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## Comment

### Illinois' Weakened Attempt to Prevent False Confessions by Juveniles: The Requirement of Counsel for the Interrogations of Some Juveniles

Jennifer J. Walters\*

[W]e are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them.

-Justice Douglas in *Haley v. Ohio*.<sup>1</sup>

#### I. INTRODUCTION

In Chicago, Illinois, fifteen-year-old Eddie Huggins confessed to stabbing a woman to death, and the State charged him as an adult for murder, despite the fact that the victim had no knife wounds.<sup>2</sup> Huggins claimed that he did not understand what the police officers said to him at the time he confessed.<sup>3</sup> He spent sixteen months in a juvenile

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1. *Haley v. Ohio*, 332 U.S. 596, 601 (1948) (plurality opinion); see *infra* Part II.B (discussing the facts and holding of the Supreme Court's decision in *Haley*).

2. Maurice Possley & Steve Mills, *Little Adds Up in Murder Case; Youth Admits Stabbing, Autopsy Shows No Knife Wounds*, CHI. TRIB., Mar. 21, 1999, § 1, at 1, available at 1999 WL 2855525. Instead of a stabbing, the victim died as a result of strangulation. Mike Robinson, *String Of Blunders Raises Questions About Chicago Cops*, ST. J.-REG., May 30, 1999, at 19, available at 1999 WL 16229668.

3. Possley & Mills, *supra* note 2. The facts of the Huggins case suggest circumstances by which a false confession is made and accepted in court. *Id.* Huggins said that the police officers

detention center before the charges were dropped.<sup>4</sup> Similarly, sixteen-year-old Don Olmetti confessed to the murder and robbery of a teacher, and the State charged him as an adult with first-degree murder and armed robbery.<sup>5</sup> According to his lawyer, the police interrogated Olmetti for eighteen hours and during that time prevented him from having any contact with his parents.<sup>6</sup> He spent two years in jail before prosecutors dropped the charges because attendance records and statements from teachers proved that Olmetti was in school at the time of the crime.<sup>7</sup> Finally, seventeen-year-old Mario Hayes confessed to the murder of a homeless man, but his first trial ended in a mistrial after the jury was deadlocked.<sup>8</sup> After Cook County Jail officers testified in his second trial that Hayes was in jail at the time of the murder, the jury found Hayes not guilty.<sup>9</sup>

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ignored his denials and threatened him. *Id.* He also claimed that he was intoxicated during the interrogation, and that the officers told him that he committed the murder. *Id.* His mother indicated that he had been diagnosed as hyperactive, and Huggins said that "after a while" he "stopped hearing" the police officers. *Id.* Huggins signed a confession after hours of questioning at four o'clock in the morning. *Id.* According to his mother, Huggins was balled up on the floor when she went into the interrogation room after he confessed. *Id.* He said to her, "Momma, I don't know what they're saying." *Id.*

The facts also demonstrate how it can take a considerable amount of time and contradictory evidence before a confession is recognized as false. *Id.* Huggins' lawyer did not question a single witness within the first four months after Huggins was charged, and he did not challenge the validity of the confession in this time. *Id.* Blood from the victim was found on the witness who implicated Huggins. *Id.* In his confession, Huggins stated that he placed a bloody sweater he wore during the murder in a garbage can, but police did not find the sweater in a search right after the interrogation. *Id.*

4. Editorial, *Eddie Huggins Finally Goes Free*, CHI. TRIB., May 1, 1999, § 1, at 26, available at 1999 WL 2868875.

5. James Hill, *Youth Jailed for 2 Years Goes Home*, CHI. TRIB., May 21, 1999, § 2, at 1, available at 1999 WL 2875614; Annie Sweeney, *Student Charged in Teacher Slaying; Police Say 16-Year-Old Killed to Steal Just \$4*, CHI. TRIB., Apr. 4, 1997, § 2, at 1, available at 1997 WL 3535241.

6. Hill, *supra* note 5. Olmetti was diagnosed as "borderline mentally retarded." *Id.* The police held him for eighteen hours, and Olmetti stated that the police "beat me down" and "made me sign" the confession. *Id.* According to his lawyer, his parents tried to see Olmetti three times while he was being questioned, but officers did not let them have any contact with their son. Diane Struzzi, *Murder Case Dropped, Teen Still Held; Questions Remain 2 Years After Arrest*, CHI. TRIB., May 18, 1999, § 2, at 1, available at 1999 WL 2874342.

7. Struzzi, *supra* note 6.

8. James Hill, *Evidence in Murder Case Too Flawed to Suit Jury*, CHI. TRIB., June 8, 1999, § 2, at 1, available at 1999 WL 2881088; Cathryn E. Stewart & G. Flint Taylor, *Law and Order, California-Style; Look West, Cook County, Look West*, CHI. TRIB., Mar. 1, 2000, § 1, at 19, available at 2000 WL 3640911. Hayes claims that investigators coerced him to confess. Hill, *supra*.

9. Hill, *supra* note 8.

Statistics cannot adequately reflect the number of false confessions given by juveniles in the United States.<sup>10</sup> Because evidence does not always exist to conclusively establish the innocence of a coerced person, the veracity of the confession will often remain in dispute.<sup>11</sup> According to one study, however, almost a dozen juveniles in the United States confessed to murder during a two-year period, and subsequent evidence eventually proved their innocence.<sup>12</sup> Although both adults and children make false confessions, recently publicized cases demonstrate that juveniles are more susceptible to falsely confessing.<sup>13</sup> A false confession by a juvenile can have grave consequences because confessions do not receive much scrutiny.<sup>14</sup> Instead, a confession by a defendant carries considerable weight.<sup>15</sup> According to experts on false confessions, seventy-three percent of false confessions led to convictions even when evidence clearly pointed to the innocence of the defendant, or when the only evidence of guilt was the confession.<sup>16</sup> As a result, juveniles who falsely confess may suffer punishment for crimes that they did not commit.<sup>17</sup>

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10. Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 431-32 (1998).

11. *Id.* at 429-30.

12. *20/20: A Child's Confession* (ABC television broadcast, June 18, 1999), available at 1999 WL 6790763 [hereinafter *20/20*]; see, e.g., *infra* note 149 (citing examples of false confessions by juveniles).

13. See *supra* notes 2-9 and *infra* notes 18, 149 and accompanying text (describing recent cases of false confessions by juveniles).

14. Jonathan Eig, *Making Them Talk*, CHI. MAG., Jan. 1999, at 52, 53.

15. WRONGFULLY CONVICTED: PERSPECTIVES ON FAILED JUSTICE 36 (Saundra D. Westervelt & John A. Humphrey eds., 2001); Eig, *supra* note 14, at 53. Prosecutors acknowledge that a confession is the "single most powerful tool for putting away criminals." *But see Arizona v. Fulminante*, 499 U.S. 279 (1991) (holding, nevertheless, that the improper admission of a confession should be subject to harmless error analysis rather than requiring automatic reversal). The Court noted that "a defendant's confession is 'probably the most probative and damaging evidence that can be admitted against him.'" *Id.* at 292 (quoting *Cruz v. New York*, 481 U.S. 186, 195 (1987) (White, J., dissenting)); see also Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997). According to Ofshe and Leo:

A confession—whether true or false—is arguably the most damaging evidence the government can present in a trial. As a result, when police elicit a false confession, they are likely to cause the wrongful conviction and imprisonment of an innocent person. Someone who confesses is presumed guilty and treated more harshly by every criminal justice official and at every stage of the trial process.

*Id.* at 983-84.

16. Amy Bach, *True Crime, False Confession*, NATION, Feb. 8, 1999, at 22, available at 1999 WL 9306862; see also Leo & Ofshe, *supra* note 10, at 484. Confession experts Richard Ofshe and Richard Leo examined sixty cases in which there was a confession and evidence that strongly

After a seven and an eight-year-old falsely confessed to the murder of eleven-year-old Ryan Harris,<sup>18</sup> Illinois lawmakers recognized that during a police interrogation, children need greater protection than simply being read their *Miranda* rights.<sup>19</sup> Lawmakers, therefore, passed section 405/5-170, a law that requires that a child under the age of thirteen suspected of committing a murder or a sexual assault be represented by a lawyer during the entire police interrogation.<sup>20</sup> An earlier version of the law required the presence of counsel for the interrogation of anyone under seventeen suspected of committing any crime.<sup>21</sup> In addition, the first proposal sought to exclude from evidence any confession obtained without the consultation of a lawyer.<sup>22</sup> Section 405/5-170, as it was eventually enacted, however, contains no remedies for confessions obtained in violation of the statute.<sup>23</sup> The changes to the legislation, as originally proposed, clearly diminish the number of

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contradicted the confession. *Id.* at 436. Seventy-three percent of these cases that went to trial resulted in a conviction. *Id.* at 484.

17. Ofshe & Leo, *supra* note 15, at 984.

18. Eig, *supra* note 14, at 52. Eleven-year-old Ryan Harris was found dead on July 28, 1998 in weeds in Englewood, a south side neighborhood in Chicago. Rosalind Rossi & Brenda Warner Rotzoll, *Boys' Ordeal Leaves Searing Questions*, CHI. SUN-TIMES, Sept. 6, 1998, at 8, available at 1998 WL 5596629. She had been beaten and suffocated with her underwear, which was stuffed into her mouth, and she had been sexually molested with an object. *Id.* Relatives of the victim told police officers that they saw some boys throw rocks at Ryan a few days before she was murdered. DeNeen L. Brown, *The Accused; For Two Little Boys, Wrongful Murder Charges Could Stick for Life*, WASH. POST, Nov. 1, 1998, at F01, available at 1998 WL 16565875. Detectives questioned individually, without the presence of their parents or lawyers, two boys who were seven and eight years old. Lorraine Forte & John Carpenter, *Why 2 Boys Stand Accused of Murder*, CHI. SUN-TIMES, Aug. 30, 1998, at 8, available at 1998 WL 5595683. During the questioning, the boys said that they had thrown rocks at Harris causing her to fall off her bicycle. Rossi & Rotzoll, *supra*. They also admitted putting her underwear in her mouth. Brown, *supra*. Officers arrested the boys and filed murder charges against them. Lorraine Forte et al., "Confessions" By Boys Put Heat on Cops, CHI. SUN-TIMES, Aug. 16, 1998, at 4, available at 1998 WL 5593812. Despite the fact that Harris was considerably larger than the boys, and that four neighbors said that on the day she was murdered they saw Harris with a man, police officers were "certain" that they had the killers. Brown, *supra*; Forte & Carpenter, *supra*. When semen was found on the underwear about a month after they were charged, it became clear that the boys had not committed the murder because boys at their age do not produce semen. Eig, *supra* note 14, at 52. The charges were dismissed, but the boys never received an apology from police officers or the City of Chicago. Brown, *supra*. According to their lawyer, the boys have been "deeply damaged" by the experience. Eig, *supra* note 14, at 133.

19. See *infra* Part II.E (discussing how *Miranda* does not afford juveniles adequate protection).

20. 705 ILL. COMP. STAT. 405/5-160 (2001), amended by P.A. 92-16 § 87 (codified as amended at 705 ILL. COMP. STAT. 405/5-170).

21. S.B. 730, 91st Gen. Assem., Reg. Sess. (Ill. 2000), amended by House Amendment 1.

22. H.B. 3674, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

23. 705 ILL. COMP. STAT. 405/5-160 (2001), amended by P.A. 92-16 § 87 (codified as amended at 705 ILL. COMP. STAT. 405/5-170).

juveniles who will benefit from this new procedural safeguard, and the limitations placed on the enacted legislation will affect whether the legislature achieves its goal of preventing false confessions by juveniles.<sup>24</sup>

This Comment will first examine the development of federal constitutional law regarding the privilege against self-incrimination and the right to counsel during an interrogation.<sup>25</sup> Next, Part II will analyze the development of juvenile courts and the application of procedural safeguards to the juvenile justice system including the recognition of juveniles' Fifth Amendment privilege against self-incrimination.<sup>26</sup> Part II will then discuss how Illinois and other states approach the admissibility of confessions by juveniles.<sup>27</sup> Finally, Part II will explore factors, which lead to false confessions by juveniles.<sup>28</sup> Part III of this Comment will trace the legislative history and intent of section 405/5-170, which requires a lawyer's presence during the interrogations of certain minors.<sup>29</sup> Part IV will critique the ways in which that statute addresses the problem of false confessions by juveniles in Illinois.<sup>30</sup> Finally, Part V will propose that the statute be amended to apply to more juveniles as a better means of achieving the statute's purported goal—to reduce false confessions by juveniles.<sup>31</sup>

## II. BACKGROUND

Over the past century, the treatment of juvenile interrogations was altered because of fundamental changes in the juvenile justice system.<sup>32</sup> Some of the changes reflect an idea that the interrogations of children should be conducted with more care than the interrogations of adults.<sup>33</sup> This idea is well supported by empirical studies as well as other

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24. See *infra* Part IV.B (analyzing the shortcomings to the enacted legislation).

25. See *infra* Part II.A (explaining how a suspect has and must be informed of both the right to counsel and the privilege against self-incrimination during an interrogation).

26. See *infra* Part II.B (tracing the development of juvenile courts and the application of procedural safeguards to juvenile justice).

27. See *infra* Part II.C–D (describing Illinois' use of a totality of the circumstances test and other states' *per se* rules concerning juvenile statements).

28. See *infra* Part II.E (identifying factors that contribute to false confessions by juveniles).

29. See *infra* Part III.A–B (tracing the development of section 405/5-170).

30. See *infra* Part IV.A–B (analyzing the benefits and shortcomings of section 405/5-170).

31. See *infra* Part V (arguing for changes to section 405/5-170 and new procedures to protect juveniles during interrogations).

32. See *infra* Part II.A–D (tracing the development of interrogation law, juvenile courts, and juvenile interrogation law).

33. See *infra* Part II.B (describing Supreme Court cases holding that juveniles need more protection during interrogations).

evidence concerning the effect of interrogation techniques on children.<sup>34</sup> While other states have set up per se rules to offer more protection to juveniles during interrogations,<sup>35</sup> courts in Illinois currently apply a totality of the circumstances test,<sup>36</sup> the same test applied to adults, to determine the voluntariness of a juvenile's confession.<sup>37</sup>

#### A. *Development of Interrogation Law*

A combination of provisions in the Constitution and decisions by the United States Supreme Court offer some protection to suspects during interrogations. Under the Fifth Amendment, a person shall not "be compelled in any criminal case to be a witness against himself."<sup>38</sup> Under the Sixth Amendment, an accused has a right to "the Assistance of Counsel for his defence."<sup>39</sup> The Court held that the privilege against self-incrimination and the right to counsel apply to a suspect being interrogated.<sup>40</sup> Statements that are coerced or made after a request for counsel are considered involuntary and inadmissible in court.<sup>41</sup> To ensure that an interrogated suspect has an opportunity to exercise the privilege against self-incrimination and the right to counsel, the Supreme Court in *Miranda v. Arizona*<sup>42</sup> created procedural safeguards to inform suspects of their rights.<sup>43</sup> After finding that a custodial interrogation is inherently coercive,<sup>44</sup> the Court decided that a suspect must be apprised of his or her rights to ensure that a confession is the

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34. See *infra* Part II.E (pointing out reasons that juveniles are more susceptible to false confessions).

35. See *infra* Part II.D (explaining rules set up by other states to protect juveniles during interrogations).

36. See *infra* Part II.C (discussing Illinois courts' use of the totality of the circumstance test).

37. See *infra* Part II.C (detailing Illinois' treatment of statements by juveniles).

38. U.S. CONST. amend. V.

39. U.S. CONST. amend. VI.

40. *Escobedo v. Illinois*, 378 U.S. 478, 490-91 (1964) (holding that denying a suspect's request for counsel during an interrogation violates the Sixth Amendment); *Bram v. United States*, 168 U.S. 532, 543 (1897) (articulating that pretrial interrogations are covered by the Fifth Amendment).

41. *Miranda v. Arizona*, 384 U.S. 436, 474 (1966); *Ashcraft v. Tennessee*, 322 U.S. 143, 155 (1944) (holding that a conviction cannot stand where it rests on a coerced confession).

42. *Miranda*, 384 U.S. at 436.

43. *Id.* at 444. The Supreme Court held that police officers must explicitly instruct suspects in custodial interrogations that they have the right to remain silent and the right to an attorney. *Id.* The suspect must be told that anything said can be used against him or her in court and that a lawyer can be appointed if the suspect cannot afford one. *Id.*

44. *Id.* at 458. The Court reviewed widely-used interrogation practices, which it found psychologically coercive, and it decided that there is "compulsion inherent in custodial surroundings." *Id.*; see also *infra* Part II.E.2 (explaining some of these interrogation techniques).

result of free choice.<sup>45</sup> While a person can still waive his or her Fifth and Sixth Amendment rights, the state retains the burden of showing that a person knowingly and intelligently waived those rights.<sup>46</sup> To determine whether a defendant made a knowing and intelligent waiver, the Court instructed that the circumstances surrounding the interrogation be considered.<sup>47</sup> As the suspects involved in *Miranda* were adults, the Court did not address whether juveniles are capable of knowingly and intelligently waiving their rights.<sup>48</sup>

### B. *The Evolution of the Juvenile Justice System*

Because juveniles differ from adults in important ways,<sup>49</sup> courts often treat juveniles differently than adults.<sup>50</sup> In fact, an entire court system was established over a hundred years ago to handle juveniles suspected of committing crimes or being victimized by abuse or neglect.<sup>51</sup> The founders of this system relied on the principle of *parens patriae* in creating the courts.<sup>52</sup> Under the theory of *parens patriae*, the State acts as a surrogate parent to delinquent juveniles.<sup>53</sup> Through informal hearings, the founders wanted juvenile courts to offer assistance to delinquent minors.<sup>54</sup> The juveniles were to be rehabilitated instead of

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45. *Miranda*, 384 U.S. at 457-58. To respond to the inherent compulsion, the Court found that a suspect must be "adequately and effectively apprised of his rights." *Id.* at 467.

46. *Id.* at 475.

47. *Id.* at 476. This consideration is known as the "totality of the circumstances test." *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

48. However, some states explicitly extended the requirement to juveniles by statute. JOHN C. WATKINS, JR., *THE JUVENILE JUSTICE CENTURY: A SOCIOLEGAL COMMENTARY ON AMERICAN JUVENILE COURTS* 119-20 (1998). Illinois courts decided that the *Miranda* requirements apply to juveniles. *People v. Horton*, 261 N.E.2d 693, 697 (Ill. App. Ct. 1970).

49. Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 156-57 (1997). Studies have found that children are less cognitively competent than adults, and they are influenced differently than adults by psychosocial factors such as peer influence, more inclination towards risk, and a different temporal perspective. *Id.* All of these factors affect their ability to make decisions. *Id.*

50. WATKINS, *supra* note 48, at 40. The founders of the juvenile court system relied on neo-classical criminology theory. *Id.* This theory holds that some people such as children are not capable of "rationally calculat[ing] pain and pleasure," and therefore, they are not blameworthy. *Id.* Because children are not blameworthy, justice is not served by punishing them. *Id.*

51. *Id.* at 43. The first court was set up in Chicago, Illinois in 1899. *Id.*

52. Sanford J. Fox, *The Early History of the Court*, *THE FUTURE OF CHILDREN*, Winter 1996, at 32. *Parens patriae* literally means "parent of the country," and the phrase is used to reflect the role of the State to act as guardian to those with disabilities or an inability to care for themselves, including juveniles. BLACK'S LAW DICTIONARY 1114 (6th ed. 1990).

53. Fox, *supra* note 52, at 32.

54. *Id.* at 33-34.



merely punished.<sup>55</sup> Because the founders of the juvenile court believed that assistance was in the best interest of the minor, they considered procedural safeguards unnecessary.<sup>56</sup> The founders also believed that judges and probation officers would adequately protect children and that the involvement of lawyers or strict rules would hinder the process of assisting delinquent children.<sup>57</sup> It quickly became clear, however, that the lack of procedural safeguards interfered with the goal of protecting children.<sup>58</sup>

Despite the fact that juvenile courts were designed to be informal to protect children, the United States Supreme Court implicitly decided, within decades of the creation of the juvenile courts, that juveniles needed the protection offered by the formalities of due process.<sup>59</sup> The Court reached this conclusion in *Haley v. Ohio*<sup>60</sup> and *Gallegos v. Colorado*<sup>61</sup> by holding that the interrogations of teenagers must comport with the requirements of due process. The facts in these cases illustrated that a lack of procedural safeguards is often not in the best interest of the minor.<sup>62</sup> Not only did the Court find that constitutional procedural safeguards apply to juveniles through these cases but it also determined that the age of the child is relevant when considering whether the safeguards are effective.<sup>63</sup>

In *Haley*, the Court found that the confession by a fifteen-year-old was involuntary, and, thus, its admission into evidence violated his right to due process under the Fourteenth Amendment.<sup>64</sup> Through an examination of the facts, the Court found evidence of coercion during the interrogation.<sup>65</sup> The defendant confessed to a murder after five

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55. Charles F. Scott, *Delinquency and Due Process: A Review of Illinois Law*, 59 CHI.-KENT L. REV. 123, 123 (1982).

56. WATKINS, *supra* note 48, at 47. In some juvenile courts, juveniles were "denied a specific charge, appointment of counsel or advice that [they had] a right to counsel, the privilege against self-incrimination, or the right to be advised of the privilege, confrontation, trial by jury, the defense of double jeopardy, the right to make a complete record, and appeal." Joel F. Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7, 16.

57. WATKINS, *supra* note 48, at 48-49.

58. See *infra* notes 59-79 and accompanying text (explaining Supreme Court's condemnation of the lack of due process in juvenile cases).

59. See *infra* notes 72, 77-79 and accompanying text (discussing the Supreme Court's holdings in cases where due process was lacking).

60. *Haley v. Ohio*, 332 U.S. 596 (1948) (plurality opinion).

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

62. See *infra* notes 64-79 and accompanying text (describing the facts in *Haley* and *Gallegos*).

63. *Gallegos*, 370 U.S. at 54; *Haley*, 332 U.S. at 599 (plurality opinion).

64. *Haley*, 332 U.S. at 599 (plurality opinion).

65. *Id.* at 599-600 (plurality opinion).

hours of interrogation.<sup>66</sup> Justice Douglas, writing for the plurality, explained that the defendant, at age fifteen, was “an easy victim of the law,” and, therefore, special care was necessary to decide whether the confession was voluntary.<sup>67</sup> The Court noted that the defendant was not able to talk to his mother<sup>68</sup> and that the questioning by different teams of police officers occurred from midnight to five o’clock in the morning.<sup>69</sup> Even though the defendant’s confession form instructed him that he had a right to counsel, the Court stated it could not be assumed that the defendant had a full appreciation of this right.<sup>70</sup> The Court was suspicious of the police conduct during the private interrogation based on the facts revealed about the police conduct towards the defendant before and after the interrogation.<sup>71</sup> In light of the defendant’s age, the timing and length of the interrogation, the absence of counsel or a friend, and the police conduct, the Court concluded that the law could not sanction the methods employed in this interrogation.<sup>72</sup>

Almost fifteen years later, the Court reaffirmed its requirement that the interrogations of juveniles receive special care to ensure their right

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66. *Id.* at 598 (plurality opinion). A candy store had been robbed, and its owner was shot and killed. *Id.* at 597 (plurality opinion). According to the State’s theory, the defendant acted as a lookout. *Id.* (plurality opinion). The defendant confessed soon after the police presented him with two “alleged” confessions by his two co-defendants. *Id.* at 598 (plurality opinion).

67. *Id.* at 599 (plurality opinion). While the Court gave special attention to the age of the defendant, the Court suggested that “what transpired would make us pause for careful inquiry if a mature man were involved.” *Id.* (plurality opinion). However, the Court was concerned with the defendant’s age because “age 15 is a tender and difficult age,” and at that age the defendant could be overwhelmed by something which would not impress an older person. *Id.* (plurality opinion).

68. *Id.* at 600 (plurality opinion). The Court found this lack of contact to be especially troublesome. *See id.* (plurality opinion).

69. *Id.* (plurality opinion). Evidence also indicated that the defendant was beaten by police officers. *Id.* at 597 (plurality opinion). The defendant testified that he had been beaten during his interrogation, and his mother testified that she noticed he was bruised and skinned when she first saw him days after he was arrested. *Id.* (plurality opinion). She also testified that clothes the defendant wore when he was arrested were torn and blood-stained. *Id.* (plurality opinion). Because the police denied that the defendant was beaten, however, the Court did not consider the possibility of physical coercion in making its decision. *Id.* at 597-98 (plurality opinion).

70. *Id.* at 601 (plurality opinion); *see supra* text accompanying note 1 (quoting Justice Douglas’ argument that “facts of life” may negate formalistic respect of constitutional rights).

71. *Haley*, 332 U.S. at 600 (plurality opinion). The defendant’s mother hired a lawyer who, in addition to his mother, attempted to see him twice. *Id.* (plurality opinion). The police did not provide the lawyer or the mother an opportunity to speak with the defendant until five days after he was arrested. *Id.* (plurality opinion). The Court characterized the police as having “a callous attitude towards the safeguards which respect for ordinary standards of human relationships compels.” *Id.* (plurality opinion). Based on the evidence of this attitude, the Court stated: “When the police are so unmindful of these basic standards of conduct in their public dealings, their secret treatment of a 15-year-old boy behind closed doors in the dead of night becomes darkly suspicious.” *Id.* (plurality opinion).

72. *Id.* at 600-01 (plurality opinion).

to due process is protected.<sup>73</sup> In *Gallegos*,<sup>74</sup> the Court focused on the inequality between the police officers and the fourteen-year-old defendant in holding that the police interrogation violated the defendant's right to due process.<sup>75</sup> After his arrest, the defendant was in custody for five days before he confessed to a murder.<sup>76</sup> During this five day period, the defendant was not provided an opportunity to see a parent or lawyer.<sup>77</sup> The Court held that the defendant did not know and was not able to assert his constitutional rights because of his age and the inequality between the defendant and the police officers.<sup>78</sup> According to the Court, to dismiss his age as irrelevant would disregard his constitutional rights.<sup>79</sup>

While *Haley* and *Gallegos* established that juveniles have due process rights,<sup>80</sup> the Court did not articulate specific rights until it decided *In re Gault* in 1967.<sup>81</sup> *Gault* involved a fifteen-year-old boy who was sentenced to an industrial school for up to six years for making a lewd telephone call.<sup>82</sup> The defendant was not informed he had a right to a lawyer for his delinquency hearing, or that he had a privilege against self-incrimination.<sup>83</sup> In addition, there was no recording or

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

74. *Id.* The defendant and another juvenile were accused of robbing and assaulting an elderly man, who eventually died from the attack. *Id.* at 49-50.

75. *Id.* at 54-55.

76. *Id.* at 50.

77. *Id.* As in *Haley*, the defendant's mother attempted to see him but was told by police officers that visiting hours were on other days. *Id.*

78. *Id.* at 54-55. Writing for the Court, Justice Douglas explained that "we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights." *Id.* at 54.

79. *Id.* at 54-55. The Court said that a fourteen-year-old "cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions . . . . Without some adult protection against this inequality [between the interrogators and the defendant], a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had." *Id.* at 54.

80. *Id.*; *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion).

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

82. *Id.* at 7-8. A neighbor of the defendant made a complaint that she received a phone call containing lewd and indecent statements. *Id.* at 4. The Court characterized the remarks as being of the "irritatingly offensive, adolescent, sex variety." *Id.* At his delinquency hearing, the defendant was questioned by the judge. *Id.* at 6. The complaining witness was not present. *Id.* at 5. According to the judge, the defendant admitted making the statements during the phone call. *Id.* at 6. However, the defendant's parents and the defendant deny that he made an admission. *Id.* After being found delinquent, the judge sentenced the defendant to industrial school for "the period of his minority (that is, until 21), unless sooner discharged by due process of law." *Id.* at 7-8 (quoting the Juvenile Court Hearing).

83. *Id.* at 10.

transcript made of the hearing, and he was not given any notice about the charges against him.<sup>84</sup>

Justice Fortas, writing for the majority, went so far as to analogize the proceedings to the Star Chamber<sup>85</sup> and to a kangaroo court.<sup>86</sup> The Court noted that the absence of procedural safeguards for juveniles had not led to fair and compassionate treatment,<sup>87</sup> but instead, to arbitrariness, unfairness, and inadequate or inaccurate findings of fact.<sup>88</sup> The *Gault* Court, for the first time, explicitly recognized that the Fourteenth Amendment and the Bill of Rights protect children as well as adults by clearly holding that juveniles have due process rights.<sup>89</sup> Accordingly, the Court held that a juvenile is entitled to proper notice, formal presentation of charges, appointment of counsel, and the privilege against self-incrimination.<sup>90</sup> Although *Gault* was decided a year after *Miranda*, the Court did not explain in *Gault* how, or whether, *Miranda* applied to juveniles. In fact, the Court did not set up any specific safeguards for interrogations of juveniles in *Gault*, but it did articulate a great concern for the reliability of juvenile confessions.<sup>91</sup>

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84. *Id.*

85. *Id.* at 18. The Court quoted Dean Pound who wrote that, “‘The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts.’” *Id.* (quoting Young, *Foreword* to SOCIAL TREATMENT IN PROBATION AND DELINQUENCY, at xxvii (1937) (quoting Dean Pound)).

86. *Id.* at 28. According to Justice Fortas: “Under our Constitution, the condition of being a boy does not justify a kangaroo court.” *Id.* The Court explained that “the procedural rules which have been fashioned from the generality of due process . . . enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data.” *Id.* at 21.

87. *Id.* at 18. The Court explained:

The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.

*Id.* at 18-19.

88. *Id.* at 19-20. The Court found that “[f]ailure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy.” *Id.*

89. *Id.* at 13. The Court noted that some procedural safeguards such as the rights to bail, indictment by grand jury, public trial, and trial by jury have been held by almost all jurisdictions to not be required by due process in juvenile proceedings. *Id.* at 14.

90. *Id.* at 30-31.

91. *Id.* at 51-52. The Court noted that “authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.” *Id.* at 52. The Court also offered instructions on handling juvenile waivers of *Miranda*:

We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the

The Supreme Court finally addressed the application of *Miranda* rights to juvenile interrogation in *Fare v. Michael C.*<sup>92</sup> The Court held that a determination of whether a juvenile knowingly and intelligently waived his or her rights should be based, just as it is with adults,<sup>93</sup> on the totality of the circumstances surrounding the interrogation.<sup>94</sup> Before confessing to a murder, the sixteen-year-old defendant in *Fare* requested an opportunity to speak with his probation officer.<sup>95</sup> The California Supreme Court accepted the defendant's argument that this request by a juvenile was an attempt to assert his right to remain silent, just as a request for a lawyer is considered an invocation of the Fifth Amendment under *Miranda*.<sup>96</sup> The Supreme Court reversed this extension of *Miranda* and held that the request by a juvenile for his probation officer should not operate as a per se invocation of the Fifth Amendment.<sup>97</sup> Instead, the Court found no reason to apply a different standard to juvenile confessions from the totality of the circumstances test applied to adult statements.<sup>98</sup> Although the Court decided to use the same approach to juvenile interrogations, it asserted that additional circumstances need to be considered, including the juvenile's age, experience, education, background, intelligence, his or her capacity to understand *Miranda* warnings, the nature of Fifth Amendment rights, and the consequences of waiving those rights.<sup>99</sup> The Court reasoned

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police, Juvenile Courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.

*Id.* at 55.

92. *Fare v. Michael C.*, 442 U.S. 707 (1979).

93. *Miranda v. Arizona*, 384 U.S. 436, 475 (1966).

94. *Fare*, 442 U.S. at 724-25.

95. *Id.* at 710.

96. *Id.* at 709. The California Supreme Court decided that the defendant's request for his probation officer was a "per se invocation of [his] Fifth Amendment rights in the same way the request for an attorney" was under *Miranda*. *Id.* at 714-15. The California court reasoned that a probation officer was a "trusted guardian figure" for a juvenile, and a state law required the officer to represent the interests of the juvenile. *Id.* at 714.

97. *Id.* at 725-26. The Court maintained that a per se rule, such as the one that the California Supreme Court developed, could undesirably prevent police officers from questioning an older juvenile who had experience with the justice system. *Id.*

98. *Id.* at 725. The Court suggested that a court could find through a consideration of the totality of the circumstances test that a juvenile's request for a probation officer was an assertion of the right to remain silent where the juvenile was young and had little experience with the system. *Id.*

99. *Id.*

that this test provides juvenile courts with flexibility so that the special concerns regarding children could be considered.<sup>100</sup>

However, as pointed out by the dissenters, the Court ignored its decisions in *Haley*, *Gallegos*, and *Gault* that the interrogations of juveniles must be examined with more care to ensure that juveniles make voluntary statements.<sup>101</sup> The four dissenting justices argued that the questioning should have ended when the defendant requested an opportunity to consult with his probation officer.<sup>102</sup> By continuing to question the defendant, interrogators failed to exercise “the greatest care” to ensure that he confessed voluntarily.<sup>103</sup> Furthermore, the dissenters pointed out that the Court did not follow *Miranda*, which instructs police officers to stop questioning when there is any indication that the suspect wants to remain silent.<sup>104</sup>

### C. Illinois Juvenile Confession Law

Like the majority in *Fare v. Michael C.*, Illinois courts have provided more protection to juveniles by rejecting opportunities to create per se rules about the interrogation of juveniles.<sup>105</sup> Instead, Illinois courts apply the totality of the circumstances test, and find that only a combination of coercive circumstances lead to an involuntary confession by a juvenile.<sup>106</sup> Illinois courts look at the factors listed in *Fare*<sup>107</sup> and also to factors such as police deception, the time of the interrogation, the presence of an interested adult,<sup>108</sup> and the length of the interrogation.<sup>109</sup> Although the validity of juvenile confessions turns on a greater number of factors compared to confessions by adults,

100. *Id.*

101. *Id.* at 729 (Marshall, J., dissenting).

102. *Id.* at 729-30 (Marshall, J., dissenting); *id.* at 733-34 (Powell, J., dissenting).

103. *Id.* at 729 (Marshall, J., dissenting). Justice Powell pointed out that the probation officer told the juvenile to contact him whenever he had any contact with the police. *Id.* at 733 (Powell, J., dissenting). The defendant did not believe the officers would bring in an actual lawyer if he requested one. *Id.* at 734 (Powell, J., dissenting) (“How I know you guys won’t pull no police officer in and tell me he’s an attorney?”). The transcripts of the interrogation showed that the defendant was immature and uneducated. *Id.* at 733 (Powell, J., dissenting).

104. *Id.* at 728-32 (Marshall, J., dissenting).

105. See Ronald G. Maimonis, *Trials*, in ILLINOIS JUVENILE LAW AND PRACTICE 4-1, 4-27 (Ill. Inst. for CLE 2001).

106. See, e.g., *In re Lamb*, 336 N.E.2d 753 (Ill. 1975).

107. *Fare*, 442 U.S. at 707.

108. *People v. Knox*, 542 N.E.2d 910, 913 (Ill. App. Ct. 1989). An interested adult is a parent, guardian, or youth officer who can protect the interest of the juvenile during an interrogation. *Id.*

109. *People v. Robinson*, 704 N.E.2d 968, 972 (Ill. App. Ct. 1998).

Illinois courts have indicated that juvenile confessions are to be given the same amount of scrutiny as adult confessions.<sup>110</sup>

Under the totality of the circumstances test, confessions are generally found inadmissible only when they arise as a result of many coercive circumstances.<sup>111</sup> For example, in *In re LaShun H.*,<sup>112</sup> police officers arrived with guns drawn in the middle of the night to the home of the defendant's uncle, where the fourteen-year-old boy was staying.<sup>113</sup> They found the juvenile and took him to the police station to question him about a murder.<sup>114</sup> The questioning began at three-thirty in the morning, and, after only fifteen minutes of questioning, the police left the boy alone for more than two hours.<sup>115</sup> The Illinois Appellate Court relied upon the fact that the defendant was not allowed to speak to his mother even though she was present at the police station.<sup>116</sup> The court also relied on the fact that the juvenile had a learning disability and little prior experience with police.<sup>117</sup> Ultimately, the court held that the circumstances of the interrogation were coercive, and therefore, deemed the confession involuntary and inadmissible.<sup>118</sup>

Illinois courts have not found any single factor dispositive in determining whether a confession is voluntary.<sup>119</sup> Of particular import is the fact that the Illinois courts do not place extra significance upon the age of the child being interrogated.<sup>120</sup> In *In re G.O.*, the Illinois Supreme Court evaluated the defendant's age, thirteen, with the same focus and emphasis it placed upon the other factors.<sup>121</sup> Absent from the court's analysis was a consideration of how the defendant's young age could affect the voluntariness of his confession to murder.<sup>122</sup> Despite a

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110. *In re V.L.T.*, 686 N.E.2d 49, 54 (Ill. App. Ct. 1997).

111. BARRY FELD, JUVENILE JUSTICE ADMINISTRATION 242 (2000).

112. *In re LaShun H.*, 672 N.E.2d 331 (Ill. App. Ct. 1996).

113. *Id.* at 335.

114. *Id.* at 332.

115. *Id.* at 335. When the officer returned, he told the defendant that witnesses identified him as the shooter, but he did not tell the defendant that other witnesses had identified someone else. *Id.*

116. *Id.* The defendant's mother was allowed to talk to him after he confessed, at which point he immediately told her that he was not the shooter. *Id.*

117. *Id.* at 335-36. Although the defendant had two prior encounters with law enforcement, the court asserted that the unsubstantial encounters had not prepared him to be interrogated as a murder suspect. *Id.* at 338.

118. *Id.* at 339.

119. Scott, *supra* note 55, at 137.

120. The Illinois Supreme Court upheld the admission of confessions by thirteen-year-old defendants. *In re G.O.*, 727 N.E.2d 1003 (Ill. 2000); *In re W.C.*, 657 N.E.2d 908 (Ill. 1995).

121. *G.O.*, 727 N.E.2d at 1013.

122. *Id.*

lack of analysis on this issue, the court held that the thirteen-year-old knowingly and intelligently waived his *Miranda* rights.<sup>123</sup>

Similarly, claims of physical abuse, being under the influence of drugs, a low I.Q., and little comprehension of English do not individually lead Illinois courts to conclude that a confession was probably coerced.<sup>124</sup> Because claims of physical abuse are generally denied by police, juveniles who allege that police beat them during an interrogation are often not considered credible by judges or juries.<sup>125</sup> Furthermore, these allegations by juveniles do not prompt closer scrutiny of the voluntariness of a confession.<sup>126</sup> For example, the Illinois Supreme Court held in *In re Lamb* that a confession was voluntary even though the juvenile defendant was hung in a cell by handcuffs and claimed that a police officer struck him.<sup>127</sup> Similarly, another juvenile was clearly in a drug-induced state in *In re Shutters*, but the court found that this condition was only one factor to be considered.<sup>128</sup> Ultimately, that fact did not affect the court's determination, and it allowed the confession to stand.<sup>129</sup> In *In re W.C.*,<sup>130</sup> even though the thirteen-year-old defendant had an I.Q. of forty-eight, the court decided that the confession was admissible.<sup>131</sup> Finally, in *In re J.S.*, despite the fact that four experts testified that the juvenile defendant could not understand his *Miranda* rights because he did not adequately understand English, the court held that the juvenile knowingly and intelligently waived his rights.<sup>132</sup>

Illinois courts will also consider whether the police gave the juvenile the opportunity to speak with an interested adult, such as a parent or

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123. *Id.*

124. *W.C.*, 657 N.E.2d at 908 (admitting the confession by a defendant with a low I.Q.); *In re Lamb*, 336 N.E.2d 753 (Ill. 1975) (upholding the admission of a confession where there were claims of physical abuse); *In re J.S.*, 460 N.E.2d 412 (Ill. App. Ct. 1984) (upholding the admission of a statement by a defendant who had little comprehension of English); *In re Shutters*, 370 N.E.2d 1225 (Ill. App. Ct. 1977) (allowing admission of a statement by a juvenile under the influence of drugs).

125. Steve Drizin, *When Little Tykes Give 'Full Confessions'*, CHI. TRIB., Aug. 26, 1998, § 1, at 19, available at 1998 WL 2889215. Drizin explains that detectives are "professional witnesses" and this gives them a "built-in credibility advantage over children," who do not make good witnesses. *Id.*

126. *Id.*

127. *Lamb*, 336 N.E.2d at 758.

128. *Shutters*, 370 N.E.2d at 1228.

129. *Id.*

130. *In re W.C.*, 657 N.E.2d 908 (Ill. 1995).

131. *Id.* at 922.

132. *In re J.S.*, 460 N.E.2d 412, 418 (Ill. App. Ct. 1984).



guardian.<sup>133</sup> In fact, an Illinois statute, the “parental notification statute” requires the arresting officer to inform a parent or guardian of where their child is being taken.<sup>134</sup> Although Illinois courts recognize that one purpose of the law is to provide juveniles an opportunity to consult with a parent,<sup>135</sup> even a youth officer<sup>136</sup> is considered an interested adult.<sup>137</sup> Furthermore, courts find confessions voluntary even if a parent is present at the interrogation location but is not given the opportunity to consult with the child.<sup>138</sup> Not only can confessions be admissible when there is no consultation with a parent present at the location of the interrogation<sup>139</sup> but courts have held that confessions are admissible when the police do not attempt to notify a parent or guardian in violation of the parental notification statute.<sup>140</sup> These decisions arise when courts determine that the lack of notification is the only factor suggesting a coercive environment, and a lack of other coercive circumstances leads to a finding that the confession is voluntary.<sup>141</sup> Therefore, a failure by the police to notify a juvenile’s parents of the interrogation does not, as with other important factors, make a juvenile’s statement per se inadmissible.

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133. *People v. Knox*, 542 N.E.2d 910, 913 (Ill. App. Ct. 1989).

134. 705 ILL. COMP. STAT. 405/5-405 (2000). According to the statute, a police officer who arrests a juvenile must “immediately make a reasonable attempt to notify the parent or other person legally responsible” for the juvenile’s care. *Id.* This notification must inform the parent or guardian that the juvenile had been arrested and the location where the juvenile is being held. *Id.* The officer who arrests a juvenile without a warrant must then take the juvenile to a youth officer. *Id.*

135. *In re D.B.*, 708 N.E.2d 806, 812 (Ill. App. Ct. 1999).

136. *In re G.O.*, 727 N.E.2d 1003, 1020 (Ill. 2000) (McMorrow, J., dissenting). A youth officer is simply a police officer with some additional training. *Id.* (McMorrow, J., dissenting).

137. *But see id.* (McMorrow, J., dissenting). Justice McMorrow stated that the presence of a youth officer does not render a confession voluntary since a youth officer is employed by the police. *Id.* (McMorrow, J., dissenting). Therefore, the officer is unlikely to adequately represent the interest of a juvenile. *Id.*; Steve Drizin, *In the Maelstrom: Children as Murder Suspects*, CHI. DAILY L. BULL., Aug. 28, 1998, at 5; Jon Sall, ‘Confession’ by Boys Put Heat on Cops, CHI. SUN-TIMES, Aug. 16, 1998, at 4. The youth officer sometimes provides no assistance to the juvenile, as the officer might even just sit silently. Drizin, *supra*. Drizin argues that this makes the interrogation even more coercive. *Id.* He suggests that a youth officer who did advise a juvenile to consult a lawyer would be “blacklisted” in the police department. *Id.*

138. *People v. Bobe*, 592 N.E.2d 301 (Ill. App. Ct. 1992). In *Bobe*, the juvenile’s father was not allowed to ride with his son to the police station. *Id.* at 311. When he arrived at the station and requested a chance to talk to his son, the officers did not let him and told him to go home. *Id.* The juvenile also claimed that he asked to speak to his father. *Id.* However, the court decided that the juvenile’s confession was voluntary because there was a youth officer present. *Id.* at 315.

139. *In re J.E. & V.B.*, 675 N.E.2d 156 (Ill. App. Ct. 1996).

140. *People v. Zepeda*, 265 N.E.2d 647 (Ill. 1970) (holding that a confession was admissible when the defendant’s parents were not notified because the parental notification statute fails to provide for sanctions for its violation).

141. *People v. Stachelek*, 495 N.E.2d 984 (Ill. App. Ct. 1986).

*D. Other States' Approaches to Juveniles' Statements*

While Illinois employs a totality of the circumstances test to determine the voluntariness of a confession, several other states established per se rules about juvenile confessions in order to treat interrogations of juveniles with more care.<sup>142</sup> These per se rules are aimed at ensuring that the constitutional rights of juveniles are fully protected.<sup>143</sup> At least one state, Colorado, mandates the presence of a parent, guardian, or counsel during an interrogation.<sup>144</sup> Several states mandate that a parent must be present during the interrogation and that the juvenile must consult with the parent.<sup>145</sup> Texas requires the involvement of a member of the judiciary to establish that a confession is voluntary.<sup>146</sup> Only North Dakota, however, requires, in certain circumstances, that counsel be present during an interrogation of a juvenile.<sup>147</sup> Furthermore, New Mexico prohibits the admission of a statement by any child under the age of thirteen, and it has established a rebuttable presumption that juveniles who are thirteen and fourteen cannot make a voluntary confession.<sup>148</sup>

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142. See *infra* text accompanying notes 144-48 (describing statutes and cases containing per se rules concerning juvenile interrogations in Colorado, Indiana, Massachusetts, Connecticut, Texas, North Dakota, and New Mexico).

143. David T. Huang, "Less Unequal Footing": State Courts' Per Se Rules for Juvenile Waivers During Interrogations and the Case for Their Implementation, 86 CORNELL L. REV. 437, 438 (2001).

144. COLO. REV. STAT. § 19-2-511 (2001).

145. In Indiana, a minor can only waive his or her rights after a meaningful consultation with a lawyer or a parent who has no adverse interest and who knowingly and intelligently waives the child's rights. IND. CODE ANN. § 31-32-5-1 (West 1999 & Supp. 2001). Based on *A Juvenile*, all minors under the age of fourteen must consult with a parent. *Commonwealth v. A Juvenile*, 449 N.E.2d 654, 657 (Mass. 1983). Those fourteen and older must consult with a parent unless found to be highly intelligent. *Id.* The Supreme Court of Vermont indicated that there must be a consultation with an interested adult who is not a member of law enforcement, and the adult must be told about the child's *Miranda* rights. *In re E.T.C.*, 449 A.2d 937, 940 (Vt. 1982). Connecticut not only requires a consultation with a parent but the confession must also be made in the presence of the parent. CONN. GEN. STAT. ANN. § 46b-137 (West 1995 & Supp. 2001); *In re Robert M.*, 576 A.2d 549, 551 (Conn. App. Ct. 1990). In Kansas, minors under fourteen must consult with a parent or lawyer during an interrogation, otherwise, any statement they make is inadmissible in court. *In re B.M.B.*, 955 P.2d 1302, 1312 (Kan. 1998).

146. In Texas, a magistrate must instruct a juvenile on his or her rights in the absence of any member of law enforcement, and the confession must be made in front of a magistrate. TEX. FAM. CODE ANN. § 51.095 (West Supp. 2002).

147. N.D. CENT. CODE § 27-20-26 (Michie 1991 & Supp. 2001) (indicating that a parent, guardian, or counsel must represent a juvenile during an interrogation). The North Dakota Supreme Court held that the presence of a parent is not enough to constitute representation. *In re J.D.Z.*, 431 N.W.2d 272, 276 (N.D. 1988). A parent who questions the juvenile along with the police is not providing representation nor is one who does not take an active role. *Id.*

148. N.M. STAT. ANN. § 32A-2-14 (Michie 1999).

*E. Reasons for False Confessions by Juveniles*

Recent cases throughout the country demonstrate that juveniles sometimes confess to crimes that they have not committed.<sup>149</sup> For a number of reasons, juveniles may be more susceptible than adults to making false confessions.<sup>150</sup> Because their intellectual capacity is not fully developed yet, children are less likely to understand, appreciate,

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149. In California, three intelligent teenage boys falsely confessed to killing one of the boy's sisters. After hours of interrogation and being told that his parents thought he killed his sister, the victim's brother confessed. Mark Sauer, *True Confessions? Crowe Murder Case Raises Questions About How Police Arrive at Admissions of Guilt*, SAN-DIEGO UNION TRIB., Nov. 29, 1998, at 1. A judge threw out his confession because a videotape of the interrogation showed that the detectives suggested that he would not go to jail if he confessed. John Wilkens & Mark Sauer, *The Bombshell*, SAN-DIEGO UNION TRIB., May 16, 1999, at 1.

In Texas, an eleven-year-old, Lacreasha Murray, appears to have admitted to killing a toddler, but the videotape of the interrogation demonstrated that she was coached by police officers. Robyn E. Blummer, *Children Confess, Whether They Did It or Not*, ST. PETERSBURG TIMES, May 2, 1999, at 6D, available at 1999 WL 3318219. Murray was sentenced to twenty-five years imprisonment. *Id.* However, a judge on appeal found the confession inadmissible because she was not instructed on her *Miranda* rights before a magistrate, as required by Texas law. *Id.*; TEX. FAM. CODE § 51.095 (West Supp. 2002).

In Ohio, twelve-year-old Anthony Harris confessed to murder under pressure from an interrogator. 20/20, *supra* note 12. The evidence showed, however, that he did not have enough time to commit the crime. *Id.* Because a tape of the interrogation demonstrated that the interrogator used coercive techniques, an Ohio Appellate Court eventually threw out his confession. *In re Harris*, No. 98JD00644, 2000 Ohio App. LEXIS 2390, at \*32-38 (Ohio Ct. App. 2000).

Illinois cases include the boys in the Harris case, Olmetti, Hayes, and Huggins, and also an eleven-year-old known as A.M. Maurice Possley, *Boy Convicted of Slaying at Age 10 Appeals*, CHI. TRIB., Jan. 11, 2000, § 2, at 1, available at 2000 WL 3625410; see also *supra* Part I (discussing the boys in the Harris case). In A.M.'s case, he falsely confessed to murder, even though he was not physically capable of committing the crime. See Possley, *supra*. The evidence indicated that the 173-pound victim was dragged through her house, but A.M. only weighed eighty-eight pounds at the time. *Id.* A.M. was interrogated by James Cassidy who also questioned the young boys in the Ryan Harris case. *Id.* A.M. claims that Cassidy told him that if he confessed, he could go home and would be able to attend his brother's birthday party. Charles Nicodemus, *Confessions Uncoerced, Cop Says*, CHI. SUN-TIMES, Jan. 13, 2000, at 16, available at 2000 WL 6664305. According to A.M., Cassidy also told him that "they [the police officers] would forgive him 'like God would forgive him'" if he confessed. Bach, *supra* note 16, at 22-23. When his mother was allowed into the interrogation room, A.M. told her that he had lied to the police officers. *Id.* He told her that he was scared, and he wanted the interrogation to end. *Id.* In addition to the size issue, evidence, including the size of fingerprints and a footprint at the crime scene, indicated that an adult committed the crime. *Id.* A.M.'s confession did not conform to the facts of the case; he said that he used a rope to strangle the victim, but a telephone cord was used. *Id.* A.M., now sixteen, is appealing his conviction in federal court. Maurice Possley, *Judge Questions Cop's Conduct in Boy's Confession; 1993 Murder Case Ordered Reopened*, CHI. TRIB. Oct. 19, 1999, § 1, at 1, available at 1999 WL 2923276.

150. See *infra* Part II.E.1-2 (identifying reasons for juveniles' susceptibility to making false confessions).

and exercise their *Miranda* rights.<sup>151</sup> In addition, juveniles are more likely to want to please and believe police officers because the officers are authority figures.<sup>152</sup> Finally, because minors are incapable of fully realizing the consequences of their decisions,<sup>153</sup> they may confess because they believe it is the only way to end a psychologically coercive interrogation.<sup>154</sup>

### 1. Empirical Studies: Misunderstanding of *Miranda* by Juveniles

Studies indicate that juveniles do not have the same capacity as adults to understand and appreciate their constitutional rights recognized in *Miranda*.<sup>155</sup> Professor Thomas Grisso conducted several studies testing juveniles recently in police custody.<sup>156</sup> Grisso concluded that juveniles under the age of sixteen, especially those with low I.Q. scores, are not able to fully understand their constitutional rights.<sup>157</sup> Overall, Grisso found that four-fifths of the juveniles studied did not adequately understand at least one of the four *Miranda* warnings.<sup>158</sup> In particular, they showed the greatest misunderstanding of how the right to remain silent and the right to an attorney applied to them before and during interrogation.<sup>159</sup> In fact, only thirty percent understood the latter

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151. See *infra* Part II.E.1 (describing studies that have found that juveniles do not understand and appreciate their *Miranda* warnings); *supra* Part II.A (discussing the Supreme Court's decision in *Miranda*).

152. See *infra* Part II.E.2.b (explaining the power differential between juveniles and police officers).

153. The inability of minors to understand legal concepts and to make decisions is reflected in several laws. As pointed out in a dissenting opinion in *In re G.O.*, Illinois legislators have decided that juveniles do not have the capacity to own a credit card, get a tattoo, consume alcohol, or drive. *In re G.O.*, 727 N.E.2d 1003, 1017 (Ill. 2000) (McMorrow, J., dissenting).

154. See *infra* Part II.E.2.a (describing the tactics used on juveniles to convince them to confess).

155. THOMAS GRISSE, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 128 (1981). Grisso is a professor of psychiatry and he is considered an expert on juvenile interrogations. *Eig. supra* note 14, at 83.

156. GRISSE, *supra* note 155, at 66. Grisso decided to base his study on juveniles who had recently been in police custody because they best represented the population who would be subject to interrogations. *Id.* It should be noted that the research was conducted under conditions that could differ from the conditions present at an actual interrogation. *Id.* at 68. Most significantly, a juvenile is likely to feel more stress during an interrogation. *Id.* Thus, the results may not accurately reflect a juvenile's ability to comprehend his or her rights while a suspect. *Id.*

157. *Id.* at 128. Juveniles with an I.Q. less than 90 were found to be less able to understand their rights. *Id.* This finding is significant because Grisso also found that most of the juveniles who are referred to courts have an I.Q. that is less than 90. *Id.*

158. *Id.* at 73.

159. *Id.*

right.<sup>160</sup> Nearly two-thirds did not understand the meaning or definition of words recited in the *Miranda* warnings, let alone what “interrogation” meant.<sup>161</sup> Furthermore, the majority of juveniles thought that a judge could force them to speak or that a police officer could persuade them to speak.<sup>162</sup>

In another study, Professor Grisso collected data on actual interrogations.<sup>163</sup> In that study, he discovered that only ten percent of juveniles asserted their right to remain silent.<sup>164</sup> Ultimately, these empirical studies indicate that few juveniles adequately understand their constitutional rights, which may minimize the protection these rights are designed to provide.<sup>165</sup>

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160. *Id.* at 74. Grisso found that many of the juveniles did not understand that they could have an attorney during the interrogation as well as one in court. *Id.*

161. *Id.* at 75. “Interrogation” was the most misunderstood word. *Id.* In fact, the juveniles surveyed believed that an interrogation meant a court hearing, or they simply had no frame of reference for understanding what an interrogation meant. *Id.*

162. *Id.* at 129. Other researchers have found similar results. A. Bruce Ferguson & Alan Charles Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39, 53 (1970). Professors Ferguson and Douglas questioned juveniles who waived their rights, and found that only five out of eighty-six truly understood their rights. *Id.* Ferguson and Douglas are law school professors who were prompted to conduct their study by a California Supreme Court decision, *In re Dennis M.* *In re Dennis M.*, 450 P.2d 296 (Cal. 1969). In this decision, the court instructed juvenile police officers to provide *Miranda* warnings to juveniles in terms that they could understand. *Id.* at 308 n.13. In response, Ferguson and Douglas tested the ability of juveniles to understand simplified *Miranda* rights. Ferguson & Douglas, *supra*, at 40-44. They discovered that simplifying the rights had no effect on their ability to understand them. *Id.* at 54. The rights were simplified to read:

You don't have to talk to me at all, now or later on, it is up to you. If you decide to talk to me, I can go to court and repeat what you say, against you. If you want a lawyer, an attorney, to help you to decide what to do, you can have one free before and during questioning by me now or by anyone else later on. Do you want me to explain or repeat anything about what I have just told you? Remembering what I've just told you, do you want to talk to me?

*Id.* at 40.

163. GRISSE, *supra* note 155, at 25.

164. *Id.* at 38. For those under fifteen, the rate of refusal to talk was “virtually nonexistent.” *Id.* at 37. According to another study, forty-two percent of adults asserted their right to remain silent. *Id.* at 38.

165. FELD, *supra* note 111, at 219.

## 2. Circumstances of Juvenile Interrogations

### a. Police Tactics

The interrogation techniques used by police officers on juveniles also contribute to false confessions.<sup>166</sup> The technique used by many police officers,<sup>167</sup> known as the Reid Technique,<sup>168</sup> places psychological pressure on suspects to convince them to confess.<sup>169</sup> This pressure is sometimes achieved through police deception.<sup>170</sup> Used on adults as well, creators adapted the Reid Technique for use on juveniles.<sup>171</sup> Although Illinois courts indicate that police deception is a consideration in the totality of the circumstances test,<sup>172</sup> false confession cases suggest that these techniques are used during interrogations of juveniles.<sup>173</sup>

The Reid Technique requires that the interrogator make the suspect feel powerless in his surroundings.<sup>174</sup> This powerlessness can be accomplished by forcing the suspect to have an escort in order to leave the room at the police station.<sup>175</sup> The *Miranda* warnings are often read while the officers are still friendly with the suspect and have yet to become confrontational, so that the suspect feels more comfortable in waiving these rights.<sup>176</sup> Finally, officers are trained to provide suspects with two alternatives: the first alternative leads to a significant punishment, while the second alternative leads to a lesser punishment or

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166. FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 216 (3d ed. 1986). These methods were examined by the Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966).

167. *Eig, supra* note 14, at 84. The technique is used by officers in Cook County. *Id.*

168. Videotape: Protecting Children, Preserving the Truth (Northwestern University Law School 2000) (on file with the Loyola University Chicago Child Law Center) [hereinafter Protecting Children].

169. *Eig, supra* note 14, at 84.

170. *Id.*

171. INBAU ET AL., *supra* note 166, at 137. In fact, officers are provided with methods specifically designed to convince a juvenile suspect to confess, but these methods are based on and to be used in addition to the general technique. *Id.* at 137-41. For example, when shifting blame, interrogators are instructed to blame the juvenile's parents and neighborhood. *Id.* at 137-39. Interrogators are also given arguments to be used to convince parents to allow the questioning of their children. *Id.* at 139.

172. *People v. Robinson*, 704 N.E.2d 968 (Ill. App. Ct. 1998) (indicating that police deception is a relevant factor to consider in the totality of the circumstances test).

173. *Eig, supra* note 14, at 83. Interrogation and coercion expert Richard Ofshe found that police use the same techniques on children as they use on adults. *Id.* Some interrogators from Chicago who were interviewed admitted that the tactics are the same. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

no punishment at all.<sup>177</sup> For example, suspects might be told that a murder could either have been intentional or in the heat of passion, the latter carrying a lighter sentence. The suspect must then choose between two confessions and may be tempted to claim that he or she committed the lesser offense so that an unavoidable punishment will not be as harsh.<sup>178</sup>

One of the main tools of deception employed by police through the Reid Technique involves an officer lying about the amount and quality of evidence already obtained.<sup>179</sup> Officers may suggest that there is extensive incriminating evidence, which leads suspects to believe that they will be convicted even if they do not confess during the interrogation.<sup>180</sup> Officers will also point to “tests” that suspects failed, such as a voice analyzer test, even where the officers know that the tests are invalid.<sup>181</sup> Such lies by the police are designed to erode the confidence of suspects.<sup>182</sup> The Reid Technique also instructs officers to offer excuses to suspects to make the suspect feel more comfortable with saying that he or she committed the crime.<sup>183</sup>

In many false confession cases involving juveniles, the juvenile repeatedly said during the interrogation that he or she did not commit the crime in question.<sup>184</sup> The questioning police officer typically ignores these denials, which frustrates the juvenile.<sup>185</sup> Police officers use some techniques with juveniles based on their immaturity.<sup>186</sup> For

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177. 20/20, *supra* note 12.

178. *Id.* Anthony Harris, age 12, was questioned about the death of his neighbor. *Id.* The interrogator suggested that if he admitted that he killed the neighbor, Anthony might just receive counseling as his punishment. *Id.* Anthony confessed because he thought that it would allow him to go home. *Id.*

179. Ofshe & Leo, *supra* note 15, at 985-86.

180. Protecting Children, *supra* note 168; *see also* Ofshe & Leo, *supra* note 15, at 985-86. Sometimes interrogators convince the suspect that he or she has no memory of committing the crime in question. Ofshe & Leo, *supra* note 15, at 986.

181. *See, e.g.*, Sauer, *supra* note 149. In the Crowe case, the victim's brother was told that a Voice Stress Test detected deception in his voice. *Id.*

182. Protecting Children, *supra* note 168.

183. *Id.*

184. Anthony Harris repeatedly told his interrogator that he did not kill his neighbor, but the detective ignored him. 20/20, *supra* note 12. Lacesha Murray told police officers almost forty times that she did not kill the victim. Blummer, *supra* note 149. Michael Crowe denied killing his sister more than eighty times. Tony Perry, *Doubts Are Raised on Police Tactics, and Whether Three Bright Teenagers or an Unstable Transient Killed Girl*, L.A. TIMES, May 11, 1999, at A1, available at 1999 WL 2157150.

185. 20/20, *supra* note 12.

186. In the Ryan Harris case, the police interrogators began the interrogation by asking the boys about their hobbies and schools. Brown, *supra* note 18, at F1. One of the interrogators told the boys that he was their “friend,” and he asked the boys to hold hands with the officers. *Id.*

example, an effective tactic for juvenile interrogations is a promise that the child will be able to see his or her parent only after a confession is made.<sup>187</sup> Finally, officers may withhold food or the use of a bathroom, which can be traumatic for a child.<sup>188</sup> Because juveniles can fail to appreciate the consequences of falsely confessing, these psychologically coercive tactics inevitably lead to false confessions by juveniles.<sup>189</sup>

#### b. Inherent Power Differential between Juveniles and Police Officers

Experts in interrogations have determined that some people are more likely than others to make a false confession.<sup>190</sup> Some of the people most susceptible to making a false confession are those in awe of police officers, because they believe that a police officer would not lie.<sup>191</sup> While not all juveniles are in awe of police officers, the differences in age, experience, and knowledge between police officers and most juveniles creates an intimidating environment.<sup>192</sup> Research shows that children want to please authority figures, and, therefore, children sometimes try to answer questions in a way that they believe will please the police officer.<sup>193</sup> Furthermore, studies indicate that children are suggestible, and through leading and repeated questions they may make inaccurate statements.<sup>194</sup> The combination of these characteristics contribute to juveniles' susceptibility to falsely confessing.

### III. DISCUSSION

The Illinois legislature considered several proposals before it created a new procedural safeguard through section 405/5-170 to protect

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After the boys made some incriminating statements, the officers brought McDonald's Happy Meals to the boys. *Id.*

187. 20/20, *supra* note 12.

188. *Eig, supra* note 14, at 133.

189. *Id.*; Bach, *supra* note 16, at 21. An expert on child witnesses, Richard Leo said: "[A] false confession is the natural consequence of police toughness on young adults." Bach, *supra* note 16, at 21.

190. Sandi Dolbee, *The Lying Game: Coaxing Confession with Lies May Be Legal—But Is It Ethical?*, SAN-DIEGO UNION TRIB., May 21, 1999, § E, at 1.

191. *Id.*

192. *See, e.g., Gallegos v. Colorado*, 370 U.S. 49 (1962); *Haley v. Ohio*, 332 U.S. 596 (1948) (plurality opinion).

193. *Eig, supra* note 14, at 53. One study found that the "good cop, bad cop" tactic made about half of children who were five to seven years old make false statements. *Id.* The children were convinced to lie because they were rewarded for desired answers and met disappointment in response to unwanted answers. *Id.*

194. Barbara Kaban & Ann E. Tobey, *When Police Question Children: Are Protections Adequate?*, 1 J. CENTER CHILD. & CTS. 151, 151 (1999).



juveniles during interrogations.<sup>195</sup> These proposals differed both in terms of the form of the safeguard and the categories of juveniles covered.<sup>196</sup> Legislators designed these proposals to prevent false confessions by juveniles, but pressure from law enforcement groups led to important limitations in the enacted legislation.<sup>197</sup>

### A. Legislative History

The first proposal to the Illinois legislature concerning juvenile interrogations differed significantly from the law enacted in that it did not require the presence of a lawyer during the interrogation. Speaker Michael Madigan introduced House Bill 3674.<sup>198</sup> Instead of requiring representation during the entire interrogation, only a consultation with a lawyer was mandated by House Bill 3674.<sup>199</sup> However, House Bill 3674 called for the presence of a parent during the interrogation.<sup>200</sup> The bill indicated that its requirements applied to anyone under the age of fifteen.<sup>201</sup> In addition, any confession obtained in violation of the provisions of House Bill 3674 would be inadmissible in court.<sup>202</sup>

Although House Bill 3674 never made it out of the House Judiciary Committee, this committee amended a Senate bill, Senate Bill 730, to address the needs of juveniles during interrogations.<sup>203</sup> First, the amendment, House Amendment 1, deleted the language of Senate Bill 730 in its entirety.<sup>204</sup> Then, House Amendment 1 required legal

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195. See *infra* Part III.A (discussing H.B. 3674 that would have required a consultation with a lawyer and the presence of a parent and S.B. 730 that mandated legal representation during the entire interrogation).

196. See *infra* Part III.A.

197. See *infra* Part III.B (explaining that law enforcement groups opposed the bills because they believed the safeguards would hamper interrogations of juveniles).

198. H.B. 3674, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* At the same time, the House dealt with another bill, H.B. 4697, that would have required counsel during interrogations of minors. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000). This bill was also proposed by Speaker Madigan, and it not only required the presence of counsel, but also required law enforcement to videotape the entire interrogation. *Id.* The opposition to the videotaping requirement by police officers and prosecutors resulted in its defeat. Dave McKinney, *Videotape Bill Fails in House; Police Won't Have to Film Confessions*, CHI. SUN-TIMES, Mar. 26, 1999, at 18, available at 1999 WL 6531564. Law enforcement contended that it would be "unwieldy" and expensive. Joel Coen, *Police, Prosecutors Fight Videotaped Interrogations*, CHI. TRIB., Mar. 1, 2000, § 1, at 1, available at 2000 WL 3641133. They also argued that the bill suggested that police officers were not credible and it attacked their professionalism. *Id.*

203. S.B. 730, 91st Gen. Assem., Reg. Sess. (Ill. 2000), amended by House Amendment 1.

204. *Id.*

representation during the entire interrogation, as opposed to only a consultation.<sup>205</sup> It applied to minors under the age of seventeen but did not indicate whether statements obtained in violation of the law would be inadmissible.<sup>206</sup> Finally, Senate Bill 730, as amended by House Amendment 1, limited the requirement of counsel to interrogations of murder or sexual assault suspects.<sup>207</sup> When House Amendment 1 went to the House of Representatives, the members voted to table the amendment.<sup>208</sup>

Because the amendment to Senate Bill 730 was tabled, the House Judiciary Committee drafted another amendment, House Amendment 2.<sup>209</sup> House Amendment 2 represented a compromise crafted by Speaker Madigan's staff,<sup>210</sup> and it limited the number of juveniles who would receive the proposed protection.<sup>211</sup> Instead of applying to interrogations of minors under the age of seventeen, this version required counsel only for minors under the age of thirteen.<sup>212</sup> Furthermore, Senate Bill 730, as amended by House Amendment 2, narrowed this class of juveniles further by limiting the safeguard to suspects of murder or sexual assault.<sup>213</sup> This version passed both houses,<sup>214</sup> and Illinois Governor George Ryan signed Senate Bill 730 into law on July 7, 2000.<sup>215</sup> Section 405/5-170, therefore, prohibits the interrogation of a child under the age of thirteen suspected of committing a murder or sexual assault without the presence of counsel.<sup>216</sup> Section 405/5-170, however, does not indicate whether a

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205. *Id.*

206. *Id.*

207. *Id.*

208. House Roll Call, S.B. 730, 113th Legis. Day (Ill. 2000). The amendment was defeated with seventy-eight nays and forty yeas. *Id.*

209. S.B. 730, 91st Gen. Assem., Reg. Sess. (Ill. 2000), amended by House Amendment 2.

210. Christi Parsons & Ryan Keith, *Bill Offers Legal Aid to Kids in Homicides; Legislation Reaction to Ryan Harris Case*, CHI. TRIB., Apr. 14, 2000, § 1, at 1, available at 2000 WL 3655877.

211. S.B. 730, 91st Gen. Assem., Reg. Sess. (Ill. 2000), amended by House Amendment 2.

212. *Id.*

213. *Id.*

214. House Roll Call, S.B. 730, 118th Legis. Day (Ill. 2000) (passing with 111 yeas and six nays); Senate Roll Call, S.B. 730, 101st Legis. Day (Ill. 2000) (passing unanimously).

215. Act of July, 7, 2000, Pub. Act No. 91-915, § 405/5-160, 2000 Legis. Serv. 2649 (West). The bill became law at 705 ILCS 405/5-160. However, an amendment changed the section number to 405/5-170. General Revisory Act, Public Act 92-16, § 87, 2001 Legis. Serv. 1329, 1643 (West).

216. 705 ILL. COMP. STAT. 405/5-160 (2001), amended by P.A. 92-16 § 87 (codified as amended at 705 ILL. COMP. STAT. 405/5-170).

confession obtained in violation of the law would be inadmissible in court against the juvenile.<sup>217</sup>

### *B. Proponents vs. Opponents: Goals & Criticisms*

The Illinois legislature relied upon numerous reasons for passing section 405/5-170, and, with various arguments, opponents to the legislation convinced the legislators to limit the application of the new law. Illinois House Speaker Michael Madigan proposed his version in response to the Ryan Harris case and other false confession cases in Chicago.<sup>218</sup> Recognizing that children are susceptible to coercion, legislators first wanted to find a way to prevent false confessions by juveniles.<sup>219</sup> Second, legislators thought that the law would benefit

217. *Id.*

218. Madigan said that he was “outraged” by the Harris case and other cases. Parsons & Keith, *supra* note 210. His spokesman later said that “[t]here are numerous examples of questionable police and prosecutorial actions” and that the law would “remove all doubt” about the validity of confessions. Daniel C. Vock, *New Law on Kid Confessions Flawed: Critics*, CHI. DAILY L. BULL., Aug. 31, 2000, at 1.

219. Illinois Senator Carl Hawkinson said that representation of young children, “decrease[s] the likelihood that they will be questioned in such a way that would elicit false confessions.” Parsons & Keith, *supra* note 210. Representative Scott argued against tabling House Amendment 1, which applied the proposed procedural safeguard broadly by including all juveniles under the age of seventeen. Scott stated that he objected for several reasons including:

[T]he high susceptibility of false confessions of juveniles. There’s a tremendous body of evidence on this particular subject. Many studies that talk about how the vast, vast majority of juveniles do not understand the rights that [sic] given to them under the Miranda warnings, thus, making the false confessions more susceptible. We saw a tape when we did a committee hearing on this in Chicago that showed a confession from a case in San Diego, where a young man had confessed to murdering his sister. The only problem was, he hadn’t done it. He confessed to it after a long period of time in a confession, where he was being interrogated, and he confessed after being told finally that he could go home if he did that. And that’s a frequent thing that we see in many of these false confession cases involving juveniles. We all know of very high-profile cases here in Illinois, and I’m not going to recite the litany of those that are absolutely false confessions that are made by juveniles.

S.B. 730, 113th Legis. Day (Ill. 2000).

Another sponsor of the bill in the House, Representative Monique-Scott Davis, also opposed tabling the Amendment. She argued:

[B]ased upon recent occurrences, we are well aware of the need of young people to have legal representation . . . I was speaking to one of my colleagues this morning, and I said to them, ‘This is the 91st General Assembly, it is not the Third Reich.’ I believe young people who find themselves in jeopardy of spending many years in incarceration are entitled to legal representation to make sure that all of their rights are adhered to and also that children do not falsely confess to crimes because they are fearful of what that adult holds for them because of threats that may be made to that young person. . . . We should vote ‘no’ on this Motion, if we care about the children in the State of Illinois, if we care about their rights being adhered to. You don’t know what may happen in your own district, where a child is falsely accused. . . . And because of threats, because of fear, because of only the police officer being in on the interrogation

police officers because it could protect them from false accusations of coercion.<sup>220</sup> Third, the sponsors of the bill recognized that, as the State transfers more juveniles into the adult criminal justice system, the conviction of a juvenile could result in even greater punishment.<sup>221</sup> Fourth, Illinois legislators noted that other states enacted similar provisions to protect children during interrogations.<sup>222</sup> Fifth, they recognized that because children are incapable of entering into a legal contract, it follows that they would be incapable of knowingly and intelligently waiving their *Miranda* rights.<sup>223</sup> Finally, one of the sponsors argued that the law could prevent county governments from having to pay monetary damages to remedy juveniles who were coerced into making false confessions.<sup>224</sup>

Despite these objectives, the proposed legislation's requirement of counsel quickly met with opposition from Illinois police agencies and

this child falsely admits something he didn't do. He needs to have legal representation. There's absolutely no reason we should not provide it.

S.B. 730, 113th Legis. Day (Ill. 2000).

220. Vock, *supra* note 218.

221. S.B. 730, 113th Legis. Day (Ill. 2000) (comments of Rep. Scott). Representative Scott said:

[R]ecognize what we've done in the last couple years. We've made many, many juvenile court cases that used to be under the Juvenile Act now transferable to adult court. . . . [A] juvenile who confesses to these crimes may end up going to prison for the rest of his or her life.

*Id.* While the maximum amount of time that a juvenile can be incarcerated is eight years, 705 ILL. COMP. STAT. 405/5-750(2) (2000), a juvenile who is transferred to the adult system can receive life imprisonment, 730 ILL. COMP. STAT. 5/5-8-1(a)(1)(c)(ii) (2000).

222. S.B. 730, 113th Legis. Day (Ill. 2000). Representative Scott pointed to several states that require a parent to be present, like Colorado which decided that a juvenile cannot be convicted based on a confession alone. *Id.*; see also *supra* Part II.D.

223. S.B. 730, 113th Legis. Day (Ill. 2000) (comments of Rep. Scott). Representative Scott stated:

We let juveniles who are under 18 years old get out of a contract. If they've purchased a toaster they can go back and undo it the next day because the contracts are presumptively void as a matter of law. Now, we won't let a juvenile buy a toaster on his own, unless he has some other backup from his parents, but we'll let him confess to a crime that'll put him in prison for the rest of his life without having a full understanding of the *Miranda* rights.

*Id.*

224. *Id.* Representative Scott noted that the Cook County Board filed a resolution asking the Illinois legislature to require counsel for all juveniles suspected of committing a Class I felony. *Id.* Scott explained that the Board requested this "because they've had to pay money for damages and for monetary awards for false confessions of juvenile cases. And so they're saying from a liability standpoint, that this is necessary to do." *Id.* The families of the boys involved in the Harris case sued the city for \$100 million. *Family Sues for \$100m*, DAYTON DAILY NEWS, Feb. 18, 1999, at 4A, available at 1999 WL 3953772.

prosecutors.<sup>225</sup> Police officers argued that the requirement of counsel would hamper interrogations,<sup>226</sup> because most minors would not be able to afford counsel preventing an interrogation at all,<sup>227</sup> and, even if they could, most lawyers do not usually allow their clients to be interrogated.<sup>228</sup> In addition, state's attorneys asserted that the requirement of counsel infringes on the role of parents.<sup>229</sup> This opposition is responsible, in part, for the changes to S.B. 730 that limited the requirement of counsel to minors under the age of thirteen and eliminated the exclusionary clause for confessions obtained from a minor without representation.<sup>230</sup> Nevertheless, members of law enforcement and prosecutorial agencies still did not support the version ultimately passed and signed into law.<sup>231</sup>

Beyond law enforcement and prosecutorial objections, the Governor and other state legislators recognized that the law had shortcomings.<sup>232</sup> In fact, Michael Madigan, the original sponsor of House Bill 3674 (the first proposal concerning juvenile interrogations), admitted that the law is less than what he wanted.<sup>233</sup> House Majority Leader Barbara Flynn Currie believed that the law made some progress in addressing the problems with juvenile confessions, but she, too, thought that juveniles who are thirteen years and older should be covered by the statute.<sup>234</sup> Though he signed the bill into law, Governor George Ryan revealed his

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225. Parsons & Keith, *supra* note 210.

226. *Id.*

227. Aaron Chambers, *Bill to Protect Juveniles in Police Custody is Introduced*, CHI. DAILY L. BULL., Jan. 26, 2000, at 1.

228. Vock, *supra* note 218. Chicago Police Department Chief of Staff Thomas P. Needham stated that "[n]o defense attorney I know will allow his clients to be interviewed." *Id.* Chief Needham also argued that the statute would hamper investigations because investigators do not always know who is a suspect and who is a witness. *Id.* Therefore, investigators may need to question many thirteen-year-olds, for example, before they determine who is a suspect. *Id.*

229. Matthew P. Jones, a lobbyist for the Illinois State's Attorneys Association, said "[parents] don't need to get a doctor in order to make medical decisions for a child, so why do [they] need an attorney for a legal decision?" *Id.*

230. S.B. 730, 118th Legis. Day (Ill. 2000) (comments of Representative Scott). Representative Scott explained during the debate that by not including an exclusionary provision, it would be up to a judge to decide whether a confession obtained in violation of the statute could be admissible. *Id.*

231. *Don't Dilute Protection for Kids*, Editorial, CHI. TRIB., May 2, 2000, § 1, at 12, available at 2000 WL 3661486. Police organizations unsuccessfully tried to convince the Governor to issue an amendatory veto. *Id.* The amendment would have allowed interrogations where a parent was present. *Id.*

232. Christi Parsons, *Ryan Oks Safeguard for Young Suspects*, CHI. TRIB., July 8, 2000, § 1, at 1, available at LEXIS, News, Chicago Tribune.

233. Parsons & Keith, *supra* note 210.

234. Parsons, *supra* note 232.

concerns about the law in a letter to lawmakers.<sup>235</sup> He focused primarily on the absence of a mechanism for actually providing counsel to minors covered by the law.<sup>236</sup> Ryan advocated that the law should contain an exception so that a juvenile's statements could be used when authorities seek to place the child into counseling or social services.<sup>237</sup> Finally, Ryan argued that there should be a penalty for violations of the law.<sup>238</sup>

#### IV. ANALYSIS

Although section 405/5-170 will be useful in preventing some false confessions and uninformed waivers of *Miranda* rights by juveniles, the law is an inadequate attempt to prevent false confessions.<sup>239</sup> This law, however, is clearly necessary for four reasons.<sup>240</sup> First, minors, especially those under the age of thirteen, do not have the capacity to knowingly and intelligently waive their *Miranda* rights.<sup>241</sup> Second, the law is necessary because the power differential between police officers and young children is inherently coercive, and this differential can easily lead to false confessions.<sup>242</sup> Third, Illinois courts give little consideration to the age of the juvenile suspect under the totality of the circumstances test when determining whether a confession is voluntary, and, thus, minors do not receive sufficient protection through the application of this test.<sup>243</sup> Finally, requiring the presence of a lawyer, instead of a parent, is more desirable because a lawyer is better able to protect the child's legal rights.<sup>244</sup>

Despite its benefits and protections, the new law is inadequate for three reasons.<sup>245</sup> First, section 405/5-170 does not apply to most

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235. Vock, *supra* note 218.

236. *Id.*

237. Parsons, *supra* note 232.

238. *Id.*

239. *See infra* Part IV.A–B (analyzing the positive aspects and the flaws of section 405/5-170).

240. *See infra* text accompanying notes 241-44 (identifying why section 405/5-170 is necessary).

241. *See infra* text accompanying notes 249-54 (discussing young children's lack of understanding of *Miranda*).

242. *See infra* text accompanying notes 255-57 (describing the power differential between police officers and young children).

243. *See infra* text accompanying notes 258-67 (analyzing Illinois courts' lack of protection of juveniles through the application of the totality of the circumstances test).

244. *See infra* text accompanying notes 268-77 (arguing that parents do not provide significant protection to minors).

245. *See infra* text accompanying notes 246-48 (stating the inadequacies of the section 405/5-170).

juveniles, and, thus, the constitutional rights of many juveniles will not be adequately protected.<sup>246</sup> Second, there are no ramifications for violating the law, because it contains no inadmissibility provision, which may make violations more likely than compliance.<sup>247</sup> Finally, section 405/5-170 does not set forth how counsel will actually be provided when required.<sup>248</sup>

#### A. *The Necessity of Section 405/5-170*

In requiring a lawyer to represent certain minors during an interrogation, the Illinois legislature demonstrated that it is serious about preventing false confessions by at least some juveniles.<sup>249</sup> It is clear that a change was needed to protect juveniles and that requiring the presence of counsel is an effective safeguard.<sup>250</sup> First, the *Miranda* requirements do not serve their purpose unless a suspect understands them.<sup>251</sup> Because most children do not have the capacity to understand or appreciate these rights, they should not be given an opportunity to waive them.<sup>252</sup> Without greater protections for young children, the *Miranda* decision effectively has no meaning for them.<sup>253</sup> Furthermore, minors twelve and under have the most difficulty understanding and appreciating their *Miranda* rights,<sup>254</sup> and as a group, young children are likely to have less experience in the criminal justice system than older juveniles.

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246. See *infra* text accompanying notes 278-90 (criticizing section 405/5-170's age and crime limitations)

247. See *infra* text accompanying notes 291-96 (arguing that the lack of an inadmissibility provision affects the likelihood of police officers' compliance with the law)

248. See *infra* text accompanying notes 297-302 (asserting that the law's failure to provide counsel harms the public and juveniles)

249. Many of the professional groups concerned with criminal justice and juvenile justice advocate the requirement of consultation with counsel. FELD, *supra* note 111, at 242. These groups include The President's Commission on Law Enforcement and Administration of Justice, the National Advisory Committee Task Force on Juvenile Justice, and the American Bar Association. *Id.*

250. See *infra* text accompanying notes 251-77 (providing reasons why the law is necessary).

251. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). These include the right to remain silent and the right to an attorney. *Id.* at 444-45.

252. See *supra* Part II.E (discussing juvenile's difficulties with understanding the *Miranda* rights).

253. According to one judge: "Plainly, one who is told something he does not understand is no better off than one who is told nothing at all." *United States v. Frazier*, 476 F.2d 891, 900 (D.C. Cir. 1973) (Bazelon, C.J., dissenting).

254. GRISSO, *supra* note 155, at 81-82.

Second, minors under the age of thirteen are the most susceptible to subtle forms of coercion by police officers.<sup>255</sup> Because of the clear power differential between police officers and young children, any deception or false promises made by police officers could lead to a false confession.<sup>256</sup> In fact, experts agree that children twelve and under are at the greatest risk of succumbing to suggestions and coercion.<sup>257</sup> Therefore, these children are most in need of protection during interrogations.

Third, in passing section 405/5-170, the Illinois legislature correctly recognized that the totality of the circumstances test employed by Illinois courts does not sufficiently protect a child's *Miranda* rights.<sup>258</sup> In fact, most courts applying the totality of the circumstances test find that a juvenile's confession is voluntary under almost all circumstances.<sup>259</sup> These findings of voluntariness practically result in a presumption of admissibility when a juvenile confesses.<sup>260</sup> The United States Supreme Court asserted that the totality test was appropriate for juveniles because it offered flexibility,<sup>261</sup> however, it appears that the application of the test is anything but flexible.<sup>262</sup> Courts virtually ignore the age of the child, the child's inability to understand or appreciate his *Miranda* rights, and a child's susceptibility to coercion.<sup>263</sup>

Proponents of the totality of the circumstances test argue that it is an appropriate standard because it complements the *parens patriae* theory of juvenile justice.<sup>264</sup> Under this theory, confessions should be admitted because of the child's interest in rehabilitation.<sup>265</sup> *Per se* rules, such as

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255. Eig, *supra*, note 14, at 83. According to interrogation expert Richard Ofshe, "[a] seven-year-old would be child's play. If you're willing to threaten him, even mildly, he'll say anything you want." *Id.*

256. See *supra* Part II.E.

257. Kaban & Tobey, *supra* note 194, at 156.

258. See *supra* Part II.C (explaining the application of the totality of the circumstances test in Illinois courts). Feld found that "when judges actually apply the 'totality' test, they exclude only the most egregiously obtained confessions and then only on a haphazard basis." FELD, *supra* note 111, at 215.

259. Robert E. McGuire, *A Proposal to Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations*, 53 VAND. L. REV. 1355, 1376 (2000).

260. *Id.* at 1377.

261. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

262. McGuire, *supra* note 259, at 1377.

263. FELD, *supra* note 111, at 215-16; see, e.g., *In re G.O.*, 727 N.E.2d 1003 (Ill. 2000).

264. Trey Meyer, Comment, *Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Courts*, 47 U. KAN. L. REV. 1036, 1067 (1999).

265. *Id.* Meyer notes that juvenile courts were created to intervene and act as parents to children whose parents had failed to provide guidance. *Id.* at 1040. The court could help delinquent children by providing them with rehabilitative services. *Id.*



section 405/5-170, can prevent children from receiving rehabilitative services.<sup>266</sup> However, this argument ignores the fact that rehabilitation is completely abandoned for some juveniles when they are transferred to the adult criminal system.<sup>267</sup> For other juveniles, while they may receive some services in the juvenile system, the overall harm of being falsely convicted outweighs the benefits of these services.

Finally, Illinois is the first state to specifically require the presence of a lawyer, even when the parent or guardian is available.<sup>268</sup> In doing so, the Illinois legislature recognized that lawyers are better able to protect children, and thus prevent false confessions, than most parents.<sup>269</sup> Parents may be ill equipped to adequately protect the child for two reasons. First, parents may have a conflict of interest with their children.<sup>270</sup> Second, parents may not fully understand the *Miranda* rights and thus might pressure the child to confess as well.<sup>271</sup> In fact, studies indicate that parents do not adequately protect children during interrogations.<sup>272</sup> According to a survey of parents, only twenty percent believed that juveniles should be able to withhold information from police officers.<sup>273</sup> Another study, focusing on the communication between parents and children during interrogations, found that most parents gave no direct advice about waiving the *Miranda* rights, and those that did advised waiver.<sup>274</sup> These results are explained by the fact that the parents surveyed thought it was important for children to cooperate with police.<sup>275</sup> Parents also believed that their children needed to face the consequences of their actions.<sup>276</sup> Finally, parents

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266. *Id.* at 1067. Meyer argues that suppressing a confession based on a “technical procedural violation” will prevent some children from receiving the rehabilitative care they need. *Id.*

267. See 705 ILL. COMP. STAT. 405/5-130 (1999 & Supp. 2001).

268. See *supra* Part II.D (noting approaches other states have adopted concerning interrogations of juveniles). While North Dakota requires a lawyer or a parent, a parent who actually represents his or her child is considered sufficient.

269. Steve A. Drizin, *Quelling an Outcry with Meaningless Reforms*, CHI. DAILY L. BULL., Oct. 8, 1998, at 6. Drizin argues that lawyers are really needed to protect juveniles instead of parents. Drizin, *supra* note 137. Drizin indicates that parents sometimes just believe that their children are being questioned as witnesses, and so they allow their children to talk. *Id.* When the child becomes a suspect, the police do not always notify the parents. *Id.*

270. FELD, *supra* note 111, at 234. Conflicts can arise, for example, when a parent is also a suspect. *Little v. Arkansas*, 435 U.S. 957 (1978) (Marshall, J., dissenting from denial of certiorari)

271. FELD, *supra* note 111, at 234.

272. GRISSO, *supra* note 155, at 179.

273. *Id.*

274. *Id.* at 187.

275. *Id.* at 180.

276. *Id.* at 181.

believed that if their child cooperated they would receive more lenient treatment from police, prosecutors, or judges.<sup>277</sup>

*B. Section 405/5-170 Still Falls Short*

While it responds to many valid concerns, section 405/5-170 still fails to adequately address false confessions by juveniles who are both older and younger than thirteen years old.<sup>278</sup> For juveniles under the age of thirteen, it fails to protect against false confessions by children suspected of crimes other than murder or sexual assault.<sup>279</sup> Children who are suspected of committing crimes other than murder or sexual assault could face significant penalties, and the desire to protect children from wrongful convictions should extend to additional crimes.<sup>280</sup>

Not only does section 405/5-170 fall short in the crimes that it covers for children under thirteen, but it also fails to adequately cover enough children, namely those who are thirteen or older. With its current age limitation, section 405/5-170 will actually apply to fewer than a hundred children a year in Illinois.<sup>281</sup> Most juveniles suspected of committing murder or sexual assault are thirteen years of age or older.<sup>282</sup> In addition, only the children who are thirteen and older can be transferred to the adult system, and thus, these children are at risk for more serious punishment.<sup>283</sup> According to empirical research, older children do not understand and fully appreciate their *Miranda* rights.<sup>284</sup> The cases of *Huggins*,<sup>285</sup> *Olmetti*,<sup>286</sup> and *Hayes*<sup>287</sup> demonstrate that even older children are susceptible to making false confessions. While these juveniles were fifteen, sixteen, and seventeen, respectively, they

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277. *Id.*

278. *See infra* text accompanying notes 279-302 (explaining section 405/5-170's failure to protect older and younger minors).

279. Vock, *supra* note 218.

280. *Id.*

281. *Id.* The Illinois Crime Authority reported that ninety-eight minors under the age of thirteen were arrested for murder or sexual assault while 384 minors who were thirteen to sixteen years old were arrested for murder or sexual assault. *Id.*

282. *Id.*

283. 705 ILL. COMP. STAT. 405/5-130 (1999 & Supp. 2001).

284. *See supra* Part II.E.1 (examining juveniles' understanding of the *Miranda* warnings).

285. *See supra* notes 2-4 and accompanying text (describing circumstances under which Huggins falsely confessed to murder).

286. *See supra* notes 5-7 and accompanying text (discussing Olmetti's false confession to murder).

287. *See supra* notes 8-9 and accompanying text (explaining Hayes' confession to a crime that occurred while he was in jail).

confessed to crimes that they did not commit,<sup>288</sup> and each one alleged that he was the subject of some type of coercion by the police officers.<sup>289</sup> Even though the courts summarily rejected these claims, it is clear that something occurred during the interrogation to convince these boys to confess to committing a crime.<sup>290</sup>

The second weakness in section 405/5-170 is that it fails to exclude confessions obtained in violation of the requirement of counsel.<sup>291</sup> While an early proposal contained a provision excluding from evidence confessions obtained in violation of the law, pressure from law enforcement agencies and prosecutors led to its removal.<sup>292</sup> Instead of a *per se* rule requiring exclusion, a judge retains the discretion to determine whether a confession obtained in violation of the law should be admitted.<sup>293</sup> By leaving it up to a judge to decide whether to admit the confession, the credibility imbalance between the police and the juvenile makes it unlikely that such a confession will be considered involuntary and excluded.<sup>294</sup> A mandatory rule excluding evidence wrongfully obtained, however, provides a clear incentive for law enforcement to respect the due process rights of suspects.<sup>295</sup> Because law enforcement faces the difficult task of balancing due process rights with the need to solve crimes, such an incentive is necessary to give the right meaning.<sup>296</sup> Therefore, a *per se* rule making confessions inadmissible if obtained in violation of the law would greatly enhance the protection afforded under section 405/5-170.

The third significant shortcoming of section 405/5-170 is that it does not actually provide counsel to minors under the age of thirteen.<sup>297</sup> Public defenders are unable to represent a juvenile suspect during an

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288. See *supra* notes 2-9 and accompanying text (describing the recent cases of three juveniles who falsely confessed to murder).

289. See *supra* notes 2-9 and accompanying text (identifying the circumstances each confession was made under).

290. See *supra* notes 2-9 and accompanying text.

291. Parsons, *supra* note 232.

292. See *supra* Part III.A (explaining H.B. 3674's provision that made confessions obtained without the safeguards required by the law inadmissible).

293. See *supra* note 230 (describing a legislator's comment that the lack of an inadmissibility provision leaves enforcement of the law to judges).

294. See *supra* note 125 (articulating police officers' substantial credibility compared to minors who can be poor witnesses).

295. See *Mapp v. Ohio*, 367 U.S. 643, 656 (1961) (explaining the need to exclude evidence secured in violation of due process rights).

296. See *Weeks v. United States*, 232 U.S. 383, 393 (1914) (discussing the need to exclude evidence secured in violation of Fourth Amendment protections).

297. 705 ILL. COMP. STAT. 405/5-160 (2001), amended by P.A. 92-16 § 87 (codified as amended at 705 ILL. COMP. STAT. 405/5-170).

interrogation because they are not appointed until the juvenile is arraigned in court.<sup>298</sup> Because section 405/5-170 requires counsel for certain interrogations, for many children there will be no interrogations until a public defender is appointed. While this outcome is more desirable than a coerced confession, it can be in the interest of the public and the child to have an interrogation.<sup>299</sup> The public has an interest in solving crimes and a confession is a valuable way for police officers to determine what happened.<sup>300</sup> A juvenile who has committed a crime needs rehabilitative services.<sup>301</sup> Therefore, the prevention of an interrogation may not serve the public or the child.<sup>302</sup> Furthermore, the lack of a mechanism providing counsel increases the likelihood that interrogations will take place in violation of 405/5-170.

### V. PROPOSAL

Several steps can be taken to achieve the legislators' goal of preventing false confessions by juveniles.<sup>303</sup> Changes to section 405/5-170 should be made to increase the number of juveniles protected by the law's procedural safeguard and to increase the likelihood that the law is

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298. 725 ILL. COMP. STAT. 5/113-3 (2000).

299. GRISSE, *supra* note 155, at 201.

300. *Id.*

301. Meyer, *supra* note 264, at 1067.

302. See *supra* Part III.B (explaining Governor Ryan's concern that an exception was needed for minors who could be diverted).

303. So far, the legislature has not addressed any of these concerns. Vock, *supra* note 218. Michael F. McMahon, the legal counsel to the Senate President, said that the issue of who would provide the required legal representation could be addressed during the legislature's spring session in 2001. *Id.* During this session, Representative Currie proposed that \$112,500 from the Juvenile Justice Fund be used to pay for court appointed counsel in juvenile cases. H.B. 1882, 92d Gen. Assem. (Ill. 2001). However, Currie's bill was still in committee at the end of the legislature's most recent session. Daniel C. Vock, *Budget Package Lacks Money for Additional Judges*, CHI. DAILY L. BULL., June 11, 2001, at 1. It appears unlikely that the legislature will extend the requirement of counsel to juveniles who are thirteen and older. Representative Black argued against an amendment from the House that would have raised the age of the Senate bill from thirteen to seventeen. S.B. 730, 91st Gen. Assem., Reg. Sess. (Ill. 2000) (comments of Representative Black). Representative Black argued that the House Amendment "may endanger the underlying Bill." *Id.* (comments of Rep. Black). He also said, "the underlying Bill should be allowed a hearing on its own merits. And I think if the Amendment is not tabled the underlying Bill may very well suffer a defeat." *Id.* (comments of Rep. Black). Also, the Senate sponsor of the legislation favored the law as passed. Vock, *supra* note 218. Representative Hawkinson said that the change in the age listed in the bill was fair because "[a] lot of 15-year olds have been through the system . . . They probably know their rights backward and forward." *Id.*

followed.<sup>304</sup> In addition, other new procedures can help achieve the goal of protecting juveniles during interrogations.<sup>305</sup>

Because section 405/5-170 does not protect any minors thirteen or older at all, and does not fully protect minors under the age of thirteen, the legislature should amend the law in several ways. First, the age indicated in the law should be increased so that all juveniles are represented by counsel during an interrogation.<sup>306</sup> Extending the law's procedural safeguard will ensure that great care is taken in the interrogations of all juveniles. Second, the law should be amended to make confessions obtained in violation of the law automatically inadmissible.<sup>307</sup> Doing so will give police officers an incentive to follow the law, making it more likely that juveniles will enjoy this procedural safeguard.<sup>308</sup> Third, section 405/5-170 should be amended to apply to all crimes committed by children under the age of thirteen, not just murder and sexual assault.<sup>309</sup> Being convicted of any crime will have a devastating impact on a child at such a young age, and thus children suspected of committing crimes other than murder or sexual assault should also receive the protection of counsel during interrogations.

In addition to amending the statute, the legislature should develop a way to guarantee that counsel is provided so that interrogations of these minors can take place. This guarantee can occur in two ways. First, a program in Chicago called First Defense Legal Aid ("First Defense") offers a twenty-four hour hotline providing lawyers to suspects during an interrogation.<sup>310</sup> The legislature should require that police officers provide a minor with First Defense's hotline number.<sup>311</sup> This information will help juveniles understand that they can be represented

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304. See *infra* notes 306-09 and accompanying text (discussing possible amendments to section 405/5-170).

305. See *infra* notes 310-28 and accompanying text (discussing additional measures to protect juveniles during police interrogations).

306. See *supra* Part IV.B (stating that juveniles who are thirteen and older are also susceptible to making false confessions).

307. See *supra* notes 291-96 and accompanying text (explaining how section 405/5-170's lack of an inadmissibility provision is a shortcoming).

308. See *supra* Part IV.B (arguing that excluding evidence is the only effective way to guarantee that police officers observe protections provided to suspects).

309. 705 ILL. COMP. STAT. 405/5-160 (2001), amended by P.A. 92-16 § 87 (codified as amended at 705 ILL. COMP. STAT. 405/5-170).

310. Deirdre Guthrie, *Kate Walz—A Young Chicago Attorney Provides a First Defense Against Police Abuse*, MOTHER JONES, May 1, 2000, at 22, available at 2000 WL 11682569.

311. For juveniles outside of Chicago either the program should be expanded or the law should be altered concerning public defenders. Currently First Defense is not representing minors outside of Chicago who fall within the law. Vock, *supra* note 218.

by counsel during the interrogation.<sup>312</sup> Because a Public Defender cannot be appointed until a suspect is arraigned,<sup>313</sup> First Defense enables indigent suspects to be represented by counsel free of charge during an interrogation.<sup>314</sup> By expanding the funding and reach of First Defense, more juveniles will be represented by counsel during an interrogation when the child cannot otherwise afford counsel.

Second, along with expanding First Defense, the laws concerning the appointment of public defenders should be changed.<sup>315</sup> Amending the statute to allow for the appointment of public defenders prior to the formal arraignment of a juvenile suspect will assist the juvenile suspect in acquiring representation during an interrogation. If public defenders are not appointed earlier, they should be called in when the police charge a juvenile with a felony.<sup>316</sup> Expanding the availability of attorneys would be an effective way to ensure that interrogations of minors adhere to section 405/5-170.

Beyond these amendments to section 405/5-170 and the expansion of programs like First Defense, other options are available to protect juveniles. For example, the legislature could create a requirement that the entire interrogation be videotaped.<sup>317</sup> By taping the interrogation, courts will have a much better understanding of the circumstances of the interrogation and should be better able to determine whether a confession was truly voluntarily given.<sup>318</sup>

Another option is to require a juvenile to consult a parent before an interrogation begins. Although a parent does little to aid juveniles during an interrogation,<sup>319</sup> requiring that a child be given the opportunity to consult with a parent may help some juveniles.<sup>320</sup> The

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312. See *supra* Part II.E.1 (examining studies about juveniles' lack of understanding and appreciation of *Miranda* rights).

313. 725 ILL. COMP. STAT. 5/113-3 (2000 & Supp. 2001).

314. Guthrie, *supra* note 310.

315. *Id.*

316. In Chicago, State's attorneys currently are available to approve felony charges before they are filed against juveniles. Christi Parsons & Maurice Possley, *Questioning of Juveniles Targeted in Madigan Bill; Parent or Attorney Needed at Interrogation*, CHI. TRIB., Jan. 27, 2000, § 1, at 1. Public defenders could develop a similar system so that they are brought in for the interrogation but then do not represent the juvenile in court.

317. See *supra* note 202 (describing Speaker Madigan's proposal to videotape interrogations).

318. It was only through the videotape or audiotape of some interrogations that courts recognized that juveniles had falsely confessed. See *supra* note 149 (explaining a California case and an Ohio case where juveniles' confessions were thrown out because the tapes of the confession revealed police officers' coercive tactics).

319. See *supra* notes 268-77 and accompanying text (analyzing how and why parents fail to help their children during interrogations).

320. FELD, *supra* note 111, at 233.

consultation should include an opportunity for the parent and child to talk privately, and the parent should be informed of the child's *Miranda* rights.<sup>321</sup> Juvenile courts should then review the interaction between the parent and child to determine whether the parent actively represented his or her child.<sup>322</sup>

Finally, providing better training to judges and youth law enforcement officers can minimize the problems encountered by juveniles.<sup>323</sup> This training should focus on preparing judges and youth officers to ascertain whether a minor has knowingly and intelligently waived his or her *Miranda* rights.<sup>324</sup> Because empirical research shows that most juveniles do not understand their rights,<sup>325</sup> judges and officers should give more weight to the juvenile's age.<sup>326</sup> In other words, judges should be sensitized to the dramatic correlation between a child's age and his or her inability to comprehend *Miranda* rights.<sup>327</sup> To assist judges, the state should be required to present evidence that demonstrates the juvenile who confessed has a better ability than his or her peers to appreciate the *Miranda* rights.<sup>328</sup>

## VI. CONCLUSION

Illinois' decision to require that juveniles be represented by counsel during an interrogation is a positive step in addressing the problem of false juvenile confessions. Section 405/5-170 ensures that young children suspected of murder or sexual assault will not make an uninformed choice of waiving their *Miranda* rights. While the statute enables these children to receive much-needed guidance, the law still falls short of fully addressing the problem of false confessions. All minors need more protection during interrogations. Section 405/5-170 should be amended to apply to all minors under the age of eighteen. In

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321. See, e.g., *supra* note 145 (describing other states' requirement for a meaningful consultation).

322. See, e.g., *supra* note 147 (explaining a North Dakota court's holding about actual representation by parents).

323. See GRISSE, *supra* note 155, at 203-04.

324. *Id.*

325. See *supra* Part II.E.1 (describing empirical evidence showing that juveniles do not understand the *Miranda* warnings).

326. GRISSE, *supra* note 155, at 203-04. Grisso recommends that judges use the results of his research to help them make a decision about whether a particular defendant is likely to possess the competence to waive *Miranda* rights. *Id.* at 205.

327. *Id.* at 203-05.

328. This would fulfill the mandate in *Miranda* that the government meet its "heavy burden . . . to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination." *Miranda v. Arizona*, 384 U.S. 436, 475 (1966).

addition, other steps should be taken to prevent false confessions by juveniles. Not only are false confessions by juveniles harmful to communities, because crimes are not properly resolved, but involvement with the criminal justice system can devastate an innocent child's life forever.