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# The Kids Aren't Alright: The Road to Abandoning Deceptive Interrogation Techniques for Juvenile Suspects in Maryland

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# COMMENT

## THE KIDS AREN'T ALRIGHT: THE ROAD TO ABANDONING DECEPTIVE INTERROGATION TECHNIQUES FOR JUVENILE SUSPECTS IN MARYLAND

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The Fifth Amendment to the United States Constitution guarantees the right against self-incrimination.[1] This protection allows a person to decline to provide incriminating information during an interrogation or at trial. Under *Miranda v. Arizona*,[2] police officers inform suspects of a crime of this protection when officers read the *Miranda* rights, which include the right to remain silent.[3] However, during an interrogation, police officers often utilize psychologically deceptive techniques to elicit a confession from a suspect whom they believe is guilty. One such interrogation strategy is the Reid Technique,[4] which has become the interrogation technique most widely used by police officers in the United States.[5] Deceptive interrogation techniques have been shown to lead to more false confessions than transparent questioning.[6] In cases of wrongful convictions that have been overturned



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1. U.S. CONST. amend. V.

2. 384 U.S. 436 (1966).

3. *Id.* at 478–79 (holding that, prior to interrogation, police officers must remind criminal suspects of their Fifth Amendment protection against self-incrimination by informing suspects of their right to remain silent, the fact that any statements made will be used against the suspect in court, the suspect's right to have an attorney present during interrogation, and the fact that, if they cannot afford an attorney, one will be provided to them).

4. *See id.* at 450 (stating that, under the Reid Technique, officers are instructed to "minimize the moral seriousness of the offense[] [and] to cast blame on the victim or on society . . . [in order] to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged." (footnotes omitted)).

5. *See In re* Elias V., 188 Cal. Rptr. 3d 202, 211 (Cal. Ct. App. 2015) ("It has been estimated that about two-thirds of police executives in this nation have had training in the 'Reid technique.'" (citing Marvin Zalman & Brad W. Smith, *The Attitudes of Police Executives Toward* Miranda *and Interrogation Policies*, 97 J. CRIM. L. & CRIMINOLOGY 873, 920 (2007))).

6. Ariel Spierer, Note, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, 92 N.Y.U. L. REV. 1720, 1730 n.75 (2017).

using DNA evidence, about 30% of the wrongful convictions involved a false confession.[7]

Deceptive techniques tend to cause heightened concern when used in cases involving juvenile suspects.[8] Children and adolescents are more susceptible to deception in interrogation situations than adults.[9] Juveniles do not yet have a fully developed prefrontal cortex,[10] meaning that they are not yet fully able to control impulsivity or fully consider the lasting consequences of their actions.[11] A child or adolescent is more likely to succumb to coercion during an interrogation than an adult under the same circumstances.[12] In fact, more than one-third of false confessions are given by juveniles.[13] Deceptive interrogation techniques have been noted in several high-profile cases of juveniles who produced false confessions, such as the now-exonerated Central Park Five[14] and the more recent case of Brendan Dassey.[15]

On July 15, 2021, the Governor of Illinois signed Senate Bill 2122 into law,[16] which prohibits law enforcement officers from deceiving juvenile

7. *Oregon Deception Bill Is Signed into Law, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (July 14, 2021), https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/.

8. *Id.*

9. Spierer, *supra* note 6, at 1730.

10. Megan Crane, Laura Nirider & Steven A. Drizin, *The Truth About Juvenile False Confessions*, INSIGHTS ON L. & SOC'Y, Winter 2016, at 12. The prefrontal cortex is the portion of the brain that contributes to problem-solving, decision-making, and impulse control, and is not fully developed until a person reaches adulthood—typically in their early- to mid-twenties. *Id.*

11. *See id.* (stating that "youths' brains are not yet fully developed in areas relating to judgment and decision-making, giving rise to classic 'teenager' traits like impulsivity, vulnerability to pressure and suggestibility, as well as a tendency to be motivated by short-term rewards").

12. *See, e.g.*, *id.* (referencing "[a]nother study of 340 exonerations [that] found that 42% of juveniles studied had falsely confessed, compared with only 13% of adults").

13. *In re* Elias V., 188 Cal. Rptr. 3d 202, 218 (Cal. Ct. App. 2015).

14. The "Central Park Five" refers to a group of five teenagers who were wrongly convicted of rape and assault of a woman in New York City. The boys all produced false confessions after being subjected to deceptive interrogation techniques by the questioning officers. Even though there was DNA found on the scene that did not match any of the five boys, the confessions proved to be persuasive enough for jury members to convict all five teenagers. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 894–900 (2004).

15. Brian Gallini, *The Interrogations of Brendan Dassey*, 102 MARQ. L. REV. 777, 792–814 (2019). Dassey's interrogation was filmed, and portions of the video were included in the Netflix series "Making a Murderer," sparking public outrage over the manipulative tactics utilized by the questioning officer, including leading questions to develop the story of the crime for Dassey (who otherwise did not know any details of the event) and false promises of immediate relief for Dassey if he confessed. *Id.* at 778–81.

16. *Bill Status of SB2122: 102nd General Assembly*, ILL. GEN. ASSEMBLY, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2122&GAID=16&DocTypeID=SB&SessionID=110&GA=102 (last visited Mar. 29, 2022) [hereinafter *Bill Status of SB2122*].

suspects during custodial interrogations.[17] This law bans techniques such as lying about protections that will be afforded to the juvenile and claiming to have false evidence in order to secure a confession.[18] Any confession made by a juvenile suspect who was subject to such deceptive techniques during an interrogation will be deemed inadmissible as evidence.[19] This law went into effect on January 1, 2022.[20] A similar law banning the use of deceptive interrogation techniques on juvenile suspects has been passed in Oregon and was also enacted on January 1, 2022.[21] Taking inspiration from these recent statutes, this Comment will explain why the Maryland General Assembly must implement statutory protections for juvenile suspects by banning the use of deceptive interrogation techniques when interrogating juveniles to protect their Fifth Amendment right against self-incrimination. Part I will explore the recent trends in police interrogation methods in the United States, highlight concerns for juveniles in interrogations, discuss current interrogation techniques practiced in Maryland, and evaluate the recent legislation passed in Illinois and Oregon.[22] Part II will analyze specific concerns for juveniles in the context of false confessions, call attention to injustices in Maryland's current interrogation practices, and, finally, introduce a model statute for the Maryland General Assembly that bans the use of deceptive interrogation techniques for juvenile suspects while urging the General Assembly to require implementation of a new method of police interrogation.[23]

## I. BACKGROUND

Prior to the 1930s, an interrogation technique referred to as the "third degree" was commonplace among American law enforcement, with interrogating officers resorting to physical torment in an attempt to obtain

17. S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021). The bill defines "custodial interrogation" to mean "any interrogation (i) during which a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response." *Id.*

18. *Id.* The bill defines "deception" as "the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer or juvenile officer to a subject of custodial interrogation." *Id.*

19. *Id.*

20. 2022 Ill. Legis. Serv. P.A. 102-101 (West); *see also Bill Status of SB2122*, *supra* note 16. The new statute is now codified within the Criminal Procedure article of the Illinois Compiled Statutes and is titled "Prohibition of deceptive tactics." 705 ILL. COMP. STAT. 405/5-401.6 (2022); 725 ILL. COMP. STAT. 5/103-2.2 (2022).

21. S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

22. *See infra* Part I.

23. *See infra* Part II.

information and confessions from criminal suspects.[24] By the mid-twentieth century, interrogations had shifted away from physical brutality and, instead, psychological techniques designed to elicit confessions from suspects became commonplace during questioning.[25] Such techniques pose concern, specifically in the context of interrogating juvenile suspects.[26] On January 1, 2022, Illinois and Oregon became the first states to enact legislation designed to ban the use of deception by law enforcement officers when interrogating juvenile suspects.[27] Section I.A of this Comment will provide an overview of the transition from the third degree to modern day interrogation techniques. Section I.B introduces the concern for juveniles who are subjected to deceptive interrogation techniques. Section I.C will analyze Maryland case law regarding interrogation practices and current interrogation techniques used in the State. Finally, Section I.D will introduce and analyze the recent laws passed in other states that ban the use of deceptive interrogation techniques with juvenile suspects.

### *A. The Transition from the Third Degree to Modern Interrogation Techniques*

The Supreme Court of the United States condemned the third degree interrogation technique in the early-1900s, finding physical violence and manipulation to be unconstitutionally coercive in obtaining confessions.[28] Soon after, Fred Inbau, John Reid, and Joseph Buckley developed a police interrogation method known as the Reid Technique, which quickly became one of the standard methods of interrogation across the country.[29] To protect the due process rights of criminal suspects following the transition from the third degree to modern psychological tactics, including the Reid Technique, the Supreme Court ushered in the requirement to read the *Miranda* rights to all criminal suspects prior to interrogation, finding that procedural safeguards

24. *See* Miranda v. Arizona, 384 U.S. 436, 445–46 (1966) ("[P]olice violence and the 'third degree' flourished [in the early 1930s]. . . . [T]he police resorted to physical brutality—beating, hanging, whipping—and to sustained and protracted questioning incommunicado in order to extort confessions." (footnote omitted)).

25. *See id.* at 448 (stating that "the modern practice of in-custody interrogation is psychologically rather than physically oriented").

26. *See, e.g.*, *In re* Elias V., 188 Cal. Rptr. 3d 202, 224 (Cal. Ct. App. 2015) (reversing the conviction of a thirteen-year-old boy based on a confession of guilt because "[t]he false evidence and other deceptive techniques employed in this case to induce a 13-year-old adolescent to incriminate himself create substantial doubt about both the voluntariness of [the adolescent's] inculpatory statements and the truth of those statements").

27. S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021); S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

28. *See infra* Section I.A.1.

29. *See infra* Section I.A.2.

are required to protect the Fifth Amendment right against self-incrimination.[30]

*1. The United States Supreme Court Condemned the Third Degree, Hastening the Shift Towards Psychological Interrogation Tactics*

In 1936, the Supreme Court of the United States ruled in *Brown v. Mississippi*[31] that confessions coerced by physical torture cannot be used as the basis for a criminal defendant's conviction.[32] The Court held such tactics to be unconstitutional, finding that physically coerced convictions violate the Fourteenth Amendment Due Process Clause,[33] which prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law."[34] Four years later, the Court publicly condemned Florida police officers for implementing physically abusive interrogation techniques in the case of *Chambers v. Florida*.[35] The Court found that the confessions of four men were obtained by coercion and given under duress because police officers subjected the suspects to sleep and food deprivation, threats of violence, and prolonged questioning for days on end.[36] The Court held that this form of coercive questioning was in violation of the Due Process Clause of the Fourteenth Amendment, stating, "[t]o permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due process of law a meaningless symbol."[37]

Thereafter, in 1948, the Supreme Court reversed a fifteen-year-old boy's conviction in the case of *Haley v. Ohio*[38] because the lower courts' ruling could not be "squared" with the Court's holding in *Chambers*.[39] The Court determined that the defendant's confession had been obtained in violation of the Fourteenth Amendment Due Process Clause and was thus involuntary.[40] The Court stated that "when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used."[41] The Court found the conduct of the officers to be coercive based on the defendant's age, the length of the interrogation and time of day at which he was interrogated, the fact that he did not have an attorney present, and the

30. *See infra* Section I.A.3.
31. 297 U.S. 278 (1936).
32. *Id.* at 286–87.
33. *Id.*
34. U.S. CONST. amend. XIV, § 1.
35. 309 U.S. 227 (1940).
36. *Id.* at 240.
37. *Id.*
38. 332 U.S. 596 (1948).
39. *Id.* at 597.
40. *Id.* at 599, 601.
41. *Id.* at 599.

cruel attitude of the officers, all of which "convince[d] [the Court] that this was a confession wrung from a child by means which the law should not sanction."[42] Notably, the Court denounced the assumption that "a boy of fifteen, without aid of counsel, would have a full appreciation of [his constitutional rights]."[43] In doing so, the Court acknowledged a need for more age-appropriate interrogation standards for juvenile suspects.[44]

*2. The Reid Technique for Police Interrogation Became One of the Most Popular Interrogation Methods Following Its Initial Publication in the 1960s*

Following the Court's criticism of the third degree method in *Brown* and *Chambers*, law enforcement agencies began to phase out such brutal interrogation methods, and by the 1960s a new method known as the Reid Technique had become commonplace among law enforcement agencies across the country.[45] The Reid Technique was created by John Reid and first published in the 1962 book, *Criminal Interrogation and Confessions*, by himself and Fred E. Inbau.[46] The Reid Technique describes two recommended courses of interrogation: one for suspects whose "guilt is definite or reasonably certain" and another for suspects whose "guilt is doubtful or uncertain."[47] The book also includes several general tips for criminal interrogations of all types.[48]

Many of the tactics for the interrogation of suspects whose guilt is definite or reasonably certain are designed to minimize the seriousness of the offense, specifically: telling the suspect "that anyone else under similar conditions or circumstances might have done the same thing";[49] suggesting that the suspect committed the crime for a morally acceptable reason;[50] placing blame for the crime on the victim or criminal accomplice;[51] and suggesting that the victim of the crime was to blame.[52] Other tactics are more straightforward and aggressive, such as: pointing out the subject's guilty state

42. *Id.* at 601.

43. *Id.*

44. *Id.*

45. *See In re* Elias V., 188 Cal. Rptr. 3d 202, 211 (Cal. Ct. App. 2015) (stating that the creators of the Reid Technique are the largest providers of interrogation technique training across the United States and that "[i]t has been estimated that about two-thirds of police executives in this nation have had training in the 'Reid Technique'").

46. FRED E. INBAU & JOHN E. REID, CRIMINAL INTERROGATION AND CONFESSIONS (2d ed. 1967).

47. *Id.* at 24.

48. *Id.* at 108.

49. *Id.* at 38.

50. *Id.* at 43.

51. *Id.* at 47.

52. *Id.* at 64.

of mind;[53] emphasizing the "futility of resistance" to truthfully confessing;[54] and pointing out the negative consequences of continued criminal behavior.[55]

While the techniques suggested for interrogations of suspects whose guilt is doubtful or uncertain are less manipulative and aggressive, the Reid Technique baselessly asserts that many behaviors exhibited by a suspect during interrogation are indicative of guilt.[56] Inbau and Reid state that, if a suspect attempts to explain nonexistent evidence away, this indicates guilt.[57] Moreover, if a theft suspect offers to pay restitution for the alleged offense, this indicates guilt.[58] Additionally, a guilty person will be more likely than an innocent person to refuse to submit to a lie detector test,[59] and a suspect who agrees to say whatever the interrogator wants while remaining adamant about their innocence is most likely guilty.[60] The book does not offer any factual basis or research to support the assertion that such statements and behaviors show a likelihood of guilt.[61] The Reid Technique became so prominent among American law enforcement that the Supreme Court of the United States referenced the technique in *Miranda v. Arizona*,[62] citing to the Reid Technique when considering the significant risk of self-incrimination during interrogations.[63]

#### *3. In the 1960s, the Supreme Court's Holdings in Two Landmark Cases Impacted Police Interrogation Techniques by Introducing the Mandatory Reading and Explanation of All Suspects' Constitutional Rights and by Expanding Fifth Amendment Protections to Juveniles*

In 1966, the Supreme Court's decision in *Miranda v. Arizona* led to national implementation of procedural safeguards to protect criminal

53. *Id.* at 33.

54. *Id.* at 77.

55. *Id.*

56. There are no citations to, discussions about, or mentions of research or statistics that support any claims made regarding behaviors that are indicative of guilt at any point in *Criminal Interrogation and Confessions*. Yet, such statements are phrased as absolute truths. *See, e.g.*, Brian R. Gallini, *Police "Science" in the Interrogation Room: Seventy Years of Pseudo-Psychological Interrogation Methods to Obtain Inadmissible Confessions*, 61 HASTINGS L.J. 529, 565 (2010) (stating that that Reid Technique was created solely as "a result of many years of [personal] experience, primarily on the part of the staff of John E. Reid & Associates" (quoting FRED E. INBAU, JOHN E. REID & JOSEPH P. BUCKLEY, CRIMINAL INTERROGATION AND CONFESSIONS 212 (3d ed. 1986)).

57. INBAU & REID, *supra* note 46, at 103.

58. *Id.* at 106.

59. *Id.*

60. *Id.* at 108.

61. *See supra* note 56 and accompanying text.

62. 384 U.S. 436 (1966).

63. *See infra* notes 71–72 and accompanying text.

suspects' Fifth Amendment rights.[64] The Court addressed the admissibility of confessions made by a suspect during custodial interrogation,[65] finding that "[e]ven without employing brutality . . . the very fact of custodial interrogation exacts a heavy toll on individual liberty" and takes advantage of individual weaknesses.[66] The Court's opinion contained citations to the Reid Technique[67] and described the psychologically oriented tactics that replaced the physical brutality of the third degree method of interrogation as "psychological conditioning."[68] In describing the Reid Technique, the Court stated that:

> [O]fficers are instructed to minimize the moral seriousness of the offense, to cast blame on the victim or on society. These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged.[69]

The Court further noted how the interrogation environment created through such techniques "is not physical intimidation, but it is equally destructive of human dignity."[70]

Upon consideration of modern interrogation techniques, the Court "can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning,"[71] and "adequate protective devices" are necessary to uphold the principle that a person shall not be required to incriminate themselves by making a statement that is not truly "the product of . . . free choice."[72] Thus, the Court introduced what is now commonly known as the *Miranda* warning, holding that:

> [W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning . . . . [h]e must be warned prior to any questioning that he has the right to remain silent, that anything he

64.*Id.* at 479.

65. "Custodial interrogation" is defined as the "[q]uestioning of a detained person by the police in connection with a criminal investigation." *Custodial Interrogation*, CORNELL LEGAL INFO. INST., https://www.law.cornell.edu/wex/custodial_interrogation (last visited Apr. 4, 2022).

66. *Miranda*, 384 U.S. at 455.

67. *Id.* at nn.9–23. Notably, Inbau & Reid published the second edition of the Reid Technique in 1967 with a preface noting that the authors made slight edits to the Technique in a "contentious effort to conform to the requirements recently established by the Court." INBAU & REID, *supra* note 46, at vii. The second edition of the Reid Technique includes a section briefly explaining the newly required *Miranda* warnings but is otherwise largely unchanged. *Id.* at 4–5.

68. *Miranda*, 384 U.S. at 454.

69. *Id.* at 450 (footnotes omitted).

70. *Id.* at 457.

71. *Id.* at 458.

72. *Id.*

> says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.[73]

The Court further held that an individual may exercise any one of these rights at any time throughout the interrogation, and also may choose to "knowingly and intelligently" waive the rights.[74] Following the holding in *Miranda*, if an officer fails to read a suspect their *Miranda* rights and the defendant fails to demonstrate a waiver of these rights, any evidence obtained during an interrogation cannot be used against the defendant at trial.[75]

Soon after the *Miranda* decision, the Supreme Court heard the 1967 case *In re Gault*.[76] The case reached the Supreme Court after fifteen-year-old Gerald Gault was denied the ability to appeal his conviction due to an Arizona state law prohibiting appeals in juvenile cases.[77] The Arizona law denied juvenile defendants any right to a notice of the charge(s) brought against them, the right to legal counsel, the right to confrontation and cross-examination of witnesses during a criminal trial, the right against self-incrimination, the right to obtain a transcript of the court proceedings, and the right to appellate review of trial court rulings.[78] The Court held that the Fourteenth Amendment due process rights must be given to juvenile criminal defendants,[79] stating:

> Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise.[80]

The Court found that sentencing a juvenile defendant to any institution at which the juvenile's freedom is restricted requires due process of law, thus holding that juvenile defendants and their parents must be informed of the defendant's right to legal counsel.[81] The Court further held that the Fifth Amendment protection against self-incrimination applies equally to adult and

73. *Id.* at 478–79.
74. *Id.*
75. *Id.*
76. 397 U.S. 1 (1967).
77. *Id.* at 8.
78. *Id.* at 10.
79. *Id.* at 41.
80. *Id.* at 19–20.
81. *Id.* at 41.

juvenile defendants.[82] The Court emphasized that "[n]o reason is suggested or appears for a different rule in respect [to] sworn testimony in juvenile courts than in adult tribunals," concluding that the constitutional rights afforded to adult criminal defendants must also be guaranteed to juveniles.[83]

### *B. The Supreme Court of the United States Raised Concerns About a Lack of Consideration of Age and Development in* J.D.B. v. North Carolina

In the 2011 case of *J.D.B. v. North Carolina*,[84] the Supreme Court of the United States held that a minor's age properly informs determination of whether an individual is being held in custody because a reasonable child subjected to police questioning would feel pressured to comply, whereas a reasonable adult in the same situation would feel free to go.[85] The *J.D.B.* Court found that a child's age "is a fact that 'generates commonsense conclusions about behavior and perception,'"[86] explaining that common sense and "'community experience' . . . make[] it possible . . . 'to determine what is to be expected' of children in other contexts [and also] makes it possible to know what to expect of children subjected to police questioning."[87]

The Court's analysis addressed the need for unique considerations in custodial analysis for juvenile suspects and included several references to concerns about juvenile interrogations. The Court acknowledged that police interrogation is inherently stressful and pressures a "frighteningly high percentage of people" to falsely confess, with this risk being even higher for juvenile suspects.[88] The Court also stated that the consideration of a juvenile suspect's age when interrogating or questioning the suspect does not impose a burden on the questioning officers nor does it inhibit the ability for the officers to do their job.[89] The questioning officers "need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a [child] is not a [teenager] . . . [or] an adult."[90] The Court acknowledged that the

82. *Id.* at 55.

83. *Id.* at 56.

84. 564 U.S. 261 (2011).

85. *Id.* at 264–65.

86. *Id.* at 272 (quoting Yarborough v. Alvarado, 541 U.S. 652, 674 (2004) (Breyer, J., dissenting)).

87. *Id.* at 274 (citations omitted) (quoting RESTATEMENT (SECOND) OF TORTS § 283A cmt. b (AM. L. INST. 1965)).

88. *Id.* at 269 (quoting Corley v. United States, 556 U.S. 303, 321 (2009)).

89. *Id.* at 271.

90. *Id.* at 279–80.

differences between juveniles and adults are common knowledge, thus requiring consideration in the context of law enforcement processes.[91]

### *C. Maryland Case Law Addressing Interrogations and Current Interrogation Techniques Utilized in the State Do Not Include Effective Special Considerations for Juvenile Suspects*

Interrogation techniques in Maryland are guided by case law, statutes, and trainings provided by the State. Maryland courts have refined an analysis to determine voluntariness of confessions over the course of several cases, looking at the totality of the circumstances in order to determine whether a confession was coerced.[92] The State also issues interrogation training through the Maryland Police and Correctional Training Commissions, which provide guidance on interrogation techniques and tactics.[93] Finally, the Maryland General Assembly has added to existing interrogation procedural requirements by enacting statutes requiring electronic recording of interrogations and notification of parents or legal guardians of juveniles who are arrested and taken into custody for questioning.[94]

#### *1. Maryland Case Law Analyzing the Voluntariness of Confessions Examines the Totality of the Circumstances Surrounding a Confession*

For decades, Maryland courts have held that, in criminal cases, the State has the burden to prove that a confession was free and voluntary and that there was no coercion through force, false promises, or threats in order for the confession to be admissible as evidence.[95] Additionally, when analyzing

91. *Id.*

92. *See infra* Section I.C.1.

93. *See infra* Section I.C.2.

94. *Id.*

95. *See, e.g.*, Smith v. State, 189 Md. 596, 603–04, 56 A.2d 818, 821–22 (1948) ("Before a confession can be admitted in evidence, the State must show, to the satisfaction of the court, that it was the free and voluntary act of an accused; that no force or coercion was exercised by the officers obtaining the confession, to cause the accused to confess; that no hope or promise was held out to an accused for the purpose of inducing him to confess."); Jackson v. State, 209 Md. 390, 394, 121 A.2d 242, 244 (1956) ("The state must show 'that no force or coercion was exercised by the officers obtaining the confession, to cause the accused to confess.'" (quoting Linkins v. State, 202 Md. 212, 222, 96 A.2d 246, 251 (1953))); Presley v. State, 224 Md. 550, 559, 168 A.2d 510, 514 (1961) ("It is the well established law of this State that in order for a confession to be admitted into evidence, the State must prove that it was voluntary and not a product of force, or threats, and was not the result of any promises whereby the accused might be led to believe that there would be a partial or total abandonment of the prosecution."); Abbott v. State, 231 Md. 462, 465, 190 A.2d 797, 799 (1963) ("The rule regarding the admissibility of a confession is that the State must prove that it was freely and voluntarily given and that it was not the product of force or of a promise, threat or inducement whereby the accused might be led to believe that there would be a partial or total abandonment of prosecution.").

the voluntariness of confessions, the courts do not look to whether the subject of interrogation was afraid or intimidated, but instead consider whether the confession was given freely and voluntarily and whether the subject "knew and understood" what they were saying.[96] The Court of Appeals of Maryland has continued to refine its analysis of the voluntariness of confessions over the years, but these core rules have not changed.

In the 1965 case of *Streams v. State*,[97] the Court of Appeals reversed the conviction of an eighteen-year-old male after finding that the false promises made by the questioning officers amounted to coercion of the suspect's confession.[98] The court held that the defendant's confession was involuntary because the questioning officer made promises of recommending probation for him if he did confess, while threatening to "throw the book" at the defendant and recommend a lengthy jail sentence if he did not confess.[99] The court found these false promises and threatening statements to be especially coercive considering the defendant's eighth grade education level,[100] stating that the false promises "might well have led [the defendant], in light of his age and his apparent lack of mental capacity, to the conclusion that the sooner he told the police what they wanted him to tell, the sooner he would be returned to his home."[101] Thus, the court found that the confession had been given involuntarily.[102]

In 1967, the Court of Special Appeals of Maryland analyzed the totality of the circumstances to determine if a confession was given "freely and voluntarily" and therefore admissible in the case of *State v. Hill*.[103] The court described the totality of the circumstances analysis as determining whether a confession was "extracted by any sort of threats, or violence, or obtained by any direct or implied promises, however[] slight, or by the exertion of any improper influence."[104] The court used the totality of the circumstances standard in determining that the trial court erred in finding the defendant's confession to have been given involuntarily because the judge did not thoroughly inquire upon the circumstances of the confession.[105] The case was remanded for further analysis of the defendant's confession in light of the totality of the circumstances.[106]

96. Mundell v. State, 244 Md. 91, 93, 223 A.2d 184, 185 (1966).
97. 238 Md. 278, 208 A.2d 614 (1965).
98. *Id.* at 282, 208 A.2d at 615.
99. *Id.* at 281, 208 A.2d at 615.
100. *Id.*
101. *Id.* at 282, 208 A.2d at 615.
102. *Id.* at 282–83, 208 A.2d at 616.
103. State v. Hill, 2 Md. App. 594, 236 A.2d 27 (1967).
104. *Id.* at 601, 236 A.2d at 30–31.
105. *Id.* at 602, 236 A.2d at 31.
106. *Id.*

In 1979, the Court of Appeals again reversed a conviction because it found the defendant's confession to have been coerced in the case of *Hillard v. State*,[107] introducing the *Hillard* test used in analysis of the voluntariness of confessions.[108] The court's finding of coercion was based on a false promise made by the interrogating officer in the case, who promised the defendant "special consideration" in exchange for a confession of guilt.[109] The *Hillard* court applied a two-pronged test for declaring a confession involuntary: (1) The interrogating officers or representatives of the officers must have said or implied that a confession would benefit the suspect; and (2) the suspect must have relied on this promise in giving the confession.[110] The court first held that the confession was involuntary because the questioning officer promised the suspect that, should he confess, the detective would "go to bat" for him with the state's attorney's office and the court.[111] The court then held that the suspect relied on that promise of implied leniency in confessing.[112] Today, Maryland courts continue to apply the two-pronged *Hillard* test when analyzing confession admissibility.[113]

In 1986, the Court of Special Appeals evaluated the admissibility of a confession given by a ten-year-old suspect in the case of *In re Lucas F.*[114] The court held that a ten-year-old child was "entitled to the counseling and guidance of a parent or guardian before he or she may validly waive the constitutional rights protected by *Miranda*."[115] Although the juvenile suspect had technically waived his Miranda rights, the court held that this waiver was meaningless because of his young age and the fact that the interrogating officers did not inform the suspect that his mother was present in the next room.[116] However, the court did note that if the State is able to prove that a juvenile suspect "had the mental capacity to comprehend the significance of *Miranda* and the rights waived," then a trial judge may justifiably accept a waiver according to the discretion of the court and based on the facts of the case.[117]

107. 286 Md. 145, 406 A.2d 415 (1979).

108. *See infra* Section II.B.

109. *Hillard*, 286 Md. at 153, 406 A.2d at 420.

110. *See id.* ("[U]nder Maryland criminal law, independent of any federal constitutional requirement, if an accused is told, or it is implied, that making an inculpatory statement will be to his advantage, in that he will be given help or some special consideration, and he makes remarks in reliance on that inducement, his declaration will be considered to have been involuntarily made and therefore inadmissible.").

111. *Id.*

112. *Id.*

113. *See infra* Section II.B.

114. 68 Md. App. 97, 510 A.2d 270 (1986).

115. *Id.* at 104, 510 A.2d at 274.

116. *Id.*

117. *Id.*

The Court of Appeals emphasized the importance of considering the age, mental capacity, education, experience, and suggestibility of a suspect when determining whether a confession was entered into voluntarily in the 1986 case of *Lodowski v. State*.[118] Similar to the Court of Special Appeals in *State v. Hill*, the court applied the totality of the circumstances standard to measure the voluntariness of a confession.[119] The *Lodowski* court lists factors to be considered under the totality of the circumstances standard, including:

> [T]he defendant's physical condition; promises of official help and threat of a long sentence; the defendant's age and lack of mental capacity; undue long periods of interrogation and 'persistent hammering by relays of officers'; physical mistreatment, including depriving a prisoner of food, drink, or rest; various characteristics of the defendant, such as 'age, intelligence, education, race[,] experience[,] . . . suggestability and liability of intimidation'; unlawful arrest; defendant's use of narcotics; threat and inducement.[120]

In the 2001 case of *Winder v. State*,[121] the Maryland Court of Appeals stated that courts should "look to all of the elements of the interrogation to determine whether a suspect's confession was given to the police through the exercise of free will or was coerced through the use of improper means."[122] The *Winder* court applied the two-pronged test from *Hillard*, ruling that a confession would be considered involuntary if a police officer promised or implied that a suspect will receive special consideration or benefits in exchange for the confession, and if the suspect then made a confession in reliance on that statement by the police officer.[123] In this case, the questioning officers repeatedly promised the suspect that, if he confessed to the murder he was accused of, they would convince the state prosecutor and judge to be lenient in sentencing and offer protection to the suspect from an "alleged angry mob" of local citizens.[124] The court found that these promises, along with the suspect's reliance on the inducements in making his confession, met both prongs of the *Hillard* test.[125] The Court deemed the confession involuntary, held that the trial court erred in declining to suppress

118. 307 Md. 233, 254–55, 513 A.2d 299, 311 (1986).

119. State v. Hill, 2 Md. App. 594, 601, 236 A.2d 27, 30 (1967) ( "[T]he standard by which the admissibility of Hill's pre-*Miranda* statement is to be measured is whether, under the totality of all the attendant circumstances, the statement was given freely and voluntarily." (footnote omitted)).

120. *Lodowski*, 307 Md. at 254–55, 513 A.2d at 311 (citations omitted) (first quoting Mefford v. State, 235 Md. 497, 512, 201 A.2d 824, 831 (1964); then quoting Green v. State, 236 Md. 334, 339, 203 A.2d 870, 872 (1964)).

121. 362 Md. 275, 765 A.2d 97 (2001).

122. *Id.* at 307, 765 A.2d at 114.

123. *Id.* at 309, 765 A.2d at 115.

124. *Id.* at 317, 765 A.2d at 119.

125. *Id.* at 320–21, 765 A.2d at 121–22.

the confession as inadmissible evidence, and remanded the case for a new trial.[126]

*2. Interrogation Techniques Currently Practiced in Maryland*

Maryland interrogation techniques are currently based upon precedent set by the Maryland courts, state statutes, and techniques distributed by the Maryland Police Training and Standards Commission and the Maryland Correctional Training Commission.[127] The state legislature created the Maryland Police and Correctional Training Commissions to oversee and govern the certification and training of police and correctional officers in Maryland.[128] The Commissions produce model interrogation policies to be implemented and followed by law enforcement agencies in Maryland, detailing the practices and goals associated with custodial interrogations of suspects.[129] The model policies define interrogation questioning procedures as being "specifically designed to elicit incriminating responses implicating the person in criminal activity."[130] According to the guiding principles for interrogations, questioning officers have "no authority to offer promises of leniency or special consideration as inducements for admissions or cooperation. This subtle form of coercion is prohibited."[131] This prohibition is in line with the case law discussed above, reflecting the state's disapproval of coercion through false promises of leniency that a defendant may rely upon when making a confession.[132]

The model policies include a section with special considerations for interrogating juveniles.[133] The policies specify that the voluntariness of a juvenile suspect's confession made during interrogation "depends on factors such as: age; experience; education; background; intelligence; capacity to understand his or her rights and the consequences of waiving them; and presence of a parent during the interrogation."[134] This is again reflective of Maryland case law, as the courts have regularly analyzed confessions under

126. *Id.*

127. *See infra* Section II.2.

128. MD. CODE ANN., PUB. SAFETY § 3-202 (2022) (establishing the Maryland Police Training and Standards Commission); MD. CODE ANN., CORR. SERVS. § 8-203 (2022) (establishing the Maryland Correctional Training Commission).

129. MD. POLICE & CORR. TRAINING COMM'NS, MODEL POLICIES FOR LAW ENFORCEMENT IN MARYLAND 56–59 (2007) [hereinafter MD. MODEL POLICIES].

130. *Id.* at 56. Note how these policies are *not* designed to elicit the true facts surrounding crimes.

131. *Id.* at 58.

132. *See supra* Section I.B.1.

133. MD. MODEL POLICIES, *supra* note 129, at 58.

134. *Id.*

the totality of the circumstances standard.[135] The section dedicated to juvenile suspects is brief, including only three major provisions: (a) police are advised to inform a juvenile suspect that they have the right to consult their parents or guardians; (b) interrogation of juveniles is suggested to be limited in length and to include periodic breaks; and (c) there should be a limited number of officers participating in the interrogation.[136]

In addition, the State of Maryland requires the electronic recording of interrogations.[137] Recording interrogations benefits criminal suspects, questioning officers, and the justice system as a whole by creating a concrete and indisputable record of the interrogation that can be referred to and introduced at trial if needed.[138] Furthermore, the State requires police officers to attempt to notify a juvenile's parent or guardian upon arrest of the juvenile.[139] This statute aims to ensure that juveniles accused of a crime are able to benefit from an adult's involvement; however, the actual requirements in the statute are not always sufficient to implement the intended benefits.[140]

### *D. Illinois and Oregon Legislatures Have Recently Introuded Laws Banning the Use of Deceptive Interrogation Techniques for Juvenile Suspects*

In 2021, Illinois became the first state legislature to pass a bill banning law enforcement officers from using deceptive interrogation techniques with juvenile suspects.[141] The state bill became law on January 1, 2022, amending the Criminal Procedure article of the Illinois Compiled Statutes by adding a section that states:

> An oral, written, or sign language confession of a minor, who at the time of the commission of the offense was under 18 years of age, made as a result of a custodial interrogation conducted at a police station or other place of detention on or after the effective date of this amendatory Act of the 102nd General Assembly shall be presumed to be inadmissible as evidence against the minor making the confession in a criminal proceeding or a juvenile court proceeding for an act that if committed by an adult would be a misdemeanor offense under Article 11 of the Criminal Code of 2012 or a felony offense under the Criminal Code of 2012 if,

135. *See supra* Section I.B.1.
136. MD. MODEL POLICIES, *supra* note 129, at 58–59.
137. MD. CODE ANN. CRIM. PROC. § 2-402 (2022).
138. *See infra* Section II.B.2.
139. MD. CODE ANN. CRIM. PROC. § 2-108 (2022).
140. *See infra* Section II.B.2.
141. *Bill Status of SB2122*, *supra* note 16.

> during the custodial interrogation, a law enforcement officer or juvenile officer knowingly engages in deception.[142]

The bill defines "deception" as "the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer or juvenile officer to a subject of custodial interrogation."[143] Additionally, the new section of the Code will go on to state that "[t]he presumption of inadmissibility . . . may be overcome by a preponderance of the evidence that the confession was voluntarily given, based on a totality of the circumstances," and will put the burden of proof on the State.[144]

Shortly thereafter, Oregon passed a similar bill, enacting a law that states:

> A statement made by a person during a custodial interview conducted by a peace officer is presumed to be involuntary if the person is under 18 years of age and the statement is made in connection with an investigation into a misdemeanor or a felony, or an allegation that the person being interviewed committed an act that, if committed by an adult would constitute a misdemeanor or a felony, and the court determines that the peace officer intentionally used information known by the officer to be false to elicit the statement. This presumption may be overcome if the state proves by clear and convincing evidence that the statement was voluntary and not made in response to the false information used by the peace officer to elicit the statement.[145]

Both statutes show an awareness of the cognitive and developmental differences between juveniles and adults that warrant the implementation of different interrogation tactics for juvenile suspects.[146] Additionally, both statutes introduce a presumption of inadmissibility.[147] These provisions mean that all confessions made by juveniles based on deception during an interrogation will be deemed involuntary and thus inadmissible as evidence, unless the state can meet its burden of proof in showing that the confession was not coerced in any way and was, in fact, given voluntarily.[148]

The rulings by the Supreme Court of the United States and the Maryland appellate courts demonstrate an understanding of the dangers posed by

142. S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021).

143. *Id.*

144. *Id.*

145. S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

146. *See infra* Section II.A.

147. S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021); S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

148. S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021); S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

deceptive and coercive interrogation techniques when a suspect relies on the false statements made by officers in producing a confession.[149] This danger is greater for juveniles because law enforcement interrogation trainings, like the Reid Technique, and the policies implemented by the Maryland Police and Correctional Training Commissions do not give much consideration to juvenile suspects.[150] The Maryland General Assembly has not yet seriously considered implementation of a law banning the use of deceptive techniques when interrogating juvenile suspects.[151]

## II. ANALYSIS

The Fifth Amendment to the United States Constitution protects citizens against self-incrimination.[152] The right against self-incrimination was the driving force in the Supreme Court mandating that all criminal suspects be read their Miranda rights prior to interrogation.[153] By utilizing deceptive interrogation techniques that intimidate, confuse, or overwhelm juvenile suspects, law enforcement officers are infringing on juveniles' constitutional protection against self-incrimination by coercing confessions of guilt.[154] Unfortunately, these techniques then lead to false confessions and wrongful convictions of juveniles.[155]

The frequency of wrongful convictions in the American justice system became evident in the late 1980s following the widespread adoption of DNA testing and evidence across the country's law enforcement agencies.[156] The first exoneration based on the use of DNA evidence to prove a wrongful conviction took place in 1989, and since then at least 375 people have been exonerated due to DNA evidence.[157] Records of these exonerations have shown that approximately 29% of the exonerees provided false confessions.[158] Strikingly, 31% of these exonerees who gave false

149. *See supra* Section I.A.1 and I.C.1.

150. *See supra* Section I.A.2 and I.C.2.

151. *See infra* Section II.B.

152. U.S. CONST. amend. V.

153. Miranda v. Arizona, 384 U.S. 436, 475 (1966) (stating that, should an interrogation proceed without the suspect exercising the right to remain silent or to have an attorney present, "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination").

154. *See infra* Section II.A.1.

155. *See infra* Section II.A.

156. Tonja Jacobi, *Miranda 2.0*, 50 U.C. DAVIS L. REV. 1, 9 n.30 (2016).

157. *DNA Exonerations in the United States*, INNOCENCE PROJECT, https://innocenceproject.org/dna-exonerations-in-the-united-states/ (last visited Feb. 12, 2022). Of the 375 exonerees, the average age at the time of wrongful conviction was 26.6 years old and the average number of years served was fourteen. *Id.* Twenty-one of these individuals served time on death row. *Id.*

158. *Id.*

confessions were eighteen or younger at the time,[159] reflecting a large disparity as individuals under the age of eighteen make up only about 7% of arrests.[160]

Considering the heightened rate of false confessions among juveniles, this Comment will explain why the Maryland General Assembly must implement statutory protections for juvenile suspects that ban the use of deceptive interrogation techniques when interrogating juveniles to protect juveniles' Fifth Amendment right against self-incrimination. Section II.A will analyze the specific concerns for juveniles in the context of false confessions and the likely reasons behind the prevalence of false confessions among juvenile suspects.[161] Next, Section II.B will identify deficiencies in Maryland's current interrogation standards and police policies, highlighting specific provisions that raise concern for juvenile interrogation, and will analyze proposed legislation in Maryland.[162] Section II.C will introduce a model statute for the Maryland General Assembly that bans police use of deceptive interrogation techniques with juvenile suspects and requires law enforcement to adopt training guidelines for non-deceptive techniques to use in juvenile interrogations.[163]

### *A. Juveniles Are Highly Susceptible to Deceptive Interrogation Techniques and Are More Likely than Adults to Produce a False Confession*

While people of all ages have been shown to provide false confessions during interrogations, juvenile suspects are more likely to do so and thus experience a heightened risk of wrongful conviction.[164] Juveniles are two to three times more likely to enter a false confession than adults.[165] In one study of 340 exonerations in the United States, 42% of the exonerees who were arrested as juveniles had falsely confessed, compared to only 13% of the exonerees who were arrested as adults.[166] This disparity can be largely explained by the fact that, despite the psychological and developmental

159. *Id.*

160. OFF. OF JUV. JUST. & DELINQ. PREVENTION, DEP'T OF JUST., STATISTICAL BRIEFING BOOK: ESTIMATED NUMBER OF ARRESTS BY OFFENSE AND AGE GROUP, 2019 (2020), https://www.ojjdp.gov/ojstatbb/crime/ucr.asp?table_in=1.

161. *See infra* Section II.A.

162. *See infra* Section II.B.

163. *See infra* Section II.C.

164. Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 259–60 (2007).

165. Crane et al., *supra* note 10, at 12.

166. *Id.*

differences between juveniles and adults,[167] the same specific techniques are used for all interrogations.[168]

*1. The Developmental Differences Between Juveniles and Adults Exhibit a Need for Unique Interrogation Strategies for Juveniles and Explain the Potential Reasoning Behind the Heightened Rate of False Confessions Among Juvenile Suspects*

The prefrontal cortex of the brain "controls judgment, problem-solving, and decision-making," and aids in regulation of impulsive behaviors.[169] This portion of the brain does not fully develop until people reach their early-twenties, leading to traits such as "impulsivity, vulnerability to pressure and suggestibility, as well as a tendency to be motivated by short-term rewards" among teenagers and young adults.[170] Furthermore, juveniles are more vulnerable to external influences and unable to fully assess risks as compared to adults.[171] These traits may not always be immediately evident to adults who interact with juveniles, especially because older teenagers often have fully developed cognitive thinking abilities.[172] However, such traits cause juveniles to be more likely to break under the pressure of an interrogation and tell the questioning officer what the juvenile believes the officer wants to hear.[173] For example, a juvenile suspect who wants a stressful interrogation to end and who is not fully able to grasp the long-term consequences and risks associated with confessing to a crime may falsely confess simply to achieve that short-term reward.

Furthermore, juveniles are more likely than adults to waive their *Miranda* rights.[174] One reason may be that juveniles often either misunderstand or fail to fully grasp the meanings of such rights,[175] especially the right to remain silent and the right to have an attorney present during an interrogation.[176] A common explanation given by juveniles who provide false confessions is the belief that, if they confess to the crime of which they

167. *See infra* Section II.A.1.

168. *See infra* Section II.A.2.

169. Crane et al., *supra* note 10, at 12.

170. *Id.*

171. *Id.* at 14.

172. Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 405 (2013) [hereinafter Feld, *Behind Closed Doors*].

173. Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. CRIM. L. & CRIMINOLOGY 219, 244 (2006) [hereinafter Feld, *Police Interrogation*].

174. Feld, *Behind Closed Doors*, *supra* note 172, at 429.

175. Caitlyn Wigler, Comment, *Juvenile Due Process: Applying Contract Principles to Ensure Voluntary Criminal Confessions*, 168 U. PA. L. REV. 1425, 1438 (2020).

176. Jennifer J. Walters, Comment, *Illinois' Weakened Attempt to Prevent False Confessions by Juveniles: The Requirement of Counsel for the Interrogations of Some Juveniles*, 33 LOY. U. CHI. L.J. 487, 506 (2002).

are accused, they will be able to go home.[177] According to studies focusing on the comprehension of *Miranda* rights, the main factor in determining how well a person understands these rights is their age.[178]

Juveniles are singled out in various other legal contexts across the country, yet they are grouped with adults for criminal interrogation purposes. For example, minors cannot vote in elections,[179] file lawsuits,[180] be employed beyond specific limitations,[181] be sentenced to death,[182] be sentenced to life in prison without possibility of parole under a mandatory sentencing policy,[183] or be sentenced to life in prison without possibility of parole in non-murder crimes.[184] In most cases, juveniles cannot be legally bound by contracts,[185] consent to certain medical treatments,[186] or be legally married.[187] However, this recognition that juveniles are not equivalent to adults in terms of legal rights does not carry over into the context of criminal interrogation under current Maryland law.

177. Drizin & Leo, *supra* note 14, at 969.

178. Sam Yousif, *Protecting Justice: Juveniles and the Coercive Environment of Police Interrogations*, 95 U. DET. MERCY L. REV. 517, 526 (2018) (citing Thomas Grisso, *Juveniles' Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1159 (1980)).

179. *See* U.S. CONST. amend. XXVI, § 1 (stating that citizens ages eighteen and older can vote in elections).

180. *See, e.g.*, Stephanie Rabiner, *Why Can't Minors File Lawsuits?*, FINDLAW (Apr. 27, 2012, 9:45 AM), https://www.findlaw.com/legalblogs/personal-injury/why-cant-minors-file-lawsuits/ (stating that both federal and state laws generally prohibit minors from filing a lawsuit on his/her own behalf).

181. *See, e.g.*, WAGE & HOUR DIV., U.S. DEP'T OF LAB., CHILD LABOR PROVISIONS OF THE FAIR LABOR STANDARDS ACT (FLSA) FOR NONAGRICULTURAL OCCUPATIONS (2016) (explaining the FLSA's limitations on employment of minors); 29 C.F.R. § 570.2(a)(ii) (2022) (stating that minors cannot be employed in any position listed as hazardous).

182. Roper v. Simmons, 543 U.S. 551, 573–75 (2005) (holding that it is unconstitutional to apply the death penalty to a juvenile as such a punishment violates the Eighth Amendment).

183. Miller v. Alabama, 567 U.S. 460, 470 (2012) (holding that a mandatory sentence of life in prison without parole for a juvenile is unconstitutional as it violates the Eighth Amendment).

184. Graham v. Florida, 560 U.S. 48, 74 (2010) (holding that a juvenile who committed a non-homicide offense cannot be sentenced to life in prison without parole).

185. *See, e.g.*, MD. CODE ANN. COM. LAW § 1-103(c)(1) (2022) (stating that the "age of majority as it pertains to the capacity to contract is 18 years of age"). The age of majority is eighteen in all states except for Alabama (nineteen), Nebraska (nineteen), and Mississippi (twenty-one). Elissa Suh, *The Age of Majority (and the UTMA Account Distribution Age) in Every State*, POLICYGENIUS (Dec. 1, 2021), https://www.policygenius.com/estate-planning/age-of-majority-by-state/.

186. *See, e.g.*, MD. CODE ANN. HEALTH–GEN. § 20-102 (2022) (specifying the limited circumstances under which a minor has the right to consent to or deny medical treatment for him/herself).

187. *See, e.g.*, MD. CODE ANN. FAM. LAW § 2-301 (2022) (stating that individuals under the age of fifteen may not marry, individuals who are fifteen may only marry if they have guardian consent and one of the juveniles is pregnant or has given birth, and individuals who are sixteen, or seventeen years old may only marry with guardian consent or if one of the juveniles is pregnant or has given birth).

In 2011, the Supreme Court acknowledged the effect of age and development on the experience of juvenile suspects in *J.D.B. v. North Carolina*.[188] There, the Court explicitly recognized that the law differentiates juveniles from adults and determined that age must be considered when evaluating whether a suspect is in custody under the *Miranda* analysis.[189] The opinion acknowledged the fact that the risk of false confessions is higher for juvenile suspects, implying that law enforcement officers should take this fact into consideration during interrogations.[190]

### *2. The Same Interrogation Techniques Are Used when Questioning Juveniles and Adults*

Research indicates that law enforcement officers are willing to adopt standard procedures for juvenile interrogations—which could include developmentally sensitive interrogation techniques—but their current training techniques do not provide them with the resources to do so.[191] For instance, the Reid Technique includes two general types of tactics: maximization and minimization.[192] Maximization techniques attempt to maximize the seriousness of the situation the interrogation subject is in, such as by introducing false evidence or utilizing scare tactics (e.g., discussing the harsh conditions of prison).[193] Minimization techniques attempt to minimize the seriousness of the situation in an effort to coerce the subject to confess, such as by downplaying the gravity of the crime, empathizing with the subject, and offering justifications for the crime.[194] In other words, maximization techniques aim to convince suspects of the "futility of denial," while minimization techniques aim to provide a "moral justification[]" strong enough to convince the suspect to confess.[195] The Reid Technique was designed to be used when interrogating adults and does not discourage law enforcement officers from using maximization and minimization techniques when questioning juveniles; it simply urges the questioning officers to use

188. 564 U.S. 261 (2011).

189. *See id.* at 277 ( "[W]e hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test.").

190. *Id.* at 269 (stating that the risk of false confessions is "more troubling" and "more acute" for juveniles).

191. *See* Jessica O. Kostelnik & N. Dickon Reppucci, *Reid Training and Sensitivity to Developmental Maturity in Interrogation: Results from a National Survey of Police*, 27 BEHAV. SCIS. & L. 361, 365–66, 375–76 (2009).

192. Saul M. Kassin, *The Psychology of Confession Evidence*, 52 AM. PSYCH. 221, 223 (1997).

193. *Id.*

194. *Id.*

195. Feld, *Police Interrogation*, *supra* note 173, at 261.

caution.[196] In one study, researchers found that police officers utilized maximization techniques frequently with juveniles: The officers accused juvenile suspects of lying 49% of the time, urged them to tell the truth 45% of the time, disputed their asserted innocence 40% of the time, "played on their fears" 36% of the time, and "emphasized the seriousness of their predicament" 34% of the time.[197] The officers utilized minimization techniques slightly more frequently with the juvenile suspects: The officers described scenarios or themes in an attempt to reduce the suspect's feelings of guilt 50% of the time, expressed empathy 42% of the time, and minimized the seriousness of the crime 38% of the time.[198]

A research study comparing police officers trained in the Reid Technique and officers not trained in the Reid Technique found that Reid-trained officers were less sensitive to the developmental differences between adolescents and adults than non-Reid-trained officers.[199] The data from this study indicates that Reid-trained officers "perceive[d] adolescents to be as mature as adults and treat them as such during interrogation."[200] However, more than half of both the Reid-trained and non-Reid-trained officers expressed interest in receiving training on techniques specifically for juvenile interrogations.[201] The findings of this study suggest that, although officers are willing to incorporate standard procedures for juvenile interrogations, the training programs they attend lack such information, and therefore they use the same interrogation tactics for both adults and juveniles.

### *B. While the Maryland Judiciary Has Acknowledged the Need for Sensitivity when Interrogating Juvenile Suspects, the Legislature and Police Policies Have Not Adopted Specific Provisions Regarding Limited Interrogation Tactics or Developmentally Sensitive Techniques*

In several cases, the Court of Appeals of Maryland[202] has ruled that a confession was given involuntarily due to false promises made by police, or due in part to a lack of consideration for the juvenile's age.[203] While the Maryland General Assembly has enacted some laws designed to ensure that confessions given during interrogation are voluntary, it has not implemented

196. Kostelnik & Reppucci, *supra* note 191, at 365–66.
197. Feld, *Police Interrogation*, *supra* note 173, at 263.
198. *Id.* at 278.
199. Kostelnik & Reppucci, *supra* note 191, at 374.
200. *Id.*
201. *Id.* at 375–76.
202. The Maryland Court of Appeals is the highest state appellate court in Maryland.
203. *See infra* Section II.B.1.

any significant limitations on juvenile interrogations.[204] However, the 2022 Maryland State Senate has passed a bill requiring law enforcement officers to provide actual notice to the parent or guardian of a juvenile who is arrested and requires juvenile suspects to consult with an attorney before an interrogation begins.[205] Furthermore, the Maryland Police and Correctional Training Commissions do not provide specific guidelines for interrogating juveniles in a developmentally sensitive way.[206] There is a need for action by the Maryland state legislature because the state courts have not clearly denounced the use of deceptive techniques for juveniles,[207] the existing legislation does not restrict the types of permissible interrogation techniques,[208] and the training policies for law enforcement across the state do not provide guidance specific to juvenile interrogations.[209]

#### *1. The Maryland Courts Have Repeatedly Expressed a Concern for the Voluntariness of Confessions Coerced Through the Use of Deceptive Interrogation Techniques and Have Denounced the General Use of Making False Promises During Interrogations*

The Maryland Court of Appeals has relied on the two-pronged *Hillard* test in consideration of the voluntariness of a coerced confession: (1) whether the suspect was falsely promised leniency or another benefit in exchange for a confession; and (2) whether such false promises directly induced the confession given.[210] The *Hillard* test does not stem from a case involving a juvenile, however, the test does extend to juvenile suspects and can be especially useful in showing that coerced juvenile confessions are involuntary when applied in conjunction with the totality of the circumstances standard of analysis from *State v. Hill*.[211] The Court of Appeals has repeatedly held that the voluntariness of any confession must be analyzed within the context of the totality of the circumstances, which

204. *See infra* Section II.B.2.

205. S.B. 53, 2022 Gen. Assemb., Reg. Sess. (Md. 2022). This bill was vetoed by the Maryland Governor, but the veto was then overridden by both chambers of the General Assembly. *Id.*

206. *See infra* Section II.B.2.

207. *See infra* Section II.B.1.

208. *See infra* Section II.B.2.

209. *See infra* Section II.B.3.

210. *See, e.g.*, Hillard v. State, 286 Md. 145, 153, 406 A.2d 415, 420 (1979) (stating that "under Maryland criminal law . . . if an accused is told, or it is implied, that making an inculpatory statement will be to his advantage . . . and he makes remarks in reliance on that inducement, his declaration will be considered to have been involuntarily made and therefore inadmissible"); Winder v. State, 362 Md. 275, 309–21, 765 A.2d 97, 115–22 (2001) (applying the *Hillard* test to determine that the defendant's confession was not given voluntarily).

211. 2 Md. App. 594, 601, 236 A.2d 27, 30 (1967) (stating that "the standard by which the admissibility of [the defendant's] . . . statement is to be measured is whether, under the totality of all the attendant circumstances, the statement was given freely and voluntarily").

include the subject's age, mental capacity, physical condition, experience, and suggestibility.[212] Factors such as age, mental capacity, and experience directly affect a person's likelihood of being induced to provide a confession.[213] Thus, although the state courts have not prohibited deceptive interrogation techniques for juvenile suspects, the analysis for voluntariness of a confession applied by the courts implicitly acknowledges the need for developmentally sensitive interrogation techniques in order for a juvenile's confession to be considered valid.[214]

The existing case law alone is insufficient to push law enforcement officers in Maryland to abandon the use of deceptive interrogation techniques for juvenile suspects. The case law largely focuses on the use of false promises by questioning officers,[215] which is only one of many deceptive interrogation techniques.[216] Additionally, the case law does not provide guidance on other, non-deceptive techniques that law enforcement officers can implement in place of the deceptive tactics currently being widely used.[217] Such guidance would more appropriately fall within the duties of the state legislature, which oversees the Maryland Police and Correctional Training Commissions.[218]

#### *2. Maryland Laws Limit the Production and Admission of False Confessions but Do Little to Directly Address the Interrogation Techniques Used for Juvenile Suspects*

One significant statute aimed at reducing the number of false confessions is the requirement that custodial interrogations be electronically recorded.[219] The implementation of a mandatory recording policy benefits all parties involved in an interrogation. Officers are less likely to use improper interrogation techniques when they know a permanent record is

212. *See, e.g.*, Lodowski v. State, 307 Md. 233, 254–58, 513 A.2d 299, 310–13 (1986) (finding that the totality of the circumstances surrounding the confession led to the conclusion that the confession was involuntary); *Winder*, 362 Md. at 307, 765 A.2d at 114 (holding that a court must look at the totality of the circumstances of an interrogation in order to determine whether a confession was voluntary).

213. *See supra* Section II.A.

214. *See, e.g.*, Streams v. State, 238 Md. 278, 281–82, 208 A.2d 614, 615 (1965) (holding that the defendant's eighth grade education level was a significant factor in determining that the deceptive techniques used by officers induced the defendant's confession); Bean v. State, 234 Md. 432, 450–51, 199 A.2d 773, 782–83 (1964) (Prescott, J., dissenting) (arguing that a fifteen-year-old should not be held to the same standards of maturity and understanding as an adult).

215. *See supra* Section I (explaining Maryland case law on this subject).

216. *See supra* Section II.A.2.

217. *See supra* Section I.C.1.

218. *Maryland Police and Correctional Training Commissions*, MD. DEP'T OF PUB. SAFETY & CORR. SERVS., https://www.dpscs.state.md.us/agencies/mpctc.shtml (last visited Oct. 28, 2021).

219. MD. CODE ANN. CRIM. PROC. § 2-402 (2022).

being made of their actions during interrogation, and they are also protected from potential false claims by a suspect that such improper techniques were used.[220] After surveying detectives in over 460 departments across the country, including many in Maryland, one report found that none of the detectives would choose to return to non-recorded interrogations.[221]

Maryland law requires police officers in the state to take reasonable steps to notify a juvenile's parent or legal guardian upon charging or arresting the juvenile.[222] If an officer arrests a juvenile, they must make a "reasonable attempt" to notify the juvenile's parent or guardian within forty-eight hours of taking the juvenile into custody.[223] Although this statute sought to provide protections for juveniles, it does not specify what constitutes a "reasonable attempt" to notify.[224] Allowing room for discretion is undoubtedly necessary in such policies in order to allow trained and experienced officers to apply their knowledge and expertise to individual, unique cases and contexts that are unforeseen by the legislature. However, the requirement of making a "reasonable attempt" to contact a person in the modern era is vague. Would a reasonable attempt end with a phone call being sent to voicemail? Or, does it require an officer to travel to the known residence to find the person? Is a busier officer with a heavy caseload allowed to exercise less effort than an officer with little on their schedule for the day? What should an officer do if the juvenile does not know the contact information for their parent or guardian?

The 2021 Maryland General Assembly considered a bill titled the "Juvenile Interrogation Protection Act" that would require parental notification and allow a juvenile to consult with an attorney prior to interrogations, improving upon the "reasonable attempt" requirement to provide parental notice that is currently in place.[225] The bill passed in the House of Delegates and was brought to the Senate Judicial Proceedings Committee, but was never debated and thus did not proceed to a vote.[226] A similar bill, titled the Child Interrogation Protection Act, has been passed by the 2022 Maryland General Assembly.[227] The Child Interrogation Protection

220. Tom Sullivan, *Justice Prevails with Recorded Interrogations*, BALT. SUN (Mar. 26, 2006, 12:00 PM), https://www.baltimoresun.com/news/bs-xpm-2006-03-26-0603260024-story.html.

221. *Id.*

222. CRIM. PROC. § 2-108.

223. *Id.* § 2-108(b).

224. *Id.* § 2-108.

225. H.B. 315, 2021 Gen. Assemb., Reg. Sess. (Md. 2021).

226. *SB0136*, MD. GEN. ASSEMBLY, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0136?ys=2021RS&search=True (last visited Apr. 13, 2022). The House Judiciary Committee and the Senate Judicial Proceedings Committee heard a similar bill in 2020, but no further actions were taken. H.B. 624, 2020 Gen. Assemb., Reg. Sess. (Md. 2020).

227. H.B. 269, 2022 Gen. Assemb., Reg. Sess. (Md. 2022).

Act is broad as to the specific rules and requirements the sponsors would like the General Assembly to adopt, stating that the Act is to establish the following:

> [C]ertain requirements for taking a child into custody, interrogating a child, or charging a child with a criminal violation, including notice requirements, requirements for consultation with an attorney, and requirements for the maintenance of certain records; authorizing the Court of Appeals to adopt certain rules relating to the advisement of a child of certain rights; establishing a certain rebuttable presumption that a statement made by a child during an interrogation is inadmissible under certain circumstances; requiring the Office of the Public Defender to develop and implement certain policies and to publish on its website or make available to law enforcement certain information; and generally relating to juvenile law and the interrogation of children by law enforcement.[228]

The 2022 bill uses broader language than the 2021 bill, which does not include several specific provisions that the 2021 bill included, such as those regarding attorney consultations with juvenile suspects and requirements for the Police Training and Standards Commission to "adopt certain rules relating to the advisement of a child of certain rights."[229] Having passed in the General Assembly, the Child Interrogation Protection Act will lead Maryland to join a few other states that already have laws requiring the presence of either a parent, guardian, or attorney during an interrogation in efforts to provide protections for juveniles' rights during questioning.[230] The Child Interrogation Protection Act does offer some protections for juvenile suspects, such as the suggestion to the Court of Appeals of Maryland to "adopt rules concerning age-appropriate language to be used to advise a child who is taken into custody of the child's rights."[231] The bill also prohibits law enforcement officers from interrogating a child unless the child has "consulted with an attorney" and a reasonable effort has been made to "give

228. *Id.*

229. *Id.*

230. *See, e.g.*, COLO. REV. STAT. ANN. § 19-2-511(1) (West 2022) (declaring that "[n]o statements or admissions of a juvenile made as a result of the custodial interrogation of such juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile shall be admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and . . . were advised of the juvenile's [*Miranda* rights]"); Elizabeth Weill-Greenberg, *Children Can Be on Their Own when Grilled By Police. The Push for Protection is Growing*, APPEAL (Mar. 25, 2021), https://theappeal.org/juvenile-right-to-attorney-police-interrogation-maryland-state-legislation/ (explaining that California recently enacted legislation requiring the presence of an attorney during juvenile interrogations and that state legislatures in Washington and New York considered similar bills in 2021).

231. H.B. 269, 2022 Gen. Assemb., Reg. Sess. (Md. 2022).

actual notice to the parent, guardian, or custodian of the child that the child will be interrogated."[232] Under this bill, the right to counsel may not be waived by a child, and all requirements within the bill must be followed unless the child is reasonably thought to have information regarding a threat to public safety.[233] These protections are undeniably beneficial for juveniles in Maryland, but a more robust statute that explicitly requires abandonment of deceptive interrogation techniques is necessary to fully account for the developmental differences and needs of juveniles.

*3. Maryland Police Policies Provide Little Guidance on Procedures for Interrogating Juvenile Suspects*

The Model Policies for Law Enforcement in Maryland, published by the Maryland Police and Correctional Training Commissions, provide guiding principles to law enforcement officers for interviews and interrogations and include a section regarding juvenile subjects.[234] The Model Policies state that "[o]fficers have no authority to offer promises of leniency or special consideration as inducements for admissions or cooperation,"[235] reflecting the Maryland Court of Appeals' holding that a confession induced by false promises during interrogation is involuntary and inadmissible.[236] The section titled "Special Cases – Juveniles" is especially brief, listing only three specific provisions.[237] First, the Model Policies state that juveniles have the same rights as adults under *Miranda*.[238] While a juvenile suspect may choose to waive these rights, interrogating officers should keep in mind that the voluntariness of any subsequent statement will be analyzed based on several factors including age, experience, capacity to understand the *Miranda* rights and the effects of waiving such rights, and the presence of a parent or legal guardian during the interrogation.[239] Second, the Model Policies advise officers to tell a juvenile that they can speak to their parents or guardians upon arrest, even though this is not a strict requirement.[240] The Model Policies reference *In re Lucas F.*,[241] stating that "at least one Maryland court has held that a 10-year old is entitled to parental guidance."[242] Finally, the Policies instruct that juvenile interrogations should be limited in time, include

232. *Id.*
233. *Id.*
234. MD. MODEL POLICIES, *supra* note 129, at 56–59.
235. *Id.* at 58.
236. *See supra* Section II.B.1.
237. MD. MODEL POLICIES, *supra* note 129, at 58–59.
238. *Id.* at 58.
239. *Id.*
240. *Id.* at 58–59.
241. 68 Md. App. 97, 510 A.2d 270 (1986); *see supra* Section I.C.1.
242. MD. MODEL POLICIES, *supra* note 129, at 58–59.

breaks from questioning, and involve only a limited number of officers in the interrogation.[243] This completes the Policies' section on juvenile cases, with no additional guidance for interrogation of juveniles.[244]

In 2019, there were 18,822 juveniles aged ten to seventeen arrested in Maryland.[245] This number of juvenile arrests justifies and signifies a need for guidance on interrogation techniques officers should use when interrogating juveniles. Similar to the Reid Technique,[246] there is currently no differentiation between the techniques used to interrogate juveniles and techniques used to interrogate adults in the Policies.[247] Introducing and implementing developmentally sensitive interrogation tactics for juvenile suspects will require training and guidance for law enforcement officers.

### *C. The Maryland Legislature Should Adopt a Statute Banning the Use of Deceptive Techniques in Juvenile Interrogations and Should Implement Guidance for Using Developmentally Sensitive Interrogation Techniques*

In order to protect juveniles' Fifth Amendment right against self-incrimination, the Maryland legislature must implement statutory protections for juvenile suspects by banning the use of deceptive interrogation techniques when interviewing juveniles. Such legislation will create a more efficient and just system by reducing the rate of false confessions and wrongful convictions.[248] Therefore, the expenditure of resources on wrongful convictions will be reduced and more resources will be directed towards convicting individuals who are guilty of a crime, benefitting the entire institution of law enforcement. Aiming to produce an effective change in the interrogation experience of juvenile suspects, this Comment proposes two actions by the Maryland General Assembly: first, a statute that bans the use of deception during juvenile interrogations, similar to those recently passed in Illinois[249] and Oregon;[250] and second, a directive for the Maryland Police and Correctional Training Commissions to produce and distribute guidance and trainings on developmentally sensitive interrogation techniques to be used in juvenile interrogations. Together, these two courses of action will

243. *Id.* at 59.

244. *Id.*

245. *Juvenile Arrests in Maryland*, KIDS COUNT DATA CTR., https://datacenter.kidscount.org/data/tables/4461-juvenile-arrests#detailed/2/any/false/1729,37,871,870,573,869,36,868,867,133/any/10020,15102 (last visited Feb. 19, 2022).

246. *See supra* Section I.A.2.

247. MD. MODEL POLICIES, *supra* note 129, at 56–59.

248. *See supra* notes 152–164 and accompanying text.

249. S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021).

250. S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

work to protect the rights of juveniles from the ground floor by training law enforcement officers in effective juvenile interrogation techniques, while providing a method of recourse for juveniles to pursue if they are subject to unfair interrogations by deeming confessions given during a deceptive interrogation inadmissible.

#### *1. The State Legislature Should Follow the Guidance of Illinois and Oregon Statutes Banning the Use of Deception in Juvenile Interrogations, with Slight Adjustments to Account for Potential Procedural Shortfalls*

The Maryland state legislature should adopt a statute that provides recourse for juveniles who were subjected to a deceptive interrogation by holding any confession induced by deception as inadmissible. One example of a potential statute for consideration is as follows:

> (a) Any law enforcement officer conducting an interview of a juvenile, who is under eighteen years of age, in connection with an investigation of an act that, if committed by an adult, would constitute a crime, may not use deceit, trickery, or any other misleading interrogation technique during the interview.
> (b) A confession given by a juvenile resulting from an interview in which the questioning officer uses deceit, trickery, or any other misleading interrogation technique will be presumed to be inadmissible as evidence against the juvenile.
> (c) The presumption of inadmissibility of a confession of a juvenile due to the use of deception may be overcome by a preponderance of the evidence that, based on the totality of the circumstances, the confession was given voluntarily. The burden of proving the voluntariness of the confession will be on the State.

This sample bill uses language from both the Illinois and Oregon bills passed in 2021, while specifying certain terms of the new law. The language in section (a) of the proposed bill is taken largely from the Oregon bill, with slight grammatical edits and with a change from the words "a peace officer" in the Oregon bill to "any law enforcement officer" in this proposed bill.[251] This change is intended to ensure that interviews performed by school resource officers are included. Additionally, the use of the word "interview," as opposed to "interrogation," is important; this language is used to ensure that the ban on deception is not limited to custodial interrogations following an arrest but includes similar interviews conducted with a juvenile suspect outside of a police station, such as those conducted by an officer on the premises of the juvenile's school.

251. S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

Section (b) of the proposed bill is modeled after section (c) of the Illinois bill.[252] This proposed section enforces the preceding section by declaring that, should a questioning officer utilize deceptive interrogation techniques, any confession obtained will thus be inadmissible as evidence. The presumption is intended to remove the burden on a juvenile to prove deception, and instead allow a judge to declare the confession inadmissible upon review of the record of the interview. Therefore, even if a juvenile defendant is unaware of the fact that they were deceived or does not have knowledge of the law prohibiting such practices, the confession may still be declared inadmissible.

Finally, section (c) of the proposed bill allows the prosecution to rebut the presumption that the confession was involuntary due to deception. This section largely reflects portions of sections (c) and (d) of the Illinois bill.[253] The consideration of "the totality of the circumstances"[254] is included in the Illinois bill, but also reflects the Maryland courts' analysis when determining the voluntariness of confessions.[255] This provision gives the prosecution the opportunity to convince the judge that the confession should be admitted if the context of the case demonstrates that the confession was voluntary and not induced by deceptive questioning.

#### *2. The State Legislature Should Direct the Maryland Police and Correctional Training Commission to Create and Implement Guidance and Training on Developmentally Appropriate Interrogation Techniques for Juvenile Suspects, Modeled After the PEACE Method*

The Maryland Police and Correctional Training Commissions produce the Model Policies for Law Enforcement in Maryland,[256] which should include developmentally sensitive interrogation techniques for juveniles. One popular example of a non-deceptive interrogation strategy is the PEACE method.[257] The PEACE method is a five-step interrogation process: planning and preparation, engage and explain, account (clarification and challenge), closure, and evaluation.[258] Developed with reliance on research of interview psychology,[259] the PEACE method relies on scientifically based techniques

252. S.B. 2122, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021).

253. *Id.*

254. *Id.*

255. *See infra* Section II.B.1.

256. *Maryland Police and Correctional Training Commissions*, *supra* note 218.

257. Mary Schollum, *Bringing PEACE to the United States: A Framework for Investigative Interviewing*, POLICE CHIEF MAG., Nov. 2017, at 30.

258. *Id.* at 32.

259. *See id.* at 32 (listing four of the main influential resources relied upon by the United Kingdom when creating the PEACE method). It is important to compare the support of empirical

in order to "obtain accurate, relevant, and complete accounts from those being interviewed."[260] As of late-2017, the PEACE method was being practiced by law enforcement in the United Kingdom, Australia, New Zealand, Norway, and parts of Canada, among others.[261] In the United Kingdom, where the PEACE method originated, the country's legislation requires officers to use the PEACE method when conducting interrogations.[262] The United Kingdom government also provides a guiding publication that details best-practice interview techniques that is referenced nationally.[263]

Interviews conducted using the PEACE method follow the same basic structure.[264] First, the questioning officer will prepare for the interview by reviewing background information and available evidence, and setting goals for the interview.[265] Next, the questioning officer will establish rapport with the subject[266] and explain the format and process of the interview that is about to proceed.[267] The questioning officer then gets the subject's full account of the events in question using open-ended questions[268] and techniques "such as active listening, use of pauses and silence, body language, different types of questions, memory jogs, seating arrangements" and others.[269] Afterwards, the questioning officer will recount the interview to the subject, ask the subject to confirm the accuracy of the information relayed back to them, and

research that backs the PEACE method to the Reid Technique, which was created by "authors with no empirical authority . . . lacks supporting experimental data, and . . . is not recognized by the scientific community. Yet . . . observations by Reid are evidently the only prerequisites necessary to create [the Reid Technique] training empire . . . ." Gallini, *supra* note 56, at 565.

260. *See* Schollum, *supra* note 257, at 32 ("[Techniques] include free recall (FR), the enhanced cognitive interview (ECI), and conversation management (CM)."). Note the difference between the PEACE method's goal of obtaining a true account of the facts and the current policies "designed to elicit incriminating responses" within the model interrogation policies distributed in Maryland. MD. MODEL POLICIES, *supra* note 129, at 56. Obtaining a true account of the facts should not be conflated with obtaining a confession, as these two goals lead to different interview outcomes. *See supra* notes 130–132 and accompanying text.

261. Schollum, *supra* note 257, at 33.

262. *See id.* at 34 (referencing the document *Achieving Best Evidence in Criminal Proceedings* that provides guidance on interview techniques).

263. *See id.* (referencing the legislative provision in the United Kingdom that "sets out the requirements for the detention, treatment, and questioning of suspects").

264. *Id.* at 33.

265. *Id.*

266. *See id.* (explaining that establishing rapport is one of the most important parts of an interview and is often done by "showing kindness and respect; identifying and meeting basic needs; being patient; asking how the interviewee wants to be addressed; finding common ground or shared experiences; showing concern for the interviewee and his or her situation; using similar language as the interviewee; and employing active listening skills").

267. *Id.* Additionally, the explanation stage can reveal important factors that may then affect the course of the interview, such as comprehension abilities or communication barriers. *Id.*

268. *Id.*

269. *Id.* at 32.

then explain the next steps in the process for the subject.[270] Finally, the questioning officer reviews the results of the interview, determines whether the original goals for the interview were met, "reviews the investigation in the light of information obtained," and reflects upon their conduct during the interview and considers any possible improvements for future interviews.[271]

As opposed to the Reid Technique and deceptive interrogation methods that aim to elicit confessions,[272] the PEACE method is designed to draw out factual information from a suspect, which may or may not include a confession.[273] There has been no evidence that the PEACE method has a lower confession rate than the more aggressive Reid Technique or similar confrontational methods.[274] One of the most important aspects of the PEACE method is the introduction of the method to officers over the course of a "tiered approach" training.[275] The tiered approach was implemented in response to concerns about the amount of information that officers were expected to master after attending a relatively short training.[276] It is mandatory that all new police officers complete the first tier of training within eighteen days; officers then complete additional tiers depending on the course and progression of their career.[277]

A shift away from aggressive and deceptive interrogation techniques does not mean that interrogations will be any less effective at eliciting confessions.[278] Research into the effectiveness of deceptive techniques is "ultimately inconclusive."[279] Such research shows that deceptive techniques can elicit false confessions "and there are reasons to believe that alternatives may produce fewer false confessions."[280] One 1989 study found that a similar shift in technique in the United Kingdom did not cause any decline in confession rates, and a 2003 study found that the United Kingdom had a higher confession rate than the United States, indicating that more cases are

270. *Id.* at 33.

271. *Id.*

272. *See supra* Section I.A.2 (providing background on the Reid Technique).

273. Schollum, *supra* note 257, at 31–33.

274. Andrew J. Greer, Note, *Oh, The Places You'll Go! — Prison: How False Evidence in Juvenile Interrogations Unconstitutionally Coerces False Confessions*, 10 DREXEL L. REV. 741, 769–70 (2018).

275. Schollum, *supra* note 257, at 32.

276. *Id.*

277. *Id.* at 34. As officers progress in their careers and move up the chain of command, gaining responsibilities and influence, they are able and encouraged to attend additional interrogation training in order to become a lead interrogator. *Id.*

278. *Id.* at 33. Research has shown that the PEACE method "results in a similar rate of confessions as interrogational interviews, even though confessions are not the primary aim." *Id.*

279. Julia Simon-Kerr, *Public Trust and Police Deception*, 11 NE. U. L. REV. 625, 631 (2019).

280. *Id.*

being solved.[281] Notably, confessions that are elicited from an individual using the PEACE method are "more likely to be true confessions than those arising from interrogational interviews."[282] For this reason, the Maryland legislature should require the Training Commissions to implement interrogation techniques similar to the PEACE method when interrogating juvenile suspects.

## CONCLUSION

The Maryland General Assembly should take action to protect juveniles' constitutional right against self-incrimination by enacting legislation that bans the use of deceptive techniques in juvenile interrogations and requires Maryland law enforcement to implement new interrogation techniques for juvenile suspects. State case law and current interrogation policies in Maryland recognize the need for consideration of a juvenile suspect's age and developmental cognitive ability during interrogation, but they do not provide direction on how law enforcement officers can tailor interrogation methods to account for the developmental stage of juveniles.[283] The General Assembly should take inspiration from the recent laws passed in Illinois and Oregon.[284] Additionally, the General Assembly should direct Maryland law enforcement to adopt a more developmentally sensitive interrogation technique for juveniles, such as the PEACE method or a similar set of tactics that do not implement deception or rely on aggressive interviewing styles.[285] A statewide ban on deceptive techniques and widespread adoption of a developmentally sensitive interrogation technique would work in tandem to ensure that juvenile suspects are not being coerced or falling victim to psychological tactics designed to elicit a confession. Instead, juveniles would be able to assert their right against self-incrimination and law enforcement officers would be suited to elicit more accurate, and less false, confessions. The Maryland General Assembly therefore must take action in order for juveniles in the state to be fully protected against self-incrimination during police interrogations.

281. Greer, *supra* note 274, at 769. In 1984, the United Kingdom passed an act requiring law enforcement to transition from confrontational interrogation techniques to techniques designed to draw out factual information, which eventually led to the creation and adoption of the PEACE technique. *Id.*

282. Schollum, *supra* note 257, at 33.

283. *See supra* Section II.B.

284. *See supra* Section II.C.1.

285. *See supra* Section II.C.2.