

# PARENTAL PRESENCE OR TOTALITY OF CIRCUMSTANCES? AN ASSESSMENT OF UTAH'S JUVENILE *MIRANDA* LAW & 50 STATE SURVEY

*Michelle Jeffs\**

*Sean Brian\*\**

*Juveniles suspected or accused of crimes present vulnerabilities that require unique protections for their constitutional rights, particularly in the fraught environment of a custodial interrogation. Newly enacted section 80-6-206 of the Utah Code requires the presence of a parent or other "friendly adult" for all juvenile Miranda waivers, as well as parental consent, for custodial interrogation to go forward. Other states have similarly enacted additional protections for juveniles during custodial interrogation, but these protections vary widely. Many other states have remained committed to the traditional totality of circumstances analysis established in Fare v. Michael C. as the best means for courts to determine the validity of each juvenile confession. This article provides an overview of recent juvenile Miranda comprehension research, relevant Supreme Court case law, and a survey of juvenile Miranda laws in the fifty U.S. states and Washington, D.C. Through this analysis, the Article investigates the disparities in juvenile understanding of rights in custodial interrogations.*

*Using Utah as a case study, this Article then provides an analysis of the juvenile interrogation statutes and provides recommendations for improvement. These recommendations include using research-supported efforts to facilitate comprehension such as simplified language in the Miranda waiver for juveniles, presenting each right separately, and presenting the rights in written form. Additionally, Utah's statute would benefit from clarifying the appropriate remedy for a violation and a re-emphasis on the totality of circumstances analysis.*

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\* Michelle Jeffs, J.D. Michelle Jeffs is an assistant professor of Criminal Justice at Weber State University. She is currently on the Utah Juvenile Rules of Procedure committee and previously worked as a juvenile court prosecutor at the Weber County Attorney's Office, prosecuting hundreds of juvenile cases. She has litigated Miranda and confession issues at the pretrial and trial stages of the criminal process in both juvenile and district court. Special thanks to Keegan Rank, J.D., for his research into this area while working as a judicial law clerk for the Utah Juvenile Court. His research and work were used with permission for this Article.

\*\* Sean Brian, J.D. Sean Brian is a Deputy County Attorney in the Weber County Attorney's Office, currently assigned to the Weber County Juvenile Court and routinely litigating *Miranda* issues. Opinions expressed in this article are those of the author and not Weber County.

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#### INTRODUCTION

The Fifth Amendment provides, “[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . . .”<sup>1</sup> To protect this right, the U.S. Supreme Court in *Miranda v. Arizona* established the rule that “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.”<sup>2</sup> *Miranda* involves a prophylactic approach—it seeks to protect a right before it is violated, rather than provide a remedy after the harm occurs.<sup>3</sup> Indeed, as the U.S. Supreme Court has observed, “[t]he

1. U.S. Const. amend. V.

2. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

3. Moreover, the analysis relevant to the Fifth Amendment, and the chief evil *Miranda* is meant to address, never takes place at all. Statements need not be coerced in order to violate *Miranda* and be immediately suppressed. For an exploration of the social cost-benefit analysis of this decision, see Paul Cassell & Amos Guiroa, *Point/*

*Miranda* rule is not a code of police conduct, and police do not violate the Constitution (or even the *Miranda* rule, for that matter) by mere failures to warn.”<sup>4</sup> The *Miranda* violation takes place only after the unwarned statement is admitted into evidence at trial.<sup>5</sup> In 1979, the U.S. Supreme Court specifically addressed juvenile *Miranda* rights in *Fare v. Michael C.*<sup>6</sup> holding that a totality of circumstances analysis appropriately addressed the unique concern of juvenile comprehension.

In 2021, fifty-five years after the *Miranda* decision,<sup>7</sup> Utah passed a law that requires that a parent be present for and give consent to the custodial interrogation of a juvenile suspected of committing a criminal offense. This substantially changed Utah’s policy from the prior procedural rule that presumptively allowed juveniles aged fourteen and older to waive their own rights without a parent. In so doing, Utah established a bright-line rule requiring the presence and consent of a parent—or other interested adult—for juvenile custodial interrogations, rather than relying solely on the totality of circumstances test required under the precedent of *Fare v. Michael C.*<sup>8</sup>

While the majority of states have continued to use the totality of circumstances approach outlined in *Fare*, research into juvenile brain development has renewed interest in the appropriate way to handle custodial interrogations for juveniles. Some other states have updated their laws regarding juvenile *Miranda* provisions,<sup>9</sup> but Utah’s is the most recent example of a state enacting provisions requiring the presence of a parent or other interested adult prior to *Miranda* waiver and custodial interrogation.

This Article will analyze Utah’s new juvenile *Miranda* law in comparison to juvenile *Miranda* laws in U.S. jurisdictions, reviewing some of the many studies regarding juvenile *Miranda* comprehension in light of juvenile brain development. It will then draw on those studies to propose an evidenced-based policy that better addresses the constitutional requirement that juveniles must knowingly and voluntarily waive their *Miranda* rights prior to custodial interrogation. Part I ex-

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*Counterpoint on the Miranda Decision: Should It Be Replaced or Retained?*, UTAH BAR J., Sept./Oct. 2018, at 18.

4. *United States v. Patane*, 542 U.S. 630, 637 (2004).

5. *Id.* at 641–42.

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

7. *Miranda*, 384 U.S. 436.

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

9. *E.g.*, COLO. REV. STAT. § 19-2.5-203 (2022); IND. CODE § 31-32-5-1 (West 2022); ME. REV. STAT. ANN. 15 § 3203-A(2-A) (2021); N.D. CENT. CODE § 27-20.2-12 (2021).

plores why additional safeguards beyond those afforded to adults are necessary to protect juveniles' fundamental constitutional rights. Part II briefly summarizes some of the relevant legal precedents regarding juvenile constitutional rights—particularly *Miranda* rights—and the protections required by those precedents. Part III categorizes and analyzes the diverse approaches taken across the United States to safeguard juvenile *Miranda* rights. Part IV summarizes and analyzes Utah's juvenile interrogation law in light of these approaches and the research discussed in Part I. Drawing on juvenile research and examples of other states, this Article concludes with specific policy recommendations for lawmakers to better protect the rights of juveniles.

## I.

### RESEARCH ON JUVENILE *MIRANDA* COMPREHENSION

Suspects need not understand the technical scope of the Fifth Amendment and *Miranda* case law in order to avail themselves of its benefits. The typical *Miranda* warning follows a pattern familiar to the general public from its frequent recitation on TV and movie screens:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?<sup>10</sup>

Despite the apparent accessibility of these warnings, studies have shown that juveniles waive their rights at a higher rate<sup>11</sup> and demonstrate a poorer comprehension of *Miranda* than adults.<sup>12</sup> A more re-

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10. *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966). Note, however, that the form of the warning may vary slightly among jurisdictions. See *California v. Prysock*, 453 U.S. 355, 359 (1981) (“This Court has never indicated that the ‘rigidity’ of *Miranda* extends to the precise formulation of the warnings given a criminal defendant.”).

11. Hayley M.D. Cleary & Sarah Vidal, *Miranda in Actual Juvenile Interrogations: Delivery, Waiver, and Readability*, 41 CRIM. JUST. REV. 98, 112 (2016) (finding a ninety percent rate of waiver amongst juvenile suspects, corroborating similarly high rates found in self-report studies). However, the rate for adult waiver is not much lower, see, e.g., Anthony J. Domanico, Michael D. Cicchini & Lawrence T. White, *Overcoming Miranda: A Content Analysis of the Miranda Portion of Police Interrogations*, 49 IDAHO L. REV. 1, 13 (2012) (“Social science research findings show that . . . the vast majority of suspects—often in excess of 80%—waive their *Miranda* rights” and in a study completed for the article, ninety-three percent of suspects waived their rights).

12. See, e.g., THOMAS GRISSO, INSTRUMENTS FOR ASSESSING UNDERSTANDING & APPRECIATION OF *MIRANDA* RIGHTS 84-94 (1998); THOMAS GRISSO, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 106 (1981).

cent study focusing on juvenile-justice involved youths' understanding and appreciation of *Miranda* warnings concluded:

The majority of youths demonstrated difficulty understanding at least one *Miranda* warning. Across the two understanding measures, different aspects of misunderstanding were revealed. On one instrument, youths had more trouble paraphrasing the right to silence than the right to counsel. On the other, however, they evidenced a key misunderstanding of the role of an attorney, equating social workers with defense counsel. . . . As expected, youths struggled more with appreciation than understanding of rights, and they demonstrated greater difficulty appreciating the right to silence than the right to counsel. Misconceptions about the breadth of the right to silence may lead a youthful suspect to waive the right to silence based on the erroneous belief that remaining silent will be futile or have negative consequences—after all, why should a youth put forth the effort of asserting rights if he thinks he will be forced to talk later anyway? In addition, although youths may *understand* the availability of an attorney, many youths failed to grasp the attorney's role as a personal advocate. Such a deficit in appreciation could undermine assertion of the right to counsel.<sup>13</sup>

Such research suggests that even if juveniles can comprehend the *words* used in the *Miranda* warnings, they may fail to appreciate the significance of what those rights entail. Similarly, studies have suggested that juveniles fail to appreciate the long-term consequences of waiving their *Miranda* rights and instead “more readily think of the short-term positive consequences of confessing (*e.g.*, police will go easier on me if I cooperate) than the long-term negative consequences of an almost certain conviction.”<sup>14</sup> Importantly, it has also been observed that juveniles are more vulnerable than adults to “acquiescence, which is characterized by affirmative responses or yeasaying.”<sup>15</sup>

These observations accompany broader studies acknowledging that the prefrontal cortex is not fully developed until early adulthood.<sup>16</sup> Furthermore, the rate at which a juvenile's cognitive capacity

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13. Heather Zelle, Christina L. Riggs Romaine & Naomi E.S. Goldstein, *Juveniles' Miranda Comprehension: Understanding, Appreciation, and Totality of Circumstances Factors*, 39 LAW & HUM. BEHAV. 281, 290 (2015).

14. Allyson J. Sharf, Richard Rogers & Margot M. Williams, *Reasoning Your Way Out of Miranda Rights: How Juvenile Detainees Relinquish Their Fifth Amendment Protections*, 3 TRANSLATION ISSUES PSYCH. SCI. 121, 128 (2017).

15. Richard Rogers, Lisa L. Hazelwood, Kenneth W. Sewell, Daniel W. Shuman & Hayley L. Blackwood, *The Comprehensibility and Content of Juvenile Miranda Warnings*, 14 PSYCH., PUB. POL'Y & L. 63, 84 (2008) (citation omitted).

16. Mariam Arain, Maliha Haque, Lina Johal, Puja Mathur, Wynand Nel, Afsha Rais, Ranbir Sandhu & Sushil Sharma, *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 450 (2013).

and psychosocial maturity develop can vary across individuals, suggesting that some juveniles might be more equipped for certain types of decision making than others.<sup>17</sup> The study argued that “[d]evelopmental science ought to inform, but not dictate, where the law sets age boundaries. Having different ages of majority, depending on the legal issue in question, is truer to the science than having a single age for all legal matters.”<sup>18</sup> Both psychosocial maturity<sup>19</sup> and cognitive capacity<sup>20</sup> have been studied to determine their effects on juvenile *Miranda* comprehension. In a broad analysis of multinational studies, juveniles performed worse than adults on tests assessing psychosocial maturity and did not reach adult levels until about the age of twenty.<sup>21</sup> Comparatively, however, juveniles reach “adult like performance” on many cognitive capacity tests around age fifteen or sixteen.<sup>22</sup>

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17. Grace Icenogle, Laurence Steinberg, Natasha Duell, Jason Chein, Lei Chang, Nandita Chaudhary, Laura Di Giunta, Kenneth A. Dodge, Kostas A. Fanti, Jennifer E. Lansford, Paul Oburu, Concetta Pastorelli, Ann T. Skinner, Emma Sorbring, Sombat Tapanya, Liliana M. Uribe Tirado, Liane P. Alampay, Suha M. Al-Hassan, Hanan M. S. Takash & Dario Bacchini, *Adolescents’ Cognitive Capacity Reaches Adult Levels Prior to Their Psychological Maturity: Evidence for a “Maturity Gap” in a Multinational, Cross Sectional Sample*, 43 *LAW & HUM. BEHAV.* 69, 70 (2019). The study defines cognitive capacity as “the basic cognitive processes supporting the ability to reason logically” and psychosocial maturity as “the capacity to exercise self-restraint, especially in emotionally-arousing contexts.” *Id.*

18. *Id.* at 83.

19. Typically refers to factors such as a juvenile’s risk appraisal, future orientation, and resistance to peer influence. Psychosocial maturity can affect a juvenile’s assessment of the consequences of waiving *Miranda* and his or her susceptibility to outside influence in making that waiver. *See, e.g.*, Lori H. Colwell, Keith R. Cruise, Laura S. Guy, Wendy K. McCoy, Krissie Fernandez & Heather H. Ross, *The Influence of Psychosocial Maturity on Male Juvenile Offenders’ Comprehension and Understanding of the Miranda Warning*, 33 *J. AM. ACAD. PSYCHIATRY L.* 444, 446 (2005).

20. Referring to the capacity to think, reason, and process information. In a *Miranda* context, cognitive capacity refers to the ability to comprehend the meaning of the waiver. *See, e.g.*, Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 *LAW & HUM. BEHAV.* 723 (2005) (finding that older youth performed better on tests related to adjudicative competence and *Miranda* comprehension and reasoning than younger youth, and cognitive abilities—for example, general intellectual ability—for youth who are eleven to fifteen years old are significantly lower than for youth who are aged sixteen and seventeen).

21. *Id.* at 732.

22. *Id.* *See also* Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci & Robert Schwartz, *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 *LAW & HUM. BEHAV.* 333 (2003) (finding that adolescents fifteen years old and younger were significantly more

With regard to *Miranda* warnings, the study concluded that juveniles do better on cognitive tasks when they have time to think and reflect, and “pressure to decide quickly intensifies the [emotional] arousal of a situation.”<sup>23</sup> The study concluded that based on the research, “to the extent that the situation lends itself to deliberation,” age sixteen could be considered a reasonable age for such tasks as participating in legal proceedings.<sup>24</sup>

The language used in *Miranda* warnings has also been studied using traditional reading comprehension techniques.<sup>25</sup> Of the four warnings, the right to silence is the most accessible, requiring “less than a fifth grade” reading level.<sup>26</sup> In contrast, however, “all other *Miranda* components require an average of at least a sixth-grade education for 75% comprehension and close to a ninth-grade education . . . for full comprehension.”<sup>27</sup> The crux of the comprehension issue is whether the reading comprehension levels of most juvenile suspects are consistent with those required to comprehend the traditional *Miranda* warnings. Concerningly, younger juvenile offenders between thirteen and fifteen years old likely “lack sufficient reading comprehension even when their academic attainment is at the expected levels.”<sup>28</sup> Furthermore, juvenile offenders typically possess below-average levels of education and intelligence, and suffer from higher rates of substance abuse, intellectual impairment, poor reading comprehension, and other factors that could lead to an inability to adequately comprehend a *Miranda* warning.<sup>29</sup>

Based on this finding, the study made several specific recommendations regarding appropriate language for juvenile *Miranda* waiver.<sup>30</sup> First, it recommended the use of simplified warning language with

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cognitively impaired than sixteen- and seventeen-year-old adolescents and young adults in abilities related to competence to stand trial).

23. Icenogle, et al., *supra* note 16, at 82.

24. *See id.* (“Although all 16-year-olds would not necessarily make ‘good’ decisions in the voting booth or doctor’s office, their decisions in these contexts, on average, would be as logical as adults’ decisions.”).

25. Rogers, et al., *supra* note 14, at 69–70. The Flesch-Kincaid “is the most widely used estimate of grade-equivalent reading level”; the SMOG “estimates the required grade reading level for full comprehension.” *Id.*

26. *Id.* at 72.

27. *Id.*

28. *Id.*

29. *Id.* at 80 (“When coupled with comorbid mental disorders, poor reading comprehension and low intelligence may nullify the Supreme Court’s intent that the *Miranda* warnings clearly inform defendants of their constitutional protections.”).

30. *Id.* at 82.

supplemental clarification shown to increase juvenile comprehension.<sup>31</sup> Below is a sample of suggested phrasings from that study:

You have the right to remain silent. That means you do not have to say anything.

Anything you say can be used against you in court.

You have the right to get help from a lawyer.

If you cannot pay a lawyer, the court will get you one for free.

You have the right to stop this interview at any time.

You have the right to have one or both parents present.<sup>32</sup>

Second, the study recommended modifying the waiver language to use simplified language and address the concern over vulnerability to acquiescence.<sup>33</sup> For example, the study suggested waiver questions such as, “Do you want to talk to me? Do you want to have a lawyer? Do you want your mother, father, or person who takes care of you to be here?”<sup>34</sup> The study concluded that:

[C]urrent juvenile Miranda warnings appear well intentioned but largely irrelevant to procedural justice. Even under the best of circumstances, preteen suspects are likely to find Miranda vocabulary and reading levels are far beyond their understanding. . . . A model juvenile Miranda warning is an important step in addressing problems with simple comprehension. It deserves serious consideration.<sup>35</sup>

In addition to modifying the language of *Miranda* warnings, researchers have examined the method of delivery for the warnings. One study looked specifically at juvenile comprehension of *Miranda* warnings when given in different formats and presented with either traditional or easier language.<sup>36</sup> Importantly, juveniles may have better comprehension and retention of simplified *written* warnings, rather than oral only. The study concluded that the method of delivering a *Miranda* warning to a juvenile matters a great deal, concluding that “an easily read juvenile advisement provided in written format is far more successful than a longer more challenging counterpart presented orally.”<sup>37</sup> The study suggests that juveniles do better with a compo-

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31. *Id.*

32. *Id.* at 83.

33. *Id.*

34. *Id.*

35. *Id.* at 83.

36. Richard Rogers, Jennifer A. Steadham, Rachel M. Carter, Sarah A. Henry, Eric Y. Drogin & Emily V. Robinson, *An Examination of Juveniles' Miranda Abilities: Investigating Differences in Miranda Recall and Reasoning*, 34 BEHAV. SCI. & L. 515 (2016).

37. *Id.* at 532.



ment by component approach rather than taking the *Miranda* warning as a whole.<sup>38</sup>

This study also differentiated between juveniles by categorizing them into groups including “likely adequate” psychological maturity and “impaired” psychological maturity.<sup>39</sup> The “likely-adequate” group far outperformed the “impaired” groups in terms of comprehension and recall.<sup>40</sup> This suggests that while age matters, a totality of the circumstances analysis provides courts with the important ability to evaluate each situation and individual juvenile based on their unique characteristics, including age but also overall maturity.

A juvenile’s capacity to understand and comprehend their rights is of particular importance to the justice system because the very nature of justice prohibits the use of false confessions to seek a conviction,<sup>41</sup> and juveniles are “especially prone to confessing falsely.”<sup>42</sup> Indeed, juvenile false confessions make up a disproportionate number of known false confessions.<sup>43</sup>

These and numerous other studies<sup>44</sup> confirm that cognitive and especially psychosocial development is not complete well into adulthood and thus additional protections are warranted for juveniles in the legal system. These additional protections can be as simple as providing the warnings in simplified language, providing them in written form, and structuring the waiver questions to avoid inadvertent acqui-

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38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at 535 (“[I]t cannot be overemphasized that the extraction of inadmissible, inaccurate, or outright false confessions may jeopardize the ability of law enforcement to apprehend truly guilty parties—and the ability of judges to determine a just outcome, titrated to the actual wrongdoing.”).

42. Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Policy Interrogation*, 31 L. & PSYCH. REV. 53, 61 (2007).

43. See, e.g., Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 944 (2004) (explaining that juveniles “are over-represented in our sample of false confessions . . . compris[ing] approximately one-third (33%) of our sample”); Grisso, et al., *supra* note 21, at 357 (“Adolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent . . . .”); Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 152 (2003) (“Age was associated with compliance with signing the false confession, particularly when false evidence was presented.”).

44. See, e.g., B.J. Casey, Sarah Getz & Adriana Galvan, *The Adolescent Brain*, 28 DEV. REV. 62 (2008); Elizabeth Cauffman, Laurence Steinberg & Alex R. Piquero, *Psychological, Neuropsychological and Physiological Correlates of Serious Antisocial Behavior in Adolescence: The Role of Self-Control*, 43 CRIMINOLOGY 133 (2005); Ronald E. Dahl, *Affect Regulation, Brain Development, and Behavioral/Emotional Health in Adolescence*, 6 CNS SPECTRUMS 60 (2001).

escence. When a *Miranda* waiver is challenged, through a motion to suppress for example, then courts are required to make a determination that a juvenile's waiver has been made knowingly and voluntarily, and employing simple, evidence-based practices can better ensure that the constitutional requirement is met.

## II. LEGAL CONTEXT

It is difficult to engage meaningfully with any issue of juvenile justice without first reflecting upon *In re Gault*,<sup>45</sup> a seminal case addressing not only the applicability of the Due Process Clause to juveniles but the additional considerations required in light of the special needs and vulnerabilities that they present.<sup>46</sup> In *Gault*, a juvenile on probation was taken into custody following a complaint about a lewd phone call.<sup>47</sup> Over the course of the case, basic principles of due process were ignored: parents were not notified of the juvenile's arrest, the petition was not provided to the parents and failed to disclose any indication of a factual basis for its allegations, evidence was presented by mere proffer, and hearsay was substituted for the victim's testimony, thus depriving the juvenile the benefit of cross-examination.<sup>48</sup>

Instead, despite the probation officer's admission that a co-defendant had made the admissions he had incorrectly attributed to the juvenile, the Judge recalled the juvenile also admitting to making some of the lewd statements, although not the more serious ones.<sup>49</sup> On the basis of this proffer alone, the court sent the juvenile to a State Industrial School until the age of twenty-one.<sup>50</sup> There was no process for appeal, so the parents were forced to resort to the extreme of a *habeas corpus* petition.<sup>51</sup>

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45. 387 U.S. 1 (1967).

46. *Id.* at 1.

47. *Id.* at 4.

48. *Id.* at 5–7.

49. *Id.* at 7.

50. 387 U.S. at 8.

51. *In re Gault*, 387 U.S. 1, 8 (1967). Habeas corpus is a Latin phrase meaning, "that you have the body." HABEAS CORPUS, DICTIONARY.COM, <https://www.dictionary.com/browse/habeas-corporis> (last visited May 25, 2022). It refers to a special legal proceeding that a prisoner can bring to force the government to prove that the prisoner is being held lawfully. *See, e.g.*, *Brown v. Turner*, 440 P.2d 968, 969 (Utah 1968) ("[Habeas corpus] is an extraordinary remedy which is properly invocable . . . where the requirements of law have been so disregarded that the party is substantially and effectively denied due process of law, or where some such fact is shown that it would be unconscionable not to re-examine the conviction.").

Following an unsuccessful petition for *habeas corpus* at the Arizona Supreme Court, the U.S. Supreme Court granted certiorari on the question of the alleged denial of various due process rights, including notice of the charges, the right to counsel, and the right to confrontation and cross-examination.<sup>52</sup> The Court began its analysis by observing that its prior cases “unmistakably indicate[d] that . . . neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.”<sup>53</sup> With palpable disapproval, the court noted, “[f]rom the inception of the juvenile court system, wide differences have been tolerated—indeed insisted upon—between the procedural rights granted to adults and those of juveniles. . . . In addition to the specific problems involved in the present case, for example, it has been held that the juvenile is not entitled to bail, to indictment by grand jury, to a public trial or to trial by jury.”<sup>54</sup> This is because, the Court explained, early reformers eschewed the application of adult procedures and penalties to juvenile defendants, believing, “society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but . . . what had best be done in his interest.”<sup>55</sup> Accordingly, the “child—essentially good, as they saw it—was to be made to feel that he is the object of the state’s care and solicitude, not that he was under arrest or on trial.”<sup>56</sup> The “rigidities” and “technicalities” of the traditional rules were therefore discarded as unnecessary given the clinical and benevolent *parens patriae* approach that was to replace the punitive adult system.<sup>57</sup>

Despite apparent good intentions, in *Gault*, informality gave rise to injustice. “Unbridled discretion,” the Court held, “however benevolently motivated, is frequently a poor substitute for principle and procedure.”<sup>58</sup> Moreover, departures from the “established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness. . . . Procedure is to law what ‘scientific method’ is to science.”<sup>59</sup> Accordingly, the court concluded, “there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.”<sup>60</sup> Most directly relevant to this Article is the Court’s dictum regarding *Miranda*—when a juve-

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52. 387 U.S. at 10.

53. *Id.* at 13.

54. *Id.* at 14.

55. *Id.* at 15.

56. *Id.*

57. *In re Gault*, 387 U.S. 1, 16 (1967).

58. *Id.* at 18.

59. *Id.* at 18–21.

60. *Id.* at 30 (quoting *Kent v. United States*, 383 U.S. 541 (1966)).

nile confesses outside the presence of an attorney, “the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.”<sup>61</sup>

Ten years later, in *Fare v. Michael C.*,<sup>62</sup> the Supreme Court first established the constitutional standard for juvenile *Miranda* waivers. There, the Court considered whether a sixteen-year-old’s request for his probation officer’s presence during custodial interrogation constituted an invocation of his *Miranda* rights.<sup>63</sup> The juvenile had “considerable experience with the police,” having had several arrests, served time in a youth camp, and been on probation for several years, including at the time of the interrogation.<sup>64</sup> Nothing in the record indicated that he lacked “intelligence to understand the rights he was waiving, or what the consequences would be,”<sup>65</sup> and the Court found that the police officers “took care to ensure that [he] understood his rights.”<sup>66</sup> They told the juvenile that he was being investigated for murder, informed him of his rights, and checked to see if he understood them.<sup>67</sup> At the outset, the juvenile asked if he could speak with his probation officer, and the police denied that request. They then “once more . . . explained his rights to him, [and he] clearly expressed his willingness to waive his rights and continue the interrogation.”<sup>68</sup> In looking at the transcript, the Court found that “he was not worn down by improper interrogation tactics or lengthy questioning or by trickery or deceit.”<sup>69</sup>

In analyzing whether the juvenile’s waiver was valid, the Court extended the totality of circumstances test used in evaluating adult interrogations to juvenile custodial interrogations to evaluate whether he had knowingly and voluntarily waived his or her rights.<sup>70</sup> The Court acknowledged that juveniles might face a unique set of issues not present in adults:

The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile’s age, experience, education, back-

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61. *Id.* at 55.

62. 442 U.S. 707 (1979).

63. *Id.* at 709.

64. *Id.* at 726.

65. *Id.*

66. *Id.*

67. *Id.* at 726–27.

68. *Fare v. Michael C.*, 442 U.S. 707, 726 (1979).

69. *Id.* at 726–27.

70. *Id.* at 724–25.

ground, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.<sup>71</sup>

Having considered the applicable factors, courts could then make an individual determination of whether a juvenile knowingly and voluntarily waived his or her rights.<sup>72</sup> The Court reasoned that:

[c]ourts repeatedly must deal with these issues of waiver. . . . There is no reason to assume that such courts—especially juvenile courts, with their special expertise in this area—will be unable to apply the totality of circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved.<sup>73</sup>

In so holding, the Court rejected the claim that a juvenile's request for the presence of a probation officer is a *per se* invocation of *Miranda* and instead required that the reviewing court employ a totality of the circumstances analysis to evaluate the entire transcript and the circumstances surrounding the interrogation before finding a *Miranda* violation.<sup>74</sup> The Court reasoned that rejecting a *per se* rule in favor of the totality of circumstances approach allows the court most familiar with the facts of a particular case to make a determination of whether a juvenile's waiver was knowing and voluntary.

Like any standard that relies on discretion, there are benefits and drawbacks to the *Fare* approach. In the good scenarios, judges are made well aware of the facts surrounding the factors in the totality of circumstances test and can make appropriate, thoughtful, case-specific decisions. Discretion acknowledges that each case is different and that the presence of a parent matters, but so too do factors such as the demeanor, number, and words of the officer(s); the length and location of the interrogation; and the unique qualities and experiences of a particular juvenile.

### III. SURVEY

*Fare* remains the minimum constitutional standard to determine whether a juvenile *Miranda* waiver was made knowingly and voluntarily. However, States have implemented a variety of approaches to provide protections above the constitutional floor set forth in *Fare* to

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71. *Id.* at 725.

72. *Id.*

73. *Id.*

74. *Fare v. Michael C.*, 442 U.S. 707, 727–28 (1979).

further address the unique challenges and limitations that juveniles present.

In this section, we will discuss our survey of the various jurisdictional protections for juvenile *Miranda* rights, which covers all fifty states and Washington, D.C. This survey comprises of a review of the relevant statutory and case law in each jurisdiction to determine if the jurisdiction had a statutory code regulating juvenile *Miranda* waivers. While there are differences across the jurisdictions, each falls into one of three primary categories with respect to its treatment of juvenile *Miranda* waivers: (1) jurisdictions that primarily rely on the totality of circumstances approach laid out in *Fare* for all juvenile waivers; (2) jurisdictions that require the presence or consent of a parent, attorney, or other interested adult at the time of waiver for juveniles under a certain age (less than eighteen); or (3) jurisdictions that require the presence or consent of a parent, attorney, or other interested adult at the time of waiver for *all* juveniles.

#### A. *Jurisdictions Relying on Totality of Circumstances Test*

The largest of the three groups, the first category consists of thirty states and Washington, D.C.<sup>75</sup> These jurisdictions exclusively rely on some form of the totality of circumstances approach developed in *Fare* for all juveniles, regardless of their age. The totality of circumstances test will traditionally look first at the nature of the interrogation, including the length and location of the interrogation, as well as the number and demeanor of officers. It will also evaluate the nature of the suspect, including age, experience, education, background, intelligence, and level of sobriety or impairment during the waiver and interrogation. Traditionally, it can also include any other factors that an individual judge feels are relevant to the specific case.

In addition to these traditional factors, many of these jurisdictions have added additional factors that the courts should consider in the totality of circumstances analysis. Some common additional factors across the states include whether investigators disclosed to the juvenile that a parent or interested adult has the right to be present during an interrogation, whether law enforcement intentionally excluded the parent or interested party from the interrogation, and, in states requiring parental notification (not presence or consent), if that requirement was met. In many of the states, courts must also consider not only whether the parent was present as part of the totality of the circumstances, but also whether that parent had interests that were adverse to

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75. See Table 1, *infra*.

the interests of the juvenile, such as by being a co-defendant or victim of the juvenile.

While many of the states have adopted these additional factors, the reliance on the totality of the circumstances analysis remains in line with the Court's reasoning in both *Miranda* and *Fare*. A totality of the circumstances analysis allows judges to consider the unique factors of each situation. Custodial interrogation can vary widely in how coercive it is based on the location of the interrogation, the number and demeanor of the officers present, the age and experience of the juvenile, and myriad other factors.<sup>76</sup> While a bright-line rule carries some benefits, some of the states in this category have considered and explicitly rejected moving to such a rule.

Courts from at least seven of these "totality of circumstances" states have considered some form of a per se rule requiring a juvenile to have a parent or attorney there during custodial interrogation; all seven states declined to adopt this rule, finding that the constitutional protections in *Fare* were sufficient and better suited to address the unique circumstances.<sup>77</sup> Pennsylvania<sup>78</sup> and Louisiana<sup>79</sup> courts have also overturned precedent requiring the presence of an interested adult during a juvenile interrogation, choosing to rely on the totality of circumstances test instead.

In *State v. Fernandez*,<sup>80</sup> the Louisiana Supreme Court overruled *State in the Interest of Dino*,<sup>81</sup> which had mandated that, in order to introduce a juvenile's confession, the prosecution was required to show that the juvenile engaged in a meaningful consultation with an attorney or informed parent, guardian, or other interested adult before

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76. See *Yarborough v. Alvarado*, 541 U.S. 562, 662–63 (2004) ("Rather than demarcate a limited set of relevant circumstances, we have required police officers and courts to examine all the circumstances surrounding the interrogation, including any circumstance that would have affected how a reasonable person in the suspect's position would perceive his or her freedom to leave."); *Berkemer v. McCarty*, 468 U.S. 420, 435–42 (1984) (distinguishing the detention involved in traffic stop from custody under *Miranda*); *Beckwith v. United States*, 425 U.S. 341, 344–48 (1976) (determining that whether the suspect is the "focus" of the investigation does not impact the custodial analysis). See also *J.D.B. v. North Carolina*, 564 U.S. 261, 270–72 (2011) (adding age to the various circumstances to consider).

77. See, e.g., *State v. Ridgely*, 732 P.2d 550, 556 (Alaska 1987); *Smith v. State*, 918 A.2d 1144, 1149–50 (Del. 2007); *Commonwealth v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984); *State v. Fernandez*, 712 So.2d 485, 489–50 (La. 1998); *State v. Pablo*, 100 N.E.3d 1068, 1072 (Ohio Ct. App. 2017); *State v. Diaz*, 847 N.W.2d 144, 155 (S.D. 2014).

78. *Commonwealth v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984).

79. *State v. Fernandez*, 712 So.2d 485, 489–50 (La. 1998).

80. *Id.*

81. 359 So.2d 586 (La. 1978).

he waived his *Miranda* rights. In its reasoning, the *Fernandez* court stated that to be admissible, a confession must always be given knowingly or voluntarily, regardless of the age of the accused. The court emphasized that age is “an extremely important and extremely relevant factor in determining knowingness and voluntariness” but stated that it “is not absolutely determinative,” and rejected the “rigid invalidation of an otherwise valid confession” as having no constitutional basis.<sup>82</sup>

In place of *Dino*’s per se rule, the *Fernandez* court required that “[a]ll of the attending facts and circumstances” be considered and weighted in evaluating whether a confession was given knowingly and voluntarily:<sup>83</sup> “Among those factors are the juvenile’s youth, experience, and comprehension, and the presence or absence of an interested adult.”<sup>84</sup> The court reasoned that the need to consider a juvenile’s youth and inexperience is similar to the need to consider the various mental disabilities an adult might have, but whether an adult or juvenile, deficiencies in comprehension can and should be accounted for in the totality of circumstances analysis.<sup>85</sup> The court also pointed out that not only does the totality of circumstances test better protect the “special needs of juveniles,” it also protects “the interests of society and justice.”<sup>86</sup> The court concluded:

Excluding an otherwise valid confession of guilt just because the accused was a few months away from achieving non-juvenile status is simply too high a price to pay for the arguable benefit of more easily administering a per se rule. . . . A confession by a juvenile given without a knowing and voluntary waiver can be, and should be, suppressed under the totality of circumstances standard applicable to adults, supplemented by consideration of other very significant factors relevant to the juvenile status of the accused.<sup>87</sup>

The Pennsylvania Supreme Court, in *Commonwealth v. Williams*, similarly considered whether a seventeen-year-old’s confession must be suppressed because he did not have the opportunity to consult with his father prior to waiving his *Miranda* rights.<sup>88</sup> There, the court overruled its own precedent that had required an interested adult to consult with the juvenile prior to a *Miranda* waiver.<sup>89</sup> The court stated:

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82. *Fernandez*, 712 So.2d at 487.

83. *Id.* at 488.

84. *Id.*

85. *State v. Fernandez*, 712 So.2d 485, 489 (La. 1998).

86. *Id.* at 489 (internal citations omitted).

87. *Id.* at 489.

88. *Commonwealth v. Williams*, 475 A.2d 1283, 1285 (Pa. 1984).

89. *Id.* at 1286.



The per se *McCutchen* rule, in discarding the totality of circumstances test, negated the relevance of all those factors which should be and must be considered in deciding whether a confession was knowingly and voluntarily given. Instead, a prophylactic principle was adopted and applied which shunned the real issue of the voluntariness of a confession.<sup>90</sup>

The court pointed out that adherence to the per se rule resulted in “the exclusion from evidence of juvenile confessions that were in fact knowingly and voluntarily given.”<sup>91</sup> The court found that due process is satisfied, and “the protection against the use of involuntary confession which law and reason demand is met,” by the totality of circumstances analysis. The court reiterated that such an analysis must include all factors involving the juvenile’s youth, experience, and comprehension and the presence of a parent or interested adult.

In the *Williams* case, the juvenile was nearly eighteen, had extensive experience with the juvenile system and law enforcement, was not subject to physical or psychological abuse or under the influence of any controlled substances, was only in custody for two hours, and his father was present for both the waiver and interrogation.<sup>92</sup> Considering all of those circumstances, the court concluded, “it is clear from the totality of the circumstances that the appellant’s confession was knowingly, intelligently, freely and voluntarily made.”<sup>93</sup> The Pennsylvania Supreme Court reviewed its totality of circumstances test as recently as 2019 and, after considering developments in social science research, held that this standard, in line with *Fare*, best protected the constitutional rights of juvenile defendants.<sup>94</sup>

The ability to balance competing interests and accommodate unique circumstances is an inherent advantage of the totality of circumstances analysis, and the states that considered a per se rule requiring parental presence or consent ultimately rejected its simplicity and predictability in favor of these values. Table 1 lists all states relying solely on the totality of circumstances test, along with a brief summary of the current law in each state.

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90. *Id.* at 1287.

91. *Id.*

92. *Id.* at 1288.

93. *Id.*

94. *Commonwealth v. Smith*, 210 A.3d 1050, 1059 (Pa. 2019).

TABLE 1: JURISDICTIONS RELYING SOLELY ON THE TOTALITY OF CIRCUMSTANCES TEST

Alabama	A minor has the right to communicate with a parent, guardian, or custodian, whether or not that person is physically present. <sup>95</sup> However, a parent’s presence is not necessary for a <i>Mirada</i> waiver. <sup>96</sup>
Alaska	Courts have expressly rejected a “per se rule that juveniles are incapable of waiving their <i>Miranda</i> rights without the guidance of an adult, adopting instead a totality of the circumstances rule.” <sup>97</sup>
Arizona	The presence of a child’s parents and whether they consented to their child’s waiver are factors considered by a court to determine whether a confession was involuntary and thereby inadmissible. <sup>98</sup>
Arkansas	A minor has the right to request a parent, guardian, or custodian before being questioned in custody and waiving any rights. <sup>99</sup> The presence of a parent, however, is only a factor in the totality of circumstances analysis. <sup>100</sup>
Delaware	Delaware has explicitly rejected an “interested parent” rule, which would require that a parent or guardian be present for a <i>Miranda</i> waiver to be effective. <sup>101</sup>
District of Columbia	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. <sup>102</sup>

95. ALA. CODE § 12-15-202 (2022).

96. *Id.*

97. *State v. Ridgely*, 732 P.2d 550, 556 (Alaska 1987).

98. *In re Andre M.*, 88 P.3d 552, 555 (Ariz. 2004).

99. ARK. CODE ANN. § 9-27-317 (2021).

100. *Id.*

101. *Smith v. State*, 918 A.2d 1144, 1149–50 (Del. 2007).

102. *See In re S.W.*, 124 A.3d 89, 98 (D.C. 2015).

Florida	A variety of factors are used to determine whether custodial statements are admissible, including a juvenile's request for a parent to be present and whether the parent was allowed to be present. <sup>103</sup>
Georgia	The absence of a parent is just one of nine factors that a court considers in determining whether a <i>Miranda</i> waiver was properly made for statements to be admissible, but there is no requirement that a parent must be present. <sup>104</sup>
Hawaii	A parent does not need to be present or consulted before a minor waives his or her rights, but a court may review whether a parent was present in its totality of the circumstances analysis. <sup>105</sup>
Idaho	Courts must look at the totality of the circumstances to determine whether the minor properly waived his or her rights in a custodial interrogation before a statement can be admissible. <sup>106</sup>
Kentucky	Statute mandates that parents must be contacted when a minor is taken into custody. A minor's waiver of his or her <i>Miranda</i> rights while in custody, however, is not dependent on a parent's presence. <sup>107</sup>
Louisiana	Louisiana courts have overturned precedent that required the minor to consult with an attorney or interested adult prior to waiving his or her rights, having adopted a totality of circumstances analysis instead. <sup>108</sup>
Maryland	The absence of a parent or guardian during a juvenile's interrogation is an important factor in determining the voluntariness of the statement, but their absence does not automatically make the statement inadmissible. <sup>109</sup>

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103. *J.G. v. State*, 883 So. 2d 915, 925–26 (Fla. Dist. Ct. App. 2004).

104. *McKoon v. State*, 465 S.E.2d 272, 273 (Ga. 1996).

105. *In re Doe*, 978 P.2d 684, 691–92 (Haw. 1999).

106. *State v. Doe*, 963 P.2d 392, 395 (Idaho Ct. App. 1998).

107. *Taylor v. Commonwealth*, 276 S.W.3d 800, 805–06 (Ky. 2008).

108. *State v. Fernandez*, 712 So.2d 485, 489–90 (La. 1998).

109. *Jones v. State*, 535 A.2d 471, 476 (Md. 1988).

Michigan	In the totality of circumstances analysis, courts specifically examine factors such as whether police contacted the parents of the juvenile and whether the parent or guardian was present in the questioning. <sup>110</sup>
Minnesota	A general totality of the circumstances analysis is used without any specific considerations for the presence of parents. <sup>111</sup>
Mississippi	When a child is taken into custody without a custody order, a judge and the child's parent or guardian must be notified. <sup>112</sup> A general totality of the circumstances is used for whether a custodial confession is voluntary, regardless of the presence of the parents during that interrogation. <sup>113</sup>
Missouri	A minor taken into custody has the right to have a parent, guardian, or custodian present during questioning. <sup>114</sup> A parent's presence is just one factor in a totality of circumstances analysis regarding <i>Miranda</i> waiver. <sup>115</sup>
Nebraska	A general totality of the circumstances analysis is used without any specific considerations for the presence of parents. <sup>116</sup>
Nevada	Courts use a totality of the circumstances approach to determine whether admissions or statements by a juvenile are admissible as evidence, using factors such as whether parents were present during the interrogation. <sup>117</sup>
New Hampshire	Statute requires that parents must be notified when the minor was taken into custody and extra weight is given to whether the statute was followed when conducting a totality of the circumstances analysis. <sup>118</sup>

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110. *People v. Givans*, 575 N.W.2d 84, 88 (Mich. 1997).

111. *State v. Burrell*, 697 N.W.2d 579, 592–93 (Minn. 2005).

112. Miss. Code Ann. 43–21–303(3) (Rev.2009)

113. *Dancer v. State*, 721 So. 2d 583, 587 (Miss. 1998).

114. MO. REV. STAT. § 211.059 (2017).

115. *State v. Barnaby*, 950 S.W.2d 1, 3 (Mo. Ct. App. 1997).

116. *State v. Goodwin*, 774 N.W.2d 733, 744 (Neb. 2009).

117. *Ford v. State*, 138 P.3d 500, 504–05 (Nev. 2006).

118. *State v. Farrell*, 766 A.2d 1057, 1061–62 (N.H. 2001).

New York	Parents have the statutory right to be present at an interrogation of a juvenile. <sup>119</sup> Moreover, they cannot be barred from an interrogation if the juvenile is less than sixteen years of age. <sup>120</sup> However, a parent's absence does not make a juvenile's statement inadmissible. <sup>121</sup>
North Dakota	North Dakota is unique because it recently repealed a statute that guaranteed minors a right to counsel when taken into custody. <sup>122</sup> The new statute provides an attorney once a petition has been filed, regardless of indigency, but does not address custodial interrogations. <sup>123</sup> All recent case law has addressed the repealed statutory requirements, <sup>124</sup> so it is unclear how North Dakota's courts will handle the issue going forward, but at a minimum, the constitutional requirements of <i>Fare</i> can be safely presumed to apply.
Ohio	The state has explicitly chosen to not adopt an interested adult requirement that would require a parent or other adult to be present during a custodial interrogation. <sup>125</sup>
Oregon	A general totality of the circumstances analysis is used without any specific considerations for the presence of parents. <sup>126</sup>
Pennsylvania	Pennsylvania has rejected an interested adult rule which would require that a parent or guardian be present for a <i>Miranda</i> waiver to be effective. <sup>127</sup> It does, however, consider a parent's presence in a totality of the circumstances analysis. <sup>128</sup>

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119. N.Y. FAM. CT. ACT § 305.2(7) (McKinney 2022).

120. *In re Jimmy D.*, 938 N.E.2d 970, 973 (N.Y. 2010).

121. *Id.*

122. N.D. CENT. CODE §§ 27-20-26 to 27-20-34. Repealed by Act of Apr. 29, 2021, ch. 245, 2021 N.D. Laws 45 (H.B. 1035), eff. July 1, 2021.

123. N.D. CENT. CODE § 27-20.2-12

124. *See e.g., In re. Z.C.B.*, 669 N.W. 2d 478, 482 (N.D. 2003).

125. *State v. Pablo*, 100 N.E.3d 1068, 1072 (Ohio Ct. App. 2017).

126. *State ex rel. Juv. Dep't of Washington Cnty. v. Deford*, 34 P.3d 673, 684–85 (Or. 2001).

127. *Commonwealth v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984).

128. *Id.*

Rhode Island	The totality of the circumstances analysis specifically examines whether a parent, guardian, or other interested adult was present during a custodial interrogation. <sup>129</sup>
South Carolina	A general totality of the circumstances analysis is used without any specific consideration for the presence of parents. <sup>130</sup>
South Dakota	South Dakota has rejected a per se rule that would require the presence of a parent for a valid <i>Miranda</i> waiver, but the ability of a juvenile to confer with a parent is an explicit factor in the totality of the circumstances analysis. <sup>131</sup>
Tennessee	Courts look specifically at “the presence of a parent, guardian, or interested adult” as a factor in the totality of the circumstances analysis. <sup>132</sup>
Virginia	A general totality of the circumstances analysis is used, with the presence of a parent being one of the factors courts are instructed to consider. <sup>133</sup>
Wisconsin	Wisconsin has rejected a per se rule that would require the presence of a parent for a valid <i>Miranda</i> waiver, but the presence of a parent during the interrogation is an explicit factor in the totality of the circumstances analysis. <sup>134</sup>
Wyoming	A general totality of the circumstances approach is used without any specific considerations for the presence of parents. <sup>135</sup>

*B. Jurisdictions Requiring the Presence or Consent of a Parent, Attorney, or Other Adult for Younger Juveniles*

The second category of jurisdictions—of which there are thirteen—follow a totality of the circumstances approach for older juveniles, but provide additional per se protections to younger juveniles that require the involvement of a parent, guardian, attorney,

129. *State v. Monteiro*, 924 A.2d 784, 789–90 (R.I. 2007).

130. *State v. Pittman*, 746 S.E.2d 144, 174–75 (S.C. 2007).

131. *State v. Diaz*, 847 N.W.2d 144, 155 (S.D. 2014).

132. *State v. Carroll*, 36 S.W.3d 854, 864 (Tenn. Crim. App. 1999).

133. *Rodriguez v. Commonwealth*, 578 S.E.2d 78, 84 (Va. Ct. App. 2003).

134. *In re Jerrell C.J.*, 699 N.W.2d 110, 120 (Wis. 2005).

135. *Rubio v. State*, 939 P.2d 238, 241–42 (Wyo. 1997).

or other interested adult.<sup>136</sup> The adult involvement required for waiver can be as minimal as mere adult presence or as extensive as requiring the adult to waive the juvenile's rights, in person or in writing, in lieu of the juvenile waiving his or her own rights. In these jurisdictions, once a juvenile reaches a certain age established by the statute, adult involvement is no longer required for a valid waiver, and courts rely solely on the totality of the circumstances approach to analyze whether a juvenile's waiver was knowingly and voluntarily made, considering the presence of an interested adult as only one factor, rather than a necessary condition for valid waiver.

Among the jurisdictions in this category, the ages of fourteen and sixteen are the most common ages at which an interested adult is no longer required to be present during an interrogation or involved in the *Miranda* waiver process. While each of these jurisdictions requires the participation of an interested adult for younger juveniles, the level of participation varies. Kansas<sup>137</sup> and Massachusetts,<sup>138</sup> for example, require a parent or attorney to consult with the juvenile before a waiver is made. States such as Connecticut,<sup>139</sup> however, only require a parent to be present for a waiver to be valid, without any indication of what level of participation is required.

Although parental involvement is required to some extent in each state, statutes in several states recognize that a parent's interests might be adverse to the child's. In some states, such as Montana<sup>140</sup> and Kansas,<sup>141</sup> if a parent disagrees with the desires of the juvenile, is the alleged victim of the offense, or is a co-defendant, then the juvenile must consult with an attorney before waiving his or her *Miranda* rights. Other states consistently require the presence of counsel rather than a parent during custodial interrogation for younger juveniles without any showing of a parental adverse interest. For example, California requires a consultation with an attorney prior to custodial interrogation until the age of sixteen,<sup>142</sup> West Virginia requires the presence of counsel for juveniles under the age of fourteen,<sup>143</sup> and Illinois provides that a juvenile may never waive the right to counsel if

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136. See Table 2. For the sake of brevity, further references to "interested adult" are meant to include a guardian, legal custodian, friendly adult, or attorney of a juvenile unless further specified.

137. KAN. STAT. ANN. § 38-2333(a) (2021).

138. *Commonwealth v. Philip S.*, 611 N.E.2d 226, 230–31 (Mass. 1993).

139. CONN. GEN. STAT. § 46b-137(a) (2022).

140. MONT. CODE ANN. § 41-5-331 (2021).

141. *In re P.W.G.*, 426 P.3d 501, 513–14 (Kan. Ct. App. 2018).

142. CAL. WELFARE & INST. CODE § 625.6(a) (2021).

143. W. VA. CODE § 49-4-701(l) (2016).

they are under fifteen and under investigation for a sex offense or murder.<sup>144</sup> However, the additional protections these three states provide for younger juveniles are rare among U.S. jurisdictions. While there are potential benefits to requiring the presence of an attorney to ensure a knowing and voluntary waiver, courts have repeatedly found juveniles to have knowingly and voluntarily waived their rights in cases where no attorney was present for the waiver.<sup>145</sup> While these three states have stopped short of requiring an attorney for *all* juvenile interrogations, even these intermediate approaches can be cumbersome for law enforcement and the investigative process and expensive for the state in funding and employing attorneys to be available whenever needed for a custodial interrogation. As such, the decision to impose such a requirement must be made carefully, weighing the necessity of such a cumbersome and expensive approach.

Importantly, even though all the states in this category offer protections that go beyond the totality of circumstances approach for younger juveniles, the ultimate ability to waive *Miranda* rights in most states remains with the juvenile and *not* the parent or interested adult. For example, in California,<sup>146</sup> Connecticut,<sup>147</sup> Iowa,<sup>148</sup> Kansas,<sup>149</sup> Massachusetts,<sup>150</sup> Montana,<sup>151</sup> New Jersey,<sup>152</sup> New Mexico,<sup>153</sup>

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144. 705 ILL. COMP. STAT. 405/5-170 (West 2022).

145. *See, e.g.*, *R.G. v. State*, 2017 UT 79, ¶ 28, 416 P.3d 478, 485 (noting that, while the juvenile did not have an attorney or parent present, he did not ask for one despite being advised he could have one present and reiterating that the presence of an attorney is “only one factor to consider among the other factors”); *State v. Dutchie*, 969 P.2d 422, 429 (Utah 1998) (noting that no attorney was present, but that “a child is [not] necessarily incompetent to waive his rights because of his infancy; nor do we agree that such a choice should lie with a child’s parent, adult friend or attorney,” and reiterating the value of the totality of circumstances analysis) (internal citation omitted); *Commonwealth v. Smith*, 210 A.3d 1050, 1059 (Pa. 2019) (juvenile confessed to murder with no attorney or interested adult present; court reiterated value of totality of circumstances analysis); *State v. A.P.*, 117 N.E.3d 840, 853 (Ohio 2018) (juvenile confessed without the presence of his mother or an attorney; court held there was no requirement for the presence of an interested adult because it is merely one factor of the analysis); *Hall v. State*, 248 So. 3d 1227, 1230 (Fla. Dist. Ct. App. 2018) (listing the “opportunity to consult with parents or an attorney before questioning” as a factor in the totality of circumstances analysis but finding that the juvenile knowingly and voluntarily waived his rights without the presence of an attorney or parent).

146. CAL. WELF. & INST. CODE § 625.6(a) (2021).

147. CONN. GEN. STAT. § 46b-137(a) (2022).

148. IOWA CODE § 232.11(2) (2022).

149. KAN. STAT. ANN. § 38-2333(a) (2021).

150. Philip S., *supra* n. 138, 611 N.E.2d at 230–31.

151. MONT. CODE ANN. § 41-5-331 (2021).

152. *State ex rel. Q.N.*, 843 A.2d 1140, 1144 (N.J. Sup. Ct. 2004).

153. N.M. STAT. ANN § 32A-2-14 (2022).



North Carolina,<sup>154</sup> and Oklahoma,<sup>155</sup> the right to waive remains with the juvenile even where some additional protections exist, such as the juvenile's opportunity to consult with a parent or interested adult or a required notification to the parents of the juvenile's rights.

Washington has a particularly narrow restriction, prohibiting only juveniles under the age of twelve from waiving their own rights and requiring that a parent make the determination of whether to waive the juvenile's rights.<sup>156</sup> In Illinois, the only restriction on the juvenile's right to waive his or her own right is for those under fifteen who are in custody for allegations related to sex offense or murder; otherwise, the juvenile themselves retains the ability to waive their *Miranda* rights.<sup>157</sup>

However, the Illinois statute also acknowledges the difficulties juveniles may have with comprehending the traditional language of *Miranda*. In Illinois, anytime a law enforcement officer, state's attorney, juvenile officer, or other public official or employee questions a juvenile subject to custodial interrogation, they must read the following statement continuously and in its entirety:<sup>158</sup>

You have the right to remain silent. That means you do not have to say anything. Anything you do say can be used against you in court. You have the right to get help from a lawyer. If you cannot pay for a lawyer, the court will get you one for free. You can ask for a lawyer at any time. You have the right to stop this interview at any time.<sup>159</sup>

After reading the statement, the public official or employee must then "ask the following questions and wait for the juvenile's response to each question: (A) 'Do you want to have a lawyer?' (B) 'Do you want to talk to me?'"<sup>160</sup>

Illinois's statute also clearly addresses the remedy for a violation. If an officer does not read the simplified statement as directed, then the juvenile's statements are presumed inadmissible in trial.<sup>161</sup> However, that presumption of inadmissibility "may be overcome by a pre-

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

155. OKLA. STAT. tit. 10A, § 2-2-301(A) (2022).

156. WASH. REV. CODE § 13.40.140(11) (2022).

157. 705 ILL. COMP. STAT. 405/5-170 (2022).

158. 705 ILL. COMP. STAT. 405/5-401.5 (2022).

159. *Id.*

160. *Id.*

161. *Id.* Additionally, the statute indicates that the statement, waiver, and interview must be recorded and that the statements are admissible if they are not recorded. 705 ILL. COMP. STAT. 405/5-401.5 (2022). This recording would allow courts to more accurately analyze the totality of circumstances surrounding not only waiver but also the additional analysis of whether the subsequent statements during the interview were made voluntarily.

ponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of circumstances.”<sup>162</sup>

Illinois’s simplified language and expansion of what constitutes potentially coercive interrogation is quite different from those protections offered by the third category of states, those that require an adult to be present during custodial interrogation, but is in line with research evaluating juveniles’ ability to comprehend the *Miranda* language itself.<sup>163</sup> Illinois’s use of simplified, juvenile-appropriate language, accompanied by a standard totality of the circumstances analysis to determine whether a waiver was knowing or voluntary, is a research-based effort to achieve the goals of *Miranda* in protecting juvenile constitutional rights.

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162. 705 ILL. COMP. STAT. 405/5-401.5(f) (2022).

163. See Part I, *supra*.

TABLE 2: STATES REQUIRING PRESENCE OR CONSENT OF  
A PARENT OR OTHER INTERESTED ADULT UNTIL  
A STATUTORILY PRESCRIBED AGE

California	A minor under the age of sixteen must consult with legal counsel before he or she participates in a custodial interrogation. <sup>164</sup> The consultation must occur unless the questioning officer reasonably believes the questioning will provide information that protects life or property from an imminent threat and the questioning is limited to reasonably obtain information. <sup>165</sup> The court, when adjudicating the admissibility of a minor's statements must consider the effects of failing to comply with the consultation requirement. <sup>166</sup>
Connecticut	Any admission or statement made by a minor under the age of sixteen, even after a waiver of their <i>Miranda</i> rights, is inadmissible unless it is made in the presence of a parent or guardian. <sup>167</sup>
Illinois	Juveniles under the age of fifteen must be represented by counsel throughout a custodial interrogation, without the ability to waive counsel if they are in custody for allegations related to a sex offense or murder. <sup>168</sup> Illinois also requires that a simplified <i>Miranda</i> statement and waiver be read in its entirety to all juveniles prior to custodial interrogation. <sup>169</sup> If the simplified statement is not read during a recorded interview, the ensuing statements made by the minor are presumed inadmissible, but the presumption can be overcome by a preponderance of evidence that the statement was voluntarily given and is reliable based on the totality of circumstances. <sup>170</sup>

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164. CAL. WELF. & INST. CODE § 625.6(a) (2021).

165. *Id.*

166. *Id.*

167. CONN. GEN. STAT. § 46b-137(a) (2022).

168. 705 ILL. COMP. STAT. 405/5-170 (2022).

169. 705 ILL. COMP. STAT. 405/5-401.5 (2022).

170. 705 ILL. COMP. STAT. 405/5-401.5 (2022).

Iowa	A minor under the age of sixteen cannot waive the right to counsel without the written consent of a parent, guardian, or custodian if they are taken into custody for an act that constitutes a serious or aggravated misdemeanor or felony under the criminal code. <sup>171</sup>
Kansas	Admissions or confessions from juveniles under the age of fourteen years old made during a custodial interrogation are inadmissible unless they were made following consultation between a parent, guardian, or attorney on whether to waive certain <i>Miranda</i> rights. <sup>172</sup> If a parent is the alleged victim or co-defendant, or a non-involved parent before making a waiver, then the juvenile must consult with an attorney prior to waiver. <sup>173</sup> Furthermore, the presence of a parent during a waiver is insufficient if the parent is not acting with the juvenile's interest in mind. <sup>174</sup>
Massachusetts	If a juvenile is under the age of fourteen, a parent or interested adult must be present during the interrogation, understand the <i>Miranda</i> warnings, and have the opportunity to explain those rights to the juvenile before a waiver is made. <sup>175</sup> Juveniles fourteen years old and older may consult with a parent or adult, but the presence of a parent or adult is not required. <sup>176</sup>
Montana	A minor under the age of sixteen can only waive his or her <i>Miranda</i> rights if a parent or guardian agrees with the waiver. <sup>177</sup> If the parent or guardian disagrees, then the minor can only waive those rights with the advice of an attorney. <sup>178</sup>

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171. IOWA CODE § 232.11 (2022).

172. KAN. STAT. ANN. § 38-2333(a) (2021).

173. KAN. STAT. ANN. § 38-2333(b) (2021).

174. *P.W.G.*, 426 P.3d 501 at 513–14.

175. *Philip S.*, 611 N.E.2d at 230–31.

176. *Commonwealth v. McCra*, 694 N.E.2d 849, 853 (Mass. 1998).

177. MONT. CODE. ANN. § 41-5-331 (2021).

178. *Id.*

New Jersey	Minors under the age of fourteen can only waive their <i>Miranda</i> rights if a parent or guardian is present during the interrogation. <sup>179</sup>
New Mexico	Statements made by a minor under the age of thirteen during an interrogation are inadmissible. <sup>180</sup> There is a rebuttable presumption that statements made by a thirteen- or fourteen-year-old to a “person in a position of authority” are inadmissible. <sup>181</sup> The statute makes no reference to the presence of parents or other interested adults for minors under the age of thirteen, but for those thirteen or older, a totality of circumstances approach is used which includes, as one factor, whether the minor had the counsel of an attorney, friend, or relative at the time of questioning. <sup>182</sup>
North Carolina	If a minor is under the age of sixteen, no in-custody admissions or confessions during an interrogation are admissible unless they were made in the presence of a parent, guardian, or attorney. <sup>183</sup> If an attorney is not present, the parent or guardian must also be advised of the minor’s rights. <sup>184</sup> A parent or guardian cannot make a waiver of rights on behalf of the minor. <sup>185</sup>
Oklahoma	If the minor is under the age of sixteen, evidence collected during a custodial interrogation cannot be admitted unless the interrogation is conducted in the presence of “the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian.” <sup>186</sup> The interested adult must also be advised of the minor’s rights before questioning. <sup>187</sup>
Washington	For minors under the age of twelve, only a parent can waive the minor’s rights to offer any objection to an interrogation. <sup>188</sup>

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179. *State ex rel. Q.N.*, 843 A.2d 1140, 1144 (N.J. 2004).

180. N.M. STAT. ANN § 32A-2-14 (2022).

181. *Id.*

182. *Id.*

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

184. *Id.*

185. *Id.*

186. OKLA. STAT. tit. 10A, § 2-2-301(A).

187. *Id.*

188. WASH. REV. CODE § 13.40.140(11) (2022).

West Virginia	Statements made to law enforcement by minors under the age of fourteen who are in custody are inadmissible unless counsel is present. <sup>189</sup> Statements made to law enforcement by minors who are fourteen or fifteen years of age are inadmissible unless they are made in the presence of counsel <i>or</i> the presence of the minor's parent or custodian. <sup>190</sup> The parent or custodian must also be fully informed of the minor's rights and consent to the waiver. <sup>191</sup>
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C. *Jurisdictions Requiring the Presence or Consent of a Parent, Attorney, or Other Adult Until Age Eighteen*

Jurisdictions in the third category, comprising only seven states, require that a parent, attorney, magistrate, or other interested adult be present, consult with, or even waive the juvenile's rights prior to custodial interrogation.<sup>192</sup> Unlike the second category, these states require these protections up until the age of eighteen.

Similar to the second category, five of the seven states in this category leave the ability to waive *Miranda* rights with the juvenile themselves but provide additional protections for all individuals under the age of eighteen. For example, Colorado requires that a parent, guardian, or attorney be present during custodial interrogation, but it is juveniles who retain the ability to waive their rights; even the right to have an interested adult present during interrogation may be waived if both the juvenile and parent consent in writing.<sup>193</sup> Maine and Utah give juveniles the ability to waive their own rights but additionally require parental permission for the interrogation to occur.<sup>194</sup> Similarly, Vermont requires that the parent also be advised of the juvenile's *Miranda* rights prior to interrogation.<sup>195</sup>

Texas is unique in requiring that a juvenile *Miranda* waiver be performed in front of a magistrate who must make findings that the juvenile waived his or her *Miranda* rights knowingly and voluntarily before any recorded or written statement can be taken.<sup>196</sup> While a parent need not be present for the duration of the interrogation, they have

189. W. VA. CODE § 49-4-701(l) (2016).

190. *Id.*

191. *Id.*

192. See Table 3, *infra*.

193. COLO. REV. STAT. § 19-2.5-203 (2022).

194. ME. REV. STAT. ANN. tit. 15, § 3203-A(2-A) (West 2021); UTAH CODE ANN. § 80-6-206(3) (LexisNexis 2022).

195. *In re E.T.C.*, 449 A.2d 937, 938 (Vt. 1982).

196. TEX. FAM. CODE ANN. § 51.095(a)(1)(B) (West 2021).

a right to be promptly notified that their child is in custody<sup>197</sup> and to consult in-person privately with their child while he or she is in custody.<sup>198</sup> If the aforementioned statutory requirements are not met, the statements are generally inadmissible, with some exceptions provided by statute.<sup>199</sup>

Texas also has significant other custodial protections in place for juveniles, such as limiting law enforcement custody to six hours in its entirety prior to releasing or booking the juvenile and limiting confinement to specific facilities defined by statute as appropriate for juveniles.<sup>200</sup> These protections are designed to limit the psychological pressure potentially caused by lengthy custodial interrogations or by being held in an adult interview room. Indiana requires that a juvenile's *Miranda* rights be waived either by counsel or by a parent or guardian who has consulted with the juvenile and has no adverse interest to the juvenile.<sup>201</sup>

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197. TEX. FAM. CODE ANN. § 51.095(a)(1)(B) (West 2021).

198. TEX. FAM. CODE ANN. § 61.103.(1) (West 2021).

199. TEX. FAM. CODE ANN. § 51.095(b) (West 2021).

200. TEX. FAM. CODE ANN. § 52.025 (West 2021).

201. IND. CODE § 31-32-5-1 (2020).

TABLE 3: STATES REQUIRING THE PRESENCE OR  
 CONSENT OF A PARENT OR OTHER INTERESTED  
 ADULT UNTIL THE AGE OF MAJORITY

Colorado	For statements made by a minor to be admissible, a parent, guardian, or attorney of a juvenile must be present during a custodial interrogation and be advised of the minor's <i>Miranda</i> rights. <sup>202</sup> The presence of a parent or guardian during an interrogation may be waived by both the minor and the parent or guardian in writing. <sup>203</sup>
Indiana	Constitutional rights of a minor may be waived only (1) by counsel if the child knowingly and voluntarily agrees to the waiver; (2) by the child's parent, guardian, or guardian ad litem if that person knowingly and voluntarily waives the child's rights, has no interest adverse to the child, meaningfully consults with the child, or (3) without the presence of a custodial parent, guardian, or guardian ad litem if the child has been emancipated. <sup>204</sup>
Maine	When a juvenile is arrested, law enforcement cannot question a juvenile until: (1) A legal custodian of the juvenile is notified and present during the questioning; (2) A legal custodian of the juvenile is notified of the arrest and gives consent for the questioning to proceed without the custodian's presence; or (3) Law enforcement has made reasonable efforts to make contact but has failed to reach the legal custodian and seeks to question the juvenile about continuing or imminent criminal activity. <sup>205</sup>
Texas	Although the totality of circumstances analysis is used, Texas has unique and strict protections for juveniles under the age of eighteen. First, a juvenile may only be held in custody by law enforcement for a maximum of six hours prior to being booked into a juvenile facility. <sup>206</sup> Second, once in custody, a juvenile must be taken without unnecessary delay to one of six specific locations permitted by statute (e.g., home, medical facility, to be booked, or a special juvenile processing unit). <sup>207</sup> Law

202. COLO. REV. STAT. § 19-2.5-203(1) (2022).

203. *Id.* § 19-2.5-203(5).

204. IND. CODE § 31-32-5-1 (2020).

205. ME. REV. STAT. ANN. 15 § 3203-A(2-A) (2021).

206. TEX. FAM. CODE ANN. § 52.025(d) (West 2021).

207. TEX. FAM. CODE ANN. § 52.02(a) (West 2021).



	enforcement must “promptly give notice” to a juvenile’s parent or guardian that the juvenile is in custody, <sup>208</sup> and parents or guardians have the right to speak privately with the juvenile. <sup>209</sup> Parents do not have to be present during waiver or interrogation; however, Texas has a stringent requirement that a juvenile be taken to a magistrate for Miranda warnings, for those warnings to be recorded, and for the magistrate to certify that the waiver was done knowingly and voluntarily. <sup>210</sup>
Utah	A child subject to custodial interrogation has the right to have a parent or guardian present. <sup>211</sup> If the parent or guardian has an adverse interest, including concerns over abuse, being a codefendant, or victim of the child, then the child has the right to have a friendly adult present during custodial interrogations. <sup>212</sup> Both the child and parent, guardian, or friendly adult if applicable, must be advised of the child’s rights, and the child must make the ultimate decision as to whether to waive his or her rights, and the parent must give permission for the child to be interrogated. <sup>213</sup> If law enforcement is unable to make contact with a parent, guardian, or friendly adult within one hour of taking the child into custody, the child may waive his or her own <i>Miranda</i> rights after having been advised of his or her right to have a parent present. <sup>214</sup>
Vermont	For a statement made by a minor in custody to be admissible and for a <i>Miranda</i> waiver to be valid: (1) the minor must have an opportunity to consult with an interested adult; (2) the adult must be interested in the welfare of the child but independent of the prosecution, and (3) the adult is also advised of the minor’s rights. <sup>215</sup>

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208. TEX. FAM. CODE ANN. § 52.02(b) (West 2021).

209. TEX. FAM. CODE ANN. § 61.103(1) (West 2021).

210. TEX. FAM. CODE ANN. § 51.095(a)(1)(B) (West 2021).

211. UTAH CODE ANN. § 80-6-206(2) (LexisNexis 2022).

212. *Id.*

213. *Id.*

214. *Id.* at § 80-6-206(4).

215. *In re E.T.C.*, 449 A.2d 937, 938, 940 (Vt. 1982).

## IV.

ANALYSIS OF UTAH'S 2021 JUVENILE *MIRANDA* LAW AND  
RECOMMENDATIONS

Having examined the research surrounding the problems and potential solutions for juvenile *Miranda* comprehension,<sup>216</sup> the constitutionally guaranteed protections, and the three basic approaches states have taken to providing additional protections for juveniles, this Article will now briefly summarize the history of Utah's new juvenile *Miranda* law. It will then critically assess the law and provide recommendations for improving the protections juveniles receive during the waiver of their rights prior to custodial interrogation.

Utah's law provides a recent example of a growing trend to require the involvement of a parent or other interested adult in the juvenile *Miranda* waiver decision. It shares some similarities and differences with other states in the third category, and it serves as a useful analysis of the issues facing states that are seeking to address this issue in light of relevant research about a juvenile's ability to comprehend their *Miranda* rights.

Prior to 2021, Utah relied on a Rule of Juvenile Procedure to establish the parameters of additional *Miranda* protections beyond the Constitutional bedrock of *Fare v. Michael C.*<sup>217</sup> While Rule 27A underwent some revisions in recent years, its basic provision was that prior to age fourteen, a juvenile was presumed incapable of knowingly and voluntarily waiving his or her rights without the presence of a parent, guardian, or legal custodian.<sup>218</sup> After age fourteen, the presumption was that with or without the presence of an adult, the juvenile could waive his or her rights, and judges should employ the traditional totality of circumstances test to determine if the waiver was knowing and voluntary.<sup>219</sup>

In 2021, H.B. 158—Juvenile Interrogation Amendments—was passed and enshrined into Utah law.<sup>220</sup> The law was proposed after an incident wherein a group of six juveniles were held on the curb of a street for forty-five minutes, questioned, and then released, with no parents notified.<sup>221</sup> Representative Judkins, a sponsor of the bill, ex-

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216. *Supra* Part I.

217. UTAH R. JUV. P. 27A (2020) (amended 2022).

218. *Id.*

219. *Id.*

220. Codified at UTAH CODE ANN. § 80-6-206 (LexisNexis 2022).

221. *Floor Debate on H.R. 158 Juvenile Interrogation Amendments*, UTAH STATE LEGIS., at 1:30:13–1:46:55 (Feb. 11, 2021), <https://le.utah.gov/av/floorArchive.jsp?markerID=113877> [<https://perma.cc/M7LM-LWLT>].

pressed concern that because of the brain development of juveniles and their lack of understanding when it comes to *Miranda*, parents should be notified prior to custodial interrogation so they can protect their children from potentially coercive interrogations.<sup>222</sup> She concluded her summation of the bill by stating, “the time has come to protect all of our youth, and not just those who are thirteen and younger.”<sup>223</sup>

The law requires the presence of a parent, guardian, or friendly adult<sup>224</sup> for any custodial interrogation of a juvenile under the age of eighteen.<sup>225</sup> First, the juvenile must be apprised of his or her *Miranda* rights and the right to have a parent, guardian, or friendly adult present during the interrogation.<sup>226</sup> Then, the parent, guardian, or friendly adult must give consent<sup>227</sup> prior to custodial interrogation taking place.<sup>228</sup> The law provides additional protections for juveniles booked into a secure facility, requiring a “meaningful opportunity to consult with the minor’s appointed or retained attorney.”<sup>229</sup> The juvenile may then waive the right only after consultation with the attorney, *and* the attorney must be present for the ensuing interview.<sup>230</sup>

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222. *Id.*

223. *Id.*

224. UTAH CODE ANN. § 80-6-206(1)(a) (LexisNexis 2022) (“(a)(i) ‘Friendly adult’ means an adult: (A) that has an established relationship with the child to the extent that the adult can provide meaningful advice and concerned help to the child should the need arise; and (B) who is not hostile or adverse to the child’s interest. (ii) ‘Friendly adult’ does not include a parent or guardian of the child.”).

225. *Id.* at § 80-6-206(2) (“If a child is in custody and subject to interrogation for an offense, the child has the right: (a) to have the child’s parent or guardian present during an interrogation of the child; or (b) to have a friendly adult present during an interrogation of the child if: (i) there is reason to believe that the child’s parent or guardian has abused or threatened the child; or (ii) the child’s parent’s or guardian’s interest is adverse to the child’s interest, including that the parent or guardian is a victim or a codefendant of the offense alleged to have been committed by the child.”).

226. *Id.* at § 80-6-206(3) (“If a child is in custody and subject to interrogation of an offense, the child may not be interrogated unless: (a) the child has been advised of the child’s constitutional rights and the child’s right to have a parent or guardian, or a friendly adult if applicable under Subsection (2)(b), present during the interrogation; (b) the child has waived the child’s constitutional rights; (c) except as provided in Subsection (4), the child’s parent or guardian, or the friendly adult if applicable under Subsection (2)(b), was present during the child’s waiver under Subsection (3)(b) and has given permission for the child to be interrogated.”)

227. The statute does not define what that consent must look like, but presumably courts would rely on established case law defining consent to interpret whether the parental consent was knowing and voluntarily given.

228. UTAH CODE ANN. § 80-6-206(3) (LexisNexis 2022).

229. *Id.* at § 80-6-206(5).

230. *Id.*

Utah's law reflects a concerted effort to balance a variety of interests. It acknowledges that parents might have interests adverse to their children through being a victim, co-defendant, or part of an abusive relationship, and provides that in those cases, a "friendly adult"<sup>231</sup> should be present in lieu of the parent.<sup>232</sup> It also acknowledges the reality that sometimes a parent, guardian, or friendly adult cannot be located, and a custodial interrogation may need to take place before the juvenile can be released or booked.<sup>233</sup> In such circumstances, the law requires officers to make "reasonable efforts" to contact interested adults.<sup>234</sup> Officers may conduct the custodial interrogation without parental presence or consent only if "reasonable efforts" to contact interested adults have been unsuccessful one hour after taking the juvenile into custody.<sup>235</sup>

Presumably, under those circumstances, courts could factor law enforcement efforts and the lack of parental presence or consent into the traditional *Fare* totality of circumstances analysis to determine if any ensuing waiver was made knowingly and voluntarily, but the law does not clearly indicate that. The statute is also silent as to remedies—contrary to other states that specify what will occur<sup>236</sup>—but it is safe to assume that the traditional *Miranda* remedy of excluding the defendant's statements from court proceedings<sup>237</sup> would apply if ei-

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231. The code defines a friendly adult as someone with "an established relationship" who "can provide meaningful advice and concerned help" and is "not hostile or adverse" to the juvenile's interest. *Id.* at § 80-6-206(1). How broadly or narrowly agency practice, and more importantly, the courts, will interpret what constitutes an "established relationship" and the other provisions has yet to be seen at the time of this article.

232. *Id.*

233. *Id.* at § 80-6-206(4).

234. *Id.* (stating that a child's parent or guardian or friendly adult is not required to be present during the waiver or to give permission to the interrogation if, "(b) the child has misrepresented the child's age as being 18 years old or older and a peace officer has relied on that misrepresentation in good faith; or (c) a peace officer or a law enforcement agency: (i) has made reasonable efforts to contact the child's parent or legal guardian, or a friendly adult if applicable under Subsection (2)(b); and (ii) has been unable to make contact within one hour after the time in which the child is in custody.")

235. *Id.*

236. *See, e.g.*, 705 ILL. COMP. STAT. 405 / 5-401.5 (West 2022).

237. *See, e.g.*, *Ex rel. T.S.V.*, 607 P.2d 827, 828 (Utah 1980) ("[T]he admissibility of the juvenile's confessions or admissions depends upon whether the juvenile made a knowing and voluntary waiver of his constitutional rights in light of the total circumstances of his case."); *R.G. v. State*, 416 P.3d 478, 482 (Utah 2017) (considering whether a juvenile's statements should have been suppressed for an alleged *Miranda* waiver violation); *State v. Bybee*, 1 P.3d 1087, 1091 (Utah 2000) (reviewing whether statements of a seventeen-year-old should have been suppressed under a totality of circumstances analysis of whether his *Miranda* waiver was knowing and voluntary);

ther parental presence during waiver or parental consent to the interrogation were absent.

#### A. *Analysis of the New Law*

On its face, the new Utah law appears to provide increased protections for juveniles undergoing custodial interrogations over those provided under the old Rule 27A. Compared to many states, the new law seemingly offers more protection for potentially psychologically coercive custodial interrogation situations by requiring the opportunity for intervention by a parent or guardian or friendly adult prior to interrogation. However, in other ways, the protections of Utah's law are potentially inadequate to address the more fundamental issues juveniles face in comprehending and waiving their rights. Indeed, upon closer look, the protection offered seems more focused on protecting *parental* rights<sup>238</sup> than finding an approach to best address the balance between ensuring that a waiver is knowing and voluntary while not hindering criminal investigations and the pursuit of justice.

Although juveniles in Utah now receive the benefit of involvement from a parent or interested adult until the age of eighteen, the new law recognizes there are limits to the efficacy of that protection. As some states, now including Utah, have recognized, parents or other "friendly adults" sometimes have a conflict of interest with the juvenile.<sup>239</sup> Furthermore, these conflicts may not be immediately apparent to law enforcement when conducting investigative interviews with limited information. Additionally, common sense and experience demonstrate that sometimes, even without a *legal* conflict of interest, the parent's interest might be adverse to the juvenile's. For example, parents may pressure their children to talk to law enforcement for reasons of their own convenience or a desire to see their child learn accountability. Furthermore, some parents and interested adults may themselves be mentally incapable of adequately understanding the rights, and this fact might not be immediately apparent to law enforcement. Thus, the mere presence of a parent does not address the ques-

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State v. Dutchie, 969 P.2d 422, 430 (Utah 1998) (affirming admissibility of juvenile's statements after concluding that the statements were made knowingly and voluntarily).

238. See e.g., *Juvenile Miranda Waiver and Parental Rights*, 126 HARV. L. REV. 2359 (2013) (arguing that police questioning affects both the individual rights of the child and the parent's custody rights because the "Constitution protects the fundamental rights of parents to direct the upbringing of their children. The state may break custodial bonds only when it has a powerful interest, which it lacks in deploying juvenile interrogation procedures that create a high risk of false incrimination.").

239. See, e.g., KAN. STAT. ANN. § 38-2333(a) (2021).

tion of whether a juvenile knowingly and voluntarily waives his or her constitutional rights, and therefore, greater efforts should be made to ensure that the juveniles themselves are given an adequate opportunity to knowingly and voluntarily waive their own rights.

Some states have addressed the concern about parents providing inadequate assistance in comprehending *Miranda* warnings by requiring the presence of an attorney, but this is a rare requirement and always limited in scope.<sup>240</sup> While an attorney would certainly be able to explain the implications of waiving or not waiving *Miranda* to a juvenile, in most states, the presence or absence of an attorney is just one of many factors courts consider in the totality.<sup>241</sup> Requiring an attorney is the most cumbersome and expensive approach a state could take to address juvenile waivers, and the vast majority of state courts have not found it necessary to accomplish the goals of *Miranda* even for juveniles. Those that have required it restrict it to the youngest offenders,<sup>242</sup> or, in the case of Illinois, even more specifically to young offenders being investigated for sex offenses or murder<sup>243</sup> (crimes that carry significantly more serious consequences than the typical juvenile offender might face). There, the balancing test between the benefits of an attorney and the cost of both time and money in the investigative process is worth considering, but there are other more measured approaches that the research suggests will yield important benefits in addressing juvenile comprehension concerns.

### B. Policy Recommendations

Utah's law on juvenile interrogation, and juvenile interrogation laws generally, would be improved by adopting the following approach, explained in greater detail below: (1) implementing age-appropriate simplifications to the *Miranda* warning, (2) presenting each right separately, (3) requiring warnings to be presented in writing and not just orally, (4) addressing the appropriate remedy if the requirements are not followed, and (5) amending statutes to ensure courts weigh all relevant circumstances, as required by the Constitution. Each is supported by research and balances the important interests of

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240. This state survey only identified three states: CAL. WELF. & INST. CODE § 625.6(a) (2021) (requiring a consultation with counsel prior to a juvenile waiving their rights up until the age of sixteen); W. VA. CODE § 49-4-701(1) (2016) (requiring presence of counsel for juveniles under the age of fourteen); 705 ILL. COMP. STAT. 405 / 5-170 (West 2022) (requiring counsel until the age of fifteen, with no ability to waive the right to counsel for interrogations related to sex offenses and murder).

241. *Fare v. Michael C.*, 442 U.S. 707, 727–28 (1979).

242. *See, e.g.*, W. VA. CODE § 49-4-701(1) (2016).

243. 705 ILL. COMP. STAT. 405 / 5-170 (West 2022).

protecting juveniles' rights with promoting public safety by not unnecessarily hindering investigations. Indeed, accommodations such as these would impose little burden on law enforcement while increasing comprehension and protection of juveniles' constitutional rights. Yet few states have imposed such accommodations, instead choosing to rely on the mere presence of parents or other interested adults to protect juveniles, despite the clear shortcomings of this approach.

*i. Age-Appropriate Simplification of Language*

As discussed in Part I, *supra*, a wealth of research<sup>244</sup> shows that juveniles struggle to comprehend both the meaning and implications of their *Miranda* rights. In order for a waiver to more clearly meet the "knowing" standard required under the Constitution,<sup>245</sup> warnings should be adapted to meet the needs of juveniles. Requiring a simplified *Miranda* warning, such as that employed in Illinois,<sup>246</sup> would leave Utah better positioned to address the issues of juvenile comprehension. Illinois law provides a readily implementable example of such juvenile-accessible language:

You have the right to remain silent. That means you do not have to say anything. Anything you do say can be used against you in court. You have the right to get help from a lawyer. If you cannot pay for a lawyer, the court will get you one for free. You can ask for a lawyer at any time. You have the right to stop this interview at any time.<sup>247</sup>

This language directly corresponds with research suggesting that juveniles would be better able to comprehend the meaning of their rights.<sup>248</sup> Although it would represent a departure from the Supreme Court's *Miranda* case law, requiring precise, simplified language would better address the issue of juvenile comprehension and thereby better ensure that they are engaging in knowing and voluntary waivers, while requiring minimal effort on the part of law enforcement.

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244. Rogers, et al., *supra* note 14; THOMAS GRISSO, JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE 106 (1981); THOMAS GRISSO, INSTRUMENTS FOR ASSESSING UNDERSTANDING & APPRECIATION OF MIRANDA RIGHTS 84-90 (1998); Cleary & Vidal, *supra* note 10, at 112.

245. See, e.g., *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) ("The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently."); "knowing" later defined in *Moran v. Burbine*, 475 U.S. 412, 421 (1986) ("made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.").

246. 705 ILL. COMP. STAT. 405 / 5-401.5 (2022).

247. *Id.*

248. Rogers, et al., *supra* note 14, at 63, 69.

ii. *Separate Presentation of Warning Elements*

*Miranda* does not require specific warning language, but it does require that the warning convey the following: (1) the right to silence, (2) that statements can be used as evidence, (3) the right to counsel prior to and during questioning, and (4) the right to have an attorney appointed.<sup>249</sup> In addition to the simplification of the language involved in conveying the warning, the warning could be greatly improved by separating the various parts of the warning into more manageable, individual waivers as suggested by recent research on juveniles' susceptibility to acquiescence.<sup>250</sup>

The Illinois approach beneficially breaks the waivers down to two separate questions: "(A) 'Do you want to have a lawyer?' and (B) 'Do you want to talk to me?'"<sup>251</sup> It frames these questions in such a way to avoid the concern that juveniles are more likely to acquiesce than adults<sup>252</sup> by making the "yes" response an *invocation* of their rights rather than following the traditional adult model of "yes" meaning a waiver.<sup>253</sup> This, too, is a simple fix requiring minimal training for law enforcement that would allow juveniles to better engage in a knowing and voluntary decision of whether to waive their own rights by increasing their comprehension of what those rights entail and what they are giving up by waiving them.

iii. *Presentation of Warnings in Writing*

Studies show that juveniles better comprehend both the words and the meaning of *Miranda* when they are presented with an opportunity to read their rights rather than have them presented orally.<sup>254</sup> Moreover, the benefits of written warnings appear to be complementary when used in conjunction with simplified language.<sup>255</sup> Despite these findings, no state has yet required that juveniles be presented with written warnings, and "oral administration of *Miranda* warnings

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249. *California v. Prysock*, 453 U.S. 355, 359 (1981); *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

250. Rogers, et al., *supra* note 14, at 63, 84.

251. 705 ILL. COMP. STAT. 405/5-401.5 (2022).

252. Rogers, et al., *supra* note 14, at 63, 84.

253. Typically, police say something like, "having these rights in mind, do you wish to talk to me?" resulting in those vulnerable to acquiescence to be more likely to waive their rights.

254. Richard Rogers, Jennifer A. Steadham, Rachel M. Carter, Sarah A. Henry, Eric Y. Drogin & Emily V. Robinson, *An Examination of Juveniles' Miranda Abilities: Investigating Differences in Miranda Recall and Reasoning*, 34 BEHAV. SCI. & L. 515, 515, 526 (2016).

255. *Id.* at 526, 532.



is the most common” method currently employed.<sup>256</sup> Such warnings promise more direct and practical protection for juveniles.

*iv. Remedies*

Creating these additional parameters for law enforcement begets the question of the appropriate remedy for violations of the statutory requirements. Experience indicates there will be times when these parameters will not be followed exactly, or even at all.<sup>257</sup> In such circumstances, Illinois’s statute again provides a moderate and easily followed approach. There, the statements made in violation of the additional requirements are presumed inadmissible, but that presumption “may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of circumstances.”<sup>258</sup> The presumption of inadmissibility incentivizes officers to comply with the statute to ensure admissibility. But the totality of circumstances analysis into voluntariness and reliability permits the court to admit statements under appropriate circumstances.

Utah could amend its statute to create a section (7) which could read: “Statements made during custodial interrogation not in compliance with this act are presumed inadmissible. The presumption of inadmissibility of a statement may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.”

*v. Emphasis on the Proper Constitutional Inquiry*

As a final exhortation, Utah’s law should reemphasize the proper constitutional inquiry: *Miranda*’s requirement that waivers be made knowingly and voluntarily.<sup>259</sup> Any additional protections must add to and not detract from this Constitutional bedrock. As argued above, simplifying the *Miranda* language, providing the warnings and waivers in written form, and giving the juveniles time to think over and reflect on those warnings will increase compatibility with juveniles’ cognitive and psychosocial development. These protections are para-

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256. *Id.* at 517.

257. *See, e.g.*, *United States v. Patane*, 542 U.S. 630 (2004) (officer was interrupted during the *Miranda* warnings and never finished reading them; suspect made incriminating statements and the court addressed the appropriate remedies for statements and physical evidence pursuant to the officer’s failure to follow proper *Miranda* procedure).

258. 705 ILL. COMP. STAT. 405/5-401.5(f) (2022).

259. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (“The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently”).

mount because, regardless of whether a state requires an additional protection of parental consent, *Miranda* rights properly remain the juvenile's own rights to waive or invoke.<sup>260</sup>

Almost all states rightfully give juveniles the ultimate decision as to whether to waive their own *Miranda* rights, either on their own or after consultation with an interested adult.<sup>261</sup> However, this practice raises concerns with the prioritization of the presence of parents over other relevant factors in determining whether a juvenile knowingly and voluntarily waived prior to questioning. In the new Utah law, the legislature has clearly prioritized the presence of a parent over any other factor in the totality of the circumstances analysis.<sup>262</sup> This gives the impression of sole reliance on the protection presumed to be gained via the presence of the parent or other interested adult. Such a focus risks inadvertently misleading courts into engaging in a superficial totality of the circumstances analysis and failing to make the constitutionally critical determination of whether the waiver was also knowing and voluntary on the part of the juvenile.

The research on juvenile comprehension and cognitive and psychosocial development<sup>263</sup> suggests that there are many factors that could affect whether a particular juvenile, under particular circumstances, knowingly and voluntarily waived his or her *Miranda* rights. For example, the number and demeanor of the officers, the location of the interrogation, and the length of custody prior to interrogation could all contribute to a more coercive atmosphere, thus compromising the

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260. See *Moran v. Burbine*, 475 U.S. 412, 433 n.4 (1986) (explaining that it is an “established proposition that the privilege against compulsory self-incrimination is, by hypothesis, a personal one that can only be invoked by the individual whose testimony is being compelled”); accord, e.g., *State v. Williams*, 793 N.E.2d 446, 457 (Ohio 2003); *United States v. Ricker*, 983 F.3d 987, 993 (8th Cir. 2020).

261. The state survey identified only four states, two of which had very narrow restrictions: Washington, WASH. REV. CODE § 13.40.140(11) (2022) (requiring parents to waive the rights of those under twelve), and Illinois, 705 ILL. COMP. STAT. 405/5-170 (WEST 2022) (stating that the right to an attorney may not be waived for a juvenile under the age of fifteen being investigated for a sex offense or murder). Two other states, Indiana and North Dakota, had a broader requirement for a parent or attorney to waive the juvenile's rights up until the age of eighteen. IND. CODE § 31-32-5-1 (2020) (requiring that any juvenile's *Miranda* rights be waived either by counsel or by a parent or guardian who has consulted with the juvenile and has no adverse interest to the juvenile); *In re Z.C.B.*, 669 N.W. 2d 478, 482 (N.D. 2003) (requiring that a parent or guardian waive the right to counsel once a juvenile of any age has been taken into custody).

262. See UTAH CODE ANN. § 80-6-206 (LexisNexis 2022). As the only factor the court is tasked with considering in determining the admissibility of statements, the presence of a parent, guardian, or friendly adult becomes inherently more important than any other characteristic of the interrogation or the accused.

263. *Supra* Part I.

juvenile's ability to make a knowing and voluntary waiver.<sup>264</sup> The circumstances in which these waivers occur vary widely, and each factor matters in assessing whether a waiver was actually knowing and voluntary. Under the new Utah law, courts should still assess whether the decision to waive *Miranda* was made knowingly and voluntarily via the totality of circumstances analysis prescribed in *Fare*. But prioritizing any one factor as a bright-line rule encourages superficial, check-the-box thinking on the part of the investigators obtaining waivers and the courts assessing their validity.<sup>265</sup>

As discussed in Part III.A, courts in Pennsylvania<sup>266</sup> and Louisiana<sup>267</sup> wrestled with this concern and concluded that the totality of circumstances analysis best balanced the competing interests at stake and allowed courts to make a more accurate determination of whether a waiver was knowing and voluntary.

Accordingly, Utah Code Ann. § 80-6-206 could be improved if subsection (3)(b), which currently reads simply, “the child has waived the child’s constitutional rights,”<sup>268</sup> were amended to say, “the child has knowingly and voluntarily waived the child’s constitutional rights, using a totality of circumstances analysis.” Such an amendment would clarify for the courts that all relevant factors must be weighed, not merely the presence of the parent. As the vast majority of states recognize,<sup>269</sup> while the presence of a parent may be an important factor in many situations, it is neither the only nor the most important factor for courts to consider.

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264. See, e.g., *Fare v. Michael C.*, 442 U.S. 707, 724-725 (1979) (“Thus, the determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel.”); *Oregon v. Elstad*, 470 U.S. 298, 318 (1985) (“[T]he finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements”).

265. See, e.g., *State v. Cuttler*, 367 P.3d 981, 983 (Utah 2015) (having observed trial courts relying exclusively on a list of factors from a prior case, the Utah Supreme Court was forced to restore the more robust analysis required by the text of the rule: “the governing legal standard for evaluating whether evidence satisfies rule 403 is the plain language of the rule, nothing more and nothing less. And while the district court’s adherence in this case to the *Shickles* factors is understandable given our prior pronouncements on this subject, it nevertheless represents an application of the wrong legal standard and, therefore, an abuse of discretion.”)

266. *Commonwealth v. Williams*, 475 A.2d 1283 (Pa. 1984).

267. *State v. Fernandez*, 712 So.2d 485 (La. 1998).

268. UTAH CODE ANN. § 80-6-206(3) (LexisNexis 2022).

269. See *supra* Table 1.

The goal of *Miranda* was never to eliminate confessions. Rather, it was intended to ensure that people understand their fundamental constitutional rights so that if and when they choose to talk to law enforcement, the choice is made knowingly and voluntarily.<sup>270</sup> Indeed, it was intended to better protect against false or coerced confessions, to which juvenile subjects are particularly susceptible.<sup>271</sup> Utah's reform is well-intentioned and provides additional parental support for juvenile custodial interrogations. However, the State would better serve the goals of *Miranda* by adopting a law that requires more age-appropriate accommodations in the warning and waiver and redirects judges to fully consider the totality of the circumstances surrounding a particular custodial interrogation to determine whether a statement is made knowingly and voluntarily.

Taking steps to ensure that law enforcement officers are providing the warnings and waivers in a manner comprehensible to juveniles is a simple, minimally burdensome requirement, and yet shows promise as a highly effective protection. Likewise, a clear directive that courts are to weigh all relevant factors ensures that a constitutionally valid determination is reached. The aforementioned recommendations would better accomplish these goals.

### C. Recommendations for Future Study

Some research suggests that juveniles would benefit from having time to consider their options in a *Miranda* context.<sup>272</sup> However, this research is both ambiguous regarding what appropriate time means and unrelated to the *Miranda* waiver decision context. The authors could not locate any research on whether giving juveniles additional time to consider their rights after being read them affected their decision one way or the other. While there are limitations to the time that officers could provide under some circumstances,<sup>273</sup> if it were shown to be beneficial, officers could certainly be trained to give juveniles five or ten minutes after presenting the *Miranda* warnings before asking them to make a decision.

A study to determine whether juveniles show any change in behavior when different periods of time are given after the presentation of the warning and prior to being asked if they want to waive their rights would be beneficial to policymakers by allowing states to re-

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270. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

271. *Id.* at 455.

272. Icenogle, et al., *supra* note 16, at 82.

273. For example, exigencies of trying to solve a time-sensitive case where the suspect poses a danger to the public.

quire evidence-based practices that could better protect juveniles' rights to make a knowing and voluntary decision about their *Miranda* waiver.

#### CONCLUSION

As the U.S. Supreme Court forcefully held in *Gault*, “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone,”<sup>274</sup> and age is a factor that legislators and courts must consider in order to ensure that the procedural safeguards required under *Miranda* effectively secure constitutional privileges to juveniles.<sup>275</sup> Although the oft-repeated *Miranda* warnings are drafted in order to be accessible, studies show that comprehension of the words does not necessarily translate into practical appreciation of the rights involved, particularly when it comes to juveniles.<sup>276</sup>

Juveniles present a unique variety of obstacles to effective understanding, ranging from a myopic focus on short-term consequences over long-term consequences, to a tendency toward acquiescence, to general limitations in psychosocial capacity.<sup>277</sup> In response, states have taken a variety of approaches to address the circumstances unique to juveniles: (1) entrusting judges to apply the totality of the circumstances test to each juvenile, sometimes with subtle alterations,<sup>278</sup> (2) requiring the presence of a parent, attorney, or other interested adult until a certain age,<sup>279</sup> and (3) requiring the presence of a parent, attorney, or other interested adult until the age of majority.<sup>280</sup>

Utah's juvenile *Miranda* law now provides that a parent, guardian, or legal custodian must be present before a juvenile waives his or her rights and then must consent to the interrogation.<sup>281</sup> Recognizing that parents may have an obvious adverse interest in some circumstances, officers are directed to locate a “friendly adult” in such cases.<sup>282</sup> However, mere adult presence does not necessarily bridge the gap between the *Miranda* warning and the juvenile's understanding. Indeed, a conflict of interest or mental limitation unknown to the investigating officer would leave a juvenile without the protection Utah's law is intended to provide.

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274. *In re Gault*, 387 U.S. 1, 13 (1967).

275. *Fare*, 442 U.S. 707.

276. *Rogers, et al.*, *supra* note 14 at 80.

277. *Fare*, 442 U.S. 707.

278. *See* Table 1, *supra*.

279. *See* Table 2, *supra*.

280. *See* Table 3, *supra*.

281. UTAH CODE ANN. § 80-6-206 (LexisNexis 2022).

282. UTAH CODE ANN. § 80-6-206(2) (LexisNexis 2022).

As the Supreme Court made clear in *Gault* and *Fare*, juveniles are entitled to their rights.<sup>283</sup> Accordingly, the decision to waive or invoke *Miranda* rights properly rests with the holder of that right—the juvenile. While states may choose to protect parental rights by ensuring the parent’s presence or consent, parental rights should not supplant the crucial consideration of whether the juvenile’s essential constitutional rights are being protected. Therefore, the paramount consideration is whether the information is presented in a way that empowers the juvenile to make that decision knowingly and voluntarily, as mandated under *Miranda*. The mere presence of a parent or friendly adult does not necessarily address the issue of comprehension. Thus, the focus of Utah’s law on parental presence may inadvertently lead to superficial consideration of the critical determination required under the Constitution—whether the waiver is made knowingly and voluntarily.

A survey of other jurisdictions as well as current research in the field provides several potential adaptations to the *Miranda* warning in order to address these issues: (1) providing age-appropriate simplification to the *Miranda* warning, (2) presentation of each right separately, and (3) presentation of the rights in written form. In creating these additional requirements, Utah should also reexamine the question of remedies and a statutory re-emphasis on the “knowing and voluntarily” inquiry mandated by the Constitution, traditionally evaluated under a totality of the circumstances analysis. Adopting these recommendations would impose little burden on law enforcement while furthering the practical force of *Miranda*’s protections for juveniles.

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283. *In re Gault*, 387 U.S. 1 (1967); *Fare v. Michael C.*, 442 U.S. 707 (1979).