *supra* note 7, at 787 (finding that "many children and adolescents will waive their Miranda rights when asked to do so by police or encouraged to do so by a well-intentioned but uninformed parent or guardian").

167. *See* Warner & Cleary, *supra* note 162, at 78 (outlining parents' inability to protect their child's best legal interests); *see also* Feron, *supra* note 7, at 787 (noting that parents may advise a child to waive their *Miranda* rights, although a lawyer may have advised differently).

Like bans on deception in juvenile interrogations, there are calls across the legal community for children to have greater access to an attorney during or before an interrogation, but pending proposals vary considerably. Some bills mirror laws enacted in other states[168] to require attorney presence or consultation. For example, lawmakers in New York have proposed legislation in the last several legislative sessions mandating that children consult an attorney via telephone or videocall before an interrogation.[169] Additionally, while most reform recommendations focus on the entire class of children, a few specifically account for the needs of children with intellectual disabilities.[170] The APA has recommended that "particularly vulnerable suspect populations, including youth, persons with developmental and intellectual disabilities, and persons with mental illness, be provided special and professional protection during interrogations such as accompaniment or advice from an attorney or professional advocate."[171] Even this recommendation, however, fails to address how law enforcement would determine when a child has an intellectual disability or other vulnerability that necessitates additional protections.

168. Statutes have been passed in Florida, Texas, Vermont, California, Washington, New Jersey, Maryland, and Illinois that require or guarantee that a child either has an attorney present in an interrogation or has the opportunity to consult an attorney before they are read their Miranda rights. *See* FLA. STAT. ANN. § 8.165 (West 2016); TEX. FAM. CODE ANN. § 51.09 (West 2023); VT. R. FAM. P. 6; WASH. REV. CODE ANN. § 13.40.740 (West 2022); 55 ILL. COMP. STAT. ANN. 5 / 3-4006 (West 2023); *see also* Press Release, Governor Murphy, *supra* note 158; Milián, *supra* note 159.

169. *See* S. 2620–A, 2025–2026 Reg. Sess. (N.Y. 2025); S. 1099–A, 2023–2024 Reg. Sess. (N.Y. 2023). This bill, which was reintroduced in January 2025, also requires that (1) parents or those "legally responsible" for the child be notified about their child's arrest before the child is taken to the police station; (2) if the child must be questioned, they be brought either to "a facility designated by the chief administrator of the courts as a suitable place for the questioning of children" or, if the parent permits it, "the child's residence"; (3) the child and parent or guardian be notified of the child's *Miranda* rights before the child can be interrogated; and (4) incriminating statements made by the child be suppressed in court if these requirements were not met. N.Y. S. 2620–A. In the 2021–2022 legislative session, lawmakers also proposed a more specific requirement that children must consult an attorney before they can waive their *Miranda* rights, but this was not passed into law or reintroduced in the following session. *See* S. 2800–C, 2021–2022 Reg. Sess. (N.Y. 2021).

170. *See* AM. PSYCH. ASS'N, *supra* note 140.

171. *See id.*

3. *Simplifying* Miranda *Explanations*

Most states do not require children to consult an attorney before or during an interrogation, despite the high rate[172] at which children waive their *Miranda* rights. Children often do so because they do not understand the meaning of those rights or the potential detriment of waiving them.[173] Few states, however, have enacted legislation to address children's limited understanding. In 2016, the Illinois legislature implemented a prescribed statement that officers must read to children before a custodial interrogation.[174] The statement is required to be read "continuously . . . in its entirety and without stopping," and if this does not occur, the child's statements are presumed inadmissible.[175] Similarly, in 2021 Nevada enacted legislation to require officers to give a specifically worded warning to children before initiating a custodial interrogation, including sentences such as, "[i]f you choose to talk to me, whatever you tell me I can tell a judge in court," and "[d]o you want to talk to me?"[176] In 2023, Utah followed suit enacting a simplified *Miranda* warning for children.[177] In

---

172. *See* Hayley M.D. Cleary & Sarah Vidal, *Miranda in Actual Juvenile Interrogations: Delivery, Waiver, and Readability*, 41 CRIM. JUST. REV. 98, 106 (2016) (finding that in a sample of 31 interviews, "90% (n = 28) of juvenile suspects waived their rights to silence and counsel," which corroborates several prior studies).

173. *See id.* (explaining "[r]egardless of when and how the Miranda warnings are delivered, extant research suggests that adolescents as a group inadequately comprehend the warnings to a degree that may compromise the validity of their Miranda waiver," with younger adolescents and those with lower levels of "psychosocial maturity" displaying particularly extreme misconceptions about *Miranda* rights).

174. *See* 705 ILL. COMP. STAT. ANN. 405 / 5-401.5 (West 2023).

175. *See id.* The full statement is, "You have the right to remain silent. That means you do not have to say anything. Anything you do say can be used against you in court. You have the right to get help from a lawyer. If you cannot pay for a lawyer, the court will get you one for free. You can ask for a lawyer at any time. You have the right to stop this interview at any time", followed by, "Do you want to have a lawyer?" and "Do you want to talk to me?" *Id.*

176. *See* NEV. REV. STAT. ANN. § 62C.013 (West 2021). The full text of the required disclosure is "(a) You have the right to remain silent, which means you do not have to say anything to me unless you want to. It is your choice. (b) If you choose to talk to me, whatever you tell me I can tell a judge in court. (c) You have the right to have your parent or guardian with you while you talk to me. (d) You have the right to have a lawyer with you while you talk to me. If your family cannot or will not pay for a lawyer, you will get a free lawyer. That lawyer is your lawyer and can help you if you decide that you want to talk to me. (e) These are your rights. Do you understand what I have told you? (f) Do you want to talk to me?" *Id.*

177. *See* UTAH CODE ANN. § 80-6-206 (West 2024). Specifically, the language provided in the law is "(a) You have the right to remain silent. (b) If you do not want to talk to me, you do not have to talk to me. (c) If you decide to talk to me, you have the right to stop answering my questions or talking to me at any time. (d) Anything you say can and will be

sum, only three state legislatures have created child-specific *Miranda* warnings, and one of those statutes explicitly notes that failure to follow the exact language does not violate the law.[178]

New York's Assembly Bill 2620A aims to better protect children who do not receive meaningful explanations of *Miranda* rights and waivers, but it has yet to be passed.[179] It would require that judges suppress incriminating statements if children were not read their *Miranda* rights or did not knowingly and voluntarily waive them.[180] Likewise, the American Bar Association passed a resolution in 2010 that "urges federal, state, territorial and local legislative bodies and governmental agencies to support the development of simplified Miranda warning language for use with juvenile arrestees."[181] Even law enforcement organizations support simplified *Miranda* warnings for children.[182] The IACP provides a model warning including statements such as "you have the right to remain silent. That means you do not have to say anything"; "you have the right to get help from a lawyer right now";

---

used against you in court. (e) If you talk to me, I can tell a judge and everyone else in court everything that you tell me. (f) You have the right to have a parent or guardian, or a friendly adult if applicable, with you while I ask you questions. (g) You have the right to a lawyer. (h) You can talk to a lawyer before I ask you any questions and you can have that lawyer with you while I ask you questions. (i) If you want to talk to a lawyer, a lawyer will be provided to you for free. (j) These are your rights. (k) Do you understand the rights that I have just told you? (l) Do you want to talk to me?" *Id.* The law notes, however, that "an [officer's] failure to strictly comply with, or state the exact language of" the simplified language outlined in the statute, "is not grounds by itself for finding the officer has not complied with" the statute. *Id.*

178. *See supra* notes 174–177.

179. As of December 26, 2025, the bill has passed the Assembly, but not the Senate. S. 2620–A, 2025–2026 Reg. Sess. (N.Y. 2025). This bill uses similar language to the 2016 Illinois law simplifying Miranda waivers for juveniles. *Compare id. with* 705 ILL. COMP. STAT. ANN. 405 / 5-401.5 (West 2023). New Jersey enacted Assembly Bill 3117 in 2024, which states that *Miranda* "waivers shall be executed in the language regularly spoken by the juvenile," but it is unclear whether this was intended to ensure that children are informed of their rights in their native language (e.g., English, Spanish), or if it addresses issues related to children's comprehension of the particular wording used to explain their rights. *See* N.J. STAT. ANN. § 2A:4A-39 (West 2024).

180. S. 2620–A, 2025–2026 Reg. Sess. (N.Y. 2025); *see also* Juv. Just. Comm. & Child. & L. Comm., *Legislation to Protect Children During Custodial Police Interrogation*, N.Y.C. BAR ASS'N (Apr. 23, 2024), https://www.nycbar.org/reports/legislation-to-protect-children-during-custodial-police-interrogation/ [https://perma.cc/7LR9-K73W] (expressing the support of the New York City Bar Association's Juvenile Justice Committee and Children and the Law Committee for the passage of this bill). New York's proposed requirement of suppression of these statements would meaningfully protect children by blocking prosecutors' ability to get these statements into the record. *Id.*

181. *Simplified Miranda Warnings for Juveniles*, A.B.A. (Nov. 16, 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/attorneys/simplified_mirandawarningsforjuveniles [https://perma.cc/B55D-B52S].

182. *See* INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 33.

and "do you want to talk to me?"[183] Similarly, Fair and Just Prosecution's[184] ("FJP") 2022 model policies for youth interrogation include a simplified *Miranda* warning to be read to children alongside the standard *Miranda* warning, both of which must occur "in the presence of both counsel and the parent/legal guardian/supportive adult."[185] While many of the proposed reforms to simplify *Miranda* for children are well-intentioned, they fail to include consequences for officers' noncompliance.[186] Further, these proposals do not include specific guidance outlining how a law enforcement officer or judge would determine when a child understood the warning.

While states and nonprofit organizations are making strides in better accommodating the needs of children during interrogations, many states have yet to enact a deception ban, mandatory attorney or parental presence, or simplified *Miranda* warnings, and even the statutes that have been enacted into law have significant

183. *See id.* The full list of model statements in the *Miranda* warning is: "1. You have the right to remain silent. That means you do not have to say anything. 2. Anything you say can be used against you in court. 3. You have the right to get help from a lawyer right now. 4. If you cannot pay for a lawyer, we will get you one here for free. 5. You have the right to stop this interview at any time. 6. Do you want to talk to me? 7. Do you want to have a lawyer with you while you talk to me?" *Id.*

184. Fair and Just Prosecution is an advocacy organization that works with elected prosecutors to promote justice. *Our Work and Vision*, FAIR & JUST PROSECUTION, https://fairandjustprosecution.org/about-fjp/our-work-and-vision/ [https://perma.cc/P3G2-BK55] (last visited Oct. 11, 2025).

185. *See* FAIR & JUST PROSECUTION, YOUTH INTERROGATION: KEY PRINCIPLES AND POLICY RECOMMENDATIONS 12 (2022). The example warning states:

1. You have the right to remain silent, which means that you don't have to say anything. 2. It's OK if you don't want to talk to me. 3. If you do want to talk to me, anything you say could be used in court to try to show that you committed a crime. I can tell the juvenile court judge or adult court judge and Probation Officer what you tell me. There may be things that you think it would be fine to tell me but that could hurt you if there is a case in court against you. 4. *(Counsel should be pointed out to the young person at this point)* [Counsel's Name] is a [free] lawyer who has been assigned to you. You have the right to talk to your lawyer in private right now. Your lawyer works for you and does not tell anyone what you tell them. Your lawyer helps you decide if it's a good idea to answer questions. Your lawyer will be with you at all times if you want to talk to me. 5. If you start to answer my questions, you can change your mind and stop at any time. I won't ask you any more questions. 6. I want to make sure you understand what I have told you. Can you explain in your own words what I said? 7. Do you want to talk with me? (If yes, then proceed with questioning.)

Id. (alterations in original).

186. *See, e.g.*, UTAH CODE ANN. § 80-6-206 (West 2024) ("[A]n [officer's] failure to strictly comply with, or state the exact language of [the simplified language outlined in the statute] is not grounds by itself for finding the officer has not complied with [the statute].").

shortcomings in meaningfully protecting children with intellectual disabilities.[187]

B. ENHANCED RECORDING REQUIREMENTS

Some states mandate audio or video recording of interrogations for particular crimes or under particular circumstances, but a wide array of interest groups and nonprofits have called for universal requirements that interrogations be recorded. Eight states and the District of Columbia already require recording of all interrogations for all crimes regardless of the subject's age.[188] Of the 42 states that do not require recording interrogations for all crimes, only North Carolina, Washington, New York, and Wisconsin specifically require that all interrogations of children be recorded.[189] Indiana and New Mexico, in contrast, only require recording for felonies[190] and 20 other states require recording for interrogations related to specific categories of crime, most commonly homicides, serious crimes, or sexual crimes.[191] These states' more limited approaches to mandating recorded interrogations leave children whose alleged crimes fall outside of the enumerated categories vulnerable to deception that may go undetected without a recording.

Nonprofit organizations, trade associations, and the legal community have pushed for robust state-level requirements to better protect all parties involved in interrogations, and many pending proposals go further than existing laws in urging that recordings be required in all states.[192] The Innocence Project released a model state statute in 2011 titled "Act Directing the

187. *See id.*; *see, e.g.*, IND. CODE. ANN. § 31-37-4-3.5 (West 2023) (merely requiring that officers "make a reasonable attempt to notify, or request a school administrator to make a reasonable attempt to notify" a child's parent or guardian before interrogating them).

188. *See* BRANDON GARRETT, JURISDICTIONS THAT RECORD POLICE INTERROGATIONS 3–4 (2024). The eight states mandating recording of all interrogations are Alaska, Arkansas, Colorado, Minnesota, Montana, New Jersey, Texas, and Virginia. *Id.*

189. *See id.* (discussing the enactment of the "Central Park 5 Bill" based on concerns that "teens are more likely to make false confessions than adults" especially if officers are engaging in manipulative or deceptive behaviors).

190. *See id.*

191. *See id.* These states are California, Connecticut, Hawaii, Illinois, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, North Carolina, New York, Ohio, Oklahoma, Oregon, Rhode Island, Washington, Wisconsin, Utah, and Vermont. *See id.*

192. *See* NAT'L ASS'N CRIM. DEF. LAWS., *supra* note 70; *Resolution: Police Misconduct as it Relates to False Confessions*, NAACP (2021), https://naacp.org/resources/police-misconduct-it-relates-false-confessions [https://perma.cc/XBB8-HKDB].

Electronic Recording of Custodial Interrogations," which cites strengths of universal recording including ensuring better investigations and thorough records of statements.[193] Similarly, the NAACP supports states adopting requirements that "custodial interrogations, involving serious and/or felony crimes, be recorded" because recordings "provide an objective and accurate audio-visual record of the interrogation, in addition to improving transparency and creating an indisputable account of what happened during the interrogation."[194]

Even organizations specifically focused on protecting law enforcement officers support recording interrogations because these recordings ensure officer safety and save police department resources.[195] FJP also recommends video and audio recordings of the entire interrogation "with both the interrogator and young person visible."[196] Beyond the child safety-related benefits of recording interrogations, mandatory recording policies offer significant financial and efficiency benefits to the criminal legal system.[197]

Finally, major organizations unaffiliated with advocacy for either defense or prosecution support requiring recording interrogations. The American Bar Association (ABA) passed

193. *See* NAT'L ASS'N CRIM. DEF. LAWS., *supra* note 70; *Resolution: Police Misconduct as it Relates to False Confessions*, *supra* note 192. The National Association of Criminal Defense Lawyers (NACDL) outlines 17 benefits that mandatory statewide recording of interrogations can provide to suspects, law enforcement, and the public. *See* Thomas P. Sullivan, *Compendium: Electronic Recording of Custodial Interrogations*, NAT'L ASS'N CRIM. DEF. LAWS. 2–3 (Jan. 2019), https://www.nacdl.org/getattachment/581455af-11b2-4632-b584-ab2213d0a2c2/custodial-interrogations-compendium-january-2019-.pdf [https://perma.cc/MSP2-RUY5]. These benefits include better assessing the validity of an officer's *Miranda* explanation, determining whether officers engaged in deceptive or improper tactics, reviewing the voluntariness of a suspect's statements, establishing a clear and consistent record of events, strengthening public confidence in law enforcement, and reducing false confessions. *See id.*

194. *Resolution: Police Misconduct as it Relates to False Confessions*, *supra* note 192.

195. *See, e.g.*, Letter from Exec. Dir., Am. Fed'n of Police & Concerned Citizens, to Nat'l President, Am. Fed'n of Police & Concerned Citizens (Nov. 2011), *as reprinted in* NAT'L ASS'N CRIM. DEF. LAWS., *supra* note 70 (expressing support for "the use of recording devices during interrogation" because it "provides a great measure of safety to the interrogating officers"); INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 12 (noting "most electronic recording systems pay for themselves by greatly reducing the need for and duration of costly pre-trial hearings about what happened inside the interrogation room" and urging police departments to "videotape interviews and interrogations from the reading of *Miranda* rights until the end").

196. FAIR & JUST PROSECUTION, *supra* note 185, at 7.

197. *See* INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 12 (noting "most electronic recording systems pay for themselves by greatly reducing the need for and duration of costly pre-trial hearings about what happened inside the interrogation room").

Resolution 8A in 2004 encouraging videotaping of all interrogations,[198] and the APA has expressed support for requiring recordings filmed at a "neutral" angle.[199] The APA cites the vulnerability of people with intellectual disabilities and children, as well as the tendency of these populations to waive their rights and falsely confess, as reasons to require recording.[200] Given the universality of calls to mandate recording across a range of political perspectives and interest groups, it is surprising that the majority of states still do not require recording of all interrogations of children, let alone interrogations for suspects of all ages.

C. OTHER IMPROVEMENTS: OFFICER TRAINING, TIME LIMITS, & MITIGATING RISKS OF THE REID TECHNIQUE

Despite calls from a variety of interest groups to implement child-specific interrogation training for law enforcement officers, time limits on interrogations, and boundaries around use of the Reid Technique, only one state has enacted a statute implementing even one of these reforms.[201] Both the APA and prosecutor-led advocacy organizations recognize the value of implementing training focused on child interrogations, setting time limits for those interrogations, and limiting or ending use of the Reid Technique, and even some law enforcement organizations have called for improvements to officer training and time constraints on interrogations.[202] These reform proposals, however, give minimal

198. *See Index of ABA Criminal Justice Policies from 1996-Present*, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/criminal_justice/cj-policies-list.pdf [https://perma.cc/GQH9-PJG3] (last visited Nov. 17, 2025); *see also* NAT'L ASS'N CRIM. DEF. LAWS., *supra* note 70 (calling for "all law enforcement agencies to videotape the entirety of custodial interrogations of crime suspects at places where suspects are held for questioning, or, where videotaping is impractical, to audiotape the entirety of such custodial interrogations"). This recommendation is valuable, but its vague exception for when videotaping is "impractical" is problematic: without defining that term, bad actors could invoke it to mask improper motives for failing to videotape an interrogation.

199. *See* AM. PSYCH. ASS'N, *supra* note 140 (explaining that "videotaping of interrogations in their entirety [for felonies] provides an objective and accurate audio-visual record" that allows for dispute resolution and discouragement of both "deceptive tactics" and "frivolous claims of police coercion"). The resolution defines a "neutral" angle for recording as "one focusing attention equally on suspects and interrogators". *Id.*

200. *See id.*

201. *See* COLO. REV. STAT. ANN. § 24-31-303(1)(u)(I) (West 2023) (requiring the development of a training program for law enforcement officers focused on "[u]nderstanding juvenile development").

202. *See infra* Part II.C.1–2.

attention to the role of intellectual disability in interrogations of children.

1. *Officer Training for Interrogations of Children*

Only one state's law provides officers specific training for juvenile interrogations.[203] In 2023, Colorado enacted a juvenile interrogation training statute that recognizes the value of instructing officers to alter their questioning to account for children's vulnerability.[204] Despite the lack of similar laws across other states, national organizations—including prosecution and police advocacy groups like FJP and the IACP, as well as unbiased scientific associations like the APA—have pushed for required trainings for law enforcement officers across the country.[205] These organizations recognize the demonstrated differences between child and adult brain development and the lack of current differentiated training for interrogation of children and adults in most U.S. jurisdictions.[206]

---

203. *See id.* (requiring the development of a training program for law enforcement officers focused on "[u]nderstanding juvenile development").

204. *See id.* § 24-31-303(1)(u)(I)–(VI). This statute requires the creation of, and appropriation of funding for, a training program focused on "[u]nderstanding juvenile development and culture and their impact on . . . custodial interrogations of juveniles; [i]nterpreting juvenile behavior during an . . . interrogation; [t]echniques for building and establishing rapport with juveniles; [a]lternative communication methods for juveniles with intellectual and developmental disabilities as required by the . . . 'Americans with Disabilities Act'; [c]onstructing age appropriate statements and questions for . . . custodial interrogation of juveniles; and [c]autions and considerations . . . including how to reduce the likelihood of false or coerced confessions." *Id.* (citation omitted) (asserting compliance with 42 U.S.C. §§ 12101–12213, the Americans with Disabilities Act).

205. *See, e.g.*, FAIR & JUST PROSECUTION, *supra* note 185, at 9 (advising that "law enforcement officers should receive training on developmentally appropriate, trauma-informed, racially equitable approaches to any interaction with youth," and "DAs should create and promote training for prosecutors on youth development, trauma, and interrogation best practices"); INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 1 ("[Interrogation training for law enforcement officers] typically does not cover the developmental differences between adults and youth nor does it cover recommended techniques to be used on youth versus adults. This often leads law enforcement practitioners to use the same techniques on youth as with adults."); AM. PSYCH. ASS'N, *supra* note 140 ("APA recommends that those who interrogate individuals receive special training regarding the risk of eliciting false confessions, with special attention paid to the heightened risk for suspects who are young (with particular attention paid to developmental level and trauma history), are cognitively impaired, have impaired mental health functioning, or in other ways are vulnerable to manipulation.").

206. *See* FAIR & JUST PROSECUTIONS, *supra* note 185, at 9 (noting the importance of specialized approaches to interrogations of children); INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 7 (explaining that trainings typically do not discuss differences between interrogating children and adults); AM. PSYCH. ASS'N, *supra* note 140 (calling for

2. *Time Limits on Interrogations*

Capping the duration of an interrogation is an additional mechanism to account for children's limited brain development.[207] Time limits aim to prevent false confessions because the longer an interrogation goes on, the more likely the suspect is to give an unreliable or coerced confession, especially if the subject is a child.[208] While a range of organizations including law enforcement associations, prosecutorial reform groups, and other public interest groups have pushed for time limits, no state has enacted legislation mandating them.[209] The APA advises that "law enforcement agencies consider placing limits on the length of time that suspects are interrogated" regardless of their age because "the risk of false confessions is increased with extended interrogation times," but provides no particular hour limitation on interrogations.[210] This lack of specificity would make such a recommendation difficult to implement in any enforceable way.

While the APA proposal fails to define "reasonable time," FJP and the IACP advise that the maximum length of juvenile interrogations should be two to four hours.[211] Further, FJP calls

---

interrogators to "receive special training . . . with special attention paid to the heightened risk for suspects who are young.").

207. See Louise Forde & Ursula Kilkelly, *Children and Police Questioning: A Rights-Based Approach*, 24 CRIMINOLOGY & CRIM. JUST. 648, 661 (2023) ("[Y]oung people's perception of time is different to adults—even a relatively short period of time can be perceived as 'an eternity' to children who are in a police station being questioned." (quoting Hayley M.D. Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice*, PSYCH., PUB. POL'Y, & L. 118, 121 (2017)).

208. *See* INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 8 ("[T]he risk that any [juvenile's] statement will be either involuntary or unreliable increases substantially with each passing hour.").

209. *But see* S. 2620A, 2025-2026 Legis. Sess. (N.Y. 2025). New York's proposed bill appears to be targeting excessively long interrogations of children, but would allow officers to "question [a child] for a reasonable period of time," which depends on "the child's age, the presence or absence of his or her parents or other persons legally responsible for his or her care, [whether] the child has been interrogated at a facility designated . . . as a suitable place for the questioning of juveniles, [and] whether the interrogation was in compliance with the video-recording and disclosure requirements." *Id.* As of December 26, 2025, this bill has passed the Assembly but not the Senate. *See Assembly Bill A2620A*, THE NEW YORK STATE SENATE, https://www.nysenate.gov/legislation/bills/2025/A2620/amendment/A [https://perma.cc/XH6D-HWY8].

210. AM. PSYCH. ASS'N, *supra* note 140.

211. *See* FAIR & JUST PROSECUTION, *supra* note 185, at 13 (providing that "[e]ach interrogation session shall be limited to a total of two hours," unless approved by the district attorney or chief prosecutor, and even then, an "interrogation session [shall not] last longer than four hours" including regular breaks); INT'L ASS'N OF CHIEFS OF POLICE, *supra* note

for children to receive a thirty minute break to eat and use the bathroom after the first hour.[212] IACP adds that "[a] juvenile interrogation should never last longer than four hours," with a "substantial break" occurring every hour, because children's statements may become increasingly "involuntary or unreliable" as time goes on.[213] It is possible that creating these limits could undermine officers' ability or inclination to take their time in fully assessing a child's guilt and therefore could inhibit the pursuit of justice. Given that children are more likely to falsely confess as time goes on, however, drawing out interrogations further is unlikely to lead to a confession that is voluntary and true.[214]

3. *Ending or Limiting Use of the Reid Technique*

Despite calls for elimination of adversarial interrogation techniques,[215] no state has banned use of the Reid Technique and it therefore remains the prevailing approach to criminal interrogations among U.S. law enforcement officers.[216] While it does not refer to the Reid Technique by name, the APA notes that "research suggests adversarial, accusatorial, and threatening interrogation methods increase innocent suspects' stress levels, which may increase risk for false confessions as interrogation time increases."[217] It instead advises that "non-adversarial, [information-gathering] interrogation methods result in fewer false confessions while preserving the rates of true confessions" for people of all ages.[218] Similarly, FJP's recommendations for youth interrogations call for "practices designed to identify facts . . . rather than to elicit incriminating statements."[219] They suggest that such practices include "open-ended, rather than

144, at 8 ("Juveniles can tolerate only about an hour of questioning before a substantial break should occur. A juvenile interrogation should never last longer than four hours.").

212. FAIR & JUST PROSECUTION, *supra* note 185, at 13. This recommendation notes that the district attorney or chief prosecutor can approve an extension beyond the two-hour mark (up to four hours at most), and in that circumstance, "an hourly break of at least 20 minutes shall still occur after each hour." *Id.*

213. INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 8.

214. *Id.*

215. *See, e.g.*, AM. PSYCH. ASS'N, *supra* note 140, at 2 (cautioning that "adversarial, accusatorial, and threatening interrogation methods . . . may increase risk for false confessions").

216. *See* Orlando, *supra* note 50.

217. AM. PSYCH. ASS'N, *supra* note 140.

218. *Id.*

219. FAIR & JUST PROSECUTION, *supra* note 185, at 8.

leading questions," and should avoid use of "behavioral analysis"—a key stage of the Reid Technique—because cues such as body language are not reliable "signs of deception" in young people.[220] Despite the widely known failures of adversarial questioning models, it does not appear that any state has taken meaningful action toward even rethinking how children are questioned, let alone limiting or barring the use of the Reid Technique in juvenile interrogations. Continued use of the Reid Technique, combined with insufficient efforts thus far to better accommodate children with intellectual disabilities through mandatory attorney presence, time limits on interrogations, and specialized training for officers, among other reforms, leaves the most vulnerable children at risk of falsely confessing.

III. CREATING A COMPREHENSIVE FRAMEWORK TO PROTECT CHILDREN WITH INTELLECTUAL DISABILITIES IN INTERROGATIONS

Nearly all existing proposals decline to consider the needs of children with intellectual disabilities, and many of them also fail to substantively protect children.[221] The appropriate solution to protect children with intellectual disabilities, however, is not to create entirely distinct standards for children with intellectual disabilities, because law enforcement officers are not equipped to identify intellectual disabilities during interrogations.[222] To avoid the need for a diagnosis or the expectation that officers be able to identify an intellectual disability, the standards applied to all children should account for the characteristics of children with intellectual disabilities that render them particularly vulnerable.[223] Children with intellectual disabilities can be better

220. *Id.* While the IACP does not call for a bar on use of behavioral analysis, it cautions against use of "behavioral cues" to determine guilt, explaining that "officers should not interpret these everyday teenage mannerisms [like avoiding eye contact] as indicators of deception." INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 7.

221. *See supra* Part II.

222. *See, e.g.*, NAT'L CTR. ON CRIM. JUST. & DISABILITY, *supra* note 12 ("Police officers receive little or no training about hidden disabilities and often don't know what to look for."); Richardson et al., *supra* note 12, at 2 ("[M]ost [law enforcement agencies] lack IDD-related training and response programs, leaving law enforcement officers (LEOs) unaware of how to best respond to their local IDD community.").

223. *See* Griego et al., *supra* note 8, at 1465 (building upon prior studies finding that children with intellectual disabilities are predisposed towards misunderstanding language, desiring to please others, submitting to pressure, suggestibility, reduced "memory performance," and "increased false memories").

protected by creating more stringent and specific standards for how law enforcement officers treat all children during interrogations because this eliminates any expectation that officers be able to determine whether the child has an intellectual disability or not.[224] This Part first explains why state legislatures are the most effective mechanism through which to enact reforms to criminal interrogation procedures, before proposing a package of specific reforms that would best protect children with intellectual disabilities.

A. STATE LEGISLATURES AS A VEHICLE FOR MEANINGFUL REFORM

Many existing proposals for interrogation reform in the United States focus on updates to federal law,[225] a constitutional amendment,[226] or Supreme Court action,[227] but none of these would be as effective as widespread state legislative reform. State reforms would be more meaningful than federal criminal law reforms because the vast majority of criminal and juvenile delinquency cases in the United States occur at the state level.[228] As such, interrogations of juveniles overwhelmingly occur in state and local jurisdictions, rather than with federal law enforcement.[229] This means that state legislatures are the most effective level at which to push for reform, in part because they are

224. *See, e.g.*, NAT'L CTR. ON CRIM. JUST. & DISABILITY, *supra* note 12 (noting that "[p]olice officers receive little or no training about hidden disabilities and often don't know what to look for" and "[a]nywhere from 85 to 89 percent of people with intellectual disability have a 'mild' intellectual disability that is not recognizable by outward appearance"); Richardson et al., *supra* note 12, at 2 ("[M]ost [law enforcement agencies] lack IDD-related training and response programs, leaving law enforcement officers (LEOs) unaware of how to best respond to their local IDD community. . . . [E]ffective training and response do not require LEOs to diagnose individuals, but they must be able to recognize IDD symptoms . . . and interact accordingly. . . .").

225. *See* Feron, *supra* note 7, at 812.

226. *See* Tayler Klinkbeil, Note, *EASY VICTIMS OF THE LAW: Protecting the Constitutional Rights of Juvenile Suspects to Prevent False Confessions*, 11 CHILD & FAM. L.J. 85, 86 (2023).

227. *See* Spierer, *supra* note 21, at 1743 (calling upon the Supreme Court to ban the Reid Technique and replace it with a cooperative alternative method of interrogation for all people).

228. *See Federal and State Court Caseloads: Trends, 2012–2024*, CT. STATS. PROJECT, https://www.ncsctableauserver.org/t/Research/views/FederalvsStateCaseloads/Dashboard1_1 [https://perma.cc/WJ84-S95A] (last visited Nov. 17, 2025) ("An average of 98.6% of U.S. court cases were filed in state courts since 2012. Only 1.4% were filed in federal courts.").

229. *See id.*

also the most closely connected to the constituents who serve to benefit from these reforms. Hearteningly, state legislatures have been increasingly active in proposing and enacting interrogation reform in recent years.[230] Congress, in contrast, is operating at historic levels of inefficiency and gridlock, leading to the passage of only a few dozen bills per year.[231] A constitutional amendment is even more unrealistic.[232] Finally, the Supreme Court is not the body through which effective, specific state law reforms should be implemented. The Court is not a lawmaking body, and even if it were to order major reforms to the interrogation process, it would likely leave the specifics of those reforms to the states.[233] Moreover, while federal courts have the ability to strike down individual convictions ex post—including those stemming from false or coerced confessions—they are not able to formulate comprehensive safeguards that could be implemented ex ante.

---

230. *See supra* Part II.0.

231. *See* Joe LoCascio et al., *118th Congress on Track to Become One of the Least Productive in US History*, ABC NEWS (Jan. 10, 2024), https://abcnews.go.com/Politics/118th-congress-track-become-productive-us-history/story? id=106254012 [https://perma.cc/5QB5-Z93K]. In the first year of the 118th Congress, Congress passed only 34 bills. *See id.*

232. *See* Drew DeSilver, *Proposed Amendments to the U.S. Constitution Seldom Go Anywhere*, PEW RSCH. CTR. (Apr. 12, 2018), https://www.pewresearch.org/short-reads/2018/04/12/a-look-at-proposed-constitutional-amendments-and-how-seldom-they-go-anywhere/ [https://perma.cc/5QB5-Z93K]. To take effect, two-thirds of both the House and the Senate would need to approve the amendment, and then three-fourths of states would need to ratify it. *See id.*; U.S. CONST. art. V. Further, "of the 12,000 amendments proposed since the Constitutional Convention, only 33 have gone to the states for ratification, and just 27 have made it all the way into the Constitution." *See* DeSilver, *supra* note 232. Given the Court's current conservative majority, it seems particularly likely that reforms would be left to the states. *See infra* note 233.

233. *See* Vincent M. Bonventre, *6 to 3: The Impact of the Supreme Court Super-Majority*, N.Y. STATE BAR ASS'N (Oct. 31, 2023), https://nysba.org/6-to-3-the-impact-of-the-supreme-courts-conservative-super-majority/?srsltid=AfmBOorMRIw3jVCnk9NOsRuo-VDkZtvOrjlnQBsBpf0hqzsoAMmjqw_G#_edn7 [https://perma.cc/633R-9CES]; Eve Brensike Primus, *The State[s] of Confession Law in a Post-*Miranda *World*, 115 J. CRIM. L. & CRIMINOLOGY 79, 79 (2025) ("Despite a documented need for better regulation, the U.S. Supreme Court has watered down constitutional protections in the interrogation room, signaling its intent to delegate most regulation of police interrogation practices to the states."); *see also* Tori A. Shaw, Note, *The Pendulum Swings Right: How the Roberts Court Rejected Precedent and Mobilized Federalism to the Detriment of American Youth in* Jones v. Mississippi, 82 MD. L. REV. 443, 444 (2023) (criticizing the Roberts Court for "permitt[ing] states to run roughshod over the Constitution under the guise of judicial restraint" by narrowing constitutional limits on state imposition of life sentences without parole for juvenile offenders (discussing 593 U.S. 98 (2021)). Particularly in terms of *Miranda* rights, the current Supreme Court has actually narrowed protections. *See* Bonventre, *supra* note 233. This makes it an especially unlikely source for criminal procedural reforms like those advocated in this Note.

B. TARGETED REFORMS TO BETTER PROTECT CHILDREN WITH INTELLECTUAL DISABILITIES

To better protect children with intellectual disabilities during interrogations, states should adopt the following three buckets of reforms. First, states should prioritize clarity for children through (i) banning deception of children during interrogations regardless of officers' intent, or in the alternative, heightening the evidentiary standard by which the state can overcome the presumption of inadmissibility for statements stemming from deception; (ii) mandating that children consult and be accompanied by an attorney prior to and during their interrogation; and (iii) requiring police officers to provide children a simplified *Miranda* warning. Second, states should mandate audio and video recordings of all interrogations of children where both the child and interrogator are visible in the footage. Third, states should adopt a variety of other best practices including (i) requiring officer training regarding the limits of officers' ability to identify intellectual disabilities or other vulnerabilities in children; (ii) creating specific, scientifically supported time limitations for juvenile interrogations that account for both the attention span of children with intellectual disabilities and the increased likelihood over time that their answers become unreliable; and (iii) limiting or eliminating adversarial questioning of children.

1. *Clarity for Children: Police Deception Bans, Attorney Presence, & Simplified* Miranda *Warnings*

The Fifth and Fourteenth Amendments require that confessions be voluntary.[234] Use of deception is confusing and overwhelming to children, especially if they have intellectual disabilities, because they are more likely to trust authority figures, submit to pressure, and develop false memories.[235] An outright ban on deception of children during interrogations—whether an officer intentionally deceived the suspect or not—protects children with intellectual disabilities from falsely confessing. This bolsters

234. *See* U.S. CONST. amend. V ("[N]or shall any person 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. . . ."); *id.* amend. XIV; *see generally* Malloy v. Hogan, 378 U.S. 1 (1964) (protecting due process and applying the Fifth Amendment due process and self-incrimination provisions to state and local governments).

235. *See* Griego et al., *supra* note 8, at 1465.

due process during the interrogation and avoids the potential future complexity of challenging a false confession. A ban on deception is also an achievable goal; many jurisdictions already ban deception of suspects of all ages and ability statuses.[236] It is conceivable, however, that it would be unworkable to implement a blanket ban on all deception of children, including unknowing and unintentional deception. Modeling a statute based on Massachusetts' proposed law, which would presume that children's statements are inadmissible in court unless "the Commonwealth proves, beyond a reasonable doubt, that the statement was voluntary and not made due to any deception"[237] would more effectively protect children with disabilities than other existing proposals.[238] The APA's recommendation against using any promises of leniency during juvenile interrogations is another beneficial inclusion.[239] While these protections would help all children, they would especially protect children with intellectual disabilities, who are more likely than other children to fall victim to false promises due to their increased suggestibility, susceptibility to pressure, and tendency to err in recalling events.[240]

The Fifth and Sixth Amendments, meanwhile, protect defendants' rights to counsel. The Sixth Amendment guarantees that criminal defendants have access to counsel, and the Fifth Amendment specifically ensures that subjects of criminal investigations have access to counsel during custodial

---

236. *See* Anderson, *supra* note 120 (referencing England, France, Germany, Australia, and Japan as countries that generally ban deception of suspects).

237. *See* H.R. 1979, 194th Gen. Ct. (Mass. 2025). In the 2025–2026 legislative session, Massachusetts lawmakers reintroduced House Bill 1979 to "prohibit the use of deception during juvenile custodial interrogations." *Id.*

238. *See, e.g.*, COLO. REV. STAT. ANN. § 19-2.5-203(8)(a) (West 2023) (establishing presumptive inadmissibility of statements made during a juvenile custodial interrogation where the law enforcement official "knowingly communicated any untruthful information or belief to obtain the statement or admission," but allowing the presumption to be overcome if the state establishes by "a preponderance of the evidence . . . based on the totality of the circumstances" that the child's statement was voluntary).

239. *See* AM. PSYCH. ASS'N, *supra* note 140.

240. *See* Griego et al., *supra* note 8, at 1465 ("[W]hen compared with participants from a chronological age comparison group, [children with intellectual disabilities] displayed decreased memory performance"); Giostra & Vagni, *supra* note 8, at 77 ("Children with [intellectual disabilities] showed more errors in distortions, inventions, and confabulations at the recall task and higher levels of suggestibility."); Gudjonsson & Henry, *supra* note 33, at 241 (children with intellectual disabilities are "more susceptible to altering their answers under pressure" than adults with similar disabilities).

interrogations.[241] Mandating the presence of an attorney before and during a child's interrogation would help to ensure that any waiver of the child's rights is truly "knowing, voluntary, and intelligent."[242] Unfortunately, current proposed statutes requiring parental notification and attorney consultation prior to a *Miranda* waiver[243] are inadequate to protect children as a class, let alone children with intellectual disabilities, particularly when those statutes allow parents to act as proxy for counsel in an interrogation.[244] A more stringent version of the APA's resolution to provide all "vulnerable suspect populations" with an attorney or professional advocate would better protect children with intellectual disabilities, while benefiting children of all ability statuses.[245] Specifically, states should implement a non-waivable right to counsel for children before and during an interrogation and should bar parents from serving as a proxy.[246] This would ensure that an adult best equipped to understand and protect the child's legal interests is present throughout the process to counsel the child. Some officials object to a non-waivable right to counsel for children because they are concerned that waiting for an attorney to be available for a child's interrogation will limit officers' ability to conduct efficient and effective investigations.[247] However, this requirement would not bar interrogations; it would simply create a more protective environment in which to question a child.[248]

---

241. *See* U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence."); Miranda v. Arizona, 384 U.S. 436, 479 (1966) (requiring that individuals subject to a custodial interrogation be informed of their Fifth Amendment right to counsel).

242. *See Miranda*, 384 U.S. at 444 (setting out the requirements for a valid waiver of rights).

243. *See supra* Part 0.0.0.

244. *See* Warner & Cleary, *supra* note 162, at 78 (outlining parents' inability to protect their child's best legal interests).

245. *See* AM. PSYCH. ASS'N, *supra* note 140.

246. Currently, suspects are read their *Miranda* rights, but they are not provided an attorney unless they specifically ask for one. Because they are deemed to have given an "implied waiver" if they are informed of their *Miranda* rights and continue to speak, suspects may be interrogated without a lawyer present. *See* Berghuis v. Thompkins, 560 U.S. 370, 384 (2010).

247. *See* Feron, *supra* note 7, at 812–13 (discussing and countering former Maryland Governor Larry Hogan's opposition to an unwaivable right to counsel because it would "hamper criminal investigations" and "potentially jeopardize public safety").

248. *See id.* (responding to Hogan's concern by explaining that "this per se rule merely increases the likelihood that the minor's decision to waive his rights and speak with police is in fact voluntary, since an attorney is best equipped to ensure that a minor actually understands his rights and appreciates the consequences of relinquishing them").

To further guard their Fifth Amendment rights, children should also be barred from waiving their right to remain silent unless they are given a simplified warning that uses developmentally appropriate concepts and vocabulary understandable to children with intellectual disabilities. If a child is unable to demonstrate comprehension of the simplified warning—e.g., as evidenced by their inability to restate to their attorney and the interrogating officer the *Miranda* explanation they received—they should not be permitted to waive their *Miranda* rights.[249] Opponents say that a specific requirement barring *Miranda* waivers for children who cannot understand their rights would be duplicative because *Miranda* already requires a knowing waiver,[250] or would undermine the effectiveness of investigations by hamstringing police questioning when a child cannot demonstrate their understanding.[251] It is essential, however, that the methods for determining a child's understanding of their *Miranda* rights are as explicit and measurable as possible to prevent false confessions, especially from children with intellectual disabilities whose understanding officers may have difficulty assessing.[252]

Current proposals for simplified *Miranda* explanations fall short because they lack consistency in explaining how the wording of the warning was selected, how closely officers must follow that wording, and what happens if officers fail to comply with the prescribed language.[253] Instead, states should implement a

249. Lack of comprehension of one's rights is incompatible with *Miranda*'s legal standard that such waivers be made knowingly, voluntarily, and intelligently. *See* 384 U.S. 436, 444 (1966).

250. *See id.*

251. An interrogation subject's inability to provide a knowing waiver of one's rights should halt law enforcement officers' further questioning, but currently, the prevailing standard is that a subject must explicitly decline to waive their right to halt the questioning; simply continuing to speak to police officers can constitute an implied waiver. *See* Zachary Mueller, *Speaking to Remain Silent: Implied Waivers and the Right to Silence After* Berghuis, 73 U. PITT. L. REV. 587, 588 (2012) ("Any statement a suspect makes—even a one-word remark after three hours of silence—probably constitutes a waiver of the Fifth Amendment privilege.").

252. *See* NAT'L CTR. ON CRIM. JUST. & DISABILITY, *supra* note 12 (noting that "[p]olice officers receive little or no training about hidden disabilities and often don't know what to look for"); Richardson et al., *supra* note 12, at 2 (noting that "most [law enforcement agencies] lack IDD-related training and response programs, leaving law enforcement officers (LEOs) unaware of how to best respond to their local IDD community").

253. *See, e.g.*, UTAH CODE ANN. § 80-6-206(5)(b) (West 2024) (stating "an [officer's] failure to strictly comply with, or state the exact language of" the simplified language outlined in the statute, "is not grounds by itself for finding the officer has not complied with" the statute).

consistent script that officers must convey in its entirety when explaining *Miranda* rights, with inadmissibility as the penalty for failure to comply with the script unless the state can demonstrate to the judge beyond a reasonable doubt that the child understood the *Miranda* warning. Importantly, the language in these warnings should be selected based on its comprehensibility for children with intellectual disabilities.[254] This is not to say, however, that it is impossible for a scenario to exist in which a child reiterates a *Miranda* warning in their own words or otherwise indicates that they understood the warning when they in fact did not, so it is important that this protection be implemented in conjunction with the other recommendations outlined in this Note.

2. *Accountability and Reviewability Through Mandatory Recording*

To promote accountability and reviewability after interrogations, states should mandate audio and video recordings of all juvenile interrogations—regardless of crime involved—and require that the subject and officer are both clearly visible in the footage. States should also require that defense counsel be able to review this footage. These protections would particularly benefit children with intellectual disabilities because it would provide "an indisputable account of what happened during the interrogation,"[255] which could include audio or visual cues such as tone of voice, discomfort, or pressure that a transcript or testimony recounting the interrogation may lack, but that an attorney versed in their client's disability may notice.

Recording interrogations is one of the most widely supported proposals across political perspectives and interest groups because it safeguards the integrity of investigations and protects all parties involved.[256] But while many states already require recording of some interrogations, few specifically require it for all juvenile

254. *See* Rogers et al., *supra* note 98, at 84 (explaining that because children "are vulnerable to acquiescence, which is characterized by affirmative responses," they are more likely to "simply comply with authority" if asked a question for which an affirmative reply would constitute a waiver of rights, and recommending instead that children be provided "several options stated separately").

255. *See Resolution: Police Misconduct as it Relates to False Confessions*, *supra* note 192.

256. *See supra* Part 0.0.

interrogations.[257] To better protect children, all interrogations of children should be audio and video recorded, and failure to do so should be grounds for barring the admission of the child's statements in legal proceedings. It is possible that officers may, at times, simply forget to record statements because they are handling hectic and stressful circumstances throughout investigations. As such, this stringent standard may be viewed as an unfair penalty for law enforcement officers who make a mistake.[258] The stakes of a child giving a false confession, however, are high, so the penalty for officers' failure to exercise care in the course of their duties should match those stakes.[259] Creating a stringent rule barring admissibility of a child's unrecorded statement may incentivize officers to proceed with special caution when interrogating children. It would also prevent law enforcement from engaging in bad faith or post hoc justifications for why a child's statement was not recorded.

3. *Other Best Practices: Officer Training, Time Limits, and Limiting or Eliminating Use of the Reid Technique*

In addition to the above reforms, states should (i) implement law enforcement training that ensures officers understand their own limitations in identifying intellectual disabilities, (ii) create interrogation time limits that account for the decreased reliability of children's confessions over time, and (iii) use non-adversarial methods of questioning that reduce stress for children. First, states should implement mandatory trainings to educate officers on how to engage with children in an interrogation setting and to ensure they understand their limited ability to identify intellectual disabilities or other vulnerabilities in children. Currently only one state has a statute requiring this type of training, and it includes

---

257. *See* GARRETT, *supra* note 188, at 3–4 (11 states and the District of Columbia require recording of juvenile interrogations).

258. *See Suggested Responses to Arguments Against Videotaping Interrogations*, NAT'L ASS'N CRIM. DEF. LAWS., https://www.nacdl.org/getattachment/1aa7cee6-ef71-4100-aaff-5eb91f2f6561/suggested-responses-to-arguments-against-videotaping-interrogations.pdf [https://perma.cc/PL7C-R7DY] (last visited Nov. 17, 2025) (responding to the argument that "interrogations not recorded for good reasons will result in the exclusion of valid confessions, and criminals will be freed on a technicality").

259. *See id.* (noting that allowing for limited exceptions, such as a malfunctioning camera, would ensure that expectations for officers are realistic, while still ensuring that only people guilty of the crime with which they are charged are convicted).

little information about children with intellectual disabilities.[260] It is important to note that even the most robust training system to educate officers about their limited ability to identify intellectual disabilities should not replace other protections for children like recording or presence of an attorney. Instead, improved training should function as one of an array of mechanisms to protect children and reduce the incidence of misconduct and false confessions by educating officers about the bounds of their expertise.

Second, states should formulate specific time limitations for juvenile interrogations that account for the attention span of children with intellectual disabilities and identify when their responses tend to become unreliable. Some organizations have already put forth specific recommendations that regard a maximum of one-to-two-hour interrogations of children as the best practice.[261] These recommendations, however, do not necessarily account for children with intellectual disabilities. To better account for the needs of children with intellectual disabilities, time limits should be informed by the attention spans of children with intellectual disabilities, which may be even shorter than those of other children.[262]

---

260. *See* COLO. REV. STAT. ANN. § 24-31-303 (West 2023). This statute requires the creation of, and appropriation of funding for, a training program focused on "[u]nderstanding juvenile development and culture and their impact on . . . custodial interrogations of juveniles; [i]nterpreting juvenile behavior during an . . . interrogation; [t]echniques for building and establishing rapport with juveniles; alternative communication methods for juveniles with intellectual and developmental disabilities as required by the federal 'Americans with Disabilities Act'; [c]onstructing age appropriate statements and questions for . . . custodial interrogations of juveniles; and [c]autions and considerations . . . including how to reduce the likelihood of false or coerced confessions." *Id.* § 24-31-303(1)(u)(I)–(VI) (citation omitted) (asserting compliance with 42 U.S.C. §§ 12101–12213, the Americans with Disabilities Act).

261. *See* FAIR & JUST PROSECUTION, *supra* note 185, at 13 (providing that "[e]ach interrogation session shall be limited to a total of two hours," unless approved by the district attorney or chief prosecutor, and even then, an "interrogation session [shall not] last longer than four hours" including regular breaks); INT'L ASS'N OF CHIEFS OF POLICE, *supra* note 144, at 8 ("Juveniles can tolerate only about an hour of questioning before a substantial break should occur. A juvenile interrogation should never last longer than four hours.").

262. Conducting a systematic review of data on the attention span of children with intellectual disabilities is outside the scope of this Note; however, such a review would be an effective way to ensure that children are only being questioned for a period that is appropriate for children with intellectual disabilities. *See* Danielle Palmieri, *From Interrogation to Truth: The Juvenile Custodial Interrogation, False Confessions, and How We Think About Kids in Trouble*, 54 CONN. L. REV. 1, 1 (2022) ("[j]uveniles . . . have a shorter attention span, have slower and more limited processing abilities, and have a tendency to comply and obey authority"). For additional discussion, see Sahdev, *supra* note 7, at 1213 and Feron, *supra* note 7, at 816.

Third, eliminating or limiting adversarial questioning of children would be highly effective in protecting children with intellectual disabilities, but is unlikely to take hold in the United States.[263] Nonetheless, in terms of reducing the stress placed on children, research shows that non-adversarial methods of questioning such as the PEACE model would be most effective and lead to fewer false confessions.[264]

CONCLUSION

The U.S. criminal legal system needs meaningful change to protect the individuals most vulnerable to its shortcomings. While the Supreme Court has implemented criminal procedural protections for individuals with intellectual disabilities and children in recent decades, state legislatures are best equipped to enact further reforms that protect children with intellectual disabilities. However, they have yet to adequately do so. Moving forward, states should establish one uniform standard of treatment for all children that specifically accommodates the needs of children with intellectual disabilities. Taken together, the reforms suggested in this Note reinforce the constitutional guarantees against self-incrimination and violations of due process and address the prevalent role of false or coerced confessions in the wrongful convictions of children with intellectual disabilities.

Some argue that the current system for interrogations in the United States is so detrimental to children that it should be disposed of entirely.[265] Such distaste for the current approach is

263. It is worth noting that if deception of children in interrogations were banned, this would in some ways undermine the essential elements of the Reid Technique; therefore, some may argue that this would effectively ban the Reid Technique for children.

264. *See* Rogal, *supra* note 63, at 91–92 (explaining the utility of the non-manipulative PEACE model used in interrogations in several other countries). Danielle Palmieri calls for use of "neutral specialists who are not law enforcement officials" to be "central in conducting interviews with juveniles and use noncoercive practices" to prioritize learning the truth over getting a confession. Palmieri, *supra* note 262 at 6. It is unclear, however, if such a dramatic upending of U.S. interrogation practices has any likelihood of taking hold, especially given states' general hesitance to adopt the protections outlined in Part II of this Note.

265. *See, e.g.*, Kim, *supra* note 22, at 271 (criticizing the presumption's rebuttability—because allowing the state to overcome it by a preponderance standard undermines its protective force—and urging states to consider categorical bans on juvenile interrogations); Samantha Buckingham, *Abolishing Juvenile Interrogation*, 101 N.C. L. Rev. 1015, 1075 (2023) (arguing for the abolition of juvenile interrogation because children are vulnerable and interrogations can undercut the ability to rehabilitate the child involved, and asserting

justified given the frequent miscarriage of justice against innocent children.[266] On the other hand, objectors to this Note's proposals may believe that current interrogation standards are adequate, or perhaps that reforms are simply too impractical to implement. A per se ban on interrogation of children would be highly protective of children, but is unlikely to be enacted across the country, given that even modest proposed state reforms do not have uniform support. At the same time, the current approach to interrogating children leads to a disproportionate rate of false confessions and wrongful convictions among children with intellectual disabilities. This Note's proposed package of reforms seeks to strike a balance between the status quo and abolition of juvenile interrogations as a pragmatic solution that state legislatures could realistically adopt. If advocates hope to maximize the enactment of reforms that benefit children with intellectual disabilities in the short term, it is prudent to take this moderate approach, which operates within the confines of the current system despite its flaws, rather than seeking to implement a sudden, drastic shift to a categorical ban on interrogating children. While advocates can and should aspire to a system in which children of all ability statuses are not subjected to the stress of a criminal interrogation, the best way to protect children with intellectual disabilities within the current criminal investigation framework is to implement specific legislative reforms at the state level that target the challenges and injustices directly undermining children's constitutional rights every day.

---

that the only way to create an administrable rule for interrogations of children is to ban them).

266. *See, e.g.*, Jochnowitz & Kendall, *supra* note 18, at 631 (summarizing the conditions under which police picked up and interrogated Korey Wise as part of an analysis of the structural problems that lead to wrongful convictions); LaVigne & Miles, *supra* note 111, at 874 (analyzing the improper interrogation of Brendan Dassey prior to his wrongful conviction for rape and murder).