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JUVENILES ARE NOT ADULTS: JUVENILES SHOULD BE AFFORDED ADDITIONAL
SAFEGUARDS FOR CUSTODIAL INTERROGATIONS.

I. Introduction:

“It’s like I have this overwhelming feeling that I killed her. I don’t know why, but I feel that way. [...] All I know is just for some reason, I can tell I killed her.”¹ This juvenile confessed to the murder of his sister, when eventually DNA evidence revealed he did not in fact kill her. It was a false confession.² Why would a juvenile falsely confess to such a serious crime with such serious consequences? He was somehow really convinced he did it. He began his interrogation, however, with the mindset that he was not responsible for the murder of his sister, but after hours of being in the interrogation process he began to be overwhelmed with a feeling that he killed his sister. He had the overwhelming feeling that he was responsible for the act, but he simply couldn’t remember the details of the event, just the fact that he believed he killed her because he was made to believe he killed her and that there was evidence that pointed to him.³ So, he confessed to the act of murder. Where is the root of the problem with all of this? Custodial interrogations.

¹ Sauer, Mark; Wilkens, John, "Haunting questions: The Stephanie Crowe Murder Case. Part 1: The night she was killed;" "Part 2: The arrest." San Diego Union Tribune (May 11, 1999); "Miscarriages/Travesty of Justice Michael Crowe Case Coerced Confession." Youtube, LLC. Web. Nov. 4, 2014.<https://www.youtube.com/watch?v=yJcqiPxtIXc>. (Quotes by Michael Crowe on the murder of his sister Stephanie Crowe during his video taped custodial interrogation, including an apology letter he wrote to his sister as part of that interrogation).

² Id.

³ Id.

The United States has a vast inconsistency when it comes to procedures for custodial interrogations and especially when it comes to those procedures for juveniles. Also, there are separate procedures at the federal level for when a juvenile is a suspect of a federal violation. Subsequently, there is an array of procedures that differ from state to state for nonfederal violations. Even with some procedures in place, the federal and state systems still lack specific procedures for how such custodial interrogations should be conducted specifically towards juveniles.

In this note I will start by discussing some of the seminal United States Supreme Court cases to illustrate the foundational pieces for custodial interrogations generally, as well as in regards to juveniles. My illustration will include a break down of what custody is and when it is established, and what a waiver of rights is and when a waiver is sufficiently established, all with regards to custodial interrogations. This note will not delve into the third piece of custodial interrogations, about how to establish what an interrogation is; the courts have not spoken on that as of yet in order to expand on it. The courts have, however, spoken on custody and waiver. After I establish those foundational pieces, I will go through some of the current federal police standards for custodial interrogations enacted by statute and then I will illustrate New Jersey and New York's juvenile systems and procedures for custodial interrogation through a comparative analysis, in order to show how two states that are similarly situated have such different treatment in juvenile procedures. Next, I will provide a brief analysis of state police manuals currently in place for interrogations. The final part of my paper will propose a number of different safeguards in juvenile procedures that can help ensure juvenile rights during custodial interrogations. Ultimately, this note will show how the courts have taken some steps towards recognizing

differences between juveniles and adults, but how those efforts are not nearly enough and the courts should expand that recognition to follow through to custodial interrogations as well.

A juvenile is defined as a young person who is not old enough to be legally considered an adult as well as one reflecting psychological or intellectual immaturity.⁴ Some synonyms provided for a juvenile include immature and young and some antonyms include adult and matured.⁵ In the contrary, an adult is defined as one who is fully grown and developed.⁶ Furthermore, a child is defined as “one strongly influenced by another or by a place or state of affairs.”⁷ Simply by reading the clear and unambiguous definitions of what a juvenile or child means compared to what an adult means is alone a sufficient indicator that treatment of each should not be alike. One who, by definition, is generally easily influenced should not be treated similarly to one who, by definition, is mature and developed, especially during custodial interrogations when the possible waiver of fundamental constitutional rights is involved. As a matter of good sub-constitutional policy in protecting juvenile rights, jurisdictions across the country should uniformly adopt special procedural safeguards for juvenile treatment during custodial interrogations.

II. Constitutional Law of Interrogations

This section will demonstrate the various constitutional laws and cases on custodial interrogation. That being said, it will first illustrate the two main United States Constitutional Amendments involved, the Fifth Amendment and the Sixth Amendment. Second, it will focus on case law that illustrates how “custody” is established, along with certain rights that attach, and

⁴ "Juvenile" Def. 1. [Merriam Webster Online](#), Merriam Webster, n.d. Web. 4 Nov. 2014.

⁵ Juvenile" Def. 2. [Merriam Webster Online](#), Merriam Webster, n.d. Web. 4 Nov. 2014.

⁶ "Adult" Def. 1. [Merriam Webster Online](#), Merriam Webster, n.d. Web. 4 Nov. 2014.

⁷ "Child" Def. 5. [Merriam Webster Online](#), Merriam Webster, n.d. Web. 4 Nov. 2014.

then lastly this section will focus on the “waiver” of rights for custodial interrogation purposes. The section will not go into detail about “interrogations” on a constitutional level because the courts have not spoken on it yet, but the courts have spoken on custody and waiver. Essentially, the purpose of this section is to outline where constitutional law currently stands with regards to juveniles.

The Fifth Amendment of the United States Constitution states that no person “shall be compelled in a criminal case to be a witness against himself,” thus protecting a person from self-incrimination.⁸ The Fifth Amendment was interpreted to apply to juveniles as well.⁹ It was applied as a fundamental right to juveniles even though it was also recognized that juvenile proceedings were somewhat different than adult proceedings, taking place in family court.¹⁰ Juvenile proceedings are somewhat different because some juvenile matters are looked at as criminal matters for the cases that lead to adjudicated dispositions of commitment in a state institution, but in the alternative some juvenile matters are seen as civil, and juveniles are still nonetheless afforded this privilege against self-incrimination.¹¹

The Sixth Amendment of the United States Constitution states, “In all criminal prosecutions, the accused shall enjoy the right [...] to have the assistance of counsel for his defense.”¹² The right to counsel is also a privilege afforded to adults as well as juveniles. Both the Fifth and Sixth Amendments have been incorporated into the States pursuant to the

⁸ U.S. Const. Amend. V.

⁹ *In re Gault*, 387 U.S. 1 (1967)

¹⁰ *Id.* at 4.

¹¹ *Id.* at 47,55; shows how special carve outs are made throughout the system to afford juveniles privileges that adults are afforded, while also taking into consideration the very fact that the person involved in the matter is a juvenile.

¹² U.S. Const. Amend. VI

Fourteenth Amendment and the two Amendments are both key rights that the courts have focused on when discussing custodial interrogations.¹³

More than forty years ago, the United States Supreme Court decided the landmark interrogation case, Miranda v. Arizona.¹⁴ The Court held that certain constitutional rights attach when a person is taken into custody.¹⁵ The test for when a person is considered to be in “custody” is an objective one, questioning whether the person was “deprived of his freedom of action in any significant way” by the police, so as to make a reasonable person believe he is not free to leave.¹⁶ Hence, if a reasonable person would not feel free to leave, as in the aforementioned situation, custody is likely to be established. Furthermore, the Court indicated that custodial interrogations include a line of questioning towards a person in custody that is reasonably likely to elicit an incriminating response from that person.¹⁷ In order to make a determination of custody, the Court looks at the circumstances surrounding the interrogation and decides whether under the circumstances a reasonable person would feel free to leave or not.¹⁸

Once custody is established, the Court held that “Miranda” rights attach and the following “Miranda Warnings” must be administered before any custodial interrogation begins: the person has the right to remain silent, anything he says can and will be used against him in a

¹³ U.S. Const. Amend. XIV

¹⁴ Miranda v. Arizona, 384 U.S. 436 (1966)

¹⁵ Id. (A man was taken to the police station and questioned for two hours without any advisement of his fundamental rights. The Court was most concerned with coerced but true confessions violating a person’s right against self-incrimination rather than focusing on due process. The Court found the coercion here to be more psychological and not at the level of coercion seen in earlier cases such as Brown v. Mississippi, 297 U.S. 278 (1936) thereby avoiding due process. [In Brown v. Mississippi, police hung the suspect on a tree while questioning and kept hanging him and then letting him go before killing him. The police used this as a method of custodial interrogation]).

¹⁶ Miranda, *supra*, 384 U.S. at 444.

¹⁷ Id. 445.

¹⁸ Id. at 444.

court of law; the person has the right to an attorney, and if he cannot afford an attorney, one will be provided to him if he so desires.¹⁹

The purpose of “Miranda Warnings” is to protect people from the Fifth Amendment Constitutional right against self-incrimination.²⁰ The solution the Court provided in deciding Miranda serves as a layer of protection against coercive police interrogations, eliciting coerced confessions. The Court stressed that “the modern practice of in-custody interrogation is psychologically rather physically orientated,” further noting that coercion does not necessarily solely mean physical, but mental as well.²¹ Unfortunately, other than the issuance of the “Miranda Warnings” to notify a person in custody of his rights, the Court has provided little guidance as to what is permissible during the actual custodial interrogation as far as how they are conducted.²² The Court has taken time to illustrate the inherent coercive atmosphere and effect such interrogations possess, even on psychological levels, however, the Court has not identified where bright lines can be drawn here. It does not leave any precedent as to what specific types of conduct and what process is in fact *acceptable* for police officers during custodial interrogations; the Court simply made carve outs of *unacceptable* behavior.²³

In recent years, the seminal case JDB v. North Carolina was decided by the United States Supreme Court discussing the “custody” of juveniles for purposes of Miranda.²⁴ Justice Sotomayor emphasized that the history of the justice system is “replete with laws and juvenile

¹⁹ Id. at 444-445.

²⁰ Id. at 512.

²¹ Id. at 437-438

²² Id.

²³ Such as in Brown v. Mississippi, 297 U.S. 278 (1936), with regard to the physical conduct of hanging the suspect during interrogations held as being unacceptable behavior for officers.

²⁴ JDB v. North Carolina, 131 S. Ct. 2394 (2011). (A thirteen-year-old juvenile was questioned by an officer in the presents of two officers and two administrators at school for an alleged burglary and the Court decided whether the age of the juvenile is a relevant factor for a custody analysis of a custodial interrogation.)

recognition that, children *cannot* be viewed simply as miniature adults,” leaving no reason to take a different course in this case.²⁵ The Court held that for the purpose of Miranda, objective custody analysis requires police to take a juvenile’s age into consideration, when the age is known to the officer or should have been known to the officer under an objective analysis, when making the determination of whether and when “Miranda” rights must be issued to the juvenile.²⁶

In reaching its decision, the Court reemphasized the “inherently compelling pressures” of police custodial interrogations as noted in Miranda, and even furthered that such pressures “can induce a frighteningly high percentage of people to confess crimes they never committed.”²⁷ The Court implicitly recognized a reasonable child versus a reasonable standard for adults by noting the common law approach in the Restatement of Torts, which embraces the reality that children are not adults thereby finding that a “person’s childhood is a relevant circumstance to be considered.”²⁸ The Court acknowledges that children or juveniles sit in a different class than adults and noted that in general a juvenile may not even form a binding contract legally or get married without the consent of a parent.²⁹

Ultimately, there are times that a juvenile needs the consent or the presents of an adult or guardian for certain areas in our judicial and legal system. Furthermore, although the Court did not specifically carve out separate procedures for juveniles other than taking the “age” of a juvenile into consideration under the totality of the circumstances in making a determination for custody and issuance of Miranda rights within the already existent objective analysis, the Court

²⁵ Id. at p. 2397, 2404, *citing*, Eddings v. Oklahoma, 455 U.S. 104, 115 (1982). (Internal quotes eliminated)(Emphasis added).

²⁶ JDB, supra, 131 S. Ct. at p. 2404.

²⁷ Id. at 2396-97, 2401, *citing*, Corley v. United States, 556 U.S. 303).

²⁸ JDB, supra, 131 S. Ct. at p. 2404, *citing*, Restatement (Third) of Torts § 10 Cmt. b, 117 (2005), *see also*, Restatement (Second) of Torts § 283A Cmt. b, 15 (1965). (Internal quotes eliminated).

²⁹ JDB, supra, 131 S. Ct. at 2403.

did recognize that “recent studies suggest that the risk is all the more acute when the subject of the custodial interrogation is a juvenile.”³⁰

Accordingly, pursuant to the current standards set forth, there is a two-step objective analysis for custody.³¹

1. What were the circumstances surrounding the interrogation, and
2. Given those circumstances would a reasonable person have felt he or she was at liberty to end the interrogation and leave

Some of the relevant factors examined under the circumstance surrounding the interrogation include: the location the questioning took place, the duration of the questioning, what statements were actually made during the interview, if there were any types of physical restraints apparent during the questioning or absent of such restraints during questions, and whether the person was actually released after the questioning ended.³² As part of those circumstances objectively considered, for juveniles, the Court held that “age,” should be included in the circumstances, “so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.”³³ It can be argued that “age” can be seen an individual or personal characteristic of the juvenile making it a little less objective. The Court here could not ignore the “very real differences between children and adults,” because to ignore such differences “would be to deny children the full scope of the procedural safeguards that Miranda guarantees to adults.”³⁴

Subsequently, after custody is properly established and Miranda warnings are given, the person in custody has the right to waive his right to remain silent and his right to speak to an

³⁰ Id. at 2397,2401.

³¹ Id. at 2402

³² Id. at 2402, *see also*, Howes v. Fields, 132 S.Ct. 1181, 1189-1190 (2012)).

³³ JDB, *supra*, 131 S. Ct. at p. 2406.

³⁴ Id. at p. 2405.

attorney or to have an attorney present. The United States Supreme Court has illustrated that a sufficient waiver must be done so, voluntarily, knowingly and intelligently by the person held in custody.³⁵ In essence, voluntarily would be done without any coercive pressures, and knowingly and intelligently would mean the person is aware of the nature of the rights they are waiving and the consequences that subsequently follow. In regards to public policy concerns, the Court was trying to strike a balance between the effectiveness of police questioning as well as the need to protect people from self-incrimination due to the inherently coercive nature of police interrogations generally.³⁶ The Court decided in Miranda that:

“...Without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.”³⁷

If the person in custody indicates that he wants to invoke his right to remain silent or right to counsel, then the interrogation should cease at that point.³⁸ If, however, the individual in custody is willing to make a statement and does not ask for an attorney, so long as it is done knowingly and voluntarily, it may constitute a waiver of those rights administered in the Miranda warning and the interrogation may commence. The Court sets a high standard of proof for the waiver of constitutional rights, including those formerly mentioned in relation to custodial interrogations, which need to be proven by the State or government to show the sufficiency of a waiver. The Court illustrated in Miranda that “any evidence that the accused was *threatened*,

³⁵ Moran v. Burbine, 475 U.S. 412 (1986) (Overruled in part by Commonwealth v. Rivera, 464 Mass. 56, cert. den.) (Holding that a suspect's knowledge of an attorney's efforts to assist him by contacting the suspect or attempting to, was considered directly relevant to the suspect’s ability to knowingly and intelligently waive his Miranda rights).

³⁶ Miranda, *supra*, 384 U.S. at 436.

³⁷ Id. at 457-58.

³⁸ Id.

tricked, or cajoled into a waiver will, of course, show that the defendant *did not* voluntarily waive his privilege.”³⁹ The aforementioned statement by the Court may be seen as one way the Court has attempted to draw some lines as to what types of behavior are perceived as coercive and not allowed by officers during custodial interrogations. The administration of the Miranda warnings coupled with a sufficient waiver is generally seen as prerequisites to the admissibility of the statements made by the person in custody.

The Court has acknowledged that at times the person’s statement in custody can be somewhat ambiguous as to whether the suspect is actually trying to invoke his Miranda rights to remain silent and more so the right to counsel.⁴⁰ Although not held as precedent, the Court did see it important to note that it *would be* “good police practice” for officers conducting interrogations, to ask some questions to clarify when it is unclear as to the person’s requests for counsel.⁴¹ This dicta shows that the Court can see some areas where the system in policing during custodial interrogations has room for improvements as good policy and for better police practice.⁴² Unfortunately, however, the Court did not take steps to elaborate on this so as to create any bright line rule for interrogations to be used for future purposes.

Further, it has been noted by the courts that silence alone does not constitute a waiver of Miranda.⁴³ The waiver of Miranda may be said expressly or may be inferred by the actions or words by the individual held in custody. The State or government must show, by a preponderance of the evidence, that, based on the totality of the circumstances the person in custody understood his rights and knowingly and intelligently intended to waive those rights.⁴⁴

³⁹ Id. (Emphasis added)

⁴⁰ Davis v. United States, 512 U.S. 452 (1994).

⁴¹ Id.

⁴² Id.

⁴³ Miranda, supra, 384 U.S. at 475.

⁴⁴ Id. at 436.

In the juvenile matter of Fare v. Michael C, the United States Supreme Court looked to Miranda in that, “if the accused indicated in any matter that he wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial.”⁴⁵ While in custody, a juvenile had asked to speak with his probation officer after his Miranda warnings were administered.⁴⁶ His probation officer was not provided and the juvenile in turn eventually continued, by speaking with the police officer.⁴⁷ Initially, the California lower court denied the juvenile’s motion to suppress those statements made, holding that the juvenile waived his right to remain silent.⁴⁸ The California Supreme Court then, in turn, reversed the lower court, holding that the juvenile’s request for his probation officer *should have been considered a “per se invocation” of his Constitutional Fifth Amendment right*, in the same way that a person in custody may request for an attorney.⁴⁹ That court saw the probation officer as a “trusted guardian” in the juvenile’s life.⁵⁰

The United States Supreme Court, however, ultimately overturned the California Supreme Court’s decision, reasoning, “A probation officer is not in a position to offer the type of legal assistance necessary to protect the Fifth Amendment rights of an accused undergoing custodial interrogation that a lawyer can offer.”⁵¹ The Court did, however, lay out some factors the courts should consider when assessing the totality of the circumstances of the sufficiency of a juveniles waiver including; age, education, experience, intelligence, background, understanding

⁴⁵ Fare, 442 U.S. 707, 709 (1979), *citing to*, Miranda, supra, 384 U.S. at 444-445, 473-474.

⁴⁶ Fare, supra, 442 U.S. at 710.

⁴⁷ Id. at 710-712.

⁴⁸ Id. at 710-712.

⁴⁹ Id. 713-714 (Emphasis added).

⁵⁰ Id. at 713.

⁵¹ Id. at 719-722.

of his Miranda rights, and understanding of the consequences that attach when agreeing to waive those rights, but still as an objective analysis.⁵² Accordingly, the Court held the age of a juvenile to merely be one of the many factors in a totality of the circumstances objective analysis of the situation at hand and not a dispositive one. The system fails to give juveniles the protections they need, in terms of sufficiently waiving their Constitutional rights, because in general they “lack the psychosocial and cognitive maturity to consider the consequences of a waiver of rights or the ability to reason how to make this decision.”⁵³

III. Sub-Constitutional Regulations:

This section will illustrate legislative and local juvenile custodial interrogation regulations. The first section will focus on the federal legislations, the second section will focus on state regulations specifically with a discussion on a comparative analysis of New Jersey and New York, and then the third section will briefly discuss current police training methods for conducting interrogations. Generally, police officers have little guidance from the courts as to the appropriateness of custodial interrogations. Very few rules are provided for the actual custodial interrogation, once warnings have been given. Some hints were set forth in Brown v. Mississippi with regards to coercion that is at the level of physical violence, such as hanging the suspect, being held unacceptable and too coercive to allow for a “voluntary” confession.⁵⁴ The use of such force was an unacceptable measure taken by police, so the Court had to revoke the

⁵² Id. at 725.

⁵³ Kenneth J. King, Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights, 2006 Wis. L. Rev. 431, 431-32 (2006), *citing*, Miranda v. Arizona, *supra*, 384 U.S. at 478-79).

⁵⁴ Brown v. Mississippi, *supra*, 297 U.S. 278 (1936).

confession obtained.⁵⁵ Even though Brown v. Mississippi deals with specific physical actions taken against a suspect while being questioned, the Court still failed to provide a definition for coercion that can be used in future cases as to what is permissible during custodial interrogations.⁵⁶ Then in Miranda v. Arizona, the Court held that pursuant to certain rights found in the Fifth and Sixth Amendments, the suspect in custody is afforded and needs to be read those given rights as a warning prior to any custodial interrogation questioning and in order to ensure the suspect's constitutional rights are protected.⁵⁷ The Court in Miranda was concerned about the inherently coercive environment in a police dominant atmosphere, which is where the "Miranda Warnings" come into play.⁵⁸ Again, these cases provided little guidance or any bright line rules as to what rules and procedures officers may use when conducting interrogations and in trying to obtain lawful confessions.

A. Federal

This subsection illustrates the federal legislation set in place for juveniles. The federal government has enacted a series of statutes for juveniles and in particular one statute that deals with appropriate procedures an officer should follow when juveniles are taken into custody for an alleged federal violation, prior to his appearance before a magistrate judge.⁵⁹ The statute 18

⁵⁵ Id. at 278-280. (The police officers used physical force by tying the suspect from a tree and making it as though they were going to hang him, but letting him down before he actually died from it. The eventually obtained a confession from the suspect. The officers admitted to the tactics they used to obtain the confession and still held that the confession was indeed voluntary because the measures they used were seen as "legal" at the time. The Court looked at the Constitution in holding that the suspect's Constitutional rights were definitely violated by the measures taken).

⁵⁶ Brown v. Mississippi, *supra*, 297 U.S. 278 (1936).

⁵⁷ Miranda, *supra*, 384 U.S. at 436 (1966)

⁵⁸ Id.

⁵⁹ 18 U.S.C.S. §5033

U.S.C.S. §5033⁶⁰ prescribes what general procedures to take place whenever a juvenile is taken into custody for a federal violation. First, the juvenile should be advised his rights by the arresting officer *immediately* and those rights should be advised “in language comprehensive to a juvenile.”⁶¹ The legislature took the time to expressly carve out a need for juveniles to not only be read their legal rights (as in Miranda⁶²), but to be read those rights in a way juveniles can understand those rights. This extra requirement still kept the standards objective, however, by stating that the rights should be read in a *language comprehensive to “a juvenile”* instead of “*the juvenile*,” but it nonetheless is apparent that the legislature intends to illustrate a reasonable juvenile standard and that the treatment of juveniles in custody should be modified and tailored to juveniles specifically as opposed to using a general reasonable person standard for adults and juveniles alike.⁶³

Furthermore, the statute states that the arresting officer needs to “immediately” notify the Attorney General and the juvenile’s parents, guardian, or custodian of the juvenile’s custody status as well as notify the parents, guardian, or custodian of the juvenile’s legal rights and nature of the alleged offense.⁶⁴ The fact that the officer needs to notify parents or guardians and advise them of the juvenile’s situation and aforementioned rights, additionally shows the legislatures intent to differentiate between adults and juveniles because unlike juveniles, adults do not have the need for their parents to be notified that they are taken into custody or of the adult suspect’s rights and alleged offense. The status of merely being a juvenile automatically initiates such additional procedures for the arresting officer in order to assure the juvenile receives the same protection of rights as a similarly situated adult would receive for a federal violation.

⁶⁰ Id.

⁶¹ Id. (Emphasis added).

⁶² Miranda, supra, 384 U.S. at 436 (1966).

⁶³ 18 U.S.C.S. §5033 (Emphasis added).

⁶⁴ Id.

The federal system in the Eighth Circuit interpreted §5033 and held that the requirement for the officer to notify parents or guardians at the time of custody, is intended to be another *safeguard* insuring the juvenile's basic rights to due process violations, as opposed to any constitutional rights or procedural rights such as to have the presents of a parent for a valid confession of the juvenile, holding that juveniles are capable of waiving their own right to remain silent.⁶⁵ This reasoning, however, should be revisited because it appears to be self-contradictory: juveniles are seen to need additional safeguards not afforded to adults in order to protect rights like due process, yet at the same time, juveniles are seen to be fully capable of waiving a right to remain silent without such additional safeguards.

In another district court case, however, the Ninth Circuit illustrated that when the arresting officer informs the juvenile's parents that the juvenile is in custody, pursuant to §5033⁶⁶, the officer must also inform the parents that they will have the opportunity to guide their child before any custodial interrogation.⁶⁷ Additionally, in another district court case, the Ninth Circuit held that a juvenile is entitled to the procedural protections under §5033 even if the age of the juvenile was not available at the time of the arrest or even if the juvenile gave an adult birth date to the officer at the time of the arrest.⁶⁸ This standard differs from the Court's decision in JDB v. North Carolina, where it held that age was a fact to consider in the evaluation of the sufficiency of the interrogation, so long as the age was apparent at the time the juvenile was in custody or, if under an objective analysis a reasonable officer should have been aware of the

⁶⁵ United States v. White Bear, 668 F.2d 409 (8th Circuit, 1982). (The juvenile accused of the rape of a teacher was looked at as a juvenile delinquent within the meaning of the Federal Juvenile Delinquency Act, 18 U.S.C.S. §5033.)

⁶⁶ 18 U.S.C.S. §5033.

⁶⁷ United States v. Female Juvenile, 255 F3d 761, 762, 766-767 (9th Cir. Cal. 2001).

⁶⁸ United States v. Juvenile Male, 2010 U.S. App. LEXIS 1686, 37-38, 61-62 (9th Cir. Cal. 2010).

age.⁶⁹ As a general blanket, however, the United States Supreme Court has held that Miranda is a constitutional rule that governs the admissibility of statement derived from custodial interrogations at both the state and federal level and *cannot* be superseded legislatively.⁷⁰ The states have accordingly used Miranda as a foundation and floor for such proceedings, but still establish their own nuances they see fit to add layers to the state’s juvenile justice system.

B. New Jersey and New York Comparison

The police standards for custodial interrogations vary from State to State. The standards differ as to the treatment of adults and whether or not the State recognizes special standards for juveniles. It is helpful to see how some states vary in general when it comes to the treatment of juveniles with regards to custody, Miranda warnings, and custodial interrogations. This subsection includes a comparative analysis of two bordering states, New Jersey and New York. The subsection will show how their two systems vary in treatment for juvenile procedures.

In New Jersey, the courts have recognized some differences in treatment that needs to be afforded specifically to juveniles with regards to “Miranda Warnings.”⁷¹ The warnings must be administered, but the analysis for a juvenile is whether, during the custodial interrogation, the juvenile was “treated with the utmost fairness and with every consideration that his age and all surrounding circumstances indicated should be accorded to him.”⁷² Also, if the juvenile “is not old enough to understand and waive, and the parents cannot be found or cannot or will not attend, [the court held] that the questioning may go forward, even without the Miranda warnings”; New Jersey allows for the questioning to continue if it is “conducted with the utmost

⁶⁹ JDB, *supra*, 131 S. Ct. at 2406.

⁷⁰ Dickerson v. United States, 530 U.S. 428 (2000); Miranda, *supra*, 384 U.S. 436 (1966).

⁷¹ Miranda, *supra*, 384 U.S. 436 (1966).

⁷² State in the Interest of R.W., 115 N.J. Super. 286, 295 (App. Div. 1971), *aff’d* 61 N.J. 118 (1972); Miranda, *supra*, 384 U.S. 436 (1966).

fairness, without force or other improper influence, mental or physical, and in accordance with the highest standards of due process and fundamental fairness.”⁷³ The formerly listed statement can be seen as the State’s attempt to illustrate inappropriate conduct during interrogations and an attempt to eliminate the psychological tactics that officers often use to obtain confessions. New Jersey clearly affords juveniles a higher level of protection during custodial interrogation because of the juveniles very nature of being more susceptible to the psychological tactics officers use, noting that the officers conducting the interrogations are not only adults but also in positions of authority.⁷⁴

Furthermore, in New Jersey the police officer should make reasonable efforts to contact the juvenile’s parents or guardian and should have them present during any juvenile custodial interrogations because of the inherently coercive nature of the questions and the juvenile’s susceptibility to psychological coercion more easily than a similarly situated adult.⁷⁵ New Jersey finds that the presents of a parent during the interrogation process not only protects the interest of the juvenile, but also serves as a protection for the truthfulness of the statements made by the juvenile.⁷⁶ Also, interestingly, New Jersey requires that the state prove the voluntariness of a waiver by the higher standard of beyond a reasonable doubt, not just by a preponderance of the evidence.⁷⁷

Comparatively, in New York, the juvenile must notified his Miranda rights, but a parent or guardian is not seen as necessary during a custodial interrogation.⁷⁸ The State has held that a juvenile is capable of voluntarily making a confession without the need of a parent, guardian, or

⁷³ State in the Interest of R.W., 115 N.J. Super. at 296.

⁷⁴ State in the Interest of B.T., 145 N.J. Super. 268 (App. Div. 1976) cert. denied 73 N.J. 49 (1977).

⁷⁵ State in the Interest of J.P.B., 143 N.J. Super. 96 (App. Div. 1976).

⁷⁶ State v. Presha, 748 A.2d 1108, 1113-1114 (N.J. 2000).

⁷⁷ State v. Galloway, 133 N.J. 631, 654 (1993).

⁷⁸ N.Y. Fam. Ct. Act 305.2(7).

counsel.⁷⁹ The parents or guardians simply need to be notified that the juvenile is in custody and also be notified of the juvenile's Miranda rights.⁸⁰ Further, when determining whether a juvenile has made a valid waiver, New York's system is less protective than New Jersey's long list of considerations in regards to juveniles specifically. The State allows for a parent or other adults that are "close blood relatives, whose protective relationship with children our society has also traditionally respected, as well as non-related adults whose functional relationship with the child is equally close," to waive their child's rights even without the juvenile's consent.⁸¹ It seems a bit counterintuitive, however, since on the one hand a juvenile is allowed to waive his own rights without the presents of a parent, so long as one is notified of the juvenile's rights, but on the other hand the parent can step in an waive those said rights even with out the juvenile consenting to that waiver. New York simply looks at the totality of the circumstances, while taking the age into consideration as one of the factors, but still not as protective as New Jersey with the "utmost fairness" analysis. These two State are similarly situated, yet there are clear distinctions and variations as far as how juveniles are treated for purposes of custodial interrogations and the juvenile's Miranda rights.

C. Current Police Training

Additionally, at the state level, police are given training manuals that include variations of interrogation techniques. This subsection will step away from the legal requirements and illustrate some of the most commonly used police training techniques for interrogations in order to show the types of measures taken and the psychological impacts such methods have on

⁷⁹ Id. at 305.2(3),(7); People v. Stephen J.B., 23 N.Y. 2d 611 (1969).

⁸⁰ Id.

⁸¹ N.Y. Fam. Ct. Act 305.2(7)-(8); In re Abraham R., 2009 WL 750179, quoting, Reno v. Flores, 507 U.S. 292, 310 (1993).

suspects. Most police training manuals across the United States merely provide general interrogation techniques that may be used. Although there is some commonly recognized methods, there is still a lack of uniformity throughout the country on conducting custodial interrogations.

The manuals, however, typically try to show different methods an officer can use to break down the person in custody's resistance to speak.⁸² The officers are seeking confessions and possibly further investigatory leads or evidence. The psychological tactics for interrogation focus on the influence of persuasion because often a person in custody is at first reluctant to speak with the officers.⁸³ Officers attempt to use the art of persuasion during custodial interrogations in order to convince the person in custody that it is in his best interest to speak with the officer and confess.⁸⁴ The manuals include a variety of deceptive strategies the officer's may choose to utilize during interrogations. Some techniques include trickery, misrepresentation of the seriousness of the crime, exaggerating the strength of the evidence against the person at that time, or creating the psychological idea that confessing leads to leniency without outright making any promises or stating that leniency will be given if a confession is made.⁸⁵

As previously stated, the Court held that "any evidence that the accused was threatened, tricked, or cajoled into waiver" essentially effects the voluntariness of a waiver.⁸⁶ Yet, police manuals allow for "trickery" and "deception," but it is very hard to tell where the thin line is drawn to go from acceptable trickery or deception to the area of unacceptable psychological force or coercion. Additionally, different methods as to the environment the interrogation is

⁸² G. H. Gudjonsson. "The Psychology of Interrogations and Confessions: A Handbook." *Applied Cognitive Psychology*. (2003)(Referencing the Reid Technique).

⁸³ *Id.* at p. 8.

⁸⁴ *Id.*

⁸⁵ *Id.* at p. 11-12.

⁸⁶ *Miranda*, *supra*, 384 U.S. 436 (1966).

given in, the type of seat the person is custody sits in, the person's position in the room in relation to the officer or officers present at the time, the size of the room, whether the room has windows, a mirror, or other physical methods based on the initial environment the suspect walks into that tends to make the situation the suspect is in, uncomfortable from the outset.⁸⁷

A popular interrogation method, well known throughout the United States, is the Reid method that includes nine steps of different ways to psychologically manipulate the suspect into a confession.⁸⁸ The nine steps are as follows: direct positive confrontation, theme development, handling denials, overcoming objections, getting the suspect's attention, handling the suspect's passive mood, presenting an alternative question, having the suspect orally relate some of the details of the alleged offense, obtaining a confession and converting that confession into a written confession.⁸⁹ These steps recognize that, naturally, most people are reluctant to confess and therefore are likely to make denials. This is seen as a problem for officers, especially if the person makes repeated denials because it starts to give the person in custody a psychological advantage, so the officer in step three is suppose to interrupt the suspect from those continued denials.⁹⁰ These steps are all essentially about overcoming the person in custody psychologically by bringing him down and making him feel like he doesn't have much "power." The justification the manual uses for setting forth such techniques is that an innocent suspect with an average level of intelligence would not acknowledge committing a crime just because the officer

⁸⁷ G. H. Gudjonsson. "The Psychology of Interrogations and Confessions: A Handbook." *Applied Cognitive Psychology*. (2003); Reid, John. The Reid Technique of Interviewing and Interrogation - Training Seminars & More. 4 Nov. 2014. <http://www.reid.com>.

⁸⁸ Id. at 10.

⁸⁹ Id. at 17-20; *see also*, Zulawski, David E.; Wicklander, Douglas E., Practical Aspects of Interview and Interrogation. Ann Arbor: CRC Press. (2001).

⁹⁰ Id. at p. 17.

provided two alternatives to how or why the crime was committed and encourage to accept one of them.⁹¹

In regards to juveniles, officers do not usually get a separate manual for those custodial interrogations, which is appalling since even the United States Supreme Court made some efforts to recognize that children should not be viewed as miniature adults.⁹² These psychological tactics are ones that are used throughout the system. Juveniles need to be protected.

IV. Recommendations.

The following section provides some of my recommendations for juvenile procedures and the section shows how the following safeguards can ensure juveniles' rights are protected during the custodial interrogation process. First and foremost, all juvenile interrogations should be video taped and recorded beginning from the moments leading up to the juvenile entering the room. Additionally, regardless of the juveniles age, a parent or guardian should definitely be notified and read the juvenile's Miranda rights in addition to the juvenile. In the event that a parent or guardian is unable to be located after reasonable efforts by the officers, then the officers may proceed by inquiring whether the juvenile has another adult he looks at as a "trusted guardian" and attempt to contact that person if anyone shall be named. Otherwise, if no one can be located after diligent reasonable efforts, then the process can proceed without a parent or guardian present, but it should be treated with the utmost fairness and with every consideration that the juvenile's age in mind as well as any surrounding circumstances. Additionally, it would be valuable to the efficiency of the process if counsel were nonetheless notified and the juvenile

⁹¹ Id. at p. 20.

⁹² JDB, supra, 131 S. Ct. at 2404.

provided the opportunity to consult with that counsel after the officer issued him his Miranda rights and before the commencement of questioning for any custodial interrogations.

Then, after such consultation the juvenile can be presumed to be in a much better position to understand his Miranda rights, so then the juvenile can make an informed decision and decide whether to waive his Miranda rights or not and how he wishes to proceed with the custodial interrogation. In the event that the juvenile decides to “knowingly” waive his Miranda rights and continue with the questioning, the juvenile should be afforded the right to decide if he would like to be questioned; with counsel present, without counsel present, with just a parent or guardian present, or with both counsel and a parent or guardian present. It is the most important for counsel to be present initially in the process because what occurs in many cases is that officers convince the juveniles that it is in their best interest to speak with the officers at this point in the proceeding and that any counsel that would be provided works together with the government; as in the public defenders and prosecutors are both considered government positions. These techniques usually instill hesitance in the juvenile to consult with such counsel. The juvenile is placed in a position where he thinks it is in his best interest to speak with the police officer and not such counsel that could be provided. Based on personal experience in working with juveniles for purposes of detention hearings, they often seem unwilling to speak freely with their represented counsel at first due to such factors that are instilled in their more-or-less innocent, developing minds.

Continuing with the proposed process, during the actual custodial interrogation, the officer should not be allowed to use psychological tactics to try and trick the juveniles; they should be more forthcoming with what the alleged crime is and in letting the juvenile know that if he chooses not to speak to the police officers it cannot be held against him. It appears okay for

the officer to even continue at this point by informing the juvenile that if the juvenile does choose to speak with them it will assist the officers in their investigation for the alleged crime, but it should definitely be made clear, even further than simply reading their Miranda rights, that it is completely okay for them not to speak to the officers for a custodial interrogation and they will not suffer any harsher consequences for the alleged crime, simply for choosing not to speak. Similar to New Jersey's treatment of young juveniles who are unable to consent, it would be beneficial that for all juvenile questioning the officers conduct the interrogations with the utmost fairness, without force or other improper influence, mental or physical, and in accordance with the highest standards of due process and fundamental fairness. The position in this note is that these proposed recommendations for safeguards during juvenile procedures will allow for the additional protections that juveniles needs to be afforded in order to not only protect their constitutional rights, but to also allow for further transparency and efficiency within the judicial system as a whole.

V. Conclusion

Over 20 years after the Court decided Miranda v. Arizona⁹³; five male juveniles were charged and convicted for the brutal rape of a female jogger in Central Park in 1989.⁹⁴ These five juveniles were known as, the "Central Park Five."⁹⁵ The juveniles ranged from fourteen to sixteen years of age. Four of them were charged as juveniles and one was charged as an adult.⁹⁶ Their sentences ranged from six years to thirteen years in confinement for the crime.⁹⁷ The State had confessions from four of those juveniles, which were received during their custodial

⁹³ Miranda, supra, 384 U.S. at 436.

⁹⁴ The Central Park Five. 2012. Documentary.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

interrogations.⁹⁸ Their constitutional rights were read to them.⁹⁹ Some of juveniles even had their parents present during the questioning.¹⁰⁰ During trial, it was difficult for the prosecution to connect any of the other evidence to those five juveniles.¹⁰¹ None of the juveniles' DNA was found on the scene or on the victim or her clothing, but those confessions were there, and were video recorded.¹⁰² Those confessions were used at trial to prosecute the juveniles.¹⁰³ Before the end of the proceedings, one of the defense attorneys approached the juveniles as to a possible plea deal if three of them plead guilty.¹⁰⁴ The juveniles' refused to take a plea deal and maintained their innocence, even with their "confessions" out in public.¹⁰⁵ At trial, after a long deliberation, guilty verdicts were returned for all of the juveniles and they were sentenced accordingly.¹⁰⁶

Then, over ten years later, a man stepped forward.¹⁰⁷ A man who was known as a serial rapist stepped up and admitted to being the sole assailant of the rape of the female jogger in Central Park on the April night in 1989.¹⁰⁸ There was DNA evidence that corroborated that man with the DNA at the scene of the incident in 1989.¹⁰⁹ Notwithstanding, about ten years prior, the State obtained elaborate and detailed confessions from those five juveniles, admitting and recording on video, that they collectively committed the crime. Their Miranda warnings were given, most if not all of their parents were present during the interrogation and again read the

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id.

Miranda warnings, and still, the innocent juveniles falsely confessed. It can be argued that they all falsely confessed due to the inherently coercive nature of such custodial interrogations particularly when minors are involved. It does not mean that the officers conducting the interrogations used unlawful techniques according to the minimal legal principles set in the area of law, but somehow, during these interrogations, the juveniles were convinced that confessing, albeit falsely, was in their best interest. The “Central Park Five” were eventually exonerated, but unfortunately so was their youth.¹¹⁰

Shortly thereafter, a large number of the States across the country began requiring that custodial interrogations be recorded in order to have an additional safeguard in the reviewing process and in hopes of creating some more transparency within the system. How much has the system really changed since then in regards to juvenile interrogations? Other than recognizing that juveniles are not in fact adults, but at the same time, somehow juveniles are not afforded their own nationwide standards recognizing that fact for the inherent compelling nature of custodial interrogations.

Additionally, there seems to be this misperception that there is an increasing number of juvenile crimes. There is little consideration, however, that maybe some of that increase in number may be due to wrongful confessions that were either false confessions or truthful but coerced confessions due to the inherently coercive nature of such interrogations coupled with the inherent lack of maturity of juveniles. There should be a presumption that juvenile confessions made during custodial interrogation are done so involuntarily because of the juvenile’s fundamental rights being “unknowingly” and “unintelligently” waived. In the current stance of the system, it is very unlikely to think that juveniles can ever really “knowingly” understand and

¹¹⁰ Id.

comprehend their rights, or what they are doing by waiving them, or the consequences their decision may have, without any further safeguards.

The system seems to be driving away from the rehabilitative purpose of juvenile proceedings. The United States Supreme Court in Miranda has already stated that custodial interrogations are inherently coercive in nature. So, that inherent coerciveness, coupled with the inherent lack of maturity of juveniles, should afford for more standards for juveniles in order to form the necessary additional safeguards. Ultimately, the justice system has taken efforts to recognize differences between adults and juveniles due to their age and development, but the system cannot stop in its current state because it is falling short in protecting the youth of our country.