

THE TRUTH ABOUT POLICE DECEPTION AND MINORS: WHY NORTH CAROLINA SHOULD BAN POLICE LYING TO MINORS DURING INTERROGATIONS

ALEXANDRA WARNOCK†

“Anybody who understands what goes on during a police interrogation asks for a lawyer and shuts up.”—James Duane, You Have the Right to Remain Innocent

I. INTRODUCTION

In 1989, five teenagers were arrested and falsely accused of raping and assaulting a female jogger.¹ The juveniles were vilified in the media and given life sentences for crimes they did not commit.² While none of the “Central Park Five” teenagers committed the crime, all but one falsely confessed after being interrogated by the police.³ Reflecting on his experiences as one of the Central Park Five, Kevin Richardson stated, “I want everybody to know that we’re survivors of this and we don’t want to see another Central Park Five.”⁴ Unfortunately, North Carolina saw another group of five juveniles convicted of murder under similar circumstances in 2002.⁵

† Alexandra Warnock has a B.A. from Wake Forest University and is a 2022 J.D. Candidate at Wake Forest University School of Law. She is a Guardian Ad Litem for abused and neglected children and a Student Attorney at the Wake Forest Innocence & Justice Clinic. She would like to thank her professor, Mark Rabil, who inspired her interest in this topic through his work leading the Wake Forest Innocence & Justice Clinic. She would also like to thank her friends and family for their support throughout the drafting process.

1. Jim Dwyer, *The True Story of How a City in Fear Brutalized the Central Park Five*, N.Y. TIMES (May 30, 2019), <https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us-real-story.html>.

2. *Id.*

3. *The Central Park Five*, HISTORY (Sept. 23, 2019), <https://www.history.com/topics/1980s/central-park-five>.

4. Aisha Harris, *The Central Park Five: ‘We Were Just Baby Boys,’* N.Y. TIMES (May 30, 2019), <https://www.nytimes.com/2019/05/30/arts/television/when-they-see-us.html>.

5. *Winston-Salem 5, Convicted in 2002 Murder, Could Soon Get New Trial*, WBTW NEWS 13 (Mar. 10, 2021), <https://www.wbtw.com/news/state-regional-news/winston-salem-5-convicted-in-2002-murder-could-soon-get-new-trial>.

This group, known as the “Winston-Salem Five,” were only teenagers when they were coerced into false confessions and ultimately sent to prison.⁶ One expert found the similarities between the two cases to be “astonishing,” because in both cases, two of the five remain in prison to this date, awaiting a retrial granted by the North Carolina Innocence Inquiry Commission.⁷

Sadly, these cases are not isolated incidents.⁸ Exoneration data suggests that false confessions by juveniles are common among the wrongfully convicted.⁹ One study found that 32% of more than 125 proven false confessions were given by minors.¹⁰ Another study that looked at exonerations found that juveniles were three times more likely to make false confessions than adults.¹¹

The Supreme Court has recognized the particularly vulnerable nature of juveniles during police interrogations and put into place some protections during the interrogation process.¹² Additionally, states such as North Carolina have gradually added more protections for juveniles during police interrogations.¹³ However, statistics collected from the National Registry of Exonerations suggest that more should be done to protect vulnerable youth who are subject to police interrogation.¹⁴ Despite the safeguards currently in place, exoneration rates in cases where false confessions were present have not declined.¹⁵

Recognizing the need for additional juvenile protections, states have recently begun to ban police from lying to juveniles

6. *Id.*

7. *Id.*

8. *Wrongful Convictions of Youth*, BLUHM LEGAL CLINIC, NW. PRITZKER SCH. L., <https://www.law.northwestern.edu/legalclinic/wrongfulconvictionsyouth/understandproblem> (last visited Feb. 26, 2022).

9. *Id.*

10. *Id.*

11. *Id.*

12. *See* J.D.B. v. North Carolina, 564 U.S. 261, 264 (2011).

13. *See id.* at 273–75.

14. NAT'L REGISTRY OF EXONERATIONS, AGE AND MENTAL STATUS OF EXONERATED DEFENDANTS WHO CONFESSED (2020),

[https://www.law.umich.edu/special/exoneration/Documents/](https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf)

[Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf](https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20of%20Exonerated%20Defendants%20Who%20Falsely%20Confess%20Table.pdf).

15. Dustin Cabral, *Exonerations by State*, NAT'L REGISTRY EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (Apr. 11, 2022).

during police interrogations.¹⁶ These bans are necessary if we are to ensure that “we don’t see another Central Park Five.”¹⁷ North Carolina should follow suit and ban police deception during youth interrogations.

This article examines how police deception during interrogation leads to false juvenile confessions. Part I discusses existing data on wrongful convictions for juveniles and the leading police interrogation method—the Reid Technique. Part II discusses how a false confession negatively impacts a jury’s finding of truth. Part III discusses issues with police lying to youths during interrogations, first looking at existing research on youths and then looking at case law that outlines why juveniles should be treated differently. Part IV analyzes the current juvenile interrogation reforms in effect in North Carolina and where the current reforms in North Carolina fall short. Finally, Part V discusses why further legislative action to ban police deception during juvenile interrogations is a necessary next step.

II. THE REID TECHNIQUE CAUSES NUMEROUS WRONGFUL CONVICTIONS

False confessions are the leading cause of wrongful convictions among children.¹⁸ Data from the National Registry of Exonerations found that 36% of 211 people who were wrongly convicted as children falsely confessed.¹⁹ Police in the United States are typically allowed to lie and use deceptive techniques to get suspects to confess.²⁰

The police interrogation process has long been considered inherently coercive.²¹ It is not uncommon for police officers to promise leniency or insinuate that incriminating evidence exists,

16. Kate Elizabeth Queram, *States Look to Ban Police from Lying During Interrogations*, ROUTE FIFTY (June 1, 2021), <https://www.route-fifty.com/public-safety/2021/06/states-look-ban-police-lying-during-interrogations/174428>.

17. Harris, *supra* note 4.

18. Nigel Quiroz, *Five Facts About Police Deception and Youth You Should Know*, INNOCENCE PROJECT (May 13, 2021), <https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers>.

19. *Id.*

20. *Id.*

21. See *Miranda v. Arizona*, 384 U.S. 436, 467 (1966); see also Ariel Spierer, *The Right to Remain a Child*, 92 N.Y.U. L. REV. 1719, 1722 (2017).

even when it does not.²² While several interrogation techniques exist, the Reid Technique is the most commonly used police interrogation tactic in the United States.²³ This coercive technique was discussed in *Miranda* and served as part of the Supreme Court's reasoning that *Miranda* warnings should be constitutionally required.²⁴ In *Miranda*, the Court used the Reid Technique Manual to demonstrate some of the coercive police techniques used during interrogations.²⁵ Ultimately, the Court established *Miranda* warnings as a way of "[balancing] the state's need for information from suspects with protecting autonomy and freedom from police coercion."²⁶ *Miranda*'s reasoning is rooted in the Fifth Amendment: without constitutional safeguards, individuals were not adequately protected from self-incrimination under the Fifth Amendment.²⁷ Despite *Miranda*'s criticism of the Reid Technique's coercive nature, the technique is still used throughout the United States.²⁸

There are three main phases to the Reid Technique: the factual analysis phase, the interviewing stage, and the interrogation phase.²⁹ First, during the factual analysis phase, an officer develops leads and suspects.³⁰ Second, in the interviewing phase, the officer conducts an interview of the subject analyzing baseline behaviors of the subject.³¹ The interviewer then monitors whether the subject deviates from these baseline behaviors during "behavior-provoking" questions.³² Third, during the interrogation phase, psychological tactics are used to get the interviewee to confess to the alleged crime.³³

22. Jaclyn Diaz, *Illinois is the 1st State to Tell Police They Can't Lie to Minors in Interrogations*, NPR (July 16, 2021), <https://www.npr.org/2021/07/16/1016710927/illinois-is-the-first-state-to-tell-police-they-cant-lie-to-minors-in-interrogat>.

23. Spierer, *supra* note 21, at 1725.

24. *See Miranda*, 384 U.S. at 445.

25. *Id.* at 448–55.

26. Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 397 (2013).

27. *Id.*

28. *Miranda*, 384 U.S. at 456; *see* Michael Bret Hood & Lawrence J. Hoffman, *Current State of Interview and Interrogation*, FBI L. ENFT BULL. (Nov. 6, 2019), <https://leb.fbi.gov/articles/featured-articles/current-state-of-interview-and-interrogation>.

29. Hood & Hoffman, *supra* note 28.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

The Reid Technique Manual instructs interviewers only to interrogate those that they believe are guilty.³⁴ Thus, the focus of the interrogation becomes getting the suspect to admit rather than to collect information on the likelihood that this person committed the crime.³⁵ Using the Reid Technique, officers rely on their behavioral analysis interview skills to determine whether they believe the suspect committed the crime.³⁶ The Reid Technique ultimately raises questions about investigator bias and the accuracy of behavioral analysis interview cues for determining one's culpability.³⁷ However, research suggests that laypersons are not skilled in determining whether or not someone is telling the truth.³⁸ Further, more training does not make a substantial difference in a person's ability to determine the truthfulness of another person.³⁹

The interrogation portion of the technique has a nine-step process that can be categorized into three phases.⁴⁰ In the first phase, the interviewer tells the suspect they are guilty and attempts

34. Wyatt Kozinski, *The Reid Interrogation Technique and False Confessions: A Time for Change*, 16 SEATTLE J. FOR SOC. JUST. 301, 311 (2017).

35. *Id.*

36. *Id.* at 310.

37. *Id.* at 317.

38. Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, 1 POL. INSIGHTS FROM BEHAV. & BRAIN SCI. 112, 113 (2014).

39. *Id.*

40. INGE SEBYAN BLACK & LAWRENCE J. FENNELLY, INVESTIGATIONS AND THE ART OF THE INTERVIEW 76–77 (4th ed. 2020) (The nine steps of the Reid Technique are as follows: “(1) Direct confrontation. Advise the suspect that the evidence has led the police to the individual as a suspect. Offer the person an early opportunity to explain why the offense took place.

(2) Try to shift the blame away from the suspect to some other person or set of circumstances that prompted the suspect to commit the crime. That is, develop themes containing reasons that will psychologically justify or excuse the crime. Themes may be developed or changed to find one to which the accused is most responsive.

(3) Try to minimize the frequency of suspect denials.

(4) At this point the accused will often give a reason why he or she did not or could not commit the crime. Try to use this to move toward the acknowledgement of what they did.

(5) Reinforce sincerity to ensure that the suspect is receptive.

(6) The suspect will become quieter and listen. Move the theme of the discussion toward offering alternatives. If the suspect cries at this point, infer guilt.

(7) Pose the ‘alternative question,’ giving two choices for what happened—one more socially acceptable than the other. The suspect is expected to choose the easier option, but whichever alternative the suspect chooses, guilt is admitted. As stated earlier, there is always a third option that is to maintain that they did not commit the crime.

(8) Lead the suspect to repeat the admission of guilt in front of witnesses and develop corroborating information to establish the validity of the confession.

(9) Document the suspect's admission or confession and have him or her prepare a recorded statement (audio, video, or written).”).

to prevent the suspect from denying guilt.⁴¹ In the second phase, the police officer presents the suspect with different scenarios on how the crime was committed and attempts to minimize the crime by offering mitigating factors that make the crime more justifiable.⁴² In the third phase, the officer pressures the suspect into confessing by acting overly confident in the existing evidence against the suspect.⁴³ The manual even encourages officers to lie and make up fake evidence to bolster the validity of the officers' presumption of the suspect's guilt.⁴⁴ One way the Reid Technique does this is by encouraging interrogators to make up false witness statements or physical evidence that does not exist.⁴⁵

The Reid Technique operates under the presumption of guilt. However, there is no distinction between how adults and juveniles are treated under this technique.⁴⁶ The Reid Technique is used in North Carolina, and the Reid organization continues to host training programs across the country, including in North Carolina.⁴⁷

Many scholars have called for the technique to be replaced with less coercive techniques, such as the PEACE method.⁴⁸ The PEACE method alternatively focuses on the overall factfinding of investigation as opposed to obtaining a confession from the suspect in question.⁴⁹ This method is considered "less confrontational, less accusatory, less deceptive, more conversational, and more focused on gathering information."⁵⁰ Whereas the focus of the Reid

41. *Id.* at 77.

42. *Id.* at 77–78.

43. *Id.*

44. Kozinski, *supra* note 34, at 325.

45. DAN SIMON, IN DOUBT: THE PSYCHOLOGY OF THE CRIMINAL JUSTICE PROCESS 135–36 (2012).

46. Buffie Brooke Merryman, *Arguments Against Use of the Reid Technique for Juvenile Interrogations*, 10 COMM. L. REV. 16, 16–18 (2010).

47. *Id.*; *The Reid Technique of Investigative Interviewing and Advanced Interrogation Techniques*, REID, <https://reid.com/programs/58068> (last visited Mar. 15, 2022) (training classes for the Reid technique can be found here). The Reid organization is a for-profit organization that trains police officers on the Reid Technique. *About*, REID, <https://reid.com/about> (last visited Mar. 27, 2022). Data on how prevalent the Reid Technique is in North Carolina was not available on the University of North Carolina School of Government website. Eighty percent of security professionals rely on the Reid organization for building their own skills and for their staff. *Id.*

48. Spierer, *supra* note 21, at 1746–47.

49. *Id.* at 1748.

50. *Id.*

technique is primarily on obtaining a confession, the PEACE method is focused obtaining accurate and reliable information.⁵¹

III. FALSE CONFESSIONS NEGATIVELY INFLUENCE A JURY'S VERDICT

False confessions are incredibly detrimental to our country's legal system. Ultimately, confessions play a major role in influencing a jury's verdict. When a defendant confesses, the likelihood that a jury reaches a guilty verdict greatly increases.⁵² In *Arizona v. Fulminante*, the Supreme Court acknowledged the heavy weight a confession can have on a verdict.⁵³ In this case, the defendant's confession was coerced and violated the Fifth and Fourteenth Amendments.⁵⁴ The Court found that admitting this confession was not harmless error because it was unlikely that the prosecution would have pursued the case at all absent the confession.⁵⁵

Research shows that false confessions have a detrimental impact on a jury's decision on a defendant's guilt.⁵⁶ In a study on the impact of confessions on a jury, a mock jury received three different versions of a murder trial transcript: one with a low-pressure interrogation leading to a defendant's confession, one with a high-pressure interrogation leading to a defendant's confession, and a control group.⁵⁷ In the low-pressure interrogation transcript, the police briefly interrogated the defendant before he admitted to committing the alleged crime.⁵⁸ In the high-pressure interrogation transcript, the defendant was interrogated aggressively for an extended period of time and eventually admitted to the alleged crime.⁵⁹ The confession stemming from this

51. FORENSIC INTERVIEW SOLS., THE SCIENCE OF INTERVIEWING 5 (n.d.), <https://www.fis-international.com/assets/Uploads/resources/PEACE-A-Different-Approach.pdf>; Spierer, *supra* note 21, at 1721.

52. *Id.* at 1722.

53. *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (internal quotation marks omitted) (quoting *Bruton v. United States*, 391 U.S. 123, 139–40 (1968) (White, J., dissenting)).

54. *Id.* at 282.

55. *Id.* at 297.

56. Kassin, *supra* note 38, at 117–18.

57. *Id.* at 116.

58. *Id.* at 117.

59. *Id.*

interrogation was reasonably perceived to be involuntary.⁶⁰ Although participants reading the high-pressure interrogation transcript said the confession was involuntary and that it would not influence their verdict, this group had a higher rate of guilty verdicts.⁶¹ This study demonstrates how damaging false confessions can be to a jury's verdict, even when a jury is aware of the coercive nature of the interrogation.

Because research suggests that juveniles are especially vulnerable to false confessions, this study demonstrates how police lying to juveniles can be especially problematic to our court's fact-finding process.⁶² The more likely someone is to confess to a crime they did not commit, the more likely it is that jury verdicts will be influenced.⁶³ Thus, juveniles are more likely to have juries convict them of crimes that they did not commit than adults because they are more likely to have falsely confessed.⁶⁴

IV. ISSUES WITH POLICE DECEPTION DURING JUVENILE INTERROGATIONS

A. Research Suggesting Youth Should Be Treated Differently During Interrogations

False confessions are a leading cause of wrongful convictions.⁶⁵ Twenty-nine percent of DNA exonerations involved individuals who falsely confessed.⁶⁶ The rate of false confessions is much higher among youths, with 49% of these false confessions overturned by DNA evidence in cases where the confessor was twenty-one years or younger.⁶⁷ The use of DNA evidence to overturn convictions has shown that false confessions are common in cases where one was wrongfully convicted.⁶⁸

Police deception is an especially problematic practice when youths are involved. Parts of the brain responsible for future

60. *Id.*

61. *Id.*

62. *Id.* at 113.

63. *Id.* at 117.

64. *Id.* at 114.

65. Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. AM. ACAD. PSYCH. & L. 332 (2009).

66. *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://innocenceproject.org/dna-exonerations-in-the-united-states> (last visited Feb. 23, 2022).

67. *Id.*

68. *See id.*

planning, judgment, and decision-making do not fully develop until an individual reaches their mid-twenties.⁶⁹ One study on false confessions in juveniles suggests that the risk of taking responsibility for an act one did not commit is higher in juveniles than adults.⁷⁰ The study tested participants in three age groups: (1) twelve and thirteen-year-olds, (2) fifteen and sixteen-year-olds, and (3) young adults aged eighteen to twenty-six years old.⁷¹ In this study, the youths were presented with false evidence indicating liability for an act that they did not commit.⁷² The study ultimately concluded that adolescents were more likely than adults to falsely confess to an action they did not actually do.⁷³ The findings of this study are inextricably linked to our juvenile interrogation process. The study highlights that “it is possible that current police tactics in the United States increase the possibility of innocent people falsely confessing.”⁷⁴

B. The Court’s Recognition that Minors Should Be Treated Differently During Police Interrogations

Courts historically recognized the differences between children and adults in the police interrogation setting.⁷⁵ In 2005, *Roper v. Simmons* established that individuals who are seventeen years old and younger cannot be sentenced to death.⁷⁶ In *Roper v. Simmons*, Justice Kennedy notably relied on studies that demonstrated the major differences between juvenile and adult decision making.⁷⁷ For example, he cited one study showing that juveniles’ lack of maturity can lead to impulsive actions and decisions.⁷⁸ Justice Kennedy then noted that juveniles are more susceptible to peer pressure from outside groups than adults are, which can impact their control over decision making.⁷⁹ In

69. Quiroz, *supra* note 18.

70. Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 L. HUM. BEHAV. 141 (2003).

71. *Id.* at 144.

72. *Id.*

73. *Id.* at 141.

74. *Id.* at 152.

75. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 570 (2005); *Graham v. Florida*, 560 U.S. 48, 67 (2010); *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011).

76. *Roper*, 543 U.S. at 578.

77. *Id.* at 569.

78. *Id.*

79. *Id.*

discussing this, Justice Kennedy cited to a study finding that youths have “less control, or less experience with control, over their own environment.”⁸⁰ In his reasoning as to why juveniles should not be given the death penalty, Justice Kennedy also acknowledged that the character of a juvenile is not as well formed as the character of an adult.⁸¹

In the 2010 case, *Graham v. Florida*, the Supreme Court confirmed its view that juveniles should be treated differently from adults in our legal system.⁸² The Court reaffirmed *Roper*, which determined that juveniles lack maturity and responsibility and are more susceptible to outside influences than adults.⁸³ The Court noted that no subsequent data has negated *Roper*'s findings and that research continually showed fundamental differences between juvenile and adult minds.⁸⁴ These differences give juveniles a limited understanding of the juvenile justice system. The Court noted here that juveniles do not understand the roles of the actors within the criminal justice system in the same way adults do.⁸⁵ The Court used a juvenile's lack of understanding of the role of a lawyer during criminal proceedings as an example of this.⁸⁶ *Graham* reaffirmed the findings of the Supreme Court in *Roper*.⁸⁷ This limited understanding is important to note as it demonstrates how juveniles may not understand the implications of their actions during police interrogations. Juveniles may not understand their right to silence in the same way that adults do. Further, even if a lawyer is present during an interrogation, juveniles may be less willing than adults to work with the lawyer or view them as being on their side. This notion that juveniles would act differently than adults in criminal proceedings was emphasized in *J.D.B. v. North Carolina*.⁸⁸

In *J.D.B.*, the Supreme Court established that children should not be treated the same as adults during police interrogations and failing to distinguish between children and

80. *Id.*

81. *Id.* at 570.

82. *Graham v. Florida*, 560 U.S. 48, 68 (2010).

83. *Id.* at 68.

84. *Id.*

85. *Id.* at 78.

86. *Id.*

87. *Id.* at 68.

88. *See J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).

adults during police interrogations would violate the Constitution.⁸⁹ In *J.D.B.*, a police officer took a thirteen-year-old boy into a conference room and interrogated him for at least half an hour without giving the child his *Miranda* warnings.⁹⁰ Under *Miranda*, the standard for holding someone in custody was whether “a reasonable person [would] have felt that he or she was at liberty to terminate the interrogation and leave.”⁹¹ While an adult would not be in custody in this situation, the Court found that the child was in custody because a child’s age informs the *Miranda* custody analysis.⁹² In this new *Miranda* analysis that accounts for the differences between children and adults in custody, the Court factors in situations where “a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.”⁹³ Thus, *J.D.B.* opens the door to reshaping protections for juveniles during interrogation.

Beyond *J.D.B.*, courts and states recognize that something needs to be done to prevent false confessions from juveniles. Courts, therefore, give children extra protections during interrogations.⁹⁴ For example, a 1998 Kansas Supreme Court decision outlines some of the many instances where courts found that a bright-line rule was necessary to protect juveniles during interrogations, as opposed to allowing courts to decide under the totality of the circumstances whether a juvenile’s rights were violated during an interrogation.⁹⁵

While state courts have not banned police from lying during investigations, they have placed additional restrictions on police when interacting with juveniles.⁹⁶ For instance, in Massachusetts, the state’s highest court imposed a requirement that a parent or guardian be present with the juvenile at the time of their police interrogation.⁹⁷ Kansas adopted a similar rule in 1998, requiring an adult to be present during juvenile interrogations.⁹⁸ Moreover, in

89. *Id.* at 281–83.

90. *Id.* at 265–66.

91. *Id.* at 279 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)).

92. *Id.* at 265.

93. *Id.* at 272.

94. *See, e.g., In re B.M.B.*, 264 Kan. 417, 955 P.2d 1302 (1998).

95. *Id.* at 432.

96. *See, e.g., Commonwealth v. A Juvenile* (No. 1), 449 N.E.2d 654, 657 (Mass. 1983); *In re B.M.B.*, 955 P.2d at 1312–13.

97. *A Juvenile* (No. 1), 449 N.E.2d at 657.

98. *In re B.M.B.*, 955 P.2d at 1312–13.

North Carolina, parents are required to be present during interrogations, and juvenile interrogations must be recorded.⁹⁹ However, despite the current safeguards, false confessions continually account for a significant portion of North Carolina's exonerations.¹⁰⁰ According to the National Registry on Exonerations, North Carolina has exonerated sixty-seven people since 1989.¹⁰¹ In eleven of the sixty-seven cases where individuals were exonerated, a false confession was present.¹⁰² This data relates only to the number of exonerations, so the actual number of false confessions leading to false convictions is possibly much higher.¹⁰³ Thus, North Carolina should do more to protect juveniles during the police interrogation process. The state should ban police from lying to juveniles during interrogations to further protect juveniles from being pressured into false confessions.

V. NORTH CAROLINA'S REFORMS IN JUVENILE INTERROGATIONS AND ISSUES WITH THE STATE'S CURRENT SAFEGUARDS FOR CHILDREN DURING POLICE INTERROGATIONS

North Carolina has added more protections to juveniles during police interrogations over time. North Carolina General Statute 7B-2101 governs police interrogations. According to G.S. 7B-2101(b), parents must be present during interrogations.¹⁰⁴ In 1997, this statute applied only to juveniles under the age of fourteen.¹⁰⁵ In 2015, the age for requiring a parent to be present was changed from fourteen to sixteen, and to this day, parents are only required to be present if a juvenile is sixteen or younger.¹⁰⁶

Subsequent case law has further solidified that a parent cannot waive the child's right to have a parent present either. For example, *In re Butts* found that a parent voluntarily leaving the interrogation room did not sufficiently waive the child's right to have a parent present.¹⁰⁷ In this case, the child had made the statement that "it happened," admitting to his guilt, while his parent

99. N.C. GEN. STAT. §§ 7B-2101(b), 7B-806 (2021).

100. Cabral, *supra* note 15.

101. *Id.*

102. *Id.*

103. *See id.*

104. N.C. GEN. STAT. § 7B-2101(b) (2021).

105. *See* 1998 N.C. Sess. Laws 810.

106. 2015 N.C. Sess. Laws 126.

107. *In re Butts*, 582 S.E.2d 279, 283 (N.C. Ct. App. 2003).

was present.¹⁰⁸ Even so, the court found that his admission of guilt did not make a difference in the child's right to have a parent present during the entire interrogation process.¹⁰⁹ The court ruled that the child's later admissions without the parent present would not be admissible in court despite the one admission with the parent present.¹¹⁰

In 2011, North Carolina enacted a statute furthering its protections for children during police interrogations.¹¹¹ The state rewrote General Statute 15A-211 on Custodial Interrogations, placing a recording requirement on "all custodial interrogations of juveniles in criminal investigations conducted at any place of detention."¹¹²

One reform North Carolina and other states have adopted is the new requirement that an adult be present during police interrogations with children.¹¹³ This reform is beneficial because in many instances a child will have an adult they trust to support them. Whereas a police officer primarily hopes to obtain a confession during an interrogation, a third-party adult can help prevent the child from getting in trouble with the law, especially if the child is innocent. This reform is particularly beneficial when it comes to waiving one's *Miranda* rights. Research suggests that juveniles lack an understanding of *Miranda* rights and how they apply during the interrogation process.¹¹⁴ The rate of juvenile waivers of *Miranda* rights during interrogations is 90%—much higher than the rate at which adults waive their *Miranda* rights.¹¹⁵

However, North Carolina's requirement that an adult be present during juvenile interrogations is not without its flaws. The requirement that a parent, guardian, attorney, or other adult figure in a minor's life be present during interrogations only applies to minors ages sixteen and under.¹¹⁶ Thus, seventeen-year-olds are not

108. *Id.* at 284.

109. *Id.*

110. *Id.* at 282.

111. See JANET MASON, U. N.C. SCH. GOV'T, 2011 LEGISLATION ENACTED: JUVENILE LAW (Oct. 2011), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Mason%20Juvenile%20Legislation_0.pdf.

112. *Id.* at 5.

113. N.C. GEN. STAT. § 7B-2101(b) (2021).

114. Feld, *supra* note 26, at 454.

115. *Id.* at 429.

116. N.C. GEN. STAT. § 7B-2101(b) (2021).

protected by this statute and could be left vulnerable during police interrogations.

Additionally, there are times parents or other adults could do more harm than good in a police interrogation. Parents frustrated with their children may be convinced that their children are guilty and actually want their children to face legal consequences for their alleged wrongs. Parents have even gone so far as to try to convince their children to confess to the alleged crime.¹¹⁷ North Carolina's requirement that a parent or guardian must be present in the police interrogation process does not require that the parent actually be on the child's side or protect the child in any way during the process.¹¹⁸ An Illinois court discussed a case where this issue arose.¹¹⁹ In *In re D.W.*, the juvenile suspect did not want to speak with anyone about the alleged crime, but the suspect's mother effectively acted as an agent of the police.¹²⁰ She testified that her son would not talk to anyone until she arrived at the sheriff's office and told him that he had to talk to someone.¹²¹ She got him to admit to the crime and addressed her son in a "loud, scolding voice."¹²² On appeal, the court found that the "trial court might well conclude that [the deputy] had the mother present" in the interrogation so she could persuade her son to confess.¹²³ The court held that the trial court did not err in finding that the mother acted as an agent of the police in a way that was detrimental to her son.¹²⁴

Similarly, other states have found that parental presence weighs against the validity of a child's *Miranda* waiver and can make a confession inadmissible.¹²⁵ In one New Jersey case, a mother badgered her son in front of the police in order to get him to cooperate.¹²⁶ The court in this case ruled that the mother effectively acted as an agent of the police and her presence here contributed

117. *E.g.*, *In re D.W.*, 440 N.E.2d 140, 141 (Ill. App. Ct. 1982).

118. *See* N.C. GEN. STAT. § 7B-2101(b) (2021).

119. *In re D.W.*, 440 N.E.2d at 141.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *See* State *in re A.S.*, 999 A.2d 1136 (N.J. 2010) (holding that a mother who badgered her son in front of the police acted as an agent of the police); State *ex rel. J.E.T.*, 10 So. 3d 1264 (La. Ct. App. 2009) (finding that the parent had presented an "obvious conflict" and was not shown to serve as someone interested in child's welfare).

126. State *in re A.S.*, 999 A.2d at 138.

to making her son's confession inadmissible.¹²⁷ While having a parent that is not helping the child and effectively serving as an agent of the police may cause courts to render a confession of guilt inadmissible, this is not something that should be left up to chance.¹²⁸ Thus, there is a need for greater protections to juveniles during the interrogation phase.

One Supreme Court brief, *Joseph H. v. California*, uses cases of parents causing more harm than good during the juvenile interrogation phase to argue that juveniles should be entitled to have their lawyer present in addition to a parent or guardian during the interrogation process.¹²⁹ The North Carolina statute on interrogation procedures states, "When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney."¹³⁰ In the North Carolina interrogation statute, if a child's parent is present, an attorney is not required to also be there.¹³¹ This effectively means that an attorney is not required to be present during interrogations for children.¹³² Even if an attorney were present, an attorney may not be able to mitigate the damage a parent could do to their child's case. A child may be more trusting of their parent than an attorney that was recently appointed to them and whom they just met. The child may also not want to get in trouble at home with their parent, and the child might confess because their parent told them to confess rather than listening to their attorney, assuming the attorney is telling the child it is best not to confess. Finally, North Carolina's requirement that an adult be present during juvenile interrogations is not enough to protect juveniles during police interrogations because if police lie during interrogations, the adult present is also hearing the lie and possibly believing it as the truth. The adult present could also be influenced by the police's deceptive tactics and not do the best job at protecting the child's interests.

127. *Id.*

128. *Id.*

129. Petitioner's Reply Brief at 3, *Joseph H. v. California*, 137 S. Ct. 34 (2016) (No. 15-1086).

130. N.C. GEN. STAT. § 7B-2101(b) (2021).

131. *Id.*

132. *Id.*

Another reform in North Carolina's juvenile justice system is the use of electronic recordings during juvenile interrogations.¹³³ Although this is a positive reform in that it holds officers accountable for the things they may say during an interrogation, it is not a foolproof way to prevent problematic interrogation methods. While it may help a juvenile defendant's case for a jury to have the opportunity to hear any coercive measures the officers used against the juvenile, it does not stop a juvenile's false confession from happening. Further, initiating these recordings is up to officers.¹³⁴ Thus, these recordings are subject to human error and an officer's own discretion. Officers could forget to turn on recordings during interrogations or only record a portion of the interrogation, leaving out the coercive tactics that contributed to a juvenile's false confession.

Further, the act of confessing can adversely influence a jury, regardless of what else they hear on the recording.¹³⁵ As previously mentioned, a study on the impact of false confessions on a jury found that even when juries are aware that coercive police tactics were used during interrogations, jury verdicts are influenced by false confessions.¹³⁶ This study further demonstrates why false confessions are detrimental to a jury verdict, regardless of whether or not a recording can shed light on the coercive nature of the interrogation.¹³⁷

Recordings of juvenile interrogations have given insight into the process so much so that they have been part of the reasoning behind the 2021 move for Oregon to ban police from lying during juvenile interrogations.¹³⁸ Recordings have shown courts the types of deceptive tactics police use, but recordings may not solely prevent the actual false confessions that deceptive interrogations lead to from getting admitted into court.¹³⁹

133. N.C. GEN. STAT. § 15A-211 (2021).

134. *Id.*

135. Kassir, *supra* note 38, at 117.

136. *Id.*

137. *Id.*

138. Innocence Staff, *Oregon Deception Bill is Signed into Law, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (June 16, 2021), <https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations>.

139. *Id.*

VI. A PROPOSAL FOR CHANGE: THE BAN ON POLICE LYING DURING JUVENILE INTERROGATIONS “NEED NOT AWAIT JUDICIAL ACTION”¹⁴⁰

An additional protection North Carolina should enact to protect juveniles during the interrogation process is to ban police from lying during interrogations with juveniles. Data collected on police exonerations suggests that further reforms should be enacted in North Carolina to prevent false confessions.¹⁴¹ The National Registry of Exonerations tracks the number of exonerations by year where a false confession was present.¹⁴² While the data is limited in that it only shows exonerations and not wrongful convictions that have not been overturned, the database tracks all the exonerations in the United States and can be separated by state, year, and contributing factors.¹⁴³ When examining the number of exonerations where a false confession was present in North Carolina, there are no major changes in the number of false confession exonerations in relation to the changes made in the 2000s in North Carolina law.¹⁴⁴ Similarly, in the United States, there has been no noticeable decline in exonerations from false confessions.¹⁴⁵ Rather, false confession exonerations have been increasing in number across the United States.¹⁴⁶ It is clear that the current protections are not eliminating the problem of false confessions in North Carolina and the United States.

In 2021, two states moved to ban police from lying to juveniles during interrogations, spurred by the continued issue of false confessions.¹⁴⁷ In July 2021, Illinois, once the false confession capital of the United States, was the first state to ban police lying to

140. *In re Joseph H.*, 367 P.3d 1, 6 (Cal. 2015) (“Finally, it bears to mention that considerations of special safeguards for young children need not await judicial action.”).

141. Cabral, *supra* note 15.

142. *Id.*

143. *Id.*

144. *See id.*

145. Emily Barone, *The Wrongly Convicted: Why More Falsely Accused People are Being Exonerated Today Than Ever Before*, TIME (Feb. 17, 2017), <https://time.com/wrongly-convicted>.

146. *Id.*

147. Emma Ockerman, *How Cops Lie to Kids in Interrogations and Get Away with It*, VICE (June 25, 2021, 9:58 AM), <https://www.vice.com/en/article/4av4xd/how-cops-lie-to-kids-in-interrogationsand-get-away-with-it>.

juveniles during interrogations.¹⁴⁸ Shortly thereafter, Oregon followed suit by enacting its own ban on lying to juveniles during police interrogation.¹⁴⁹ The Oregon bill was originally sponsored by Senator Chris Gorsek, a former police officer.¹⁵⁰ Senator Gorsek stated that “this is a professional standard I teach and we have reliable data showing that untruthfulness used in interviews can lead to false confessions.”¹⁵¹ Moreover, New York, where the Central Park Five were wrongfully convicted, is in the process of following Oregon and Illinois in banning police from lying to juveniles as well as adults.¹⁵²

These states have paved the way for a movement across the United States to ban police from lying to juveniles. North Carolina, home of the “Winston-Salem Five” should consider following suit. Steve Drizin, a nationally recognized expert on false confessions and Director of the Center on Wrongful Convictions at Northwestern Pritzker School of Law, considers banning police from lying during juvenile interrogations to be the next generation of reform in juvenile justice.¹⁵³ Drizin acknowledged the impact recordings have had on future reforms, stating: “Recording gave us a window inside the interrogation room. When we’ve peered through that window over the past two decades, we’ve seen again and again how lies about evidence and false promises of leniency contribute to false confessions by youthful suspects.”¹⁵⁴ It is time to take action on this insight from the juvenile interrogation recording statute in North Carolina.

While states should advocate for change both judicially and legislatively to increase protections for juveniles during police

148. Diaz, *supra* note 22; N’dea Yancey-Bragg, *Illinois to Become First State to Ban Police Officers From Lying to Minors During Interrogations*, USA TODAY (June 1, 2021), <https://www.usatoday.com/story/news/nation/2021/06/01/illinois-ban-police-lying-minors-interrogations/7489269002>. One of the bill’s sponsors, Senator Robert Peters stated that “Chicago is the wrongful conviction capital of the nation, and a disproportionate number of wrongful convictions were elicited from Black youth by police who were allowed to lie to them during questioning.” *Id.* He hopes that this bill will end this trend. *Id.*

149. Innocence Staff, *supra* note 138.

150. *Id.*

151. *Id.*

152. Rocco Parascandola, *Proposed N.Y. Legislation Would Ban Police Tactic of Lying to Suspects to Get a Confession*, N.Y. DAILY NEWS (Mar. 8, 2021), <https://www.nydailynews.com/new-york/nyc-crime/ny-ny-bill-ban-police-lying-interrogation-20210308-jxcppdatdvcgktneng2uxirp6i-story.html>.

153. Innocence Staff, *supra* note 138.

154. *Id.*

interrogations, the best course of action is for North Carolina to enact a statute that bans police from lying to juveniles during interrogations, like that of Illinois and Oregon.¹⁵⁵

A dissenting judge on the California Supreme Court recognized the need for further state action on these matters in *In re Joseph H.*¹⁵⁶ The dissent acknowledged the many states, including North Carolina, that have implemented extra safeguards for juveniles during the interrogation process.¹⁵⁷ While judicial action is certainly better than no action at all, legislative action banning police lying to juveniles would likely provide a quicker remedy than judicial bans. Additionally, judges may be hesitant to create the sort of guidelines that would ban police from lying to juveniles.¹⁵⁸ Judges can be hesitant to “legislate from the bench” and create new laws.¹⁵⁹ It is not hard to imagine a situation where the current Supreme Court would hesitate to create new laws, especially when it comes to such an action that would substantially alter the way that police officers conduct business.

Many officers in North Carolina and across the United States rely on the Reid Technique to conduct business.¹⁶⁰ This technique relies heavily on deception and coercion.¹⁶¹ Some have argued that the Reid Technique should be abandoned for a less coercive method, such as the PEACE method.¹⁶² An outright ban on lying would prevent officers from using the Reid Method or any other subsequent method that incorporates the coercive and deceptive tactics essential to the Reid Technique.¹⁶³ This would also prevent officers from incorporating coercive techniques into their interrogations under other methods.¹⁶⁴ Moreover, police officers that have used the Reid Technique for many years could be at risk of lying to juveniles out of habit. By banning lying altogether,

155. *Id.*

156. *In re Joseph H.*, 367 P.3d 1 (Cal. 2015).

157. *Id.*

158. *Id.*; see Arthur Eisenburg, *Dear Brett Kavanaugh, Justices Do Make Law*, AM. C.L. UNION (July 13, 2018), <https://www.aclu.org/blog/free-speech/dear-brett-kavanaugh-justices-do-make-law>. Justice Kavanaugh stated that Justices “must interpret the law, not make the law,” demonstrating a hesitancy by some judges to create new laws. *Id.*

159. *Id.*

160. Spierer, *supra* note 21, at 1721.

161. *Id.* at 1724.

162. *Id.* at 1725.

163. *Id.* at 1724.

164. *Id.*

statements that are fruit of the poisonous tree of deception could be excluded from trial.

VII. CONCLUSION

North Carolina should act swiftly to protect juveniles during interrogations. Courts and states have long recognized the inherently vulnerable nature of juveniles during the interrogation process.¹⁶⁵ North Carolina has made beneficial reforms to the juvenile interrogation process by requiring an adult to be present during the interrogation of juveniles and requiring that juvenile interrogations be recorded.¹⁶⁶ However, juvenile false confessions continually occur, and more must be done to protect these individuals.¹⁶⁷ The time has come for North Carolina to enact the next generation of juvenile justice reform and ban police from lying during juvenile interrogations.

165. *J.D.B. v. North Carolina*, 564 U.S. 261, 271–72 (2011).

166. N.C. GEN. STAT. § 7B-2101(b) (2021).

167. Spierer, *supra* note 21, at 1750.