

**AMERICAN BAR ASSOCIATION**

**CRIMINAL JUSTICE SECTION**

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

1 RESOLVED, That the American Bar Association urges all federal, state, local,  
2 territorial, and tribal legislative bodies and governmental agencies to enact laws  
3 and adopt policies prohibiting law enforcement from knowingly employing or  
4 relying upon deception by falsification of facts or unauthorized promises of leniency  
5 to obtain an incriminating response, confession, or admission of culpability of a  
6 crime in a custodial setting from a child under the age of 18; and  
7  
8 FURTHER RESOLVED, That any such promises of leniency include unauthorized  
9 inducements such as release from arrest or detention, dismissal of charges, or  
10 refraining from treatment or sentencing as an adult.

## REPORT

In many states and federally police officers are permitted to use deceptive tactics to elicit confessions from youth under the age of 18.<sup>1</sup> It is time to revisit this inequitable practice. Science and developmental research have conclusively established what we have always known- children are not little adults and in the context of police questioning they are particularly vulnerable and are much more susceptible to police coercion than adults.<sup>2</sup>

The vulnerability of children and youth during police interrogation was acknowledged years before the United States Supreme Court's decision in *Miranda*.<sup>3</sup> In *Haley v. Ohio*,<sup>4</sup> a case decided in 1948, the court considered the voluntariness of statements attributed to a fifteen-year-old and reversed his conviction. Justice Douglas noted that, "What happened here would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child-an easy victim of the law-is before us-special care in scrutinizing the record must be used. Age 15 is a difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."<sup>5</sup> In discussing the facts of the interrogation, Douglas stated that, "Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become first the victim of fear, then of panic. He needs someone on whom to lean, lest the overpowering presence of the law, as he knows it, crush him."<sup>6</sup>

In 1962 the Supreme Court revisited the issue of police coercion in another juvenile case. in *Gallegos v. Colorado*.<sup>7</sup> The Court observed that "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. No lawyer stood guard...to see to it that [the police] stopped short of the point where he became the victim of coercion."<sup>8</sup> The key question in analyzing interrogations of youth under the age of 18 requires consideration of coercion which is often not physical in nature. Coercion in this context includes minimization of consequences of waiving rights and psychological pressure that is often employed to induce *Miranda* waiver. These issues are also of critical importance in assessing the voluntariness of statements even if *Miranda* rights are initially waived. As noted in *Miranda*, "again, we stress that the modern practice of in custody

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<sup>1</sup> See e.g., *Com. v. DiGiambattista*, 442 Mass. 423 (2004); *Frazer v. Cupp.*, 394 U.S. 731 (1969); *Oregon v. Mathiason*, 429 U.S. 492 (1977)(permitting use of deceitful practices in federal custodial interrogations).

<sup>2</sup> In *New York v. Quarles*, 467 U.S. 649, 656-657 (1984) the U.S. Supreme Court discussed the "public safety" exception to *Miranda*. The issue of whether this exception applies involves case based determinations and jurisdictional analysis.

<sup>3</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>4</sup> 332 U.S. 596 (1948)

<sup>5</sup> *Id.* 599-600.

<sup>6</sup> *Id.*

<sup>7</sup> 370 U.S. 49 (1962)

<sup>8</sup> *Id.* at 53.

interrogation is psychologically rather than physically oriented. As we have stated before, this Court has recognized that coercion can be mental as well as physical and that the blood of the accused is not the only hallmark of unconstitutional inquisition.”<sup>9</sup>

The seminal juvenile law case of *In Re Gault*<sup>10</sup> in 1967, established the right to counsel for indigent youth in bench trials. *Gault* also applied the protections of the right against self-incrimination in juvenile proceedings. Justice Fortas’ majority opinion cited the language in *Haley*, observing... “This Court has emphasized that admissions and confessions of juveniles require special caution.”<sup>11</sup> Dean Wigmore’s 1940 Treatise on evidence was cited to support the proposition that “It has long been noted that the eliciting and the use of confessions require careful scrutiny and “under stresses a person...may falsely acknowledge guilt.”<sup>12</sup> Justice Fortas wrote that “With respect to juveniles, both common observation and expert opinion emphasize that the “distrust of confessions made in certain situations” to which Dean Wigmore observed... is imperative in the case of children from an early age through adolescence.”<sup>13</sup>

The historical concern regarding being circumspect about the interrogations of children was reflected in the 1980 Institute of I.J.A.-A.B.A Juvenile Justice Standards recommending that no custodial juvenile interrogation without the presence of an attorney.<sup>14</sup> This standard and its commentary emphasizes that juveniles are not mature enough to understand their rights and are not competent to exercise them.<sup>15</sup> The commentary notes that as the presence of counsel as opposed to a parent is preferable when a youth is being questioned.<sup>16</sup> California law prevents law enforcement from interrogating a child who is 17 or younger until the adolescent has consulted with an attorney.<sup>17</sup>

In *J.D.B. v. North Carolina*<sup>18</sup> the Supreme Court held that the chronological reality of age is an important factor in *Miranda* analysis. The Court reiterated that by its very nature custodial interrogation entails inherently compelling pressures. “Indeed, the pressure of custodial interrogation is so immense that it can induce a frighteningly high percentage of people to confess to crimes that they have never committed. The risk is all the more troubling, and recent studies suggest- all the more acute-when the subject of

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<sup>9</sup> *Miranda, supra* at 437.

<sup>10</sup> 387 U.S. 1 (1967)

<sup>11</sup> *Id.* at 53. (*Gault* established the right to counsel for indigent juveniles).

<sup>12</sup> *Id.* at 45-46; citing Dean Wigmore on Evidence, 3 Wigmore, Evidence Sec.822 (3ed. 1940).

<sup>13</sup> *Id.* at 46.

<sup>14</sup> Institute of Judicial Administration-America Bar Association Standard 3.2D (b) (c)- The Authority of The Police To Handle Juvenile Delinquency and Delinquency Problems. “Following an arrest, a juvenile may be questioned only after conferring with counsel. All such questioning must take place in counsel’s presence.”

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> California Welfare & Institution Code, Sec. 625.6 (a).

<sup>18</sup> 564 U.S. 261 (2011).

custodial interrogation is a juvenile.”<sup>19</sup> Justice Sotomayor’s admonition underlines the prescience of Dean Wigmore and the warning in *Gault* to be circumspect about the reliability of confessions and admissions made by youth. The research and studies, as suggested by Justice Sotomayor, are revealing.

The Juvenile Law Center, based in Philadelphia, has reported that adolescents waive their *Miranda* rights in over 90% of cases and make false confessions at exponentially higher rates than adults.<sup>20</sup> In reported exoneration cases of people wrong convicted as children, 34% falsely confessed to a crime they did not commit, as compared to only 10% of adults.<sup>21</sup> According to the Innocence Project, 69% of juveniles who had been wrongfully convicted between the ages of 12-15 made admission or false confessions.<sup>22</sup> One in four youths between the ages of 16 to 17 are wrongfully convicted for false confessions.<sup>23</sup> Adolescents are two to three times more likely to falsely confess than adults; out of 340 exonerations, 42% were adolescents and 13% were adults<sup>24</sup>. Confessions carry significant weight with juries which means that false confessions become wrongful convictions.

### Conclusions

It is beyond dispute that interrogations of adolescents by law enforcement, particularly with coercive or deceptive means, are more likely to result in false confessions and wrongful convictions. The case law cited in this report has been corroborated by robust research and emerging science conclusively establishing that the adolescent brains is less capable of assessing risk, understanding and weighing consequences, perceiving deceit and manipulation, and withstanding coercion during police questioning. The capacities of youth are further diminished in high stress situations with interrogations, as occurs during interrogations.<sup>25</sup> The issues are exacerbated regarding youth with disabilities.<sup>26</sup> A growing number of leading law enforcement organizations have rejected

<sup>19</sup> *Id.* at 269.

<sup>20</sup> *Youth In Interrogations and Access to Counsel*, Issues- JUVENILE LAW CENTER (2023-jlc.org).

<sup>21</sup> Registry of Exonerations, Fact Sheet, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess-18 April 2022 (<https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%FINAL%CHART.pdf>) (last visited 11/27.23).

<sup>22</sup> Innocence Project, *Youth Against Wrongful Convictions*, innocenceproject.org, <https://innocenceproject.org/petitions/youth-against-wrongful-convictions/>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See e.g. A.D. Redlich, G.S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Susceptibility*, LAW & HUMAN BEHAVIOR, VOL. 27, 141-156 (2003).

<sup>26</sup> See e.g. Daniel Losen et al., *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies*, THE CIVIL RIGHTS PROJECT (March 23, 2021)(Discussion includes interaction of police in schools with youth with disabilities, including those with special education issues and high rates of arrest of youth of color with disabilities).

the use of deception in interrogations because such tactics are more likely to result in false confessions which undermines the credibility and legitimacy of investigations.<sup>27</sup>

A growing number of states have acted to address this critical issue. Five state legislatures have banned the use of deception during juvenile interrogations since 2021: California, Delaware Illinois, Oregon and Utah- and five other states have recently considered, or are actively considering, similar legislation: Colorado, Massachusetts, Nebraska and Rhode Island.<sup>28</sup> Adopting policy which supports these jurisdictions in necessary. We are all aware of infamous cases such as the 1985 Central Park Five involving the wrongful convictions of five African American and Latinx youths.<sup>29</sup> Illinois was the first state to ban deceptive police interrogations of persons under the age of 18 given an infamous history of law enforcement practices which targeted black youth in Chicago which was called the false confession capital.<sup>30</sup> The city had twice as many documented false confessions than any city in the country and had been the subject of a Department of Justice investigation.<sup>31</sup> The unfortunate reality is that there are virtually countless numbers of other young people, many of whom are also youth of color, who are subjected to psychologically coercive law enforcement practices on a daily basis.

Respectfully submitted,

Tina Luongo, Chair  
Criminal Justice Section

August 2024

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<sup>27</sup> *Fact Sheet on An Act Ensuring Integrity in Juvenile Interrogations*, Strategies for Youth, [FACT+SHEET+Deceit+in+Juvenile+Interrogations.pdf \(squarespace.com\)](#)

<sup>28</sup> *Id.*

<sup>29</sup> HISTORY, *Central Park Five: Crime, Coverage & Settlement*, history.com, May 14, 2019.

<sup>30</sup> *Chicago: The false confession capital*, SIXTY MINUTES, CBS NEWS (December 19, 2012).

<sup>31</sup> *Id.*

## GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Tina Luongo, Chair

1. Summary of the Resolution(s). urges all federal, state, local, territorial, and tribal legislative bodies and governmental agencies to enact laws and adopt policies prohibiting law enforcement from knowingly employing or relying upon deception by falsification of facts or unauthorized promises of leniency to obtain an incriminating response, confession, or admission of culpability of a crime in a custodial setting from a child under the age of 18
2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

This Resolution advances Goal 4 (advance the rule of law) by seeking to reduce the use of deceptive tactics by law enforcement when interrogating minors.

3. Approval by Submitting Entity. The Council of the Criminal Justice Section passed this Resolution unanimously on April 13, 2024.
4. Has this or a similar resolution been submitted to the House or Board previously? No.
5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? None.
6. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A
7. Status of Legislation. (If applicable) None.
8. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. Implementation of policy will include but is not limited to Amicus Briefs, media releases and lobbying before Congress.
9. Cost to the Association. (Both direct and indirect costs) None.

10. Disclosure of Interest. (If applicable) None.

11. Referrals.

Section of Litigation  
State and Local Government Law Section  
Civil Rights and Social Justice Section  
Government and Public Sector Lawyers Division  
Judicial Division  
Young Lawyers Division  
Solo, Small Firm and General Practice Division

12. Name and Contact Information. Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

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13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

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## EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution urges all federal, state, local, territorial, and tribal legislative bodies and governmental agencies to enact laws and adopt policies prohibiting law enforcement from knowingly employing or relying upon deception by falsification of facts or unauthorized promises of leniency to obtain an incriminating response, confession, or admission of culpability of a crime in a custodial setting from a child under the age of 18.

2. Summary of the issue that the resolution addresses.

This Resolution recognizes that minors are uniquely vulnerable to self-incrimination when subjected to deceptive tactics during police interrogations.

3. Please explain how the proposed policy position will address the issue.

This Resolution seeks to achieve the goal of protecting minors from self-incrimination by banning falsification of facts and unauthorized promises of leniency by the police during interrogations.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.