



FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

ISSUES AT A GLANCE

Youth Interrogation: Key Principles and Policy Recommendations

*Fair and Just Prosecution (FJP) brings together recently elected district attorneys¹ as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP provides district attorneys with best practices about a variety of critical and timely topics. For these topics, FJP has additional “Issues at a Glance” briefs and “Key Principles” available on the FJP website, as well as supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.**

OVERVIEW

Without proper protections, interrogations² of children can have serious and harmful ramifications. These include, among others, *Miranda* waivers³ that are not truly knowing and voluntary, coerced and false confessions, wrongful convictions, trauma to young people, and inadmissible evidence obtained through improper interrogations.⁴ In addition to the inherent harm to children and their loved ones these practices cause, these troubling outcomes also result in diminished public confidence in the criminal legal system that, ultimately, erodes public safety and impacts the entire community. **This Statement of Key Principles and Policy Recommendations outlines relevant research, emerging reforms, and best practices regarding the interrogation of children. The**

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¹ The terms “district attorney,” “DA,” or “elected prosecutor” are used generally to refer to any chief local prosecutor, including State’s Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.

² While these best practices and recommendations pertain primarily to interrogations and interviews of youth who are suspects in an investigation, many of these principles also apply to interviews of children as witnesses.

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ See International Association of Chiefs of Police (IACP) (2012), *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation*, <https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>.

“...We owe it to our young people to give them what they need to become resilient, thriving, contributing members of our community.”

— DISTRICT OF COLUMBIA ATTORNEY GENERAL KARL RACINE

accompanying Model Youth Interrogation Policy (set forth in Appendix A) provides language for putting these principles and recommendations into practice.

BACKGROUND

A. Concerns with Youth Interrogations

The brains of young people are still developing in ways that cause them to think and behave differently from adults.⁵ As the U.S. Supreme Court has recognized, these differences are particularly relevant in the context of an interrogation⁶: “A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”⁷ Likewise, the court has noted that “juveniles are more vulnerable or susceptible to negative influences and outside pressures....”⁸

Yet law enforcement officers are rarely trained in developmentally appropriate, trauma-informed, and racially equitable approaches to interacting with youth. As a result, law enforcement often use adult-oriented tactics to interrogate youth, including threats, coercion, deceit, and promises of leniency for cooperation, as well as other strategies which are uniquely powerful when used with children. Likewise, officers may fail to recognize youth with literacy issues, mental illness, or cognitive delays, or youth in a state of shock or under the influence. Legal and policy reform is vital to ensure fair and just outcomes for children and communities.⁹

The consequences of failing to implement safeguards for children are grave. For example, studies estimate that 90% of children, often without any opportunity to consult parents or an attorney, waive *Miranda* rights¹⁰ – a decision that can have severe, lasting repercussions. Indeed, many children do not understand the meaning or import of these protections,¹¹ a natural consequence of the fact that the typical *Miranda* warning requires close to a 9th-grade reading level for full comprehension.¹²

⁵ The Center for Law, Brain & Behavior, *Juvenile Justice & the Adolescent Brain*, Massachusetts General Hospital and Harvard Medical School, <https://clbb.mgh.harvard.edu/juvenilejustice/>.

⁶ *J.D.B v. North Carolina*, 564 U.S. 261 (2011).

⁷ *Johnson v. Texas*, 509 U.S. 350, 359-362 (1993).

⁸ *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

⁹ Strategies for Youth (2017), *Where’s The State? Creating And Implementing State Standards For Law Enforcement Interactions With Youth*, <https://strategiesforyouth.org/sitefiles/wp-content/uploads/2019/10/SFY-Wheres-the-State-Report-May2017.pdf>.

¹⁰ Feld, C. (2013), *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 *Cornell Journal of Law and Public Policy*, 23(1), 429, https://scholarship.law.umn.edu/faculty_articles/286.

¹¹ Research shows that 58% of 11- to 13-year-olds, one-third of 14- and 15-year-olds, and 8% of 16- and 17-year-olds do not understand what the *Miranda* warning means. Even more alarmingly, 78% of 11- to 13-year-olds, 63% of 14- and 15-year-olds, and 35% of 16- and 17-year-olds do not understand why these rights matter. Viljoen, J.L., Zapf, P.A., and Roesch, R. (2006), *Adjudicative competence and comprehension of Miranda Rights in adolescent defendants: A comparison of legal standards*, *Behavioral Sciences and the Law*, 25(1), 1-19, https://www.researchgate.net/publication/6518371_Adjudicative_competence_and_comprehension_of_Miranda_Rights_in_adolescent_defendants_A_comparison_of_legal_standards.

¹² Roger, R. et al. (2013), *The Comprehensibility and Content of Juvenile Miranda Warnings*, *Psychology, Public Policy, and Law*, 14(1), 63-87, 72, <https://njdc.info/wp-content/uploads/2013/12/The-Comprehensibility-and-Content-of-Juvenile-Miranda-Warnings.pdf>.

Children also are particularly vulnerable to pressures inherent in an interrogation setting.¹³ The prefrontal cortex, the portion of the brain responsible for judgment and decision-making, is not fully developed until the mid-twenties. As a result, in the context of an interrogation, young people are less likely to fully consider the long-term implications of confessing to something they did not do, and more likely to say whatever they think is necessary in order to extricate themselves from the interrogation setting and, ideally, go home. They are also especially likely to be influenced by external pressure, having been taught to comply with authority figures, and are more likely to be intimidated by police officers. Moreover, even when interrogations do not result in a false confession, they may still cause or exacerbate trauma, which can have lasting repercussions for young people.¹⁴

Miranda rights are a fundamental constitutional guarantee. They are also primarily intended to safeguard against false confessions, a phenomenon which the Supreme Court has found to be “frighteningly” common, even among adults.¹⁵ This is in part due to psychologically coercive interrogation practices, such as the use of deception (including both false offers of leniency as well as the presentation of false evidence), that have been shown to be likely to produce false confessions.¹⁶ Counterintuitively, innocent individuals may be particularly susceptible to coercive practices; they are often more likely to waive their *Miranda* rights because they believe they have

¹³ Gately, G. (2013), *Why Do So Many Juvenile Suspects Confess to Crimes They Didn't Commit?*, Juvenile Justice Information Exchange, <https://jjie.org/2013/09/23/why-do-so-many-juvenile-suspects-confess-to-crimes-they-didnt-commit/>.

¹⁴ While little scholarship has focused on the trauma of interrogations, several studies have shown that interactions with police officers are often a source of trauma for young people, particularly young people of color in heavily policed communities, resulting in significant mental health and physical consequences. Del Toro, J. et al. (2019), *The criminogenic and psychological effects of police stops on adolescent black and Latino boys*, PNAS, 116 (17), 8261-8268, <https://www.pnas.org/content/116/17/8261>; Jackson, D.B. et al. (2020), *Police stops and sleep behaviors among at-risk youth*, Sleep Health, 6(4), 435-441, <https://pubmed.ncbi.nlm.nih.gov/32305306/>; Jackson, D.B. et al. (2019), *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, J Adolesc Health, 65(5), 627-632, <https://pubmed.ncbi.nlm.nih.gov/31495640/>; Landers, A.J. et al. (2011), *Police contacts and stress among African American college students*, Am J Orthopsychiatry, 81(1), 72-81, <https://pubmed.ncbi.nlm.nih.gov/21219277/>. In addition, interrogations can cause children to feel frightened and helpless, which can lead to trauma responses. See The National Child Traumatic Stress Network, *About Child Trauma*, <https://www.nctsn.org/what-is-child-trauma/about-child-trauma>.

¹⁵ *J.D.B v. North Carolina*, 564 U.S. 261 (2011). This is in part due to coercive interrogation practices. Starr, D. (2019), *This psychologist explains why people confess to crimes they didn't commit*, Science, <https://www.sciencemag.org/news/2019/06/psychologist-explains-why-people-confess-crimes-they-didnt-commit>.

¹⁶ Starr, D. (2019), *This psychologist explains why people confess to crimes they didn't commit*, Science, <https://www.sciencemag.org/news/2019/06/psychologist-explains-why-people-confess-crimes-they-didnt-commit>. One driver of high rates of false confessions in general, and among young people in particular, is the “Reid technique,” which until recently was the near-universal interrogation method taught to police officers in the U.S. *Id.* Under the Reid technique, interrogators begin by looking for non-verbal behaviors that are supposedly indicative of deception. If they conclude that someone’s body language shows that the individual is lying, the interrogator proceeds with an assumption that the individual is guilty and that the purpose of the interrogation is to get them to tell the “truth,” thereby justifying high-pressure tactics to achieve a confession. However, research shows that this approach is fundamentally flawed, as the non-verbal cues that are frequently seen as indicators of deception, such as gaze aversion, are not in fact related to deception, and that law enforcement professionals are only slightly more accurate at identifying deception than a coin flip. Aamodt, M.G. and Custer, H. (2006), *Who can best catch a liar? A meta-analysis of individual differences in detecting deception*, The Forensic Examiner, 9, https://www.researchgate.net/publication/232424344_Who_can_best_catch_a_liar_A_meta-analysis_of_individual_differences_in_detecting_deception.

nothing to hide,¹⁷ and then, under the pressure of a coercive interrogation, may “confess” in order to end the interrogation, wrongly assuming that other evidence will subsequently demonstrate their innocence.¹⁸ In reality though, confessions often trump other evidence, or shape the subsequent investigation so evidence that contradicts the confession – including DNA evidence that excludes the youth or identifies other potential perpetrators – is ignored.¹⁹

False confessions are entirely too common even among adults. Children, however, are especially likely to falsely confess. Thirty-six percent of individuals who have been exonerated for crimes that they were convicted of while children, and 86% of those exonerated for crimes that purportedly occurred before they turned 14, had falsely confessed, compared to only 10% of those exonerated for crimes they were convicted of as adults.²⁰ False confessions can also contribute to ongoing racial disparities that have included the arrest and charging of a disproportionate number of Black children; indeed, a disproportionate percentage of those exonerated after falsely confessing are Black.²¹

B. Necessary Safeguards and Protections for Children

Parental involvement offers limited, but important, protection from coerced and uninformed waivers of rights and from false confessions. As the Supreme Court recognized, parents have a fundamental constitutional right to make decisions about the care and custody of their children.²² Minors are regularly prohibited from making a range of decisions without parental consent. *Miranda* waivers and interrogations are among the most impactful choices that children can face – parents are entitled to have a voice in those decisions.

Parents alone, however, are not a sufficient safeguard, and are no substitute for **legal counsel**, given the complexity and stakes involved in interrogations.²³ Parents may themselves not fully

¹⁷ Kassin, S. and Norwick, R.J. (2004), *Why People Waive Their Miranda Rights: The Power of Innocence*, Law and Human Behavior, 28(2), 211-21, https://www.researchgate.net/publication/8563858_Why_People_Waive_Their_Miranda_Rights_The_Power_of_Innocence.

¹⁸ Starr, *supra* note 11.

¹⁹ Kassin, S.M. (2012), *Why Confessions Trump Innocence*, American Psychologist, 67(6), 431– 445, <https://www.innocenceproject.org/wp-content/uploads/2016/05/Kassin-2012.pdf>.

²⁰ National Registry of Exonerations (2020), *Age and Mental Status of Exonerated Defendants Who Confessed*, <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf>.

²¹ Najdowski, C. (2018), *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects are at Risk for Confessing Falsely*, Psychology, Public Policy, and Law, 2011, Vol. 17, No. 4, 562–591, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3198878.

²² *Troxel v. Granville*, 530 U.S. 57 (2000).

²³ American Academy of Child and Adolescent Psychiatry (AACAP) (2013), *Policy Statement: Interviewing and Interrogating Juvenile Suspects*, https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx; Farber, H.B. (2004), *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, American Criminal Law Review, 41, 1277-1312, https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1060&context=fac_pubs.

“We all want to get to the truth in criminal cases, but interrogation — especially of young people — is a tool that should be wielded carefully.”

— BALTIMORE CITY (MD) STATE’S ATTORNEY MARILYN MOSBY

comprehend the ramifications of a *Miranda* waiver, and may encourage a child to cooperate with the police based on a false expectation that this cooperation will be rewarded and result in a better outcome for the child. They also may want to know more about their child's involvement in the incident at issue and so may view an interrogation as a route to gaining this insight; or may be upset with the child and want the child to "learn a lesson," but fail to appreciate the consequences that the child could face. There are also situations in which parental interests are in direct conflict with their children's interests, including when the child is a suspect in a crime committed by another family member or a parent is a suspected accomplice of the child. It is, therefore, imperative that children also receive the support of legal counsel to ensure that any decisions they make are truly knowing, voluntary, and intelligent. Ensuring that every child receives advocacy, advice, and support from a lawyer throughout the entire *Miranda* advisement and interrogation process has the potential to mitigate some of the harms discussed above – and it is also a right and protection children deserve.

Various other police practices can be highly coercive, as well as traumatic, to youth in interrogation settings. These practices include cuffing and shackling youth in interview rooms and threatening harm if youth do not cooperate.²⁴ It is vital that such policies are prohibited in policy and in practice.

EXAMPLES OF BEST PRACTICES AND STATE PROTECTIONS

States across the country have adopted legislative reforms in recent years aimed at addressing the aforementioned concerns and protecting young people in interrogations. Some recent notable examples include the following:

- In 2016, **New Mexico** prohibited confessions or admissions from being used against a child under age 13 and created a rebuttable presumption that confessions or statements made by 13- or 14-year-olds are inadmissible.²⁵
- Effective as of January 1, 2021, **California** established a non-waivable right for minors to consult with legal counsel prior to a custodial interrogation.²⁶
- Effective as of January 1, 2017, **Illinois** law requires that children under the age of 15 charged with homicides or sex offenses "must be represented by counsel" during the entirety of their custodial interrogations.²⁷

²⁴ Such threats may include threats or harm to family members if youth do not cooperate (such as arrest or search warrants), threatening referral to the department of child welfare to remove youth from their families, the threat that youth will face violence within locked facilities if they do not cooperate to ensure their release, and threats that police will disclose damaging information to others who would harm the youth, if the youth does not cooperate.

²⁵ Children's Code, Delinquency, Basic rights (2016), New Mexico Statutes, NM Stat § 32A-2-14, <https://law.justia.com/codes/new-mexico/2016/chapter-32a/article-2/section-32a-2-14>.

²⁶ Wards – Temporary Custody and Detention (2020), California Welfare and Institutions Code, WIC § 625.6, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=625.6&lawCode=WIC. Kansas and North Carolina have adopted legislation that requires the presence of a parent/guardian or an attorney. While the goals of these statutes are commendable, as discussed above parents *alone* do not provide a sufficient safeguard and in some cases encourage children to waive *Miranda* rights, so in practice these statutes can create an illusion of protection but provide insufficient actual protection.

²⁷ Illinois State Legislature (2016), Public Act 099-0882: An Act Concerning Criminal Law, <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0882>.

- Several states, including **California**,²⁸ **Illinois**,²⁹ **Montana**,³⁰ **New York**,³¹ and **Oregon**³² now require that certain custodial interrogations of children³³ be electronically recorded or presume that statements made by children during custodial interrogations are inadmissible if the interrogation is not recorded.
- In 2021, **Illinois**³⁴ and **Oregon**³⁵ passed bills establishing a presumption that confessions by children are inadmissible if made as a result of a custodial interrogation in which a law enforcement officer knowingly used deception.

Many experts believe there must be other limits as well that define appropriate conditions for the questioning of youth. The U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention and the International Association of Chiefs of Police recommend time limitations on interrogation – a maximum of one hour of interrogation before a substantial break and a total limit of four hours.³⁶ Studies have also shown the importance of recording all interviews with the camera positioned to show the interrogator as well as the young person – when the camera focuses solely on the individual being questioned and the interrogator is not seen, “viewers are more likely to believe that any self-incriminating evidence is voluntary.”³⁷ And in 2010, the American Bar Association (ABA) passed a resolution urging governments to develop a simply worded *Miranda* warning for children.³⁸

²⁸ Examination of the Case, and Discharge of the Defendant, or Holding Him to Answer (2016), California Penal Code, PEN § 859.5, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=859.5&lawCode=PEN.

²⁹ When statements by minor may be used (2014), Illinois Juvenile Court Act of 1987, 705 ILCS 405/5-401.5, <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=070504050K5-401.5>.

³⁰ Custodial Interrogations – Recording, Recordings Required (2009), Montana Code Annotated, Mont. Code § 46-4-408, https://leg.mt.gov/bills/mca/title_0460/chapter_0040/part_0040/section_0080/0460-0040-0040-0080.html.

³¹ Rules of evidence; admissibility of statements of defendants, New York Criminal Procedure Law, N.Y. Crim. Proc. Law § 60.45, <https://www.nysenate.gov/legislation/laws/CPL/60.45>.

³² Recording of custodial interviews of juveniles, Oregon Revised Statutes, ORS 133.402, <https://www.oregonlaws.org/ors/133.402>.

³³ Some states require all custodial interrogations of children to be recorded, while other states require recording only for delineated types of cases, typically involving particularly serious crimes.

³⁴ Illinois General Assembly (2021), SB2122: An Act concerning courts, <https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeld=SB&DocNum=2122&GAID=16&LegID=134773&SpecSess=&Session=>.

³⁵ Oregon State Legislature (2021), SB418: An Act Relating to law enforcement interviews of persons under 18 years of age, <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB418>.

³⁶ IACP, *supra* note 4 at 8.

³⁷ National Science Foundation (2015), *Camera angle of an interrogation video can actually influence viewers, research finds*, Medical Xpress, <https://medicalxpress.com/news/2015-09-camera-angle-interrogation-video-viewers.html>.

³⁸ American Bar Association (ABA) (2019), *Index of Criminal Justice Policies: 102B: Juvenile Miranda rights, Midyear Meeting 2010*.

“[W]hen children are arrested, their lives are forever changed.”

— FORMER NINTH JUDICIAL CIRCUIT (ORANGE AND OSCEOLA COUNTY, FL) STATE ATTORNEY ARAMIS AYALA

KEY PRINCIPLES AND BEST PRACTICES FOR YOUTH INTERROGATIONS³⁹

To safeguard children's rights, avoid traumatizing young people, promote justice, and protect the community from the harms of false confessions and coercive practices, FJP urges prosecutors and policymakers to adopt the following policies regarding interrogations of children who come in contact with the criminal legal system. The guidelines and recommendations set forth below are not intended as a complete guide for law enforcement officers, rather they offer an overview of key principles and best practices for prosecutors and policymakers committed to protecting the rights of youth.

- 1. Evidentiary and trial use of statements by children younger than 14 should be prohibited.** Children this young cannot be deemed to have "voluntarily" waived their rights, and the risk of false confessions is simply too high.⁴⁰ This prohibition is critical given that, as of January 2021, over half of the states in the U.S. have no minimum age for prosecution, making the proactive need to protect children even greater.⁴¹
- 2. Both a parent or legal guardian and an attorney should be present for the entire *Miranda* and interrogation process,** and the child should be able to consult with either or both of them in private. In rare situations in which the parent/guardian is either a complainant or is suspected of being an accomplice in the offense under investigation, or is actively hostile towards the youth, the youth should be given the opportunity to have another supportive adult present. And the presence of legal counsel should be *nonwaivable*.
- 3. The entire *Miranda* and interrogation process should be video and audio recorded,** with both the interrogator and young person visible.⁴² This will avoid any uncertainty about what transpired and help ensure that best practices are followed.

³⁹ This guidance incorporates recommendations from numerous experts and organizations, including the American Academy of Child and Adolescent Psychiatry, the International Association of Chiefs of Police (IACP), the American Bar Association, and the American Law Institute. American Academy of Child and Adolescent Psychiatry (AACAP) (2013), *Policy Statement: Interviewing and Interrogating Juvenile Suspects*, https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx; International Association of Chiefs of Police (2012), *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, <https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>; American Bar Association (ABA) (2019), *Index of Criminal Justice Policies: 102B: Juvenile Miranda rights*, Midyear Meeting 2010; 8A, Midyear 2004; American Law Institute (2018), *Section 14-2. Interrogation and the Admissibility of Statements*, in *Restatement of the Law: Children and the Law, Tentative Draft No. 1*, <https://texasscorecard.com/wp-content/uploads/2019/07/ALI-Restatement.pdf>. The draft was approved by the membership at the 2018 Annual Meeting, subject to the discussion at the Meeting and to the usual editorial prerogative. This material may be cited as representing the Institute's position until the official text of the entire project is published, <https://www.ali.org/publications/show/children-and-law/>.

⁴⁰ As noted above, New Mexico law prohibits confessions, statements, or admissions from being introduced against a child under age 13. *Children's Code, Delinquency, Basic rights* (2016), New Mexico Statutes, NM Stat § 32A-2-14, <https://law.justia.com/codes/new-mexico/2016/chapter-32a/article-2/section-32a-2-14>.

⁴¹ National Juvenile Justice Network (2021), *Raising the Minimum Age for Prosecuting Children*, <https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children>.

⁴² Kassin, S. and Thompson, D. (2019), *Videotape All Police Interrogations*, The New York Times, <https://www.nytimes.com/2019/08/01/opinion/police-interrogations-confessions-record.html>.

4. Interrogators should administer **Miranda warnings** to youth using **developmentally appropriate language that is easier for young people to understand**.⁴³
5. **The knowing use of deception** by law enforcement during the interrogation process should be **prohibited**.⁴⁴
6. Interrogations should occur **at a time** when the young person would normally be awake and alert.
7. The **physical setting** of the interrogation should be developmentally appropriate and **designed to reduce coercion**. Youth should not, for example, be cuffed or shackled, and preferably only one officer should be present.
8. Interrogation sessions should be **limited to two hours** (with breaks every hour), should not be allowed to go longer without approval by the prosecutor's office, and in no instance should they go longer than four hours. Lengthy interrogations can wear young people down and increase the risk that they will make false or involuntary statements.⁴⁵
9. Interrogators should use **practices designed to identify facts** about the underlying events rather than to elicit incriminating statements. The goal of questioning should be to obtain accurate and reliable information, while seeking to minimize the amount of undue coercion used and treating youth with dignity and fairness.⁴⁶ In particular, guidance around appropriate practices should include the following:
 - Interrogators should use **open-ended, rather than leading questions**, and should avoid providing the youth with information about the crime, crime scene, or other evidence.
 - Interrogators **should not use "behavioral analysis"** to make determinations about whether a young person is lying based on non-verbal information or body language. Normal adolescent behaviors such as slouching or avoiding eye contact can be easily mistaken as signs of deception.
 - Interrogators **should not make statements suggesting benefits to the young person if they confess or suggesting negative consequences** if they do not.

⁴³ For example, the King County (Seattle), WA Sheriff's Office requires the following questions and statements be read to minors in addition to the regular *Miranda* warning:

1. You have the right to remain silent, which means that you don't have to say anything.
2. It's OK if you don't want to talk to me.
3. If you do want to talk to me, I can tell the juvenile court judge or adult court judge and Probation Officer what you tell me.
4. You have the right to talk to a free lawyer right now. That free lawyer works for you and is available at any time – even late at night. That lawyer does not tell anyone what you tell them. That free lawyer helps you decide if it's a good idea to answer questions. That free lawyer can be with you if you want to talk with me.
5. If you start to answer my questions, you can change your mind and stop at any time. I won't ask you any more questions.

Juvenile Waiver of Rights:

1. Do you understand? (If yes, then continue to number 2)
2. Do you want to have a lawyer? (If no, then continue to number 3)
3. Do you want to talk with me? (If yes, then proceed with questioning)

⁴⁴ Even Reid and Associates, one of the primary trainers of interrogators worldwide, and the architects of the "Reid Technique" suggest that the use of "fictitious evidence" should not be used with children under 10 or with low social maturity or diminished mental capacity. Reid (2013), *Criminal Interrogation and Confessions*, 5th edition, 254.

⁴⁵ IACP, *supra* note 4 at 8.

⁴⁶ See American Law Institute (2019), Principles of the Law: Policing, Tentative Draft No. 2, 99, https://www.ali.org/media/filer_public/8d/95/8d9557ff-9a56-4bd7-bf3b-ebb5b7a622ee/policing_td_2.pdf.

- 10. Law enforcement officers should receive training** on developmentally appropriate, trauma-informed, racially equitable approaches to any interaction with youth.
- 11.** If a young person provides a confession, **prosecutors should take follow-up steps to ensure the reliability of the confession** before it is introduced at trial or used in plea negotiations.⁴⁷ Such follow-up steps should include:
- Reviewing the interrogation video, and carefully verifying that the child's *Miranda* rights were administered properly and the child's waiver was knowing and voluntary;
 - Looking for evidence that, under the totality of the circumstances, the resulting confession was given **voluntarily**;
 - Examining additional evidence regarding the **reliability** of the confession, including corroborating evidence, any signs of contamination, and evidence of whether interrogators complied with interrogation guidelines (such as making a good faith effort to contact the youth's guardian, or continuing to question the youth as a witness after the youth requested an attorney).⁴⁸
- 12.** DAs should work with law enforcement partners to **adopt interrogation policies consistent with best practices**, and ideally **decline to use** (for charging decisions, in plea negotiations, or as trial evidence) confessions obtained in a manner inconsistent with those policies.
- 13.** On a regular basis, prosecutors should **audit law enforcement agencies' youth interrogation practices** to ensure agencies' adherence to youths' constitutional protections.
- 14.** DAs should create and promote **training for line prosecutors on youth development, trauma, and interrogation best practices**, to ensure that all staff are adequately prepared to assess the reliability of statements made during interrogations.

CONCLUSION

We recognize that these practices will limit, or in some cases preclude, law enforcement officers' ability to interrogate children and/or prosecutors' ability to make use in court of information obtained through interrogations of children. History has demonstrated, however, that in the absence of sufficient and rigorous standards and safeguards, interrogations of children too frequently result in coerced and false statements, miscarriages of justice, and tremendous harm to young people – all of which in turn undermine confidence and trust in the criminal legal system and thereby erode public safety.⁴⁹

⁴⁷ International Association of Chiefs of Police (IACP) (2012), *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, 13, <https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>.

⁴⁸ For a detailed framework for assessing the reliability of confessions, see Leo, R. et al. (2008), *Bringing Reliability Back in: False Confessions and Legal Safeguards in the Twenty-First Century*, *Wisconsin Law Review*, Vol. 2, 531–535, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1134948.

⁴⁹ See Mosby, M. and Krinsky, M. (2019), *The Baltimore exonerees' cases shed light on the need for reforming youth interrogations*, *The Washington Post*, https://www.washingtonpost.com/opinions/local-opinions/the-baltimore-exonerees-cases-shed-light-on-the-need-for-reforming-youth-interrogations/2019/11/27/e7e22570-1099-11ea-b0fc-62cc38411ebb_story.html. The Exonerated Five (formerly known as the Central Park Five) is the most well-known example (Salaam, Y., Richardson, K. and Santana, R. (2021) *We Are the 'Exonerated 5.' What Happened to Us Isn't Past, It's Present.*, *The New York Times*, <https://www.nytimes.com/2021/01/04/opinion/exonerated-five-false-confessions.html>), and numerous others are listed in the National Registry of Exonerations (<https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&SortField=Ae&SortDir=Asc>).

Elected prosecutors and other law enforcement leaders have a responsibility to pursue justice, protect all members of their communities, and avoid repeating mistakes that have condemned numerous individuals to spend decades behind bars for crimes that they did not commit. Rethinking our flawed approach to youth interrogations is a necessary step towards achieving those fundamental and vitally important goals.

FOR MORE INFORMATION: Contact FJP at info@fairandjustprosecution.org



APPENDIX A MODEL POLICY

(1) Inadmissibility [*Presumptive Inadmissibility*] of Statements

Preferable version that aligns with best practices: For youth under age 14, all statements resulting from interrogation are inadmissible.

Alternative version: For youth under age 14, all statements resulting from interrogation are *presumptively inadmissible*. This presumption can be overcome in extraordinary circumstances *only if* all of the following conditions are met:

- The youth had *both* counsel and a parent or guardian present at the time of the statement;
- Counsel as well as the parent/guardian *all agreed* that the youth should waive his/her rights and make a statement;
- There are *indicia of reliability*⁵⁰; and
- There is *substantial corroboration* of the statement.

(2) Presence of Counsel and a Parent or Legal Guardian

Youth under age 18 must have *both* a parent/legal guardian and attorney present for the entire *Miranda* and interrogation process. The child must be afforded an opportunity to consult with these individuals in private, including the opportunity to consult privately solely with their attorney outside the presence of a guardian or parent, prior to the interrogation, and should be able to consult with them in private at any time during the interrogation.

(a) Exceptions

A parent/legal guardian will *not* be permitted to consult with the youth or be present during the interrogation when the parent/legal guardian is:

- A complainant in the offense under investigation;
- Suspected of being an accomplice in the offense; or
- Demonstrates hostility towards the youth, which must include a credible threat of violence or other forms of retaliation (e.g. barred from returning home, sent to live with others, etc.).

In the event that any of the above apply, the youth shall be informed by the interviewer that they can have the presence of another supportive adult before any interrogation begins. If a parent or guardian cannot be located after a good faith effort, interrogation may proceed in the presence of counsel. No interrogation may proceed without counsel present.

(b) Documentation

Interrogators should document the use of any exceptions, along with the basis for that exception as well as attempts to offer alternatives.

(c) Inadmissibility of Statements after Waiver of Rights without Counsel

If the youth waives the youth's right to counsel or right to remain silent in the absence of counsel, all statements rendered during the ensuing interrogation are deemed inadmissible.

⁵⁰ To assess reliability, prosecutors should weigh three factors: (1) whether the statement contains nonpublic information that can be independently verified and would only be known to one involved in the offense, and cannot likely be guessed by chance; (2) whether the statement leads the police to new evidence about the crime; and (3) whether the youth's postadmission narrative "fits" (or fails to fit) with the crime facts and existing objective evidence.

(3) Recording of Interrogations

Any interviewers conducting an interrogation of a youth must make both video and audio recordings of the interrogation in its entirety, including the advisement of rights and any breaks. In the event that circumstances do not allow for video recording, an audio recording must always be made.

These conditions apply to any interrogation, including whether the conduct under investigation is a misdemeanor or a felony. The video camera must be positioned so that both the interrogator and youth are visible to viewers.

(4) Youth *Miranda* Warnings

Interviewers shall read the traditional *Miranda* warning, and then read a youth-focused *Miranda* warning. This should occur *in the presence of both counsel and the parent/legal guardian/supportive adult*.

The content of the youth-focused *Miranda* warning should include simplified language understandable to the youth, such as the following:

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

Before any Waiver of Rights by the Juvenile:

6. I want to make sure you understand what I have told you. Can you explain in your own words what I said?
7. Do you want to talk with me? (If yes, then proceed with questioning)

(5) Content and Confines of Interrogation

(a) Interviewers shall not use deception during interrogations. Deception is defined as express misstatements about the existence of evidence, the use of false expressions of sympathy for a suspect in order to establish a better rapport, or the employment of lies in the interrogation to mislead the suspect. More specifically, interviewers must not tell the youth that if they assist with the investigation, confess, or "tell the truth" they will be able to "go home" or receive any other benefits such as leniency or advocacy on behalf of the youth with the court.

(b) In order to avoid contamination, interviewers should not use leading questions or disclose key facts during interrogations.

(6) Timing of Interrogation

An interrogation should occur at a time when the young person would normally be awake and alert.

(7) Time Limits

Each interrogation session shall be limited to a total of two hours, with approval by the District Attorney/elected chief prosecutor and documentation of approval before interviewers proceed beyond that limit. In no instance should an interrogation session last longer than four hours. A break of at least 30 minutes shall occur after the first hour, which should include the opportunity for the youth to eat and use the bathroom. If the interviewer receives permission to move beyond the two-hour limit from the District Attorney/chief prosecutor, an hourly break of at least 20 minutes shall still occur after each hour.

(8) Use of Statements

- (a)** Statements and confessions obtained in accordance with these policies should be used in court only if steps have been taken to ensure their reliability. The steps taken by the interrogators and detectives must be documented and reviewed by the prosecutor.
- (b)** Statements obtained in contravention of these requirements cannot be used for any purpose in court.