

**MORE THAN A PLAZA
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GEORGETOWN JUVENILE JUSTICE INITIATIVE**

DEMANDING A MORE MATURE MIRANDA FOR KIDS

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Demanding a More Mature *Miranda* for Kids

I. Introduction

In *Miranda v. Arizona*, the Supreme Court held that statements made by an adult during custodial interrogation are inadmissible unless law enforcement officers first administer warnings before questioning and the adult validly waives those rights.¹ Pursuant to the Fifth and Sixth Amendments, *Miranda* warnings inform individuals of: (1) the right to remain silent, (2) that any statement can be used against them, (3) the right to obtain an attorney and to have counsel present during questioning, and (4) the right to be appointed an attorney.² To waive these rights, a person must make a voluntary, knowing, and intelligent waiver based on the totality of the circumstances.³ The Supreme Court emphasized that any statement or confession obtained through an uninformed, coerced, or compelled waiver of these rights must be excluded from any judicial proceeding.⁴

A year later, in *In re Gault*, the Supreme Court recognized that the procedural Constitutional safeguards outlined in *Miranda v. Arizona*, apply to children as well.⁵ However, in deciding *Gault*, the Supreme Court extended *Miranda*'s adult framework to youth without the benefit of the wealth of adolescent development research that has been conducted since *Miranda* and *Gault* were decided.⁶ As a result, the *Miranda* framework is not a robust, research-driven approach for protecting the rights of youth. Indeed, in *J.D.B. v. North Carolina*, the Supreme Court recognized this shortcoming and held that a child's age is relevant to *Miranda*'s custody analysis because children as a class are different than adults.⁷ Notably, *Miranda*, *Gault*, and *J.D.B.* describe only the Constitutional floor of protections that must be afforded to youth in an interrogation context.

These bare minimum *Miranda* protections fail to fully protect children because they do not accommodate for a child's high susceptibility to pressure and limited cognitive ability. Furthermore, Black children are disproportionately affected by the grave insufficiencies of the *Miranda* Doctrine. The current Doctrine fails to consider the unique vulnerabilities of Black youth experience when interacting with the police. As residents, law students, attorneys, and members of the community, we respectfully urge the DC Council to protect children from *Miranda*'s shortcomings by requiring, prior to any custodial interrogation, that (1) law enforcement provide youth with expanded warnings; 2) youth be provided a reasonable opportunity to consult with counsel; and (3) waivers will only be valid if they are knowing, intelligent, voluntary, and made in the presence of counsel.

II. The Insufficiencies of the *Miranda* Doctrine

Although children only account for about 8.5% of arrests, nationally, they account for about one-third of false confessions.⁸ This often leads to wrongful convictions and severe dispositions because those who falsely confess are treated harshly throughout the rest of the juvenile or criminal legal process.⁹ Youth have difficulty understanding the *Miranda* rights, largely contributing to this high rate of wrongful convictions.

Because children's cognitive abilities are still developing, most children cannot meaningfully understand their *Miranda* rights.¹⁰ More specifically, only 20% of youth adequately understand their *Miranda* rights.¹¹ Empirical evidence illustrates that adequately comprehending *Miranda* requires at least a tenth-grade reading level.¹² Moreover, understanding two of the *Miranda* warning

protections, the right to remain silent and the right to have an attorney present, requires a college or graduate reading ability.¹³ As high as 85% of the youth in the juvenile legal system have disabilities, and children with disabilities inherently have difficulties in understanding the complexity of the *Miranda* doctrine.¹⁴ Due to economic, social, and educational disparities, these necessary reading levels are far beyond the majority of individuals, including adults, who are targets of custodial interrogations.¹⁵

Furthermore, “[o]verwhelming empirical evidence shows that [youth] do not understand their Constitutional protection against self-incrimination or the consequence of waiving their rights.”¹⁶ In particular, many children do not understand that they will not incur consequences or court sanctions if they invoke their rights, such as the right to remain silent.¹⁷ Due to no fault of their own, children do not understand the purpose of an attorney or that an attorney will support them even if they are guilty.¹⁸ Additionally, many children often confuse the term, “interrogation,” with an adjudication hearing and, therefore, do not understand that the right to have an attorney present during an interrogation means that they have the right to have an attorney present during questioning.¹⁹ Thus, because youth do not understand *Miranda*’s protections, they cannot fully understand or appreciate the rights they are giving up when they waive them.²⁰

In addition to not fully understanding their rights or the consequences of waiving them, children also “lack the psychosocial maturity and cognitive capacity to waive *Miranda* rights.”²¹ Because a child’s prefrontal cortex has not yet matured,²² children focus on short-term rather than long-term consequences,²³ especially in moments of stress.²⁴ Thus, children are especially at risk of waiving their rights without considering the consequences in the inherently stressful setting of an interrogation.²⁵ For example, when an officer tells a child that they can go home if they waive their *Miranda* rights and answer questions, the child is likely to waive their rights based on the short-term reward of going home.²⁶ Furthermore, even if they could consider the long-term consequences, youth “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.”²⁷ As a result, children as young as ten years old waive their *Miranda* rights about 90% of the time without understanding the rights they are giving up,²⁸ often leading to false confessions and wrongful convictions.²⁹

III. Race Implications and Disproportionate Effects of the *Miranda* Doctrine

For decades, tensions have existed between the Black community and the police. In the District of Columbia, police disproportionately stop, search, and arrest Black youth. Black youth are “ten times more likely to get stopped than their white peers,” and between July and December of 2019, police searched 738 Black youth and only four White youth.³⁰ In 2018, 98% of youth committed to the Department of Youth and Rehabilitation Services were Black.³¹ In 2015, Black youth made up just under 70% of the District’s youth population, but accounted for over 95% of those arrested in the District.³² Black people continue to be disproportionately arrested, not just in heavily policed, predominantly Black neighborhoods, but also in areas with high concentrations of White people.³³ Furthermore, Black youth’s view of the police is often learned and shaped at a very young age.³⁴ Therefore, “[d]istrust, fear, and even hostility between police and youth of color exacerbate the psychological atmosphere that undermines the voluntariness of *Miranda* waivers.”³⁵

Moreover, Black men are more likely than White men to feel anxiousness and fearfulness during police encounters and, as a result, engage self-regulatory behavior to counteract any formed stereotypes regarding their guilt.³⁶ For example, Black men are hyper aware to engage in eye-contact and remain mindful of their body language and word choice.³⁷ But, despite a Black man's true intentions, "these self-regulatory efforts are interpreted as suspicious by police." Researchers have referred to this phenomenon as "stereotype threat."³⁸ Although the study was limited to Black men, it can be reasonably inferred that Black youth engage in similar attempts to conform their behavior to the perceived expectations of the officer. As a result, Black youth experience substantially different interactions with the police than their White counterparts, which leaves greater exposed to the shortcomings of the *Miranda* Doctrine.

IV. The Impact on the District of Columbia

The involuntary waiver of *Miranda* rights remains an issue within Washington, D.C.'s juvenile legal system. In 2012, the Metropolitan Police Department ("MPD") arrested a 15-year old child and brought him to a police station, where an MPD detective questioned him around midnight.³⁹ During the interview, the child's foot was cuffed to the floor, so he was unable to move freely.⁴⁰ Before reading the child his *Miranda* rights, the detective said:

"I know you know why you're up here, so I ain't gonna play the 'I don't know' crap, all right? I'm gonna give you an opportunity to give your version of what happened today, because ... I stand between you and the lions out there [W]e have a lot of things going on out there, and they're gonna try and say that you did it all. Okay? And I think what happened today was just a one-time thing. But before I came out here everybody said ... you did a whole bunch of stuff, but in order for us to have a conversation, I have to read you your rights and you have to waive your rights. If you answer no to any of the questions I ask you after I read you your rights, that's all, I mean, I can't have the interview, okay?"⁴¹

After the officer made these coercive statements to the child, he read the child his *Miranda* rights.⁴² The child then waived his rights and confessed.⁴³ Because the officer's statements implied that invoking his *Miranda* rights would make the situation even worse, the officer made the boy feel helpless, as if he had no choice but to waive his *Miranda* rights and confess.⁴⁴ The District of Columbia Court of Appeals found that the officer's statements did not give the child a real choice and that his waiver was, therefore, involuntary.⁴⁵ This is just one of many examples that illustrates a child's susceptibility to waiving *Miranda* rights during an inherently coercive police interrogation.

V. A New Approach

To better protect children from the current inadequacies of the *Miranda* doctrine, the District of Columbia should make any statement made by a minor in a custodial interrogation inadmissible unless (1) the minor was advised of their rights by the interrogating law enforcement official,⁴⁶ (2) the minor was given an opportunity to confer with an attorney regarding the waiver of those rights, and (3) the minor knowingly, intelligently, and voluntarily waived those rights in the presence of counsel. D.C. should not permit any child to waive any *Miranda* right without assistance from counsel.

These protections would ensure that waivers are actually knowing, intelligent, and voluntary; prevent false confessions; and reduce wrongful convictions.

Other jurisdictions have already codified protections for youth in custodial interrogations, including (1) requiring children to consult with a counsel during police questioning, (2) not allowing children to waive *Miranda* rights without consulting with an attorney, and (3) making inadmissible any statement made outside the presence of counsel. Specifically, New Jersey requires the assistance of counsel before a child can waive any right, including a *Miranda* right.⁴⁷ Additionally, California recently passed legislation that requires all minors to consult with an attorney before waiving any *Miranda* right.⁴⁸ Furthermore, Illinois requires counsel at all custodial interrogations for children under 15 who are suspected of committing homicide or another serious offense.⁴⁹ Similarly, in West Virginia, statements made by children under 14 during custodial interrogations are not admissible in court unless counsel was present during the interrogation.⁵⁰

States and cities across the United States continue to codify further protections for youth in custodial interrogations. For example, in New York, there is a bill that, if it becomes law, will mandate that children are only interrogated when necessary and only *after* consulting with an attorney.⁵¹ Baltimore City has also taken steps to ensure that a child's constitutional rights are preserved. Specifically, the Maryland State's Attorney's Office has explicitly expressed its plans to develop policy that will make statements made by a minor outside the presence of counsel inadmissible.⁵²

Although some states require parents to be present during custodial interrogations as a way to potentially guard against coerced waivers or confessions, this "protection" has proven to be inadequate. Instead, attorneys are best positioned to explain *Miranda* rights to children. Generally, parents do not have the necessary legal knowledge to represent their child's best interest.⁵³ In fact, "[i]n 24 out of 25 interrogations, the parents either did nothing or affirmatively aided the police" by advising their children to confess or to tell the truth.⁵⁴ One notable example of a case where children were wrongfully convicted based on false confessions is the Exonerated Five, where the children's parents encouraged the boys to waive their right to remain silent and further encouraged them to cooperate with the police.⁵⁵ The parents, like their children, felt helpless and powerless to resist police pressure during the interrogations. Thus, merely having a parental or custodial guardian present would not adequately preserve *Miranda*'s Constitutional protections.⁵⁶

Moreover, providing minors a more expansive explanation of their *Miranda* rights alone would not be enough to protect youth from involuntarily waiving their rights. To create a fully comprehensive explanation of *Miranda*'s protections that most youth could factually and rationally understand would be both impractical and ineffective. For example, England and Wales created a comprehensive 44-page "easy read" letter of rights for people in custody.⁵⁷ However, because it is so unlikely that a child could understand and internalize such a lengthy document under the conditions often associated with custodial interrogation, England and Wales also requires counsel and an appropriate adult when youth are in police custody.⁵⁸ "On average, custodial suspects are expected to comprehend 146 words with a range from 49 to 547," and longer pieces are especially challenging.⁵⁹ Thus, a comprehensive resource would not effectively communicate the *Miranda* doctrine to youth and would, therefore, not adequately protect against involuntary waivers.

Providing further *Miranda* protections would not only protect youth from falsely confessing but also save the District money that could be allocated to social programs. Detaining a young person can cost upwards of \$621 per day and \$226,665 per year.⁶⁰ These numbers do not account for the long-term indirect costs of detaining youth, including less tax revenue, increased public assistance, and increased crime costs.⁶¹ Additionally, “[b]etween lawsuits and state statutes that award fixed compensation for wrongful convictions, state and municipal governments have paid out \$2.2 billion to exonerees.”⁶²



The District of Columbia should make any statement made to law enforcement officers by any person under eighteen years of age inadmissible in any court of the District of Columbia for any purpose, including impeachment, unless:

- **The child is advised of their rights by law enforcement;**
- **The child is given an opportunity to confer with an attorney; and**
- **The child knowingly, intelligently, and voluntarily waives their rights in the presence of counsel.**

References

¹ See 384 U.S. 436, 444 (1966).

² See generally *id.*

³ *Miranda*, 384 U.S. at 444-45; *Fare v. Michael C.*, 442 U.S. 707, 725-26 (1979).

⁴ *Miranda*, 384 U.S. at 462.

⁵ 387 U.S. 1, 44-55 (1967).

⁶ *Id.*

⁷ *J.D.B. v. North Carolina*, 564 U.S. 261,272 (2011) (recognizing that “[t]ime and again, this Court has drawn these commonsense conclusions for itself. We have observed that children generally are less mature and responsible than adults; that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them; that they are more vulnerable or susceptible to outside pressures than adults; and so on.”)

⁸ Kevin Lapp, *Taking Back Juvenile Confessions*, 64 UCLA L. REV. 902, 920 (2017).

⁹ Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 920 (2004).

¹⁰ Lapp, *supra* note 8, at 914.

¹¹ Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1152-53 (1980) (finding, in a study of 431 youth, only 20.9 percent of those youth adequately understood all four *Miranda* rights).

¹² Anthony J. Domanico et al., *Overcoming Miranda: A Content Analysis of the Miranda Portion of Police Interrogations*, 49 IDAHO L. REV. 1,3 (2012). It is important to note that DC uses the same Miranda Rights Card with both adults and youth. See Metropolitan Police Department PD-47 form.

¹³ *Id.*

¹⁴ Taryn VanderPyl, *The Intersection of Disproportionality in Face, Disability, and Juvenile Justice*, 15 JUST. POL’Y J. 1, 2 (2018).

¹⁵ *Id.*

¹⁶ Lapp, *supra* note 8, at 914.

¹⁷ Richard Rogers, et al., *The Comprehensibility and Content of Juvenile Miranda Warnings*, 14 PSYCH., PUB. POL’Y, & L. 63, 67 (2008).

¹⁸ Thomas Grisso, *Adolescents’ Decision Making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 3, 11 (2006).

¹⁹ Grisso, *supra* note 11, at 1154 (finding, in a study of 431 youth, only 20.9 percent of those youth adequately understood all four *Miranda* rights).

²⁰ Grisso, *supra* note 18, at 11.

²¹ Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 WIS. L. REV. 431, 431 (2006).

²² Marco Luna, *Juvenile False Confessions: Juvenile Psychology, Police Interrogation Tactics, and Prosecutorial Discretion*, 18 NEV. L.J. 291, 297 (2017).

²³ Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J. L. & PUB. POL’Y 395, 405 - 06 (2013).

²⁴ Grisso, *supra* note 18, at 9.

²⁵ *J.D.B.*, 564 U.S. at 269 (quoting *Miranda*, 384 U.S. at 467); Grisso, *supra* note 18, at 9.

²⁶ Grisso, *supra* note 18, at 11. Oftentimes, when officers interrogate a child, they give the child two options: “(1) you did it and if you do not confess I cannot help you so you are going to be punished harshly, or (2) you did it and if you do confess, you are a good person and I can help you.” Steven A. Drizin & Beth A. Colgan, *Interrogation Tactics Can Product Coerced and False Confessions from Juvenile Suspects*, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 127, 136 (G. Daniel Lassiter ed., 2004). Based on these limited options and the short-term reward of going home, children almost always waive their *Miranda* rights and confess even if they are innocent. See generally *id.* at 138.

²⁷ *J.D.B.* 564 U.S. at 272 (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)).

²⁸ Lapp, *supra* note 8, at 914 (2017); Barry Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 L. & SOC’Y REV. 1, 12 (2013) (finding, in a study of 307 16 through 18-year olds, 92.8 percent of youth waived their *Miranda* rights)

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- ²⁹ Elizabeth Vulaj, *From the Central Park 5 to the Exonerated 5: Can It Happen Again?*, N.Y. ST. B.J. (2019), at 24-25.
- ³⁰ ACLU-DC, RACIAL DISPARITIES IN STOPS BY THE D.C. METROPOLITAN POLICE DEPARTMENT: REVIEW OF FIVE MONTHS OF DATA 8 (2020), https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf (last visited Sept. 13, 2020).
- ³¹ Youth Population Snapshot, DEP'T YOUTH REHABILITATION SERV.S, <https://dyrs.dc.gov/page/youth-snapshot> (last visited Sept. 2, 2020).
- ³² *Racial Disparities in D.C. Policing: Descriptive Evidence from 2013-2017*, ACLU DISTRICT OF COLUMBIA, <https://www.acludc.org/en/racial-disparities-dc-policing-descriptive-evidence-2013-2017> (last visited Sept. 13, 2020).
- ³³ *Id.*
- ³⁴ Kristin Henning, Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 ARIZ. STATE L. J. ____ (expected December 2020).
- ³⁵ Compare Puzanchera, C., Sladky, A. and Kang, W., "Easy Access to Juvenile Populations: 1990-2019," at <https://www.ojdp.gov/ojstatbb/ezapop/> (reporting 29,321 Black youth ages 10 to 17 and 42,234 total youth ages 10 -17) with MPD FOIA Request Response 2016-05463 (reporting 2928 arrests of Black youth out of 3073 total arrests in 2015) (on file with the Georgetown Juvenile Justice Initiative).
- ³⁶ *Id.*
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ *In re S.W.*, 124 A.3d 89, 93 (D.C. Ct. App. 2015).
- ⁴⁰ *Id.*
- ⁴¹ *Id.* at 94.
- ⁴² *Id.*
- ⁴³ *Id.*
- ⁴⁴ *Id.*
- ⁴⁵ *Id.* at 104-05.
- ⁴⁶ These rights include but are not limited to: (a) the right to remain silent, (b) anything they say can be used against them, (c) the right to an attorney, (d) the right to have someone else pay for the attorney, (e) the right to talk to an attorney *immediately* before continuing to answer questions, (f) the refusal to give a statement cannot be used as evidence of guilt, (g) making a statement does not mean they will be released from custody or that they will not be charged, (h) they can be held in pretrial detention for the most minor offenses, and (i) they can be committed until age 21 for the most minor offenses.
- ⁴⁷ N.J. STAT. ANN. § 2A:4A-39(b)(1).
- ⁴⁸ S. 203, 2020 (Cal.)
- ⁴⁹ 705 ILL. COMP. STAT. § 405 / 5-170.
- ⁵⁰ W. VA. CODE § 49-4-701(l).
- ⁵¹ A6982B, 2019 Leg., Reg Sess. (N.Y. 2019). Emily Haney-Caron & Sydney Baker, *Protecting Youth from Interrogation*, NEW YORK DAILY NEWS, (Aug. 5, 2020), <https://www.nydailynews.com/opinion/ny-oped-protecting-youth-from-unfair-interrogation-20200805-yzg33mie6vhkvkmmrfz7jagrwy-story.html>, (last visited Sept. 27, 2020).
- ⁵² Marilyn Mosby & Miriam Aroni Krinsky, *The Baltimore Exonerees' Cases Shed Light on the Need for Reforming Youth Interrogations*, WASH. POST (Nov. 27, 2019), https://www.washingtonpost.com/opinions/local-opinions/the-baltimore-exonerees-cases-shed-light-on-the-need-for-reforming-youth-interrogations/2019/11/27/e7e22570-1099-11ea-b0fc-62cc38411ebb_story.html; Jennifer Egan, *Baltimore State's Attorney Should Refuse to Use Child Confessions Taken Without an Attorney Present*, BALT. SUN, Dec. 6, 2019, <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1208-mosby-kid-confession-20191206-jsdhcnsocrf7m2hdkygzui-story.html>.
- ⁵³ Hana M. Sahdev, *Juvenile Miranda Waivers and Wrongful Convictions (Winner of American Constitution Society's National Student Writing Competition)*, 20 U. PA. J. CONST. L. 1211, 1232 (2018).
- ⁵⁴ Molly Knefel, *'Making a Murderer,' and the Huge Problem of False Youth Confessions*, ROLLING STONE (Jan 8, 2016), <https://www.rollingstone.com/tv/tv-news/making-a-murderer-and-the-huge-problem-of-false-youth-confessions-51948/>, (last visited Sept. 27, 2020); Rogers, *supra* note 17, at 66.
- ⁵⁵ Drizin, *supra* note 9, at 896.
- ⁵⁶ Rogers, *supra* note 17, at 66.

⁵⁷ HERTFORDSHIRE CONSTABULARY, RIGHTS AND ENTITLEMENTS EASY READ BOOKLET (2009).

⁵⁸ See Rogers, *supra* note 17, at 185.

⁵⁹ *Id.* at 186.

⁶⁰ JUSTICE POLICY INSTITUTE, STICKER SHOCK 2020: THE COST OF YOUTH INCARCERATION 3 (2020).

⁶¹ *Id.* at 1.

⁶² Radley Balko, *Report: Wrongful Convictions Have Stolen at Least 20,000 years from Innocent Defendants*, WASH. POST: OPINIONS (June 10, 2019), <https://www.washingtonpost.com/news/opinions/wp/2018/09/10/report-wrongful-convictions-have-stolen-at-least-20000-years-from-innocent-defendants/>.

Appendix: Proposed Amendments

§ 16–2316. Conduct of hearings; evidence.

(g) A statement made by a person under 18 years of age to a law enforcement officer during a custodial interrogation shall be inadmissible for any purpose, including impeachment, in a transfer hearing pursuant to section 16-2307, in a dispositional hearing under this subchapter, or in a commitment proceeding under Chapter 5 or 11 of Title 21, unless the person under 18 years of age:

- (1) Is advised by a law enforcement officer in a developmentally appropriate manner of:
 - (A) The person has the right to remain silent;
 - (B) Anything the person says can be used against them in court;
 - (C) Refusing to make a statement cannot be used as evidence that they were involved in a crime;
 - (D) Making a statement does not mean they will be released from custody or that they will not be charged with a crime;
 - (E) The person has the right to an attorney;
 - (F) The person has the right to have someone else pay for the attorney at no cost to them;
 - (G) The person has the right to privately speak with an attorney, immediately, before continuing to speak with a law enforcement officer;
 - (H) The person has the right to be advised by an attorney regardless of whether they committed a crime; and
- (2) Is given a reasonable opportunity to confer privately and confidentially with an attorney; and
- (3) Through an attorney, knowingly, intelligently, and voluntarily waives their right to remain silent.