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JUVENILES' DEVELOPING CAPACITY AND WHY THEY SHOULD NOT BE ABLE TO CONSENT TO SEARCHES

Rosanna Amato

I. INTRODUCTION

Age is not just a number. Juveniles are not adults, and in fact, in many circumstances juveniles have been recognized by law to be different than adults. This is because they lack the maturity, the life experiences, and the capacity to make important life decisions.¹ Age has also been considered in laws concerning marriages, sex, contract, abortions, interrogations, sentencing, and so forth.² Age should also be a consideration when determining the mental capacity of a juvenile to consent to searches. Whether juveniles are allowed to give consent to searches is an unresolved issue.³ Courts are inconsistent in how they apply the consideration of age and consent.⁴ The Supreme Court has held in *Schneckloth v. Bustamonte* that to determine whether consent was voluntarily given, courts must look at the totality of the circumstances including the age of the person accused.⁵ *Schneckloth* also stated that intelligence, maturity, and knowledge of the right to refuse can also be considered even though not dispositive.⁶ Some

¹ Jennifer Ann Drobac, "Developing Capacity": Adolescent "Consent" at Work, at Law, and in the Sciences of the Mind, 10 U.C. DAVIS J. JUV. L. & POL'Y 1, 2 (2006).

² *Memphis Planned Parenthood v. Sunquist*, 175 F.3d 456(6th Cir. 1999) (on abortions); *Parkwood OB/GYN v/ Hess*, 70 Misc. 2d 32 (Oh.1995) (on contracts).

³ Megan Annitto, Abstract, *Consent Searches of Minors*, 38 N.Y.U. REV. L. & SOC. CHANGE 1, 11 (2014).

⁴ *In re J.M.*, 619 A.2d 497 (D.C.App. 1992) (considering age); *State ex rel. R.A.*, 231 P.3d 808 (Ut. App. 2010) (not considering age).

⁵ *Sckneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

⁶ *Id.* at 220.

lower courts have considered age as a factor while others have ignored the issue of age entirely.⁷ There needs to be a consistent way to handle this.

Other scholars have suggested that reasonable juvenile standard should be implemented when the court addresses juvenile consent under the Fourth Amendment.⁸ The reasonable juvenile standard was discussed by a court as a modification of the reasonable person standard.⁹ That Illinois court modified a reasonable person standard and considered “whether a reasonable juvenile would have thought his freedom of movement was restricted.”¹⁰ Although that may be a step in the right direction, a reasonable juvenile standard is vague and subject to many different interpretations.¹¹ Since it is so vague, this standard will be difficult to apply on a uniform basis.¹²

Juveniles need more protections than adults do. This is shown by case law prohibiting minors from receiving the death penalty and life without parole.¹³ Also, this is demonstrated by laws not allowing minors to consent to various things such a sex or marriage or even having the ability to vote.¹⁴ Since minors aren’t capable of these things because that their brains are still developing, they should not be able to consent to searches at all.¹⁵ Minors need that protection and there is no better time for a bright line rule than now.

⁷ In re J.M., 619 A.2d 497 (D.C.App. 1992) (considering age); State ex rel. R.A., 231 P.3d 808 (Ut. App. 2010) (not considering age).

⁸ Anitto, *supra* note 3, at 39.

⁹ People v. Lopez, 892 N.E.2d 1047,1061 (Ill. 2008).

¹⁰ *Id.*

¹¹ Anitto, *supra* note 3, at 39.

¹² *Id.*

¹³ Roper v. Simmons, 543 U.S. 551 (2005); Graham v. Florida, 560 U.S. 48 (2010)

¹⁴ Drobac, *supra* note 1, at 6.

¹⁵ *Id.* at 2.

II. EXISTING LAW ON CONSENT SEARCHES

The fourth amendment provides protection against unreasonable searches generally to all persons whether juveniles or not. The amendment states: “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”¹⁶ An established exception to this amendment is consent.¹⁷ Consent has to be free of coercion.¹⁸ It also has to be understood that giving consent means losing rights that offer protection.¹⁹ Knowledge of the right to refuse consent is also a consideration when asking if the consent was voluntary.²⁰ As will later be discussed, this is a problem especially for juveniles because their will is more likely to be overborne by police officers than their adult counterparts.²¹

A very important case establishing when consent is voluntary is *Schneckloth v. Bustamonte*.²² In *Schneckloth*, a police officer was on nightly routine when around 2:40 in the morning he stopped a vehicle because one of the headlights and a license plate light were burned out. The officer asked to search the vehicle after he asked all occupants of the vehicle for their identification and only the driver was able to do so. The driver consented to the search by saying, “sure, go ahead.” The police officer searched the entire vehicle with the cooperation of the driver. Then, underneath the back seat, the police officer found three crumpled up stolen

¹⁶ U.S. Const. amend. IV

¹⁷ *Schneckloth v. Bustamonte*, 412 U.S. 218, 221 (1973).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 241.

²¹ See Jennifer Ann Drobac, “*Developing Capacity*”: Adolescent “Consent” at Work, at Law, and in the Sciences of the Mind, 10 U.C. DAVIS J. JUV. L. & POL’Y 1 (2006).

²² *Schneckloth*, 412 U.S. at 218 (1973).

checks.²³ The Court had to determine whether consent was voluntarily given. The Court established that consent has to be made of free choice without duress or coercion.²⁴

An example of involuntary action is the case *Brown v. Mississippi*, where brutality and violence was used in obtaining a confession.²⁵ The Court determined that cases where there is physically harm inflicted, the information obtained cannot be said to be voluntary.²⁶ Now that brutality isn't as common, the Court needed to determine how to analyze and determine whether consent in a certain situation is voluntary. The Court held that consent is voluntary when it is given without duress or coercion.²⁷ To determine that consent was given without duress or coercion, the Court uses a case by case analysis analyzing all the different circumstances in an individual case.²⁸ The Court also notes that there are factors that could be considered in the analysis; the two most relevant in this paper are age and knowledge of the right to refuse.²⁹ The problem with this is that the Court does not require age or the knowledge of the right to refuse to be considered.³⁰ In fact, the Court says that it is just a factor that may be considered.³¹ This is the reason why we do not have a uniform rule in how to treat age when determining if consent was voluntary. Courts are not consistent or clear about this issue but they need to be. Age cannot be ignored. Minors need protection from the consequences of consenting to a search. Minors are given protections in many different areas because of the recognition that they are naïve, that they

²³ *Id.* at 220.

²⁴ *Id.*

²⁵ *Brown v. Mississippi*, 297 U.S. 278 (1936).

²⁶ *Id.*

²⁷ *Schneckloth*, 412 U.S. at 220.

²⁸ *Id.* at 233.

²⁹ *Id.* at 226.

³⁰ *Id.*

³¹ *Id.*

don't fully understand what they are getting themselves into, and that they cannot fully understand the consequences of their actions.³²

Courts have generally taken two very different approaches when determining whether a minor's consent was voluntary.³³ Some courts believe age is critical factor, while other courts do not consider age at all.³⁴ Courts that do believe age should be considered, embrace the scientific research and understand that minors have a "less than well-developed capacity" to understand the consequences of consenting to a search.³⁵ Courts that ignore age believe that juveniles have roughly the same capacity to understanding the consequences of consenting to a search as adults do and require no difference in treatment.³⁶

The District of Columbia is one of the jurisdictions that consider age into its analysis of whether or not a juvenile's consent was voluntary.³⁷ In *In re J.M.*, police were on assignment at a Greyhound bus station to search buses coming from New York City.³⁸ A bus stopped at the station for a ten minute rest stop. The police announced their presence and proceeded to question passengers to find out if drugs were being transported. The detective then approached the juvenile and asked to search his bag which the juvenile consented to. The officers found nothing in the bag. The officer then asked to pat him down. The juvenile did not respond affirmatively, he just raised his hands up while still seated. The officer patted the fourteen year old boy down

³² Drobac, *supra* note 1, at 14.

³³ Lourdes M. Rosado, Note, *Minors and the Fourth Amendment: How Juvenile Status Should Invoke Different Standards for Searches and Seizures on the Street*, 71 N.Y.U. L. REV. 762, 765 (1996).

³⁴ Annitto, *supra* note 3, at 11.

³⁵ Rosado, *supra* note 33, at 765.

³⁶ *Id.*

³⁷ *In re J.M.*, 619 A. 2d 497, 499 (D.C.App. 1992).

³⁸ *Id.* at 498.

and found that there was a bag containing crack cocaine taped to the juvenile's body.³⁹ The court understood that his age, lack of education, inexperience and level of maturity is significant to determining if the juvenile's consent was voluntary.⁴⁰ The court remanded the case specifically so that the trial court can deal "expressly and thoroughly with the significance of age before finding that a juvenile consented to a search."⁴¹

Delaware is another state that considers age in determining whether consent was given freely.⁴² *State in the Interest of Trader* is another example of this.⁴³ Here, the officer was on routine patrol at about 2:00am and noticed a car that was weaving and crossing the "fog line."⁴⁴ The officer believed that the operator of the vehicle was intoxicated and pulled him over. Officer was asking the juvenile questions including if there was contraband in the car. The juvenile responded that the officer may search the car if he wanted to. Before he searched the car, the officer conducted a pat down of the juvenile and found a small tin can with a small amount of marijuana. The court here noted that age, education, and intelligence can all be factors that the court may consider.⁴⁵ In fact the court noted and took into consideration that in this case the juvenile was 16 years of age at the time of the incident.⁴⁶

In Indiana, although age is not a decisive factor it is part of the considerations in the totality of the circumstances.⁴⁷ *Holman v. State*, involved a seventeen year old girl who lived

³⁹ *Id.*

⁴⁰ *Id.* at 503

⁴¹ *Id.* at 504

⁴² *State in the Interest of Trader*, 1993 WL 265173, *1 (Del. Fam. Ct. March 29, 1993).

⁴³ *Id.*

⁴⁴ *Id.* at *4.

⁴⁵ *Id.*

⁴⁶ *Id.* at *3.

⁴⁷ *Holman v. State*, 816 N.E. 2d 78, 82 (In. Ct. App. 2004)

with her parents. One night while she was not home she allowed her boyfriend to enter her bedroom through her window to get some of his clothes. Her boyfriend was later charged with burglary. This case is important because the court discusses when a minor has the authority to consent to a search.⁴⁸ The court states: “whether a minor possesses the authority to consent to a search depends on a number of factors, including age, intelligence and maturity of the minor.”⁴⁹ Here, the court acknowledges that age and maturity level are factors that courts should look to in determining whether minors can give consent.⁵⁰

Florida is another state in which age is considered.⁵¹ The juvenile was charged and adjudicated for possession of cannabis. The juvenile was removed from his classroom by a deputy sheriff and his bag was searched. The student claims that the consent was not voluntary that he felt pressured and coerced. The court in this case analyzed a totality of the circumstances to see whether or not the consent was voluntary.⁵² The court took into account the age of the juvenile but did not apply it as the juvenile did not raise age as factor.⁵³ The court found the consent to be voluntary.⁵⁴ This is a situation where age has to be raised by the juvenile in order to be considered. In situations like this, the age should always be considered by the court whether or not the juvenile raised it in order to be fair to every juvenile in court.

Colorado is an interesting state because it goes beyond just using age a factor. Colorado actually has a statutory exception for minors when it comes to consent to searches.⁵⁵ The statute

⁴⁸ *Id.* at 82.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *IRC v. State*, 968 So. 2d 583 (Fl. App.2007).

⁵² *Id.* at 585.

⁵³ *Id.* at 587.

⁵⁴ *Id.*

⁵⁵ *People in Interest of S.J.F.*, 736 P.2d 29 (Sup. Ct. Col. 1987).

reads: “A search by consent requires that consent to the search be obtained from the minor’s parents, guardian, or legal custodian.⁵⁶ Colorado recognizes the protections offered to children in interrogation setting when Fifth Amendment rights are implicated and wants to offer the juveniles comparable protection when waiving Fourth Amendment rights.⁵⁷ Colorado’s intent of this law “is to protect, restore, and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law.”⁵⁸ The legislative declaration future states “while holding paramount the public safety, the juvenile justice system shall take into consideration the best interest of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.”⁵⁹ Colorado recognizes that juveniles do not have the mental capacity and experience to intelligently and freely give their consent. Colorado understands that the “best interests” of the juveniles is to have a parents or guardian make the decision for them.⁶⁰ The best interest of the juvenile includes being entitled to comparable protection in connection with the waiver of Fifth Amendment rights.⁶¹

Other states such as Wisconsin, Oregon, and Nebraska have considered age as a factor when determining whether a juvenile’s consent was voluntary.⁶² Generally, they all understand that a child is more vulnerable to being coerced into giving consent. These courts understand that

⁵⁶ *Id.* at 31.

⁵⁷ *Id.*

⁵⁸ C.R.S.A. §19-2-102 (1999).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *People v. Reyes*, 778 P.2d 1384, 1396 (Colo. 1971).

⁶² *State v. Tomlinson*, 247 Wis. 2d 682 (2001); *State v. Will*, 131 Or. App. 498 (1994); *State ex rel. Juvenile Dept. of Multnomah County v. Fikes*, 116 Or. App. 618 (1992); *State v. Butzke*, 7 Neb. App. 360 (1998).

a child may be more easily frightened by an encounter with a police officer and may not have the maturity level to understand what it means to give up their rights.⁶³

In contrast, there are states that do not see a difference between juveniles and adults and therefore treat them exactly the same when deciding whether consent was voluntary. Utah is one of those states.⁶⁴ In *State ex rel. R.A.*, a juvenile became ill after ingesting mushrooms and marijuana.⁶⁵ The officers wanted to find out who supplied him with the drugs. They searched through his phone and found the information of R.A., another juvenile. The officer called R.A. and found out that he was working; the officer advised R.A. if he returned home and gave the officer the drugs, R.A. would not be taken to detention, R.A. agreed to come home and give the officer the drugs.⁶⁶ Officer then asked R.A. if he can search the car and R.A. agreed, but the search of the car did not produce anything. Then officer followed R.A. into his bedroom where R.A. gave the items to the officer. R.A. claims that the consent to search was a product of coercion.⁶⁷ In the analysis of this court, they cited several factors that did not include of the age of the suspect.⁶⁸ The court found that the consent was not a product of coercion or duress; however they did not take into account R.A.'s age in reaching that conclusion.⁶⁹

Georgia is another state that treats juveniles as equivalent to adults.⁷⁰ *In re S.B.* involves officers on patrol who are following a car for some time stopping as the car stops and continue to

⁶³ *State ex rel. Juvenile Dept. of Multnomah County v. Fikes*, 116 Or. App. 618, 624 (1992)

⁶⁴ *State ex rel. R.A.*, 231 P. 3d 808 (Ut. App. 2010).

⁶⁵ *Id.* at 811.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 812.

⁶⁹ *Id.* at 813.

⁷⁰ *In re S.B.*, 427 S.E. 2d 52 (Ga. Ct. App. 1993); *In re A.T.*, 691 S.E. 2d 642 (Ga. Ct. App. 2010).

follow the car when it starts moving again. The teen eventually stops the car and approaches the officer with an I.D. The officers ask to search his vehicle and the teen verbally consented. The search of the car revealed a pistol. In deeming the search valid the court found that the teen voluntarily consented. The Georgia court used a totality of the circumstances test yet did not consider or address the teenager's age at all treating him as they would a fully mature adult.⁷¹

Another state that does not consider age is California.⁷² Jessica was a young female about 16 years of age out late at night at a gas station. An officer went up to her and noticed she had a puffy jacket on. The officer asked her if she had anything illegal on her to which she replied "not that I know of." The officer proceeded to search her person and found methamphetamine in her jacket pocket. The California court found that she had voluntary consent to search of her person. Like Georgia, the court looked at the totality of the circumstances but did not discuss or address her age in their analysis.⁷³

In another California case, police officers were on patrol when they received a radio dispatch that a citizen reported drug activity in the area.⁷⁴ As they approached the scene, the officers saw a juvenile leaning into a car. The juvenile then began to walk away. As the juvenile noticed the officers following him, the juvenile dropped a brown paper bag which later searched revealed marijuana.⁷⁵ The court did not consider age at all in their inquiry. The court asked themselves "in view of all the circumstances surrounding the incident, a reasonable person would

⁷¹ In re S.B., 429 S.E. 2d at 54.

⁷² In re Jessica M., No. A11311, 2007 WL 593609 at *4-5 (Cal. Ct. App. Feb. 2, 2007).

⁷³ *Id.* at *5.

⁷⁴ In re Kemonte H., 223 Cal. App. 3d 1507 (1990).

⁷⁵ *Id.* at 1512.

have believed he was not free to leave.” The accused here was 13 year old, just barely a teen and subject to the same standard an adult would be subject to.⁷⁶

In summary, case law shows that some courts view age as a considering factor into whether a juvenile voluntarily consents, while other courts completely ignore age and treat a fourteen year old the same as they would treat a forty year old. The inconsistency in how the courts have handled the issue of the consent searches of minors leaves unanswered many questions about what law courts should apply and how police officers should act when trying to conduct a search. Since minors are different and need to be treated differently they need to be provided the same protection whether they are from Washington D.C. or California.

III. JUVENILES HAVE PRIVACY INTERESTS

The fourth amendment balances two interests. One is public safety while the other is protecting the privacy of an individual.⁷⁷ Although at first glance, it may seem that juveniles have no privacy interests because of the many rules a juvenile has to follow in daily life. However, Courts have recognized that juveniles do have privacy interests.⁷⁸ In *Carey v. Population Services International*, there was a law, particularly Section 6811(8) of the New York Education law that makes it a crime for any person to distribute contraceptives to a minor under 16.⁷⁹ The Court held that the state interest was not compelling enough to prevent minors to obtaining contraceptives. The Court found that juveniles do have privacy interests.⁸⁰

⁷⁶ *Id.* at 1512.

⁷⁷ *Schneckloth*, 412 U.S. at 226.

⁷⁸ *Carey v. Population Services International*, 431 U.S. 678 (1977).

⁷⁹ *Id.* at 678.

⁸⁰ *Id.* at 682.

Arizona courts have held that a juvenile does have a privacy interest in his/her integrity and identity.⁸¹ In *Mario W. v. Kaipio*, the state is allowed to obtain buccal cells of the juveniles that have been charged with certain offenses.⁸² However, the state cannot go so far as to extract the DNA information contained in the sample. It is a great intrusion because the sample needs to be processed and so much of the person's identification is contained in that sample. It violates the fourth amendment and is a great intrusion of privacy.⁸³ This case reveals that juveniles are afforded privacy protections recognized in the law.

Oregon is another state that recognizes a juvenile's privacy even in schools.⁸⁴ In *State ex rel. Juvenile Dep't of Clackamas County v. M.A.D.*, the youth was suspected of having marijuana in school.⁸⁵ The youth was called to office and asked if he had anything on him. The school official saw a bulge in his breast pocket of his jacket and went into the pocket and took out marijuana. The court noted that that youth had a privacy interest in his jacket pocket even though he was on school grounds. The court states: "there is no suggestion that juveniles are any less secure in their right of privacy against government intrusions than adults."⁸⁶

The above case law reveals that juveniles do have privacy interests that need to be taken into account even at school where their privacy tends to be less recognized. Therefore juveniles do have a privacy interest of their persons or their belongings and so juveniles needed to be

⁸¹ *Mario W. v. Kaipio*, 230 Ariz. 122, 127 (2012).

⁸² *Id.*

⁸³ *Id.* at 128.

⁸⁴ *State ex rel. Juvenile Dep't of Clackamas County v. M.A.D.*, 226 Or. App. 21 (2009).

⁸⁵ *Id.* at 23.

⁸⁶ *Id.* at 32.

afforded the protections so that their will is not overborne. For this reason, courts should extend privacy protections to juveniles' fourth amendment rights.

IV. JUVENILES ARE DIFFERENT THAN ADULTS AND THEREFORE SHOULD BE TREATED DIFFERENTLY AND AFFORDED MORE PROTECTIONS THAN ADULTS

There has always been a fascination with the developing brains of teens. This has been shown in all aspects of life. Car insurances claiming that teens' brains are not fully developed, that they are risky and should only be able to attain driving privileges gradually.⁸⁷ Juveniles have limited rights in choosing to have an abortion, have sex, or get married.⁸⁸ Juveniles cannot vote.⁸⁹ Juveniles cannot consent to medical procedures.⁹⁰ There are many things that juveniles are prohibited from doing even if they want to consent. This all has to do with their competence and their capacity to understand what they are doing and the consequences of their actions.⁹¹ There are many changes going on throughout a young person's body and this includes significant changes in their brains. These changes impact the ability to reason and understand.⁹²

The frontal cortex is still developing and it is associated with "response inhibition, emotional regulation, planning, organization, impulse control, and making informed judgments."⁹³ This less-developed frontal cortex is the reason why young people take risks and don't consider

⁸⁷ Terry A. Maroney, Article, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89 (2009).

⁸⁸ *Memphis Planned Parenthood v. Sunquist*, 184 F.3d 600 (6th Cir. 1999).

⁸⁹ *Drobac*, *supra* note 1, at 2.

⁹⁰ *Id.*

⁹¹ *Id.* at 5.

⁹² *Id.* at 14

⁹³ *Id.*

consequences of their actions.⁹⁴ The cerebellum is also developing in these years and its functions control “all forms of higher thought” including social skills and ability to make decisions.⁹⁵ Neuroscience suggests that young people’s brains are developing past the age of consent. Neuroscience suggests that juveniles do not have full legal capacity and that they should not be able to consent until at least after 18.⁹⁶

Cognitive abilities also continue to grow and mature into early adulthood. This is responsible for the child’s thinking skills and advanced reasoning.⁹⁷ Adolescents also want to break free from their families and hang out more with their friends developing social skills and feeling a sense of independence. However, because of their developing brain, teens tend to focus on short-term results and get pressured easier. “Adolescent responsibility, temperance, and perspective distinguish teen from adult judgment.”⁹⁸

This scientific research shows that juveniles’ brains are still developing and do not have full brain capacity as an adult would.⁹⁹ Scholars and advocates having started to bring these ideas to courts and while it seems to have an impact in regards to custodial interrogations it has not made its way to consent for searches. The scientific research still has a limited impact on most courts in deciding whether consent by a juvenile was voluntary and treat the juvenile as they would an adult.¹⁰⁰

⁹⁴ Maroney, *supra* note 86, at 106.

⁹⁵ *Id.* at 99.

⁹⁶ See “Developing Capacity: Adolescent “consent” at work, at law and in the sciences of the mind, 10 U.C. Davis J. Juv. L. & Pol’y 1.

⁹⁷ Maroney, *supra* note 86, at 99.

⁹⁸ Drobac, *supra* note 1, at 58.

⁹⁹ *Id.* at 14.

¹⁰⁰ Maroney, *supra* note 86, at 91.

This research tells us that juveniles are different than adults. Juveniles are still trying to understand things in life and that they are more vulnerable to coercion and submit more readily to authorities.¹⁰¹ They usually do not have a full understanding of their rights and do not understand what it means when they waive them. In most situations when they are confronted by authorities they become frightened and may believe that consenting to a search will help them when it will only make matters worse for them.

V. JUVENILES TREATED DIFFERENTLY IN OTHER CONSTITUTIONAL AREAS

Since the way courts deal with juveniles and consent in the Fourth Amendment is very inconsistent, it is helpful to turn to how age has been dealt with in other constitutional areas particularly the 14th, 5th and 8th amendments. In their reasoning and analysis a path to a more uniform consistent standard can be found for juveniles and consent searches.

A. 14th Amendment

As early as 1948, the Court recognized that juveniles are different.¹⁰² The Court used the 14th amendment to say that coerced confessions from juveniles are not admissible.¹⁰³ Section 1 of the 14th amendment provides that: “nor shall any state deprive any person of life, liberty, or property, **without due process of law**...”¹⁰⁴ A person is given an empty form of due process of law when he confesses without a full appreciation of his constitutional rights.¹⁰⁵ An adolescent, because of his developing brain and vulnerability, does not have a full appreciation of his

¹⁰¹ Drobac, *supra* note 1, at 31.

¹⁰² *Haley v. Ohio*, 332 U.S. 597 (1948).

¹⁰³ *Id.* at 601.

¹⁰⁴ U.S. Const. amend. XIV, § 1.

¹⁰⁵ *Haley v. Ohio*, 332 U.S. 597, 600 (1948).

constitutional rights.¹⁰⁶ Therefore, a juvenile needs the aid of counsel or a parent to make an informed decision before confessing to a crime.¹⁰⁷

The Supreme Court, in *Haley v. Ohio*, understood that a child at the age of 14 is easily overcome by confrontations with law enforcement.¹⁰⁸ This was a case involving a 14 year old boy serving as a look out in an armed robbery. The store owner was shot and later died, the boy was charged and convicted of 1st degree murder. During the interrogation the boy was questioned for five hours straight.¹⁰⁹ His mother and attorney were denied entry to see him or speak to him. However, the police did allow a photographer from a newspaper gain entry to photograph him. The Court cited his age here as a critical factor in whether his confession at the time of interrogation was admissible or not.¹¹⁰ The Court found that everything combined; his not being able to speak with his mother or attorney and especially his age rendered his confession inadmissible. The Court went on with much emphasis to show that juveniles were different.¹¹¹ The court mentioned how the teenage years are ones of great instability. A child of adolescent years may not feel as if he had a choice. A child of adolescent years do not have a full appreciation of warning read to him and what are the consequences of waiving them. The court recognized a need for adult protection.¹¹²

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 607.

¹⁰⁸ *Haley v. Ohio*, 332 U.S. 597 (1948).

¹⁰⁹ *Id.* at 598.

¹¹⁰ *Id.* at 599.

¹¹¹ *Id.*

¹¹² *Id.* at 601.

In 1962, the Court again stated how age is a critical factor when determining whether a confession from a 14 year old boy was voluntary.¹¹³ In *Gallegos v. Colorado*, a 14 year old boy was accused of assaulting a man and stealing \$13 from him.¹¹⁴ The boy admitted to the robbery but the man later died and he was charged and convicted of 1st degree murder.¹¹⁵ The crucial evidence against him was a formal written confession signed by the juvenile. The juvenile signed this after being held in detention for five days without being able to see a lawyer, parent, or other adult.¹¹⁶ The Court eloquently states: “He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his right and without the aid of more mature judgment as to the steps he should take.”¹¹⁷ The Court understood that his age and fear in the situation he found himself caused his will to be overborne by the authorities.

B. 5th Amendment

The Fifth Amendment provides protections against self-incrimination.¹¹⁸ One of the ways the 5th amendment provides protection is to hold inadmissible a coerced confession during custodial interrogation. This 5th amendment protection has been extended and expanded for juveniles. Courts have recognized that juveniles are different than adults and need to be treated differently.¹¹⁹ Age becomes a critical factor in determining whether a confession is coerced.¹²⁰

¹¹³ *Gallegos v. Colorado*, 370 U.S. 49 (1962).

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 50.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 54.

¹¹⁸ U.S. Const. amend. V.

¹¹⁹ *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

¹²⁰ *Id.*

In custodial interrogations, age of the person interrogated is taking into consideration.¹²¹ *J.D.B. v. North Carolina*, involved a 13 year old charged with breaking and entering.¹²² He was stopped and questioned at the site of the break in. Five days later, when they found a camera at his school matching the proceeds of the breaking and entering, he was taken out of school and questioned.¹²³ He provided a statement without being given *Miranda* warnings and without being able to contact any adult.¹²⁴ The Court states that the child's age was a crucial factor in this case and the child needs to be treated differently than an adult would but he is in fact different than an adult. The Court mentions: "the risk of compelling pressures is higher when the suspect is a juvenile...children cannot be viewed as mini adults, age has to be considered because children are less likely to feel that they are free to leave in situations like the one J.D.B. was put in."¹²⁵ In fact, they understand that age "generates commonsense conclusions about behavior and perception, children are generally less mature and responsible than adults."¹²⁶

Justice Marshall's dissent in *Fare v. Michael C.* shows that juveniles have been recognized in case law to be different than adults and need to be protected.¹²⁷ Juveniles, more often than adults, are scared when they are confronted with a situation they do not fully understand.¹²⁸ Juveniles want to confide in someone they trust. In *Michael C.*'s case that person he wanted to confide in was his probation officer.¹²⁹ Marshall states that a juvenile should be

¹²¹ *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2398 (2011).

¹²² *Id.* at 2399.

¹²³ *Id.*

¹²⁴ *Id.* at 2400.

¹²⁵ *Id.* at 2397

¹²⁶ *Id.*

¹²⁷ *Fare v. Michael C.*, 442 U.S. 707 (1979).

¹²⁸ *Drobac*, *supra* note 1, at 25-26.

¹²⁹ *Fare*, 442 U.S. at 730.

able to speak with an adult they trust and even if it is a probation officer that does not mean that they waive their 5th amendment rights. In fact it should be an assertion of them.¹³⁰

These cases suggest how juveniles are more prone to be coerced into giving statements even if they are not true in order for the police to let them go. When the courts do not allow a child to speak with an adult they trust, the child becomes even more frightened and just wants to go home. Juveniles are more prone to submission to authorities than adults are. They may be scared into giving a confession which should not be given without advice from a trusted adult. This is why juveniles need to be given these extra protections in all areas of law especially the area of consent.

C. 8th Amendment

Juveniles have been treated differently when it comes to the punishment of their crimes.¹³¹ The 8th amendment prohibits cruel and unusual punishments and excessive fines and bails.¹³² The Supreme Court has found that the 8th amendment prohibits a death penalty sentence for those engaged in crime as juveniles.¹³³ The Supreme Court has also found that a life sentence without parole for those who committed crimes before the age of 18 could be a violation of the 8th amendment.¹³⁴ The Court understood that juveniles do not understand the consequences of

¹³⁰ *Id.* at 730

¹³¹ *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010).

¹³² U.S. Const. amend. VIII

¹³³ *Roper v. Simmons*, 543 U.S. 551 (2005).

¹³⁴ *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

their actions like adults do.¹³⁵ The Court further notes that juveniles have a better ability to be rehabilitated and become a productive member of society than adults do.¹³⁶

In *Roper v. Simmons*, the Supreme Court held that the death penalty is prohibited for those who committed crimes when they were under 18 years old.¹³⁷ Christopher Simmons committed murder when he was 17 and was sentenced to death. The rationale behind this holding is because of the fact that juveniles are different than adults.¹³⁸ The Court mentions how juveniles are immature and irresponsible and “their irresponsible conduct is not as morally reprehensible as that of an adult.”¹³⁹ The court realized that juveniles still struggle to find their identity and are easily pressured.¹⁴⁰

In 2010, the Supreme Court also held that the 8th amendment prohibits imposing a sentence of life without parole for juveniles who did not commit homicide.¹⁴¹ Terrance Jamar Graham was 16 when he committed the crime of burglary. He was sentenced to probation. However, he violated probation and was then sentenced to life in prison for the original charge of burglary. The Court accepted the finding in *Roper* that juveniles are different than adults and adds that there is more of a chance that a juvenile’s failings can be rehabilitated as compared to

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Roper v. Simmons*, 543 U.S. 551 (2005).

¹³⁸ *Id.* at 577.

¹³⁹ *Id.* at 553.

¹⁴⁰ *Id.* at 554

¹⁴¹ *Graham v. Florida*, 560 U.S. 48 (2010).

adults. The Court held that life without parole is an especially harsh punishment for a juvenile who has not committed murder.¹⁴²

In 2012, the Supreme Court took it a step further and held that mandatory life in prison without parole for those who committed crimes under the age of 18 violated the 8th amendment.¹⁴³ Evan Miller was 14 years old when he committed the crime of murder and he was sentenced to life in prison without the possibility of parole.¹⁴⁴ The Court took the understanding that juveniles were different from *Roper* and the idea from *Graham v. Florida* that life without parole sentences for juveniles equated to the death penalty.¹⁴⁵ The Court found that courts need to be able to consider any mitigating factors before imposing the death penalty even if the juvenile committed a murder.¹⁴⁶ Here, the juvenile was 14 years old, he was high on drugs when he committed the crime and he was neglected as child with parents who were addicted to drugs.¹⁴⁷ All those facts were considered by the Court here. The Court realized that juveniles are different and different circumstances may lead a juvenile to commit even a murder; however certain factors need to be taken into account, especially their age and the possibility of rehabilitation.¹⁴⁸ Here, the Court believed those were strong factors in reversing Miller's life without parole sentence.¹⁴⁹

¹⁴² *Id.* at 70.

¹⁴³ *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

¹⁴⁴ *Id.* at 2456.

¹⁴⁵ *Miller*, 132 S. Ct. at 2458.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 2467.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 2475.

These cases reveal that in other constitutional areas juveniles have been viewed and treated differently than adults. This is because courts have accepted the research and recognized that juvenile's mental capacity is not fully functioning as compared to an adult. The courts also recognized juveniles are vulnerable, more susceptible to pressure, and easier to coerce than adults. These are many of the same reasons why juveniles need to be treated differently when it comes to consent. In every case age must be a consideration.

VI. JUVENILES AND CAPACITY TO CONSENT IN OTHER AREAS OF LAW

Juveniles have limited capacity to consent to many critical decisions of life such as marriage, abortion, contracts, and sex.¹⁵⁰ Consent to search should be included in that list because juveniles do not understand the implications of consenting just as it is found that they do not understand the implications of consenting to marriage, or contracts, or sex.

A. Marriage

Marriage is a major life decision that can have potentially serious consequences.¹⁵¹ Minors under the under of 18 cannot enter into marriage in many states such as New York.¹⁵² *Moe v. Dinkins* involved New York Domestic Relations Law Section 15.2 which provides that a juvenile seeking to get married needs parental consent.¹⁵³ The reason for this rule is that the state

¹⁵⁰ Drobac, *supra* note 1, at 6.

¹⁵¹ *Moe v. Dinkins*, 553 F. Supp. 623, 629 (1981).

¹⁵² *Id.* at 625.

¹⁵³ *Moe v. Dinkins*, 553 F. Supp. 623 (1981).

wants to protect minors from “immature decision-making and preventing unstable marriages.”¹⁵⁴ Here the state realizes minors are immature and are unable to make critical life decisions in an informed and mature manner. The state goes further to say “minors often lack experience, perspective, and judgment necessarily to make important, affirmative choices with potentially serious consequences.”¹⁵⁵ The court agreed with the state and held that parental consent is rationally related to the legitimate interests of the state.¹⁵⁶

Much like the rationale behind why juveniles cannot consent to marriage, juveniles should not be able to consent to a search. Consenting to a search is a critical decision that can have potentially serious consequences. Consenting to a search is a serious decision that a juvenile should make after consulting with their parents or counsel. Like marriage, juveniles lack the experience and judgment in making an informed decision to consent to search.

B. Abortion

Thirty-eight states require parental involvement in a minor’s decisions to have an abortion.¹⁵⁷ Of those thirty-eight states, twenty-one states require parental consent only.¹⁵⁸

¹⁵⁴ *Id.* at 629

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ The Alan Guttmacher Institute, *State Policies in Brief: Parental Involvement in Minors’ Abortion*, available at http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf (last visited April 23, 2015).

¹⁵⁸ *Id.* The following states require parental consent: Alabama, Arizona, Arkansas, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Wisconsin.

Twelve of those states require parental notification only.¹⁵⁹ Finally, five of those states require both parental consent and notification.¹⁶⁰ Although abortion is considered a privacy interest because the consequences of abortion can be a lot more severe than making the decision to take birth control it is important that juveniles get the protection they need.¹⁶¹ Memphis, Tennessee is one of the states that do not allow a physician to perform an abortion without parental consent. In *Memphis Planned Parenthood v. Sunquist*, Planned Parenthood sued to prevent the state from enforcing its Parental Consent for Abortion by Minors Act.¹⁶² The court believed that the reasoning for the Parent Consent for Abortion by Minor Act was justified and deemed it valid. The reasoning was the children have a peculiar vulnerability; they have an inability to make an informed, mature decision.¹⁶³ The reasoning affords the child the opportunity not to make a decision without at least confiding in an adult. Most children who end up pregnant become nervous that their parents will disown them, but having this law makes it possible to let the child see that they are not alone in making a decision that they can do it with a more mature informed adult.

C. CONTRACTS

Contract made by minors are voidable.¹⁶⁴ This is in order to protect minors from fraud

¹⁵⁹ *Id.* The following states require parental notification only: Alaska, Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Maryland, Minnesota, New Hampshire, South Dakota, and West Virginia.

¹⁶⁰ *Id.* The following states require both parental consent and notification: Oklahoma, Texas, Utah, Virginia, and Wyoming.

¹⁶¹ *Memphis Planned Parenthood*, 175 F.3d at 460.

¹⁶² *Id.* at 462.

¹⁶³ *Id.*

¹⁶⁴ *Luce v. Jestrab*, 12 N.D. 548 (1903).

and imposition practiced on them. This law is made because it realizes that minors are more susceptible to coercion and can be duped into making contracts in which they do not realize the consequences.¹⁶⁵

In *Parkwood OB/GYN Inc. v. Hess*, a doctor sued for unpaid medical services.¹⁶⁶

Defendant was a minor when the doctor performed medical services on her. In this case, doctor was aware of minor's birthdate and knew of her minority status and her incapacity to contract.¹⁶⁷ The court found that the contract was void and not enforceable against the minor because of the knowledge of the doctor that the minor was under the age to contract for medical services.¹⁶⁸

Juveniles enter into contracts because they were forced to, or because they wanted something and thought it was a good deal. Children believe that they are capable of making decisions for themselves.¹⁶⁹ In the teenage years they want to achieve autonomy and may make decisions they think are correct.¹⁷⁰ The research shows that they are not correct, they do not understand what predicaments they may put themselves into and may make a situation worse for themselves. This is the reason why the law provides for contracts to be made voidable. Juveniles are taking advantages of by many. In the issue of consent they are also taking advantage of by police officers and that is why they need the protections and should not be able to consent.

¹⁶⁵ *Id.* at 550.

¹⁶⁶ *Parkwood OB/GYN v. Hess*, 70 Ohio Misc. 2d 32 (1995).

¹⁶⁷ *Id.* at 33.

¹⁶⁸ *Id.* at 34.

¹⁶⁹ Drobac, *supra* note 1, at 25.

¹⁷⁰ *Id.* at 27.

D. SEX

Minors cannot consent to sex and most states have varying statutory rape laws which prohibit minors from having sex.¹⁷¹ For example in New Jersey, minors under the age of 12 are prohibited from having sex at all. Minors between the ages of 13 and 16 are prohibited from having sexual partners that are more than 4 years older than them. The reasons for this are the same reasons why minors cannot consent to marriages or contract or abortions. Sex is a decision that can have severe consequences on minors.¹⁷² They do not have the capacity to make informed mature decisions. Minors are unequal to adults socially and financially and may not be able to deal with the consequences of sex that adults can.¹⁷³ Statutory rape laws are meant to protect minors because of their immaturity.¹⁷⁴

In all these cases, juveniles are unable to consent to these crucial life decisions for all the same reasons. They are immature, they lack the capacity and experience to make informed decisions that can impact their life. Since they lack the capacity to do all these things, it seems logical to conclude that they lack the capacity to understand something as complicated as a waiver of fourth amendment rights. This is something that can lead to potentially more severe consequences on a juvenile than sex or consenting to a contract. It can take away their liberty, it can affect their ability to obtain a job in the future, and it can affect so many things for a majority

¹⁷¹ *Id.* at 41.

¹⁷² Drobac, *supra* note 1, at. 41-44

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 62.

of their life. Therefore, just as juveniles cannot consent to marriage, contracts, sex, or abortion they should not be able to consent to searches.

VII. PROPOSED STANDARD: JUVENILES SHOULD NOT BE ABLE TO CONSENT TO SEARCHES

When it comes to a minor's consent of searches courts are inconsistent. Some courts simply ignore age and treat juveniles the same as adults while other courts consider age to be an important factor.¹⁷⁵ Age should be given consideration in all cases. All courts should accept and recognize the research associated with juveniles. Juveniles are different. Juveniles cannot be treated equally as adults.¹⁷⁶ They lack the capacity of understanding and the life experience that adults have. Consent laws regarding juveniles should be equivalent to the consent laws in place now regarding sex, marriage, abortion, and contracts. They should not be able to consent to searches for the exact same reasons that they cannot consent to getting married.¹⁷⁷ The enormous difference in power between a developing teenager and a police officer will affect the decisions of the youth.¹⁷⁸ This suggests that consent by juveniles can never be voluntary. Unlike custodial interrogations where juveniles are exposed to *Miranda* warnings, searches do not involve being informed of consequences of consenting. Juveniles need protection from the consequences of

¹⁷⁵ In re J.M., 619 A.2d 497, 502 (D.C. App. 1992) (considering age); State ex. rel. R.A., 231 P.3d 808, 813 (Utah App. 2010). (not considering age as factor).

¹⁷⁶ Drobac, *supra* note 1, at. 12.

¹⁷⁷ Drobac, *supra* note 1, at. 6.

¹⁷⁸ *Id.*

consenting to a search for the same reason they need protection from the consequences of sex or agreeing to a contract. They just do not have the capacity to make an informed decision.¹⁷⁹

In the alternative, because of the interest of keeping a community safe and because sometimes the only way a police officer can obtain access to dangerous weapons or drugs, a child may consent. However, they need to be afforded higher protections that are applied uniformly to all minors. These higher protections can include the requirement that an officer needs to advise the juvenile of the right to refuse, the requirement of having a parent or other trusted adult there to advise the juvenile and if not available then consent still cannot be granted by the juveniles because the protections of the juvenile come first before any other interest. Protections of the juveniles come first because they come first in so many different areas of law including the ones mentioned above such as marriage, sex, consent, abortion. The community wants children to be safe and protected from harm, distress, and coercion that doing any of these things including consenting to a search, can cause.

¹⁷⁹ *Id.*

VIII. CONCLUSION

Courts need to be consistent in how they treat juveniles with regard to consenting to searches. On one hand courts do not think that age is relevant at all and simply apply an adult standard to a juvenile. On the other hand courts consider age and realize that juveniles need to be offered more protection. Case law in many areas of law show that juveniles are different. Minors lack the capacity to make an informed decision that can affect their lives. They do not have the life experience or maturity of an adult to understand the decisions. This is reflected in laws that do not allow a child to marry, vote, have sex, enter contracts and so forth. In that same regard, juveniles should not be allowed to consent to searches. The things a search can reveal not only affect the privacy interests of juveniles but also may affect their liberty and their future lives.