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BUT I DIDN'T DO IT: PROTECTING THE RIGHTS OF JUVENILES DURING INTERROGATION

LISA M. KRZEWINSKI*

Abstract: Juveniles' susceptibility to suggestion, coupled with their inherent naiveties and immature thought processes, raise considerable doubt as to their ability to understand and exercise their Fifth Amendment right against self-incrimination. Furthermore, they are extremely vulnerable to overimplicating themselves in crimes or, even more unfortunate for all involved, confessing to crimes they did not even commit. To protect the rights and interests of juveniles, states must enact several safeguards. This Note suggests, for example, that courts which currently use a totality of the circumstances test to determine whether a juvenile confession is voluntary, and thus not a violation of the Fifth Amendment, should abandon it in favor of a less-flexible per se rule. Additionally, states need to simplify the Miranda warning into language more conducive to juveniles' comprehension. To increase the reliability of confessions and prevent false confessions altogether, interrogators need to cease using the same interrogation tactics, such as leading questions and the presentation of false evidence, on juveniles as they do on adults.

INTRODUCTION

The juvenile court system is based on the premise that a juvenile is different physically, mentally, and intellectually from an adult. In the 1966 case In re Gault, the bedrock upon which modern juvenile law is based, the United States Supreme Court commented:

[i]f 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.²

This statement implicitly recognizes two separate but related problems inherent in the interrogation of juveniles.³ First is the question of whether a juvenile has the capacity to understand his Fifth Amendment right against self-incrimination, which is "explained" to him through the standard Miranda warning.⁴ Furthermore, assuming the juvenile understands this right, will he successfully invoke it when he is alone in a small interrogation room, facing the accusatory questions of law enforcement officers?⁵

Second, even if a juvenile makes a statement "voluntarily, knowingly and intelligently,"⁶ the reliability of his statements may be questionable.⁷ For a variety of reasons, including an incapacity for adult reasoning, susceptibility to suggestion, and a value system misunderstood by adults, a juvenile may give a confession that can be anything from partly untrue to wholly false.⁸ This, of course, can have severe repercussions for the juvenile because a confession is an extremely powerful piece of evidence for the judge or jury to take into consideration when deciding whether to convict.⁹

When a juvenile is arrested, there may be conflicting public policies at work.¹⁰ Court officials must ensure the protection of a juvenile's constitutional rights, as well as recognize his inherent naivété and immaturity regarding these rights.¹¹ At the same time, juveniles do sometimes commit heinous and horrible crimes.¹² In such in-

² 387 U.S. at 55.
³ See id.
⁴ See, e.g., Chao, supra note 1, at 522; infra notes 106–119 and accompanying text. The Fifth Amendment provides, in part that no person "shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V.
⁵ See id. at 521.
⁷ See Chao, supra note 1, at 522.
⁸ See Malcolm C. Young, Representing a Child in Adult Criminal Court, 15 CRIM. JUST. 14, 16 (Spring 2000); An Obligation to Protect the Children, CHI. TRIB., Nov. 15, 1999, at 18; Robyn E. Blumner, Children Confess, Whether They Did It or Not, ST. PETERSBURG TIMES, May 2, 1999, at 6D.
⁹ See Amy Bach, True Crime, False Confession, THE NATION, Feb. 8, 1999. For example, "A recent study of cases in which the only piece of evidence was a confession, flying in the face of contrary physical evidence, found that juries will convict 73% of the time." Id.
¹¹ See Chao, supra note 1, at 525.
¹² See, e.g., Devine, supra note 10.
stances, police and prosecutors must be allowed to hold the juvenile accountable for his acts in order to protect the community.\textsuperscript{13}

This Note recognizes the tension between these goals and suggests ways to strike a better balance between them. Part I of this Note discusses ways in which juvenile statements may not be wholly truthful, as well as reasons behind the unreliability. Part II describes the debate about whether a juvenile can knowingly, intelligently, and voluntarily waive his Fifth Amendment right. Finally, using the context of \textit{In re B.M.B.}, Part III suggests various safeguards a juvenile court must implement to address a juvenile’s ability to waive his constitutional rights. The author suggests the abandonment of the totality of the circumstances test used by the majority of the states to determine whether a juvenile properly waived his rights and, instead, advocates the adoption of a per se rule of statement admissibility. Part III also explores ways to increase the reliability of a juvenile’s statement. For example, the author suggests the need for a police interview technique more in line with the psychological development of juveniles, as well as a waiver form written in language comprehensible to juveniles.

I. THE UNRELIABILITY OF JUVENILE STATEMENTS

Everyone involved in the juvenile justice system is familiar with the aftermath of the Ryan Harris tragedy.\textsuperscript{14} In 1998, two young boys, only seven and eight years of age, were charged with murdering an eleven-year-old girl, Ryan.\textsuperscript{15} The two boys confessed to Chicago Detective James Cassidy that they hit Ryan in the head with a brick in order to steal her bicycle.\textsuperscript{16} The country was horrified that such young children could commit such a heinous crime.\textsuperscript{17} Months later, however, the charges against the boys were dropped after DNA tests of the semen found on Ryan’s clothing linked the crime to an adult male.\textsuperscript{18}

This was not the first time that Detective Cassidy obtained an untruthful confession from young children.\textsuperscript{19} Four years earlier, Detective Cassidy elicited a similar juvenile confession from a ten-year-old

\textsuperscript{14} See, e.g., Bach, supra note 9; Drizin, supra note 1, at 10.
\textsuperscript{15} See Maurice Possley, \textit{Boy Convicted of Slaying at Age 10 Appeals}, CHI. TRIB., Jan. 11, 2000, at 1.
\textsuperscript{16} See id.
\textsuperscript{17} See Drizin, supra note 1, at 2.
\textsuperscript{18} See Possley, supra note 15. Apparently, Detective Cassidy still maintains that the statements of the two boys were truthful. See id.
\textsuperscript{19} See id.
Chicago boy, A.M., who was eventually convicted of the murder of his eighty-four-year-old neighbor.\textsuperscript{20} Police charged the boy with the murder almost entirely based on his confession—the juvenile’s fingerprints were never found inside the victim’s home, despite the fact that it appeared to be ransacked; a bloody palm print and shoe print did not match to the juvenile; and the 173-pound victim was found bound with a telephone cord around her arms, neck, and hand, and was dragged throughout the house.\textsuperscript{21} At the time of the murder, the juvenile was an eighty-eight-pound ten year old.\textsuperscript{22}

Almost a year after the murder, A.M.’s mother allowed him to go with Cassidy and another detective to police headquarters, believing that they wanted her son to look at photographs of possible suspects.\textsuperscript{23} She was later summoned to the police station and told her son had confessed to the murder.\textsuperscript{24} Upon seeing his mother, the first thing the juvenile said was, “I told them that I did it, but I didn’t do it.”\textsuperscript{25} He indicated to her that he had confessed so that he could leave the police station in time to attend a birthday party.\textsuperscript{26}

In January 2000, a sixteen-year-old A.M. appealed his conviction, contending that he had been coerced into giving a false confession.\textsuperscript{27} He testified in federal court that Detective Cassidy had yelled and cursed at him, screaming out at various points, “I know you did it. I know you killed her.”\textsuperscript{28} He testified that Cassidy had patted him on the knee, saying, “God forgives you and we forgive you.”\textsuperscript{29} Most disturbingly, he testified that Cassidy had promised him that he would be released to attend his younger brother’s birthday party if he would just say what happened.\textsuperscript{30} A.M. said that he could not handle the pressure and eventually “just broke down” and confessed that he had committed the murder.\textsuperscript{31}

The similarities between the two stories are striking: all three of the children, A.M. and the two young boys in the Harris case, are Af—

\textsuperscript{20} See id.
\textsuperscript{21} See id.
\textsuperscript{22} See id.
\textsuperscript{23} See Possley, supra note 15.
\textsuperscript{24} See id.
\textsuperscript{25} See id.
\textsuperscript{26} See id.
\textsuperscript{27} See id.
\textsuperscript{28} See Possley, supra note 15.
\textsuperscript{29} See id.
\textsuperscript{30} See id.
\textsuperscript{31} See id.
frican-American boys whose parents were initially told by police that their children were witnesses, not suspects. Consequently, all three spontaneously confessed without the presence of parents or a lawyer. All three immediately recanted once allowed to talk with their parents.

These similarities also indicate the problems inherent in police interrogation of juveniles. Labeling a confession "coerced" conjures images of police brutality and violence or endless hours of interrogation without access to food or sleep. But, as these cases attest, coercive forces that lead to inaccurate or false juvenile confessions can be much more subtle, and they are often the result of inappropriate police tactics playing upon the immature thought processes and naiveties of juveniles.

According to child witness expert Richard Leo, "[a] false confession is the natural consequence of police toughness on young adults." Police tactics, including the use of leading questions and the presentation of false evidence, can be extremely persuasive to children, who are naturally susceptible to suggestion. Psychologist Stephen Ceci has conducted several studies that have shown that while the methods police use to interrogate suspects will elicit false confessions from both adults and children, children are particularly susceptible to manipulation and persuasion. And, Mark Chaffin, a child development specialist, recently testified that

[e]ven in situations less stressful and coercive than a station-house interrogation . . . substantial numbers of children will

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52 See Bach, supra note 9.
53 See id.
54 See id. In fact, the similarities between the two stories are what, eventually, enabled the sixteen-year-old juvenile to appeal to a federal court. See id. One of his lawyers, Steven Drizin, who had unsuccessfully argued to the Illinois Supreme Court the year before that his client's confession had been coerced, noticed an article about the Harris case in the Chicago Tribune. See id. The article was about the false confession obtained by Detective James Cassidy, the same detective who had obtained his client's confession four years earlier. See id.
55 See Drizin, supra note 1, at 4.
58 See id.; Bach, supra note 9.
59 See Bach, supra note 9. The use of false evidence is an interrogation tactic in which police make a suspect believe that there is an overwhelming amount of evidence that he or she is guilty. See id.
agree to things that are factually inaccurate . . . . If what one wants is a confession, [the type of interview technique currently used] will get it. It will unfortunately . . . get it from the guilty and get it from the innocent.\footnote{See An Obligation to Protect the Children, supra note 8.}

Another danger in police interrogations is that juveniles will readily agree to an officer's words without understanding the significant implications of these words.\footnote{See Young, supra note 8, at 16.} For example, one attorney described his experiences representing Latasha, a thirteen-year-old juvenile who was charged with first-degree murder.\footnote{See id. at 15.} The police filled her confession with "planning words" and words suggesting "agreement" between Latasha and her codefendant.\footnote{See id. at 16.} According to Latasha's attorney, "[h]is common police practice is far too sophisticated for a kid to pick up as he or she readily initials each page of the confession, skipping over words that have no specific meaning to them."\footnote{Id.} Latasha, a thirteen-year-old charged with murder and interrogated without an attorney present, could neither convey nor understand the subtle distinction between what the police suggested happened—there was an "agreement" with her boyfriend to commit murder—and the "acquiescence" to an older boyfriend that her story suggested.\footnote{See id. at 29-30.} This subtle distinction probably had a large impact on Latasha's disposition, however, because mere acquiescence would have made her less culpable under criminal law.\footnote{See Young, supra note 8, at 16.} Instead, Latasha's statement made it difficult for her attorneys to convince a jury that she did not have the requisite intent to be convicted on a charge of first-degree intentional homicide.\footnote{See id.}

Additionally, false confessions and admissions to inaccurate statements are often a juvenile's reaction to a perceived threat.\footnote{See Beyer, supra note 37, at 27.} Children will take the blame for crimes they did not commit just to make the interrogation cease.\footnote{See id.} According to child psychologist Marty Beyer, this is especially true for children of color (as A.M. and the boys in the Harris case were), as well as for victims of physical and
sexual abuse. For example, several of the youths in Dr. Beyer’s study reported that a fear of police made them feel that they had to confess; she writes, “[h]aving been powerless when adults abused them in the past, these young people probably could not do anything but comply with police.”

Furthermore, some adolescents, especially younger juveniles, may be excessively compliant. These juveniles may feel compelled to give answers adults want. This propensity may be especially strong when the adults are authority figures such as police officers.

Finally, inaccurate statements may be the result of comparatively “immature” juvenile thought processes. Experts suggest that adolescents may see different options than an adult would when faced with a decision. Juveniles may also place a different value on their options than adults, such as emphasizing peer approval as a factor in the decision. Furthermore, juveniles differ in their identification of the possible consequences that may follow from the options they are considering. For example, younger adolescents may not be able to think “strategically” when making statements, especially in such emotionally charged circumstances as a police interrogation.

Using Latasha to demonstrate these characteristics of a juvenile may be particularly helpful. When Latasha was initially interrogated without an attorney present, she made several confessions of various actions to which her co-defendant, an older boyfriend, also admitted. At one point, she said that she had found the cord used to strangle the victim from a room in her own house. Meanwhile, her seventeen-year-old boyfriend, who actually committed the murder, had already confessed that he had obtained the cord from a different

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51 See id. at 27.
52 See id. at 35.
53 See id. at 32.
54 See Beyer, supra note 37, at 32; Bach, supra note 9.
55 See Bach, supra note 9.
56 See Beyer, supra note 37, at 29.
58 See id. at 7.
59 See id. at 6. For example, “adults may imagine that refusing to smoke marijuana could lead to only minor peer rejection among adolescents ... whereas adolescents may imagine a much larger dose of peer rejection.” Id.
61 See Young, supra note 8, at 16.
62 See id.
room. After her lawyer "spent months in patient and often difficult discussions with Latasha in order to work through her teenage fears and misperceptions of reality," he learned that this particular admission of Latasha's was false.

It seems that Latasha was simply protecting her boyfriend by assuming some of the responsibility of the crime, not an unusual occurrence in juvenile confessions. Some experts believe that instead of considering what an adult may view as the worst possible outcome—getting punished himself—a juvenile's sense of morality may be overshadowed by a sense of loyalty to others. In one study, Dr. Beyer discusses one adolescent who thought falsely confessing and taking the blame for an adult friend was the "right" thing to do. This same friend assured him that because of his age and his lack of a delinquent record, he would get a mild juvenile sanction. Along the same lines, there is also a strong belief among juveniles that informing on others, such as a boyfriend or girlfriend or fellow gang member, is morally wrong, a concept that Dr. Beyer says many adults do not understand.

Juveniles' susceptibility to suggestion, coupled with their immature thought processes, has serious consequences when they are interrogated by individuals who do not recognize these limitations. Whether through leading and suggestive questions or because of a juvenile's innate fears, if he is compelled to give answers he is uncomfortable giving, his constitutional right against self-incrimination may be violated. This is true regardless of whether the interrogation is objectively threatening. Furthermore, some crimes, such as the first-degree murder charge on which Latasha was convicted, require the establishment of premeditation and intent. However, "[d]etermining intent in juveniles requires understanding adolescent development" in general and where a particular child is in his development.

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63 See id.
64 See id.
65 See id.; Beyer, supra note 37, at 33.
66 See Beyer, supra note 37, at 27.
67 See id. at 33.
68 See id.
69 See id. at 33–34
70 See id. at 35.
71 See discussion infra Part IV.
72 See id.
73 See Young, supra note 8, at 16.
74 See Beyer, supra note 37, at 27.
Investigators must realize that juveniles often follow others out of loyalty or are easily coerced into situations that they may not have anticipated or planned.\textsuperscript{75} Again, however, through the use of subtle coercion, such as leading questions and using "significant" words that kids may not understand, police officers may suggest or create the requisite intent for a serious criminal charge.\textsuperscript{76} In an era in which adolescents are increasingly tried as adults, juveniles may be, literally, signing their lives away.\textsuperscript{77} There is also the important consideration, of course, that "[s]ociety is no safer when a seven- or eight-year-old boy . . . is convicted of a crime the child didn't commit because the police bullied a confession out of him" and the actual perpetrator remains free.\textsuperscript{78}

II. MISUNDERSTANDING \textit{MIRANDA}

In \textit{Miranda v. Arizona}, the United States Supreme Court determined that "[p]rior to any questioning, [a] person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."\textsuperscript{79} The Court's decision was based on its belief that automatic procedures were necessary to ensure that an individual was aware of and understood his Fifth and Sixth Amendment rights.\textsuperscript{80}

The United States Supreme Court has never specifically held that \textit{Miranda} warnings apply to juveniles.\textsuperscript{81} However, one year after \textit{Miranda}, the Supreme Court decided \textit{In re Gault}, a landmark case in

\begin{footnotesize}
\textsuperscript{75} See id. at 35.
\textsuperscript{76} See id. at 27; Young, \textit{supra} note 8, at 16.
\textsuperscript{77} See, e.g., Young, \textit{supra} note 8, at 16; Blumner, \textit{supra} note 8.
\textsuperscript{78} See Blumner, \textit{supra} note 8. According to an article in \textit{The Nation} referring to A.M.'s case, "the police ignored the telltale signs of a forced confession," such as "the suspect's narrative not matching known facts of the case." See Bach, \textit{supra} note 9. Even though A.M. confessed to tying the victim up with a rope hanging from a plant, the victim, in fact, had been bound by a telephone cord. See id. Additionally, [c]ourt-appointed psychologists found no evidence that A.M. was capable of murder, and in fact were so skeptical of his guilt that they recommended he not be placed in a locked, out-of-state residential facility . . . . One of the doctors even remarked that the boy would have little need for any psychiatric treatment if it weren't for the grueling proceedings around the murder investigation.

\textit{Id.}
\textsuperscript{79} 384 U.S. 436, 444 (1966).
\textsuperscript{80} See id.
\textsuperscript{81} See, e.g., Chao, \textit{supra} note 1, at 524.
\end{footnotesize}
juvenile law. The Court’s lengthy discussion made clear that a juvenile has the right against self-incrimination and that “[t]he language of the Fifth Amendment . . . is unequivocal and without exception.”

In a limited holding, the Court went on to decide that a juvenile who may be committed to a state institution, as well as his parents, must be advised of his right to representation by counsel. Furthermore, “an admission by the juvenile may [not] be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent.”

It is important to understand the basis upon which the Court came to this conclusion. The Court was deeply concerned that even in the then-rehabilitative and paternalistic atmosphere of the juvenile court, the reality was that a juvenile may be “committed to an institution where he may be restrained of liberty for years.” It emphasized that the Fifth Amendment protects against a defendant’s incriminating statement because of “the exposure which it invites” and the deprivation of liberties it may entail.

In the thirty-five years since In re Gault, this discussion has become increasingly relevant. For example, legislatures in recent years have passed laws in all fifty states allowing juveniles to be tried in adult courts and sent to adult prisons. Furthermore, according to Amnesty International:

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83 See id. at 47.
84 See id. at 1. The Court specifically said that its holding “relates only to the adjudicatory stage of the juvenile process, where commitment to a state institution may follow.” Id.
85 See id. at 1–2.
86 Id. at 2 (alteration in original).
87 See In re Gault, 387 U.S. at 26–27. Indeed, the Court was appalled that the fifteen-year-old in question, Gerry Gault, was sentenced to a state institution until he reached his eighteenth birthday for making an obscene phone call. See id. at 1, 29. The Court pointed out that “[i]f Gerald had been over 18, he would not have been subject to Juvenile Court proceedings. For the particular offense immediately involved, the maximum punishment would have been a fine of $5 to $50, or imprisonment in jail for not more than two months.” Id. at 29.
88 See id. at 49–50.
89 See, e.g., Beyer, supra note 37, at 35. Half of the juveniles involved in Dr. Beyer’s study faced the death penalty or adult sentences without parole. See id; see also Grisso, supra note 60, at 27. Dr. Grisso writes, “As adjudication in juvenile courts has become more similar to criminal courts in their process and potential outcomes, the argument that youths should be competent to stand trial . . . has increased.” See Grisso, supra note 60, at 27.
During the past 20 years, in response to public concern about the extent and nature of crimes committed by young people, [state] governments have significantly expanded the role of the general criminal justice system with respect to children and generally increased the severity of sanctions that courts may impose on children.\footnote{Betraying the Young Children in the U.S. Justice System, 1998 AMNESTY IT'L 12 [hereinafter, Betraying the Young Children].}

The report goes on to say that, according to the most recent data available, "about 200,000 children a year are prosecuted in general criminal courts; more than 11,000 children are in prisons and other long-term adult correctional facilities; and, more than 2000 children are housed in the general population of adult prisons."\footnote{See id. at 11-12.}

Simply put, juveniles have increasingly more liberty to lose when they are arrested and interrogated.\footnote{See Grisso, supra note 60, at 27; Betraying the Young Children, supra note 91, at 12.} Thus, state and federal courts have consistently warned that special care must be taken to ensure that a juvenile understands that he has a constitutional right against self-incrimination.\footnote{See, e.g., State v. Presha, 748 A.2d 1108, 1117 (NJ. 2000):

Although a suspect is always free to waive the privilege and confess to committing crimes, that waiver must never be the product of police coercion ... the requirement of voluntariness applies equally to adult and juvenile confessions ... [and] younger offenders present a special circumstance in the context of police interrogation.

Id. at 1113–14; see also In re E.T.C., 449 A.2d 937, 939–40 (Vt. 1982):

This State, like all others, has recognized the fact that juveniles many times lack the capacity and responsibility to realize the full consequences of their actions ... It would indeed be inconsistent and unjust to hold that one whom the State deems incapable of being able to marry, purchase alcoholic beverages, or even donate their own blood, should be compelled to stand on the same footing as an adult when asked to waive important ... rights at a time most critical to him and in an atmosphere most foreign and unfamiliar. Therefore ... criteria must be met for a juvenile to voluntarily and intelligently waive his rights against self-incrimination ... .

Id. \footnote{See, e.g., Commonwealth v. A Juvenile, 449 N.E.2d 654, 656 (Mass. 1983); In re E.T.C., 449 A.2d at 940.}} Furthermore, when a juvenile makes incriminating statements, courts have consistently looked to whether the waiver of that right was made knowingly, intelligently, and voluntarily to ensure proper due process.\footnote{See, e.g., Commonwealth v. A Juvenile, 449 N.E.2d 654, 656 (Mass. 1983); In re E.T.C., 449 A.2d at 940.}
Courts and legislatures have generally taken one of two approaches to determine whether a Fifth Amendment right was properly waived. The majority of states apply a totality of the circumstances test. This is modeled after the one used for adults to determine whether they properly waived their Fifth Amendment right. The Supreme Court adopted this approach in Fare v. Michael C., where it said that the "totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved." Under the totality approach, courts have traditionally examined factors such as the suspect's age, education, intelligence, whether he was advised of his constitutional rights, and the length and nature of detention. The factors that a particular court applies, as well as the weight judges assign to these factors, are usually matters of judicial discretion and vary among courts.

Other states, however, have rejected the totality test and, instead, have adopted per se exclusionary rules. These rules are largely based on the Supreme Court's discussion in Gallegos v. Colorado that adult advice is valuable in ensuring the voluntariness of a juvenile's waiver and the Court's recognition that immaturity may render a youth helpless to assert his rights. In states using a per se rule, a statement is rendered automatically inadmissible if it does not follow statutory guidelines, such as having a parent or another interested adult present when the statement is made. The per se rule is based on a public policy determination that juveniles do not have the capacity to understand or waive their right against incrimination and so they need an adult's help to make this decision.

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97 See *Presha*, 748 A.2d at 1117.
99 See id.
100 See *Presha*, 748 A.2d at 1113.
102 See *Presha*, 748 A.2d at 1120–21.
103 See 370 U.S. 49, 54 (1962). The Court wrote, "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.*
The fact that several states have explicitly made this determination and adopted a per se exclusionary rule begs the question: Are juveniles capable of knowingly, intelligently, and voluntarily waiving their constitutional rights? Empirical studies emphatically suggest that the answer is no. For example, Dr. Thomas Grisso’s statistical evidence shows that a majority of delinquent youths are learning disabled, which compounds their problem of comprehension. Dr. Grisso’s studies also conclude, in part, that juveniles demonstrate less understanding of the wording in the Miranda warnings than do adults; that juveniles are more likely than adults to misunderstand the function of legal counsel, thus not realizing the benefits and protection that lawyers can give them; and, that many juveniles do not understand that they truly have a “right” to remain silent. He further notes that juveniles fifteen and younger are especially unable to comprehend the concepts involved in a Miranda warning.

Dr. Grisso’s findings have been replicated in subsequent studies. For example, in Dr. Beyer’s study, ten of seventeen juveniles could not demonstrate an adequate understanding of the words of the Miranda warning. She describes how one fourteen year old explained “You have the right to remain silent” as “Don’t make noise.” He explained the phrasing “Anything you say can be used against you” as meaning “You better talk to the police.” Furthermore, there is evidence that juveniles may misperceive the function of counsel. One study found that one-third of the juveniles believed that it was important to be truthful because a lawyer could report the defendant’s guilt to the court.

Finally, research suggests that young adolescents may not see a “right” as an entitlement but, instead, as something that can be taken away by authorities. These youths, then, may not realize that a

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106 See Chao, supra note 1, at 522.
107 See id. at 526.
108 See id. These data are largely the work of Thomas Grisso, whose 1980 study of juveniles is often quoted by courts. See id.
109 See Chao, supra note 1, at 526; Grisso, supra note 96, at 1151–60.
110 See Grisso, supra note 96, at 1160.
111 See Beyer, supra note 37, at 28.
112 See id.
113 See id.
114 See id.
115 See Grisso, supra note 60, at 31.
116 See id.
117 See id. at 29.
"right" belongs to them and is something that they can assert. This becomes problematic during a juvenile interrogation because "[t]he accused who does not know his rights and therefore does not make a request may be the person who most needs counsel."

The Supreme Court, writing about criminal defendant Miranda himself, opined, "[t]he mere fact that he signed a statement which contained a typed-in clause stating that he had 'full knowledge' of his 'legal rights' does not approach the knowing and intelligent waiver required to relinquish constitutional rights." In an akin situation, if a juvenile does not understand what his right to silence means or does not understand how a lawyer can help him or does not realize that his statements will be used against him—regardless of whether he recants upon being released or seeing his parents—it seems that these rights cannot have been waived intelligently and voluntarily.

III. PROCEDURAL PROTECTIONS

Juveniles may not have the capacity to understand what their legal right against self-incrimination entails. Thus, if juveniles do not know what they possess in the first instance, they cannot properly waive this right, lending to a violation of the Fifth Amendment. Furthermore, because juveniles have immature thought processes that make them susceptible to suggestion and prevent them from realizing the long-term consequences of their statements, they are extremely vulnerable to overimplicating themselves or even making wholly false confessions.

To protect the rights and interests of juveniles, states must enact several safeguards. First, courts which currently use a totality of circumstances test to determine whether the confession of a juvenile sixteen or younger is voluntary should abandon it in favor of a per se rule of admissibility. Such a per se rule would exclude the admissibility of any statements made by juveniles sixteen and under when an interested adult such as a parent, guardian, or lawyer is not present.

118 See id.
119 See Miranda, 384 U.S. at 470–71.
120 Id. at 492.
121 See id.; Grisso, supra note 60, at 31.
122 See Grisso, supra note 60, at 31.
123 See Beyer, supra note 37, at 35; Young, supra note 8, at 16; An Obligation to Protect the Children, supra note 8; Blumner, supra note 8.
124 See, e.g., In re B.M.B., 955 P.2d 1302, 1312 (Kan. 1998).
125 See discussion infra Part III.A.2. and notes 204–211.
Additionally, the Miranda warning must be explained and understood by both the juvenile and adult.\textsuperscript{126} If such an adult was present when an incriminating statement was made, the burden is on the defense to show that the statement was not voluntary. For instance, the defense could present evidence that a juvenile’s parent compelled him to speak to an officer or that the interested adult did not comprehend the concepts in the Miranda warnings well enough to render advice.\textsuperscript{127}

For juveniles older than sixteen, the per se rule should not apply.\textsuperscript{128} Instead, there should be a rebuttable presumption based on the preponderance of the evidence standard that the statement was not given voluntarily. Prosecutors can overcome this presumption by showing that an interested adult was present and that the adult had a meaningful consultation with the juvenile.\textsuperscript{129} Also, showing that a juvenile’s parent or guardian was aware of his arrest and that the juvenile was given the opportunity to have such a person present would also strongly favor overcoming the presumption.\textsuperscript{130} On the contrary, a prosecutor could not overcome this burden if there is evidence that the police deliberately excluded a juvenile’s parent or legal guardian from the interrogation.\textsuperscript{131}

Finally, states need to enact procedural safeguards to ensure that constitutional rights are waived properly and that statements are reliable. For instance, the Miranda warning needs to be simplified into language more appropriate for juveniles and incorporated into a juvenile waiver form.\textsuperscript{132} Additionally, interrogators need to cease using the same tactics on children as they do on adults, such as the use of leading questions and presentation of false evidence.\textsuperscript{133}

\textsuperscript{126} See infra notes 206–211 and accompanying text.
\textsuperscript{128} See infra Part III.A.2. and notes 219–226.
\textsuperscript{129} See infra notes 203–204 and accompanying text.
\textsuperscript{130} See id.
\textsuperscript{131} See, e.g., In re B.M.B., 955 P.2d at 1305.
\textsuperscript{132} See discussion infra Part III.B. and notes 252–257.
\textsuperscript{133} See infra notes 263–266.
A. Abandon the Totality Test

1. The Case of B.M.B.

The totality test currently used by states to determine if a waiver was proper is problematic for several reasons. First, as several commentators have pointed out, it only serves to protect a juvenile retrospectively, after he may have improperly waived his rights. In effect, the totality test serves as a remedy rather than a safeguard. In Miranda, however, the Supreme Court's entire premise is that an individual's Fifth Amendment right is "fundamental to our system of constitutional rule" and, therefore, great care must be taken to ensure the State does not infringe upon this right. Because a per se rule acts prospectively to prevent such an infringement in the first place, it encompasses a value system more in line with constitutional intent.

Another problem with the totality test is that the determination of whether a juvenile's rights were disregarded is entirely based on the discretion of judges, which leads to inconsistency from case to case. Police interrogators are then left with only rough guidelines, which may be too flexible to be useful and which may allow police to take advantage of a youth's immaturity. Another way in which the totality test falters concerns the factors that are used to analyze whether a confession is voluntary. For instance, many courts look to a juve-

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134 See In re B.M.B., 955 P.2d at 1312; Grisso, supra note 96, at 1138–40; Huang, supra note 96, at 448–49.
135 See In re B.M.B., 955 P.2d at 1312. As the Supreme Court of Kansas pointed out, this has especially deleterious effects on juveniles. See id. at 1311–12. The Court wrote:

Our determination that respondent has not proved a valid waiver, however . . . is consistent with the protective ethic of our juvenile law that at the accusatory stage of the process a juvenile have . . . guidance as to whether he will waive his constitutional rights . . . to remain silent . . . And since a juvenile who confesses at the accusatory state has, in most instances, already had his trial, to deprive him at that state of . . . assistance would render meaningless [protective measures taken during trial].

Id. (quoting In re K.W.B., 500 S.W.2d 275, 281–82 (Mo. Ct. App. 1973)); see also Huang, supra note 96, at 449.
136 See Huang, supra note 96, at 449.
138 See id. at 469; Huang, supra note 96, at 449.
139 See discussion infra Part IV.
141 See Grisso, supra note 60, at 30 (noting that age and prior experience are not indicative of a juveniles' ability to understand his constitutional rights).
nile's prior arrest experience, theorizing that if he has been previously exposed to an arrest and a Miranda warning, he has a better understanding of what rights are implicated the next time.\textsuperscript{142} However, research has shown that a juvenile's repeated exposure to a Miranda warning does not necessarily make it more understandable.\textsuperscript{143}

Additionally, courts often analyze whether a juvenile was advised of his rights.\textsuperscript{144} However, just because a Miranda warning is given and a juvenile indicates that he understands his rights does not mean that this is necessarily the case.\textsuperscript{145} Again, even if a juvenile realizes that "These statements may be used against you," he may not understand the long-term consequences of his statements or may not understand that a right is something that belongs to him and cannot be taken away by the law officer.\textsuperscript{146} As Dr. Grisso writes, even when juveniles are interrogated "under optimal conditions . . . [they are] not immune from comprehension inhibitions."\textsuperscript{147}

Finally, courts will often look to the age of the juvenile.\textsuperscript{148} However, Dr. Beyer argues that "adolescent development is not a linear progression tied to chronological age."\textsuperscript{149} Just as a fifteen-year-old juvenile does not think like a twenty-year-old adult, he may not think in the same way as the fifteen year old with whom he was arrested.\textsuperscript{150} In addition, many arrested juveniles have suffered from physical or sexual abuse, which can delay adolescent development.\textsuperscript{151} Thus, many juveniles' thought processes may be more immature than their chronological age would suggest.\textsuperscript{152}

\textit{In re B.M.B.}, a 1998 decision of the Supreme Court of Kansas\textsuperscript{153} illustrates the problems inherent in using totality tests to determine whether a statement was voluntarily given. B.M.B. was a ten-year-old boy accused of sexually assaulting a four-year-old neighbor while they

\begin{itemize}
\item \textsuperscript{143} See Grisso, \textit{supra} note 60, at 30.
\item \textsuperscript{144} See, e.g., \textit{In re B.M.B.}, 955 P.2d at 1307; \textit{Presha}, 748 A.2d at 1112.
\item \textsuperscript{145} See Beyer, \textit{supra} note 37, at 28; Grisso, \textit{supra} note 96, at 1160.
\item \textsuperscript{146} See id.
\item \textsuperscript{147} Grisso, \textit{supra} note 96, at 1161.
\item \textsuperscript{148} See, e.g., \textit{In re B.M.B.}, 955 P.2d at 1307; \textit{Presha}, 748 A.2d at 1112; \textit{Christmas}, 465 A.2d at 993.
\item \textsuperscript{149} See Beyer, \textit{supra} note 37, at 35.
\item \textsuperscript{150} See id.; Grisso, \textit{supra} note 60, at 30.
\item \textsuperscript{151} See Beyer, \textit{supra} note 37, at 34-35.
\item \textsuperscript{152} See id. at 35.
\item \textsuperscript{153} See \textit{In re B.M.B.}, 955 P.2d at 1302.
\end{itemize}
and her seven-year-old brother were playing together. At one point, while the two boys were burying the four year old in the sand, she got out and ran into the house screaming. Although the boys believed it was because she had seen a worm in the sand, when her mother asked her what happened, she said that “a boy” had tried to stick his “finger up [her] butt.” Police, believing that the girl had adequately identified B.M.B. as the assailant, attempted to question him. An investigator left several phone messages with B.M.B.’s mother, indicating that she should get in touch with the police. Finally, under the belief that B.M.B. would soon be leaving to spend the summer with an uncle, the officer removed him from his fourth grade class and took him for questioning—all without trying to contact his mother again.

Once at the station, the officer had B.M.B. read the Miranda form, “going over each sentence with him,” and had B.M.B. initial each sentence, as if to indicate his understanding. Although the officer asked B.M.B. if he wanted his mother present, the ten-year-old indicated that he did not. The officer began questioning the boy, and, about twenty minutes later, the officer was told B.M.B.’s mother had called. However, the officer never told B.M.B. that his mother was on the way to the police station. Instead, he concluded the interrogation before B.M.B.’s mother arrived. B.M.B. was subsequently adjudicated as a youthful offender for the rape of the four-year-old. He appealed the adjudication, contending an erroneous admission of his confession.

The trial court rejected B.M.B.’s motion to suppress his statements to the police. At the time of B.M.B.’s trial, Kansas courts applied a totality test, considering such factors as the age of the minor,
the length of the questioning, the youth’s prior experience with the police, his education, and his mental state.\(^{169}\) However, when assessing these factors, the trial judge merely mentioned that B.M.B. was ten years old and admitted that “[she knew] nothing about [B.M.B.’s] maturity,” although she noted that he could read and write.\(^{170}\)

The trial court judge never made any mention of B.M.B.‘s prior experience with the police, supposedly one of the factors to be applied under this test.\(^{171}\) She emphasized, “I’m more impressed, however, with [B.M.B.]’s comment that he would simply do his homework while waiting for paperwork to be processed, rather than being described as tearful or overwrought. There is no indication at this point that [B.M.B.] had any hesitation with regard to speaking to this Detective.”\(^{172}\) The trial judge allowed all of B.M.B.’s incriminating statements into evidence.\(^{173}\)

On appeal, the Supreme Court of Kansas took issue with the trial judge’s assessment of B.M.B.’s mental state, indicating that the fact that B.M.B. wanted to do his homework after the interrogation was of “questionable relevance.”\(^{174}\) The court also implicitly disagreed with the trial judge’s decision to place so much weight on B.M.B.’s apparent calm mental state.\(^{175}\) Furthermore, the opinion said that another “shortcoming in the trial court’s consideration” was its omission of the fact that the detective had deliberately continued and finished his interrogation before B.M.B.’s mother had arrived.\(^{176}\) The Supreme Court of Kansas subsequently held that B.M.B. did not, and, in fact, could not properly waive his constitutional rights, saying “[f]or all intents and purposes, the State and trial court treated B.M.B. as if he were an adult or at least a much older teenager.”\(^{177}\)

\textit{In re B.M.B.} highlights the fundamental problem of inconsistency in the totality test.\(^{178}\) The trial judge and the Supreme Court of Kansas examined the same set of circumstances and supposedly applied them to the same set of factors.\(^{179}\) Despite this fact, some factors, such as

\(^{169}\) See id at 1307.

\(^{170}\) See id. at 1306.

\(^{171}\) See id. at 1307.

\(^{172}\) Id. at 1306.

\(^{173}\) See In re B.M.B., 955 P.2d at 1302.

\(^{174}\) See id. at 1308.

\(^{175}\) See id. at 1307–08.

\(^{176}\) See id.

\(^{177}\) See id. at 1312.

\(^{178}\) See In re B.M.B., 955 P.2d at 1308.

\(^{179}\) See id. at 1307.
B.M.B.’s mental state, were evaluated differently based on subjective assessments of the judges. Whether individual factors should be considered at all and the determination of relative weight of the factors differed greatly from the trial judge to the Supreme Court of Kansas. If judges who “know” the law come to such dramatically different conclusions based on their discretion, it may be equally, if not more, difficult for the police officer who is conducting an interrogation to make an accurate prospective assessment of whether a juvenile intelligently and voluntarily waived his right against self-incrimination. Also troubling was the trial judge’s emphasis on the fact that B.M.B. had read the Miranda form and initialed it, indicating that he understood his rights. Again, reading about rights is not equivalent to comprehending them.

2. Adopting the Per Se Rule

The Supreme Court of Kansas implicitly recognized the problems involved in the totality test, “persuaded by what occurred in the present case.” After determining that B.M.B.’s waiver was not proper, the Court went on to set a new standard that no statement or confession from a child under the age of fourteen could be used against him unless he had consulted with a parent, guardian, or attorney, who also must have been advised of the child’s rights. The opinion stated:

We cannot ignore the immaturity and inexperience of a child under 14 years of age and the obvious disadvantage such a child has in confronting a custodial police interrogation. In such a case, we conclude that the totality of the circumstances is not sufficient to ensure that the child makes an intelligent and knowing waiver of his rights.

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180 See id. at 1307–08.
181 See id.
182 See id. at 1311.
183 See In re B.M.B., 955 P.2d at 1306–07.
184 See Beyer, supra note 37, at 28; Grisso, supra note 96, at 1160.
185 See In re B.M.B., 955 P.2d at 1312.
186 See id. at 1312–13.
187 Id. at 1312.
Furthermore, it stated that requiring the advice of a parent or counsel or is "relatively simple" and was "well-established as a safeguard against a juvenile's improvident judicial acts." 188

Other jurisdictions have recently enacted similar safeguards, whether by statute or judicial decree. 189 For example, in March 2000, the Supreme Court of New Jersey said in State v. Presha that "special circumstances exist when a juvenile is under the age of fourteen." 190 It held that, in such instances, an adult's absence will render a juvenile's statement inadmissible as a matter of law. 191

Similarly, in April 2000, Illinois lawmakers passed a measure requiring anyone younger than age thirteen to have a lawyer before facing police questioning in homicide and sexual assault cases. 192 The statute requires that the police, at the very least, allow the juvenile to speak with an attorney over the phone before the police can begin their interrogation. 193 The legislation falters, however, in its failure to realize that the presence of a lawyer or other adult serves dual purposes. 194 While a telephone call to an attorney, perhaps, can provide a juvenile help in understanding his constitutional rights, the juvenile will still be disadvantaged if an adult is not physically present to act as a buffer against coercion or intimidation. 195 The original proposal for the legislation took this into consideration and mandated that statements taken without a lawyer present would be strictly inadmissible. 196

188 See id. (quoting In re Dino, 359 So.2d 586, 591–93 (La. 1978)).
189 See Presha, 748 A.2d at 1110; Christi Parsons & Ryan Keith, Bill Offers Legal Aid to Kids in Homicide Legislation in Reaction to Ryan Harris Case, CHI. TRIB., Apr. 14, 2000, at 1.
190 748 A.2d at 1110.
191 See id.
192 See Parsons & Keith, supra note 189.
193 See id. However, the measure has been criticized as being irrelevant. See id. For instance, it would only cover juveniles under age thirteen. See id. Chicago, in 1999, did not have any arrests of juveniles under the age of thirteen for murder, and had only forty-two arrests for sexual assault. See id. However, thirty-nine juveniles younger than seventeen were arrested for murder and 159 were arrested for criminal sexual assaults. See Parsons & Keith, supra note 189. Furthermore, juveniles who commit murder or sexual assault are not the only ones being locked up in juvenile or adult facilities. See Betraying the Young Children, supra note 91, at 14. According to an Amnesty International study conducted in November 1998, "in 15 states, children accused of committing non-violent offenses such as burglary, offenses involving weapons and drug offenses must be prosecuted in general criminal courts." Id.
194 See Presha, 748 A.2d at 1113–14; Huang, supra note 96, at 472.
195 See Presha, 748 A.2d at 1113–14; Huang, supra note 96, at 472. Commentators have explicitly pointed out several other advantages of having an adult present during a juvenile interrogation. For example, having an adult present provides an additional witness to testify as to the coerciveness of the interrogation. See Huang, supra note 96, at 472.
196 See Parsons & Keith, supra note 189.
It also required a lawyer for any criminal suspect younger than eighteen.\textsuperscript{197} However, law enforcement groups decried these strict proposals, maintaining that such restrictions would make it difficult for them to perform their jobs.\textsuperscript{198}

As the above examples demonstrate, states that have enacted per se rules are not uniform in their requirements.\textsuperscript{199} The particular nuances and requirements of a statute are public policy determinations, which seek to balance the protection of a community against the protection of a juvenile's constitutional rights.\textsuperscript{200} For example, some states require merely the immediate notification of a minor's guardian or custodian if a minor is taken into custody so that statements made by juveniles where no notification has been made have been suppressed.\textsuperscript{201} However, because this standard does not require an interested adult's presence for support and ongoing consultation, it does not provide adequate protection.\textsuperscript{202}

Other states, such as Colorado and Indiana, have enacted statutes that render inadmissible any statement by a juvenile made during the interrogation outside the presence of an interested adult, such as a parent or attorney.\textsuperscript{203} This author believes that the latter view is the best way to provide protection for a juvenile. When an interested adult is present, such an adult can provide advice so that the juvenile better understands his rights, as well as protect the juvenile from the "compelling atmosphere" of custodial interrogation.\textsuperscript{204} Courts have noted that the presence of a parent to act as a "buffer" is especially

\textsuperscript{197} See \textit{id.}
\textsuperscript{198} See \textit{id.}
\textsuperscript{199} See \textit{Presha}, 748 A.2d at 1119–22. In this case, the Supreme Court of New Jersey discusses the judicial and legislative requirements of various states' per se rules, distinguishing, for instance, states which require the presence of an interested adult versus states which only require notification of a parent or guardian if a juvenile is arrested. See \textit{id.}
\textsuperscript{200} See \textit{In re B.M.B.}, 955 P.2d at 1311. The Supreme Court of Kansas discusses various states' articulations as to why per se rules were adopted. See \textit{id.}, at 1311–12.
\textsuperscript{201} See \textit{Presha}, 748 A.2d at 1121. Proponents of per se rules often argue that juveniles do not understand the benefit of having a lawyer present and would not, therefore, invoke their Sixth Amendment privilege. Presumably, states that have mandated per se rules which require only notification to a parent or guardian once a juvenile has been arrested have done so with the belief that once parents realize their child is in custody they will contact a lawyer for their child themselves.
\textsuperscript{202} See \textit{id.}, at 1113–14; Huang, \textit{supra} note 96, at 472.
\textsuperscript{203} See, \textit{e.g.}, \textit{COLO. REV. STAT. ANN.} § 19–2–511 (West 1999); \textit{IND. CODE ANN.} § 31–32–5–1 (Michie 1999).
\textsuperscript{204} See, \textit{e.g.}, \textit{State v. Benoit}, 490 A.2d 295, 302 (N.H. 1985); \textit{Presha}, 748 A.2d at 1113–1114.
significant now because there has been an increased focus on the apprehension and prosecution of youth offenders.\textsuperscript{205}

The language used to require the consultation with or presence of an interested adult also varies from state to state.\textsuperscript{206} However, the requirement that the adult must be interested not only in the juvenile’s general welfare but also his legal welfare seems to be implicitly uniform.\textsuperscript{207} For instance, Vermont requires that a juvenile be given the opportunity to consult with an adult “who is not only generally interested in the welfare of the juvenile but completely independent from and disassociated with the prosecution.”\textsuperscript{208} As well, the Supreme Court, in \textit{Gallegos v. Colorado}, advised that juveniles should receive aid from “someone concerned with securing him . . . rights.”\textsuperscript{209} It is apparent, then, that a lawyer would fall under the interested adult standard.\textsuperscript{210} Similarly, per se rules uniformly consider a parent or legal guardian to be an interested adult.\textsuperscript{211}

\textsuperscript{205} See Presha, 748 A.2d at 1114.
\textsuperscript{206} See, e.g., \textit{In re B.M.B.}, 955 P.2d at 1312-13 (requiring that juveniles under the age of fourteen be given an opportunity to consult with “his or her parent, guardian, or attorney.”); \textit{In re Dino}, 359 So.2d at 594 (stating that Louisiana’s per se rule, which has since been abandoned, required consultation with “an attorney or an informed parent, guardian, or other adult interested in his welfare . . . .”); \textit{Commonwealth v. A Juvenile}, 449 N.E.2d at 657 (requiring “an interested adult” including an “attorney or person standing in loco parentis”); \textit{In re E.T.C.}, 449 A.2d 937, 940 (Vt. 1982) (requiring the opportunity for consultation “with an adult . . . who is not only generally interested in the welfare of the juvenile but completely independent from and disassociated with the prosecution, e.g., a parent, legal guardian, or attorney representing the juvenile.”).
\textsuperscript{207} See \textit{In re E.T.C.}, 449 A.2d at 940.
\textsuperscript{208} See id.
\textsuperscript{209} See 370 U.S. 49, 54 (1962). In \textit{Fare v. Michael C.}, the Supreme Court explicitly rejected the argument that the juvenile had invoked his Fifth Amendment rights by requesting to speak to his probation officer because such a person:

\begin{quote}
is not in a position to . . . protect the Fifth Amendment rights of an accused undergoing custodial interrogation that a lawyer can offer . . . . He is significantly handicapped by the position he occupies in the juvenile system from serving as an effective protector of the rights of a juvenile suspected of a crime.
\end{quote}

442 U.S. at 722.
\textsuperscript{210} See, e.g., \textit{In re B.M.B.}, 955 P.2d at 1312-13; \textit{In re E.T.C.}, 449 A.2d at 940. Indeed, Thomas Grisso advises that having counsel always present for juveniles under the age of fifteen affords the best protection of juvenile’s constitutional rights. See Grisso, supra note 96, at 1163-64.
\textsuperscript{211} See, e.g., \textit{In re B.M.B.}, 955 P.2d at 1312-13; \textit{Commonwealth v. A. Juvenile}, 449 N.E.2d at 657; \textit{In re E.T.C.}, 449 A.2d at 940. An interesting argument, but one that is beyond the scope of this Note, may be made as to who else, in addition to the parent, guardian, or attorney, may constitute an interested adult. For instance, while \textit{In re B.M.B.} only specifically mentions a “parent, guardian, or attorney,” 955 P.2d at 1312-13, Vermont re-
In addition to the variation in who may be present in a juvenile interrogation, the age at which a per se rule applies varies across jurisdictions. For example, Colorado's statute does not make reference to a specific applicable age, instead referring to "a juvenile." As mentioned already, New Jersey's per se court mandate only applies to juveniles under the age of fourteen. Interestingly, in Massachusetts the judiciary has created a two-tiered standard based on age. There, a juvenile under fourteen can only properly waive his Fifth Amendment right if he has an interested adult present during interrogation. For juveniles fourteen and over, however, there is a rebuttable presumption that a waiver of rights is improper. If such a juvenile demonstrates "a high degree of intelligence, experience, knowledge, or sophistication," even if there is no interested adult present during the interrogation, the waiver is valid and any incriminating statements may be entered into evidence.

Creating an age limit within a per se rule is a difficult determination because, as already noted, psychological development and conceptual understanding of rights do not necessarily correlate to chronological age. Although studies show that younger juveniles are the most vulnerable to confusion about their rights, these studies also show that "there is much more variability in capacities among youths" in the age range of fourteen to sixteen. Furthermore,
"[t]his variability gradually decreases until, in the older adolescent years, it is about the same as one finds among adults."\textsuperscript{221}

Because of this variability, a Massachusetts-like per se rule that creates two distinct age-based tiers is necessary.\textsuperscript{222} Such a rule provides the optimal balance between recognizing cognitive limitations of younger juveniles and easing public fears that older "seasoned delinquent[s]" may be overprotected.\textsuperscript{223} The ideal per se rule requires the presence of an interested adult for any juvenile sixteen years old and under, as studies show this age group is the one most likely to misunderstand, or not have the capacity to understand, their rights.\textsuperscript{224}

For juveniles over the age of sixteen, a rebuttable presumption that their constitutional rights were impermissibly waived most adequately affords constitutional protection. For an older juvenile who may not have an adult capacity to understand his rights due to a learning disability, mental disorder, or slow cognitive development, the prosecutor may not be able to overcome this burden if an interested adult did not consult with the juvenile.\textsuperscript{225} At the same time, such a rule recognizes that a mature juvenile only months away from adult status may not need an interested adult’s consultation in order to effectuate his rights.\textsuperscript{226}

\textsuperscript{221} Id.
\textsuperscript{222} See Commonwealth v. A Juvenile, 449 N.E.2d at 657.
\textsuperscript{223} See Christmas, 465 A.2d at 993.
\textsuperscript{224} See Beyer, supra note 37, at 35; Grisso, supra note 60, at 30.
\textsuperscript{225} See Commonwealth v. A Juvenile, 449 N.E.2d at 657.
\textsuperscript{226} See Christmas, 465 A.2d at 991. The case of such a juvenile caused Pennsylvania to abandon its per se rule in 1983. See id. at 992. Importantly, Pennsylvania’s per se rule provided that no juvenile under eighteen could waive his Miranda rights unless he was provided an opportunity to consult with an interested adult. See Huang, supra note 97, at 458. In 1983, the court heard Commonwealth v. Christmas, in which the defendant, who was merely four months away from his eighteenth birthday, was arrested for possession of 744 packets of heroin. See 465 A.2d at 991. This was his eighteenth arrest. See id. at 993. Although the defendant was allowed to consult with his father, himself a police officer, the father was never informed of his son’s constitutional rights. See id. at 991. This violated Pennsylvania’s per se rule, and his eventual incriminating remarks should have been disqualified. See id. The Supreme Court of Pennsylvania, however, was explicitly distressed over the age of the defendant and how close he was to becoming an adult. See id. at 991, 993. It began its opinion by simply stating, “At the time of his arrest, appellee was approximately 17 years and 8 months of age.” Id. at 991. It went on to mention again that “at the time of his arrest, appellee was just four months under the age of eighteen years.” Id. at 993. Finally, the opinion referred to the defendant as “a veteran arrestee,” “a seasoned delinquent,” and “not a naïve and inexperienced youth needing the advice of an interested and informed adult.” Id. Because the per se rule rested on the premise that “juvenile immaturity may preclude self-protection from overbearing police interrogation,” and this defendant was not the naïve juvenile it was meant to protect, the Court not only let in the incriminating statements, but reexamined the per se rule and decided to abandon it in
Notwithstanding the aforementioned advantages of the per se rule, opponents point out several flaws. For instance, the interested adult standard may require the same worrisome judicial discretion as the totality test regarding who qualifies as an "interested adult." However, recognizing that parents may not always represent the best interests of their children and that an individual who is not a parent or guardian may be able to fulfill the role of an interested adult, this is a necessary danger. The possibility of an inconsistency is outweighed by the threshold of rights guaranteed.

Additionally, some critics believe that requiring the presence of an interested adult is too cumbersome and costly. Illinois lawmakers considered this a key factor when they scaled down their per se rule to include only juveniles under thirteen who were accused of committing specific crimes and required only that such juveniles have a chance for a telephone conversation with a lawyer. Courts have also expressed these same concerns. For example, Chief Justice Sanders, writing for the dissent in In re Dino, lamented that he was "not prepared... to fasten upon our law enforcement officers... inflexible rules... under [which], when parents are unavailable, an investigation must be halted. The requirement of the presence of an attorney

favor of a rebuttable presumption standard. See id. at 991–92. In effect, the Court reverted back to a totality of the circumstances test because, although the presumption that a statement made without the opportunity to consult with an interested and informed adult could be rebutted, this determination was made by a review of evidence to show whether the juvenile was in fact competent. See id. at 992.

See, e.g., Fare, 442 U.S. at 725; Christmas, 465 A.2d at 992; Huang, supra note 96, at 465–67.

See, e.g., In re Dino, 359 So.2d at 599 (Sanders, C.J., concurring in part and dissenting in part); Huang, supra note 96, at 467. But compare In re B.M.B., where Justice Allegrucci of the Supreme Court of Kansas quotes the Louisiana Supreme Court: "the expedient of requiring the advice of a parent, counsel or adviser [is] relatively simple." 955 P.2d at 1312 (quoting in In re Dino, 359 So.2d at 591–93).

See, e.g., Commonwealth v. A Juvenile, 449 N.E.2d at 655. In this case, at a police officer's request, the father brought his two sons to the courthouse for questioning. See id. The officer explained the Miranda rights to the father, who, according to the officer's testimony was "very upset." See id. In fact, he told his sons to tell the officer what they knew, and the two boys subsequently confessed to breaking and entering a sporting goods store. See id. at 657. Because the father insisted his sons tell the officer what they knew, it can be argued that he was not acting in their legal interests, as required by the per se rule. See id. at 655.

See, e.g., In re Dino, 359 So.2d at 599 (Sanders, C.J., concurring in part and dissenting in part); Parsons & Keith, supra note 189.

See Parsons & Keith, supra note 189.

See, e.g., In re Dino, 359 So.2d at 599 (Sanders, C.J., concurring in part and dissenting in part).
adds one more costly burden to our already heavily burdened justice system."

However, the proposed per se rule does offer some flexibility in that if a parent cannot be located or the juvenile does not desire the parent to be present, it still allows interrogation if a lawyer is present. Thus, law enforcement officers will not be forced to waste valuable investigation time, or hold the juvenile for an unnecessarily long time, while they search for a juvenile’s parent.

In addition to the logistical burdens, other opponents express fear that per se rules will hamper police investigations. The Court in *Fare v. Michael C.*, for instance, warned that a per se rule may impose “rigid restraints on police and courts” in dealing with juvenile investigations. Interestingly, observers expressed the same concerns when the Supreme Court first created the Miranda warning. However, its utility in allowing police to carry out their duties in a manner that protects constitutional rights has become so accepted that the *Miranda* warning is now “part of our national culture.”

Like the Miranda warning, per se rules are procedural protections that “inform[s] police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and [they inform] courts under what circumstances statements obtained during such interrogation are not admissible.” These inflexible guidelines not only protect the juvenile but serve society’s interest as well. For example, although there are clearly instances when juveniles overimplicate themselves or confess to actions they did not take, at the same time, confessions that may be valid are getting thrown out under a totality of the circumstance test because police do not have a fixed

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233 *Id.* (Sanders, C.J., concurring in part and dissenting in part).
234 See, e.g., *Fare*, 442 U.S. at 725; Parsons & Keith, *supra* note 189.
235 See 442 U.S. at 725.
236 See Huang, *supra* note 96, at 474. The Supreme Court was “not unmindful of the burdens which law enforcement officials must bear . . . [so that] [t]he limits we have placed on the interrogation process should not constitute an undue interference with a proper system of law enforcement . . . our decision does not in any way preclude police from carrying out their traditional investigatory functions.” See *Miranda v. Arizona*, 384 U.S. 436, 481 (1966).
237 See Huang, *supra* note 96, at 474 (quoting the Supreme Court opinion in *Dickerson v. United States*, 530 U.S. 428, 443 (2000)).
238 *Fare*, 442 U.S. at 718.
239 See, e.g., Evans Osnos & Julie Deardorff, 10-Year-Old's Slaying 'Confession' Barred, CHI. TRIB., July 20, 1999, at 1; *Teen Freed After Decision Rules Out His Confession*, CINCINNATI ENQUIRER, June 9, 2000, at D02 [hereinafter *Teen Freed*].
standard to follow when determining if a waiver is proper.\textsuperscript{240} Again, this determination will be left up to the judiciary, which is not consistent in its application of subjective factors.\textsuperscript{241} Clearer guidelines, if they are followed, may prevent this from happening.

Opponents argue, however, that valid confessions still may be thrown out under per se rules—and juvenile delinquents may be set free—because of a "technicality."\textsuperscript{242} This argument may be refuted when several premises are taken together and the language of \textit{Miranda v. Arizona} is closely examined. First, and most importantly, under the Constitution, an individual's Fifth Amendment right is by no means a mere technicality.\textsuperscript{243} The Supreme Court in \textit{Miranda} discussed, at length, the historical foundation and application of the "long recognized"\textsuperscript{244} right that is a fundamental aspect of our adversary system.\textsuperscript{245} Additionally, the Court emphasized that individuals not only have this Constitutional right, but must be aware of it and understand it to effectuate the right.\textsuperscript{246} This is why the Court found it necessary to implement clear-cut procedures to ensure awareness and understanding in the form of the Miranda warning.\textsuperscript{247}

\textsuperscript{240} See Osnos \& Deardorff, supra note 239; \textit{Teen Freed}, supra note 239.
\textsuperscript{241} See discussion infra Part IV.
\textsuperscript{242} See, e.g., Osnos \& Deardorff, supra note 239. For instance, a confession may be thrown out because the Miranda warning was not explained to the interested adult. See, e.g., \textit{Christmas}, 465 A.2d at 991; see also Devine, supra note 10, at 16. For example, Richard A. Devine, a Cook County state's attorney, wrote a commentary in the \textit{Chicago Tribune} de­crying the suppression of a nine year old's incriminating statement to the police. See Devine, supra note 10, at 16. The judge believed that the child did not understand his Miranda warning. See id. Devine, however, emphasized the impact of a juvenile's crime on the community, as well as the repercussions of the crime for the juvenile himself. See id. He wrote:

[t]herefore the question of whether to 'throw out' a juvenile's confession is more complex than merely looking at the juvenile's age. If a juvenile under 10 is involved in a murder, or any serious crime, something has gone terribly wrong in that young person's life even before the crime was committed .... I recognize that views diverge on whether it is ever possible for a juvenile to waive his or her rights under such circumstances. But, under Illinois law, if we are to address the underlying problems that cause a juvenile to commit such a crime, we have no alternative but to proceed in a juvenile system that has become increasingly adversarial in nature, not always to the benefit of ... the accused.

\textit{Id.}

\textsuperscript{243} See \textit{Miranda}, 384 U.S. at 442, 476–77.
\textsuperscript{244} See \textit{id.} at 442.
\textsuperscript{245} See \textit{id.} at 476–77.
\textsuperscript{246} See \textit{id.} at 468–69, 471–72.
\textsuperscript{247} See \textit{id.} at 460, 467–68.
When juveniles are involved, it is important to additionally factor in the previous discussion that juveniles do not fully understand what it means to have a constitutional right because of their psychological and cognitive development. To uphold Miranda's intent that individuals must understand their rights, then, it is necessary to go beyond the per se warning required for adults when a juvenile is under interrogation. Thus, the implementation of a per se rule that requires the presence of an adult during interrogation for juveniles sixteen and under is not a technicality, but the means of ensuring that juveniles understand and apply a fundamental constitutional right. Any logistical or economic burden that such a rule imposes upon the juvenile justice system is a necessary one in light of its essential protective function.

B. Child-Proof Language

In addition to the per se rule, another interrogation safeguard that should be implemented by police officers during interrogations is the use of simple language that is more comprehensible to juveniles. Evidence suggests that Miranda rights should be modified when administered to juveniles to make them more comprehensible. In 1985, the Supreme Court of New Hampshire heeded this advice in State v. Benoit by suggesting that a juvenile needs to be informed of his constitutional rights in a language understandable to a child. The court suggested that a child should be told "You have the right to remain silent. This means that you do not have to say or write anything. You do not have to talk to anyone or answer any questions we ask you. You will not be punished for deciding not to talk to us." A simplified warning, of course, does not "diminish the potentially intimidating nature of a police interrogation ...." This is why clear, understandable warnings must be used in conjunction with other

248 See Beyer, supra note 37, at 35; Grisso, supra note 60, at 30.
249 See 384 U.S. at 444-45.
250 See, e.g., In re B.M.B., 955 P.2d at 1312.
251 See Miranda, 384 U.S. at 481.
252 See State v. Benoit 490 A.2d 295, 300, 304 (N.H. 1985); Chao, supra note 1, at 547.
253 See Chao, supra note 1, at 526; Grisso, supra note 96, at 1161.
254 See 490 A.2d at 304.
255 Id. at 306-07.
256 See Grisso, supra note 96, at 1162.
safeguards, such as the required presence of an interested adult, to ensure that a juvenile fully understands his rights. 257

Similarly, state legislatures need to mandate that state and local police departments research and develop an interview technique that is more reflective of a juvenile’s psychological development, and then train personnel in the implementation of these techniques. 258 Although some states do have legislation regarding police training programs on the handling of juvenile matters, the legislation does not specifically address the issue of juvenile interrogation. 259 For example, a Connecticut statute provides that “[e]ach police basic training program conducted or administered by the Division of State Police within the Department of Public Safety shall provide a minimum of twenty-seven hours of training relative to the handling of juvenile matters.” 260 This statute, however, only makes the general requirement that part of this training must be related to “information relative to the processing and disposition of juvenile matters.” 261 Likewise, Florida created a Juvenile Justice Standards and Training Commission “to enable the state to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, [and] law enforcement officers” but, again, it never specifically mandates training procedures related to juvenile interrogation. 262

Individuals working with juveniles in interrogations may find it useful to examine, for instance, the various protocols for proper questioning of children currently used in suspected child abuse situations. 263 These protocols generally mandate that a mental health professional be present during questioning and prohibit the use of leading or suggestive questions. 264 They were developed in large part in the wake of several high-profile child abuse cases, such as the California McMartin preschool case, in which children made false accusations of sexual abuse. 265 It seems that the abundance of high-profile false confessions resulting from juvenile interrogations would warrant a similar solution. 266

257 See id.
258 See Beyer, supra note 37, at 35.
259 See, e.g., CONN. GEN. STAT. ANN. § 7–294h (West 2000).
260 See § 7–294h.
261 See id.
263 See Bach, supra note 9.
264 See id.
265 See id.
266 See id.
Again, a look at *In re B.M.B.* illustrates the need for this protocol.\(^\text{267}\) There, the Supreme Court of Kansas explicitly agreed that the taped transcript showed that the detective "[misled] B.M.B. into thinking that the situation was not serious by failing to tell [him] he was under arrest and facing a very serious charge and by acting as if he were a pal rather than a law enforcement officer."\(^\text{268}\) After B.M.B. denies several times that he touched the girl, the detective clearly leads the boy, asking, "You didn't mean to hurt her, did you? ... I mean was it an accident?"\(^\text{269}\) When the juvenile starts to reply "I don't see how I could have touched though cause all I was doing was putting sand on her . . .," the detective interrupts him to say, "but your hand touched her down there, didn't it? You know, it's okay . . . . [i]f you talk to me and let me know we can help."\(^\text{270}\)

At a hearing on the motion for a new trial, a psychiatrist testified that, "I have to say, unfortunately, [that this interview is] probably the worst I have seen in my career."\(^\text{271}\) In reference to the use of suggestive and leading questions and comments, he said:

> [t]hese are techniques that law enforcement people, to my knowledge, are trained to use with adult suspects . . . . They are wholly inappropriate for use with ten-year-old children. . . . Even in settings where less pressure, less suggestion and less coercion has been studied, we found substantial numbers of children will agree with things that are factually inaccurate . . . perhaps as many as half of all children interviewed in this way would have given some minimal agreement to what was being suggested to them . . . ."\(^\text{272}\)

The Supreme Court of Kansas pointed out a further problem, explicitly mentioning that the detective and juvenile did not "shar[e] a vocabulary for the subject. [In fact] the transcript leaves the reader wondering if the two are talking about the same thing . . . ."\(^\text{273}\)

Juvenile advocates warn that "it is imperative that everyone involved in the [juvenile] justice system reconsider the important role immaturity plays in a juvenile's commission of a crime and compe-

\(^{267}\) See *In re B.M.B.*, 955 P.2d at 1308.

\(^{268}\) See id.

\(^{269}\) See id. at 1309.

\(^{270}\) See id. at 1305.

\(^{271}\) See id. at 1305–06.

\(^{272}\) See *In re B.M.B.*, 955 P.2d at 1309.

\(^{273}\) Id.
tency to aid in his or her own defense."274 This may require, for instance, evaluators "who are skilled at a culturally sensitive assessment of adolescent development ...."275 In terms of interrogation, this means that law enforcement officials need to use words that are not confusing to children when giving them a Miranda warning, as well as when questioning them.276 Law enforcement officers need to stop using leading questions filled with suggestive words that serve to manipulate a juvenile.277 They must not be allowed to suggest intent, as was the case with thirteen-year-old Latasha.278 Instead, police officers need to let a juvenile show, by answering with his own words, whether he "agreed" or "acquiesced."279

CONCLUSION

In June 2000, an Ohio appeals court threw out a fourteen year old's murder conviction because it believed the boy had been coerced into confessing.280 The court reasoned that the line of questioning the juvenile was subjected to would "lead any twelve-year-old to believe 'that he had no choice but to submit and confess.'"281 In April 1999, a Texas appeals court threw out the juvenile conviction and twenty-five-year sentence of Lacresha Murray, who was eleven years old when she confessed to the murder of a young toddler.282 An editorial in the Washington Post said that after reading the transcript of Lacresha's interrogation, it was "hard to escape the conclusion that investigators were playing a sort of hardball to which no child should be subjected if the goal is to get the truth from her."283

274 Beyer, supra note 37, at 35.
275 Id.
276 See id.; Young, supra note 8.
277 See Young, supra note 8.
278 See id.; discussion supra Part I.
279 See id.
280 See Teen Freed, supra note 239.
281 Id.
282 See Interrogating Children, WASH. POST, Apr. 20, 1999, at A22. Although the conviction was based on the court's view that Lacresha had not been properly apprised of her rights, the transcript of her interrogation suggests elements of coercion. See id. For example, according to a May 1999 article in the St. Petersburg Times, Lacresha's "taped confession indicates that she told police almost 40 times that she did not hurt [the toddler]." Blumner, supra note 8. Eventually, she agreed that she may have dropped the toddler, and with more coaching from the detectives who knew that the toddler's injuries could not be fully explained by being dropped, she told them she may have accidentally kicked her, too. See id. "Police then wrote out a confession, and LaCresha [sic] signed." Id.
283 Interrogating Children, supra note 282.
Cases similar to that of A.M. or Latasha or Lacresha will keep recurring unless steps are taken to prevent law enforcement officials and prosecutors from exploiting the inherent naivete and immaturity of juveniles. Instead, states must require them to take into consideration the nuances of adolescent psychological development. In terms of procedural protections, this means implementing per se rules and undertaking interviews with language that is comprehensible to juveniles. Only then will a juvenile’s Fifth Amendment right be protected.

284 See Ken Armstrong et al., Cops and Confessions, CHI. TRIB., Dec. 18, 2001, at 1. A Chicago Tribune article reported that “since 1991, police from Cook County law enforcement agencies have obtained at least 71 murder confessions from suspects age 16 and under that were so unconvincing or improper that the courts threw them out, prosecutors dropped the charges or the juveniles were acquitted at trial.” See id. The Tribune article appeared just as this Note was going to press, and thus it is not incorporated in the discussion. However, the lengthy article references many of the same issues as this Note, and it is a very thorough and informative investigation of how juvenile confessions are often mishandled in Chicago and surrounding areas. See id.