

Article

A Presumptive In-Custody Analysis to Police-Conducted School Interrogations

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I. Introduction

A child and his parent anticipate an array of experiences that the child might encounter on any given school day. Some experiences are beyond their reasonable expectation. For instance, being subjected to police questioning incident to an active police investigation is not usually within the scope of

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educational experiences that either the parent or the child would anticipate. Nevertheless, police questioning in the schoolhouse is becoming more common as the incidents of crimes committed by children increase.¹ Because police investigations increasingly involve interrogation of child suspects in schools, consideration for their constitutional rights is crucial. While the constitutional protections afforded by the United States Supreme Court in *Miranda v. Arizona*² have provided protection for adults against self-incrimination, the custodial analysis has not always afforded the same to child suspects.³ Specifically, the reasonable person's belief that he or she is free to leave police-initiated interrogations is not qualitatively the same for a child suspect.⁴ The special circumstances presented by the school setting further complicate the determination of what a reasonable child suspect believes when confronted with police questioning.⁵ Children will not likely assess the legal consequences of making statements to the police.⁶

Additionally, the risk of self-incrimination and the evolution of legal jurisprudence relevant to false confessions foundationally explain how even children who commit crimes are incapable of fully understanding the consequences of their actions.⁷ State statutes generally provide age limits⁸ when determining a child's ability to comprehend his or her constitutional rights under the Fifth Amendment, as well as the child's ability to knowingly waive them.⁹ Age limits are especially important when children operate under the false perception that they are not under the authority of the police, as in school interrogation situations.¹⁰ The United States Supreme Court

1. Children often do not sufficiently understand the gravity of their potentially criminal actions, as well as the constitutional rights afforded them under the law. Trey Meyer, *Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Courts*, 47 U. KAN. L. REV. 1037, 1050–51 (1999); see also Meg Penrose, *Miranda, Please Report to the Principal's Office*, 33 FORDHAM URB. L.J. 775, 785–88 (2006); Stephanie Forbes, *Reading, Writing, and Interrogating: Providing Miranda Warnings to Students in Schoolhouse Interrogations*, 47 CT. REV. 68, 68 (2011); Lee Remington, Note, *The Ghost of Columbine and the Miranda Doctrine: Student Interrogations in a School Setting*, 41 BRANDEIS L.J. 373, 373–75 (2002).

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

3. See Pamela M. Henry-Mays, *Farewell Michael C., Hello Gault: Considering the Miranda Rights of Learning Disabled Children*, 34 N. KY. L. REV. 343, 343–44 (2007) (arguing that adults are sufficiently apprised of their Fifth Amendment protections when *Miranda* warnings are given, and noting that the U.S. Supreme Court in “*In re Gault* recognized that children required special consideration when under interrogation because they could be overwhelmed by the will of an adult”).

4. See *infra* notes 36–47 and accompanying text.

5. See Henry-Mays, *supra* note 3, at 357 (“[J]uveniles have great difficulty foreseeing what waiver of their *Miranda* rights may mean to them in the future. When asked about their reasons for waiving their rights, most juveniles were more concerned with their immediate detention or release.”).

6. *Id.* at 349–50.

7. *State v. Benoit*, 490 A.2d 295, 300 (N.H. 1985) (discussing studies showing the failure of juveniles to fully comprehend the substance and significance of waiving their constitutional rights).

8. See, e.g., N.M. STAT. ANN. § 32A-2-14 (2010); CONN. GEN. STAT. § 46b-137(c) (Supp. 2012).

9. Meyer, *supra* note 1, at 1051.

10. The lines between school officials' authority and the local police authority have been blurred in cases where the validity of a child suspect's confession made to the school administration is challenged. See *State v. Tinkham*, 719 A.2d 580, 584 (N.H. 1998) (holding that the principal was not operating as a law enforcement officer or an agent of the police when he obtained a child's confession regarding

addressed application of the *Miranda* custody analysis in its recent ruling, *J.D.B. v. North Carolina*,¹¹ where the Court determined that “age may indeed be relevant” when affording children Fifth Amendment protections against self-incrimination during police-conducted school interrogation.¹² Certainly, age is relevant when determining whether it is cruel and unusual punishment to impose the death penalty on juveniles or to impose life without parole sentencing¹³ based on the legally recognized theory of diminished culpability.¹⁴ The Court’s age-is-relevant ruling, however, does not sufficiently protect children during in-school interrogations where they might operate under the false perception that their statements and actions are not made under the authority of the police.¹⁵ The States should therefore adopt a presumptive in-custody determination that eliminates the two-step totality of circumstances and reasonable child test.¹⁶ Each state should amend its juvenile *Miranda* statute¹⁷ or adult *Miranda* statute, as the case may be, to include a presumption that children should be provided *Miranda* warnings when questioned in the school setting.¹⁸ The police authorities may interview

possession of marijuana). States have litigated the issue of agency relationships between the police and school authorities in the context of such school interrogations. Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39, 61 (2006). A critical distinction must be made between a school “importing” local police authority versus a law enforcement agency “exporting” local authority to the school. *Id.* at 73. Officers who are hired by the school are generally not required to provide *Miranda* warnings. See Peter Price, Comment, *When is a Police Officer an Officer of the Law?: The Status of Police Officers in Schools*, 99 J. CRIM. L. & CRIMINOLOGY 541, 551 (2009); see also *Farmer v. State*, 275 S.E.2d 774, 776 (1980).

11. 131 S. Ct. 2394 (2011).

12. *Id.* at 2405. The Court considered the issue of age and other psychological factors impacting the child’s mindset to be irrelevant in its precedent case, *Yarborough v. Alvarado*, 541 U.S. 652 (2004). In *Alvarado*, these factors were considered as subjective rather than objective. *Id.* at 668. However, in *J.D.B.*, the Court views its ruling as consistent with *Alvarado* by stating that age is different because it does not involve a subjective determination about the mindset of the child. *J.D.B.*, 131 S. Ct. at 2404.

13. *Graham v. Florida*, 130 S. Ct. 2011, 2016 (2010).

14. *Id.* at 2038 (Roberts, C.J., concurring); see Henry-Mays, *supra* note 3, at 350 (“Children are different from adults with low intelligence as they lack the worldly experience and the knowledge time will bring.”).

15. Indeed, even courts have wrestled with the issue of whether police in the school setting are acting in their capacity as police or as “school officials.” See Remington, *supra* note 1, at 379–80 (“[C]ourts across the nation have been confused as to which standard applies when police officers, such as on-site school resource officers or officers acting on behalf of school authorities, conduct searches or seizures of students on school grounds. Courts have had to determine whether police officers are to be considered as ‘school officials’ and therefore allowed to conduct searches and seizures based upon the lesser standard of ‘reasonable suspicion.’”).

16. See *J.D.B.*, 131 S. Ct. at 2402. The Court describes two independent questions used to determine whether a suspect is in custody: “[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave.” *Id.* If “in custody,” the child is entitled to the *Miranda* warnings, which are pivotal to the child’s protection under the Constitution. *Id.* However, the Court regards the child’s ability to comprehend the warning when given as without merit if the circumstances do not amount to a custodial interrogation. *Id.* at 2401.

17. See, e.g., N.C. GEN. STAT. § 7B-2101 (2011) (requiring that juveniles be Mirandized before questioning when in custody, and prohibiting the use of a confession from a minor under 14 years old unless a guardian or attorney is present).

18. In Minnesota, a juvenile is afforded the same protections against self-incrimination as an adult.

children at school, but no statement made to the police can be admissible under the proposed presumption unless it is made in the presence of a parent, guardian or attorney. In effect, the child suspect would have to be escorted to the police station since a parent, guardian or attorney is not likely to be present at the school. While in the presence of a parent, guardian or attorney, the police can provide proper *Miranda* warnings to the child suspect before any statements can be admitted into evidence or any determinations are made regarding the waiver of rights. By amending statutes to include a presumption that a child is in custody,¹⁹ the states would extend a heightened level of constitutional protection that is necessary given the enhanced risk of false statements made in the school setting.²⁰

The United States Supreme Court's jurisprudence has recognized a heightened risk of coercion and subsequent false confessions by juveniles during interrogation, yet the *J.D.B.* Court held that considering age as a relevant factor is enough to address these risks.²¹ In the school interrogation context, obtaining a knowing, intelligent, and voluntary confession is inextricably linked to the custodial interrogation analysis. Consequently, the law addressing the voluntariness of confessions must necessarily be considered when applying legal protections to children in the school setting.²² This Article will address how school interrogations substantially amount to a "custodial interrogation" and how the reasonable child test supports the adoption of a presumptive in-custody approach.

Part II provides a case summary of the *J.D.B.* opinion. Part III explains the long-standing U.S. Supreme Court jurisprudence that articulates constitutional standards for protecting juveniles from self-incrimination. The reasonable-person standard determines whether the suspect is in custody for *Miranda* purposes, and the totality-of-circumstances test considers the immaturity of the child and other relevant factors.²³ The totality of

MINN. R. JUV. DEL. P. 5.07 subd. 3. ("At the beginning of the detention hearing, the court shall advise all persons present of: (A) the reasons why the child was taken into custody; (B) the allegations of the charging document; (C) the purpose and scope of the detention hearing; (D) the right of the child to be represented by counsel at the detention hearing and at every other stage of the proceedings, and the right of a child alleged to be delinquent to counsel at public expense; and (E) the right of the child to remain silent."). Similarly, a juvenile in Washington is also protected against self-incrimination. WASH. REV. CODE § 13.40.140(8) (2004).

19. For examples of statutes that give constitutional protections to juveniles in custody, see COLO. REV. STAT. § 19-2-511 (2005); CONN. GEN. STAT. § 46b-137(c) (Supp. 2012); GA. CODE ANN. § 15-11-7 (2012); N.M. STAT. ANN. § 32A-2-14 (2010); N.C. GEN. STAT. § 7B-2101 (2011); WASH. REV. CODE § 13.40.140 (2004).

20. See Henry-Mays, *supra* note 3, at 357 (discussing how a child does not anticipate the impact of statements made to the police, or the long-term consequences of a waiver of rights, thereby leading to high rates of false confessions).

21. *J.D.B.*, 131 S. Ct. at 2401-02; see also *Stansbury v. California*, 511 U.S. 318, 322-25 (1994) (discussing the inquiry necessary to determine whether an individual is in custody and therefore entitled to *Miranda* warnings).

22. See Meyer, *supra* note 1, at 1048 (commenting on the use of a totality of circumstances test by federal courts and state courts to evaluate the admissibility of a custodial statement under the due process standard).

23. See *infra* Part III.

circumstances in the school setting presumptively amounts to in-custody interrogation for *Miranda* purposes.²⁴ Part IV argues that the totality of circumstances in police-conducted school interrogations uniquely compels the reasonable child to make potentially false statements. Accordingly, the States' juvenile *Miranda* statutes provide the appropriate forum for ensuring that juvenile suspects receive adequate protection when the police interrogate them at school. Part V reviews Texas and other state statutes and case law that support the adoption of a presumptive in-custody approach. The following case summary provides context for the relevant issues surrounding school interrogations.

II. *J.D.B. v. North Carolina*

In *J.D.B. v. North Carolina*, the United States Supreme Court held that a child's age is relevant to the *Miranda*²⁵ custody analysis when police officers either know the child's age at the time of questioning, or the age is objectively apparent to the reasonable officer.²⁶ J.D.B. was a thirteen-year-old seventh-grade special-education student²⁷ who was escorted away from his classroom by a uniformed police officer to a school conference room.²⁸ Four adults, including the assistant principal, an administrative intern, and two police officers, proceeded to question him behind closed doors for approximately thirty to forty-five minutes.²⁹ The officers had previously questioned him³⁰ about two home burglaries that occurred during the prior week.³¹ For this second questioning, the police placed J.D.B. in a closed-door conference room and asked him about the digital camera found at the middle school that matched the description of one of the stolen items.³² No parent, guardian, or other trusted adult was present in the room during the questioning.³³ Ultimately, the young suspect confessed to the robberies and

24. See *infra* Part III–IV.

25. *Miranda v. Arizona*, 384 U.S. 436 (1966) (ruling that statements obtained from defendants in police-dominated interrogations without full warning of constitutional rights are inadmissible and violate defendants' Fifth Amendment privilege against self-incrimination).

26. *J.D.B.*, 131 S. Ct. at 2399, 2406.

27. Petition for Writ of Certiorari, *J.D.B.*, 131 S. Ct. 2394 (No. 09-11121), 2010 WL 4278709, at *4.

28. *J.D.B.*, 131 S. Ct. at 2399.

29. *Id.*

30. *Id.* A police officer told J.D.B. that he had additional questions as follow-up to the questions he asked five days earlier when he found J.D.B. in the neighborhood where the crimes were committed. Petition for Writ of Certiorari, *supra* note 27, at *3.

31. *J.D.B.*, 131 S. Ct. at 2399.

32. The school resource officer, the assistant principal, and an administrative intern were in the closed-door conference room, in addition to the juvenile investigator from the local police. *Id.* School resource officers are police officers that are primarily based within a school. See Catherine Y. Kim, *Policing School Discipline*, 77 BROOK. L. REV. 861, 878 (2012). This segment of law enforcement is the fastest growing division. *Id.*

33. See *J.D.B.*, 131 S. Ct. at 2399.

gave details about the location of the stolen items.³⁴

In holding that a child's age is relevant to the *Miranda* custody analysis, the Court acknowledged how the physical and psychological isolation of custodial interrogation creates intense pressure and increases the percentage of individuals who may be induced to confess to crimes they did not commit.³⁵ The risk of coerced confessions is heightened when the suspect is a juvenile.³⁶ A child does not respond to police questioning like an adult counterpart under the same circumstances, mostly because children do not always perceive their constitutionally supported right to remain silent.³⁷ The Court refers to the child's response to police questioning as a "commonsense reality"³⁸ grounded in its precedent-based observation that children are "generally less mature . . . and often lack . . . perspective and judgment, [and] are more vulnerable or susceptible to . . . outside pressures" than adults.³⁹ In order to protect an individual from self-incrimination during police questioning, the Court determined, in *Miranda v. Arizona*, that suspects must be specifically warned prior to questioning that their statements may be used against them.⁴⁰ For children, however, their ability to understand the warnings becomes integral to their constitutional protection.

The *J.D.B.* Court concluded that a child's ability to understand *Miranda* warnings is irrelevant when no *Miranda* warnings are given.⁴¹ The concern over the coercive nature of a custodial interrogation is triggered only when the suspect perceives that his freedom of action is restricted.⁴² Determining whether a suspect is restricted in his freedom, or otherwise considered to be in custody is an objective standard.⁴³ The Court refers to

34. *Id.* at 2400. The prosecutor filed a juvenile petition alleging breaking and entering and larceny. *Id.* During a suppression hearing, the juvenile public defender argued that the young suspect's confession was obtained during a police custodial interrogation made without *Miranda* warnings given to him and that the confession was involuntary. *Id.* The trial court denied the defense's motion to suppress and ruled that the confession was voluntary and that the schoolhouse questioning was not a custodial interrogation for *Miranda* purposes. *Id.* The North Carolina Court of Appeals affirmed, ruling that consideration of age was not a valid extension of the custody analysis. *Id.*

35. *Id.* at 2401.

36. *J.D.B.*, 131 S. Ct. at 2401–02; See Clay Turner, *Simple Justice: In re J.D.B. and Custodial Interrogations*, 89 N.C. L. REV. 685, 713 (2011).

37. *J.D.B.*, 131 S. Ct. at 2398. The factor that highly distinguishes schoolhouse interrogations from generic police-conducted interrogations is the age of the suspect and, consequently, the suspect's inability to comprehend the severity of the situation. Holland, *supra* note 10, at 84.

38. *J.D.B.*, 131 S. Ct. at 2399.

39. *Id.* at 2403 (citations omitted) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115–16 (1982); *Bellotti v. Baird*, 443 U.S. 622, 635 (1979); *Roper v. Simmons*, 543 U.S. 551, 569 (2005)) (internal quotation marks omitted).

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

41. *J.D.B.*, 131 S. Ct. at 2401 n.4 ("Amici on behalf of J.D.B. question whether children of all ages can comprehend *Miranda* warnings and suggest that additional procedural safeguards may be necessary to protect their *Miranda* rights. Whatever the merit of that contention, it has no relevance here, where no *Miranda* warnings were administered at all." (internal citation omitted)).

42. *Id.*

43. *Id.* at 2402. The North Carolina Supreme Court ruled that consideration of the child's age is

two essential inquiries that, in summary, involve: (1) the totality-of-circumstances test and (2) the reasonable-person test.⁴⁴ Based on the outcome of these two tests, we can determine whether the suspect is entitled to the *Miranda* warnings as a constitutionally-protected right incident to an in-custody interrogation.

In balancing the competing considerations of the State while considering the practical implications for “in-the-moment judgments”⁴⁵ made by the police, the Court concludes that even under the objective test age is relevant to the custodial analysis.⁴⁶ Turning to its case precedent on the commonsense conclusions of childhood behaviors, the Court recognized that children are “less mature and responsible than adults” and lack the experience and perspective to avoid choices that may be detrimental or otherwise resulting from outside pressures.⁴⁷ Nonetheless, officers do not have to consider individualized characteristics “unknowable to them,” but can make determinations based on what is known at the time of the interview or on what is objectively apparent to any reasonable officer.⁴⁸ Unfortunately, the *J.D.B.* Court demonstrated its unwillingness to regulate the notable impact of police presence, much less questioning, on a child suspect. When coupled with the potentially misleading impressions of a school setting that minimizes the severity of the child’s suspected illegal conduct, the risk of false confession is impermissibly high. The in-custody presumption would

not relevant to determining whether his confession is lawful; however, they addressed the objective standard by specifically acknowledging the school environment. *In re J.D.B.*, 686 S.E.2d 135, 138, 140 (N.C. 2009). The court stated that the school environment does not constitute a “significant deprivation of freedom of action.” *Id.* at 138. The court explained that the inquiry as to whether a reasonable person would believe himself to be in custody and deprived of his freedom of action in some significant way associated with formal arrest is not equivalent to the broader “free to leave” test that has been applied under the Fourth Amendment. *Id.* Citing *Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004), the court expressed its adherence to the view that the objective standard is designed to give clear guidance to officers, and considering a suspect’s individual characteristics could be deemed a subjective inquiry. *Id.* at 140. The court further concluded that the nature of the school environment deprives students of some freedom of action, but it applies to all students and does not meet the requisite deprivation of freedom of action in a significant way. *Id.* at 138. The court accepted the trial court’s finding that J.D.B. was not restrained in any way and no one stood guard at the door. *Id.* at 139. It noted that the investigator only began questioning after J.D.B. stated he was willing to answer questions. *Id.* Even further, in order to be considered in custody, J.D.B. would have had to have been restrained well beyond the usual limitations of the school setting. *See id.* (“[W]e determine that there were not sufficient ‘indicia of formal arrest’ to justify a conclusion that J.D.B. ‘had been formally arrested or had had his freedom of movement restrained to the degree associated with a formal arrest.’” (emphasis added) (citation omitted)). The Court focused its ruling primarily on facts surrounding the level of participation of the school resource officer and the degree of restraint involved in the presence of a closed, but not locked, door. *Id.* These factors comprised the Court’s objective consideration of the totality of circumstances. *Id.*

44. *J.D.B.*, 131 S. Ct. at 2402.

45. *Id.*

46. *Id.* at 2402, 2406. The Court stated that “a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality without doing any damage to the objective nature of the custody analysis.” *Id.* at 2403.

47. *Id.* at 2403 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115–16 (1982); *Bellotti v. Baird*, 443 U.S. 622, 635 (1979); *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

48. *Id.* at 2404.

provide the scope of required constitutional protection for child suspects in this unique setting.

III. United States Supreme Court Jurisprudence has Long Recognized a Heightened Risk of Coercion and False Confessions of Juveniles During Custodial Interrogations

The mere presence, pressure, and power of the police exacerbate the long-standing problems of false juvenile confessions obtained during school interrogations.⁴⁹ In *J.D.B.*, the Court applied its recent case precedent on the extent of Fifth Amendment protection required during school interrogations.⁵⁰ Prior case law discusses the immaturity of juveniles and their propensity to make poor judgments.⁵¹ The Court has addressed the juvenile's perception of his constitutional right to leave when questioned by the police in an earlier opinion, *Yarborough v. Alvarado*,⁵² where it stated that a determination of "custody" is based on how a reasonable person in a similar situation as the suspect would perceive the circumstances.⁵³ While there were facts that supported the conclusion that the juveniles were in custody, the Court pointed to other facts that supported the contrary

49. See Henry-Mays, *supra* note 3, at 358.

50. See *J.D.B.*, 131 S. Ct. at 2404 (discussing *Yarborough v. Alvarado*, 541 U.S. 652 (2004)).

51. In *Thompson v. Oklahoma*, 487 U.S. 815 (1988), petitioner was convicted of first-degree murder and sentenced to death. *Id.* at 818. States distinguish between the rights and duties of adults compared to those of juveniles when affording the right to vote, right to hold office, serve on a jury and other rights and duties. *Id.* at 823–24. In *Thompson*, the Court held that the normal fifteen-year-old is not ready to assume the full responsibilities of an adult. *Id.* at 825. Juveniles are known to be more vulnerable, more impulsive, and less self-disciplined than adults. *Id.* at 834. They have less capacity to think in long-range terms like adults. *Id.* The Court suggested that the crimes of juveniles are not exclusively the offender's fault, but offenses by the juvenile represent failure of family, school, and the social system. *Id.* Juveniles are not trusted with the same privileges and responsibilities as an adults; therefore, their irresponsibility is not as morally reprehensible as that of an adult. *Id.* at 835. More recently, in *Roper*, the Court recognized that "three general differences between juveniles under [eighteen] and adults demonstrate that juvenile offenders cannot be classified among the worst offenders." *Roper*, 543 U.S. at 569. First, juveniles more often have an underdeveloped sense of responsibility when compared to adults, which can result in ill-considered actions and decisions. *Id.* (citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993)). Juveniles have been noted as being "overrepresented statistically in virtually every category of reckless behavior." *Id.* (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 339 (1992)) (internal quotation marks omitted). The second difference is that juveniles are more vulnerable and susceptible to influences than adults. *Id.* (citing *Eddings*, 455 U.S. at 115). Juveniles also tend to have less control over their own environment. *Id.* The third noted difference is that the character of juveniles is not as well formed as that of adults. *Id.* at 570.

52. 541 U.S. 652 (2004). Paul Soto and Michael Alvarado attempted to steal a truck from a mall parking lot. *Id.* at 655. Alvarado was five months shy of his eighteenth birthday. *Id.* at 656. Detective Comstock, the leading detective on the case, contacted Alvarado's mother to inform her that the police wished to speak with Alvarado. *Id.* Alvarado's parents took him to the police station to be questioned. *Id.* The parents asked to be present during the interview, but were kept out, so they waited in the lobby. *Id.* Alvarado was not given *Miranda* warnings during his two-hour interview in the small interview room with Detective Comstock. *Id.* A few months later, Alvarado was charged with first-degree murder and attempted robbery. *Id.* at 658. He was sentenced to fifteen years to life. *Id.* at 659.

53. *Id.* at 662.

argument.⁵⁴ Factors such as Alvarado's prior history with law enforcement was not proper for determining custody⁵⁵ and considering the relationship between a suspect's past experiences and the likelihood that a reasonable person⁵⁶ would feel free to leave would be speculative.⁵⁷ Additionally, Justice O'Connor stated that it would be difficult to recognize that a suspect is a juvenile if he is close to the majority age.⁵⁸

Even before the *Miranda* opinion, however, the Court acknowledged the immaturity of a child when confronting police authorities. In *Haley v. Ohio*,⁵⁹ the Court held that fifteen is a tender age for a child of any race, therefore, he cannot be held to standards of high maturity like adults.⁶⁰ While an adult can react to some situations in an unimpressed manner, a child can become overwhelmed in similar situations.⁶¹ The Court determined that a child needs counsel and support to refrain from becoming a victim of fear and panic.⁶² Then, in *Gallegos v. Colorado*,⁶³ the Court held that individual cases should closely scrutinize factors like the length of the questioning, the use of fear to break a suspect, and the age of the accused youth.⁶⁴ The Court noted that despite how sophisticated a juvenile may be, a fourteen-year-old boy "is unlikely to have any conception of what will confront him when he is made accessible only to the police."⁶⁵ A child is "unable to know how to protect his own interests or how to get the benefits of his constitutional rights."⁶⁶ Therefore, a child has no way of knowing the consequences of a confession without the aid of mature judgment as to what steps to take.⁶⁷ Adult advice would place him on less unequal ground with the police.⁶⁸ The Court also held that to allow the conviction to stand would be equal to treating the child as if he had no constitutional rights.⁶⁹

54. *Id.*

55. *Id.* at 668.

56. The dissenting opinion noted that a reasonable person taken to the police station by his parents, questioned in a small interview room alone for two hours, and confronted with claims that there is strong evidence to show his participation in a serious crime, would not feel free to get up and leave at their own will at any time. *Id.* at 670–71 (Breyer, J., dissenting). The parents' involvement also indicated that Alvarado's statement was involuntary. *Id.* at 671.

57. *Id.*

58. *Id.* at 669 (O'Connor, J., concurring).

59. 332 U.S. 596 (1948).

60. *Id.* at 599.

61. *Id.* The age of the suspect holds weight when the courts evaluate the validity of waived *Miranda* rights. *See id.* As such, studies have concluded that juveniles are incapable of comprehending the legal implications of ignoring *Miranda* warnings and waiving those rights. Meyer, *supra* note 1, at 1035; *see also*, Henry-Mays, *supra* note 3, at 343–44.

62. *Haley*, 332 U.S. at 600.

63. 370 U.S. 49 (1962).

64. *Id.* at 52.

65. *Id.* at 54.

66. *Id.* Consequently, a younger suspect will generally be afforded more leniency by the courts when discerning whether the juvenile understood his rights. Meyer, *supra* note 1, at 1071.

67. *Gallegos*, 370 U.S. at 54.

68. *Id.*

69. *Id.* at 55.

These cases reflect the Court's long standing consideration for the potential violation of basic constitutional rights of child suspects when they are subjected to police questioning in the absence of a trusted adult. However, the *J.D.B.* Court failed to extend the same analysis to the heightened danger present during police questioning in the school setting.

Employing the typical custodial-interrogation determination leading to the shield of *Miranda* protections does not provide the level of procedural safeguards needed by a juvenile in the school setting. As a result, juveniles subjected to police questioning in the school setting do not benefit from the usual custodial-interrogation/*Miranda*-warning framework, long-established as the governing standard for sufficient constitutional protection of their adult counterparts.

The police-conducted-school-interrogation setting presents a totality of circumstances that is inherently coercive and custodial in nature.⁷⁰ The juvenile is at an even greater risk of making false statements in the presence of school administrative authority and state police authority.⁷¹ Accordingly, the totality of the circumstances would lead any reasonable school-age child to believe that the questioning is taking place under the restriction of freedom and movement that goes beyond the ordinary school policy.⁷² If the risk for false confessions is heightened, then a presumptive in-custody approach that embodies key factors articulated in the "totality of circumstances" test utilized by post-*Miranda* case law⁷³ more expansively addresses the interconnected issue of voluntary or involuntary confessions incident to the

70. See Remington, *supra* note 1, at 375–82 (discussing the *Miranda* in-custody standard as it is applied to juveniles, especially in the school setting); Marjorie A. Shields, Annotation, *What Constitutes "Custodial Interrogation" Within Rule of Miranda v. Arizona Requiring That Suspect be Informed of Federal Constitutional Rights Before Custodial Interrogation—At School*, 59 A.L.R.6th 393, at § 9 (2010) (listing cases finding that the questioning of a student by a law enforcement officer constituted a custodial interrogation).

71. Forbes, *supra* note 1, at 70.

72. See *In re J.D.B.*, 686 S.E.2d 135, 138 (N.C. 2009) (holding that restriction needs to go beyond the usual limitations).

73. In *Miranda*, the Court held that a suspect in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation; and that, if he is indigent, a lawyer will be appointed to represent him. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). These warnings are in place to protect the suspect's constitutional rights and avoid involuntary confessions. *Id.*; see also *B.M.B. v. State*, 927 So. 2d 219, 222 (Fla. Dist. Ct. App. 2006), listing five factors that the Supreme Court of Florida has provided for determining whether under the totality of circumstances a suspect's Fifth Amendment rights against self-incrimination were violated when he was being questioned by the police). The Florida court summarized the five factors to be considered as follows:

(1) "the manner in which the *Miranda* rights were administered, including any cajoling or trickery"; (2) "the suspect's age, experience, background and intelligence"; (3) "the fact that the suspect's parents were not contacted and the juvenile was not given an opportunity to consult with his or her parents before questioning"; (4) "the fact that the questioning took place in the station house"; and (5) "the fact that the interrogators did not secure a written waiver of the *Miranda* rights at the outset."

Id. (quoting *Ramirez v. State*, 739 So. 2d 568, 575–76 (Fla. 1999)).

custodial setting.

Specifically, the suspect's age, experience, background and intelligence,⁷⁴ and the fact that the suspect's parents were not contacted and the juvenile was not given an opportunity to consult with his or her parents before questioning⁷⁵ are two key factors considered by the post-*Miranda* case law that closely resembles the test articulated by the *J.D.B.* Court for the in-custody determination.⁷⁶ This Article will show how the presumptive in-custody approach properly considers both the totality-of-circumstances test made for determining "custody" and the required *Miranda* warnings.

IV. The Totality of Circumstances in Police-Conducted School Interrogations Leads the Reasonable Child to Believe He Must Respond and Make Potentially False Statements

The U.S. Supreme Court in *J.D.B.* based its decision about the relevancy of age in a custody analysis on an objective inquiry into the totality of circumstances.⁷⁷ When examining all of the circumstances surrounding the interrogation, the police must necessarily consider how, under the identified circumstances, a reasonable person would perceive restrictions on his freedom.⁷⁸ This means that the totality-of-circumstances test is a global consideration of several factors that potentially amount to a custodial determination. If it is determined that the child is in custody, then that child's constitutional Fifth Amendment rights must be protected through the administration of *Miranda* rights.⁷⁹

However, a police-conducted school interrogation does not ordinarily provide for administering *Miranda* rights unless, as a result of the undeclared "custodial interrogation," the child suspect is arrested.⁸⁰ In the schoolhouse setting, the general totality of circumstances includes easily ascertainable information relevant to consideration of the child suspect's age,

74. *Miranda*, 384 U.S. at 469; see also Remington, *supra* note 1, at 376.

75. Remington, *supra* note 1, at 377–78; see *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2399 (2011) (noting that "J.D.B. was given neither *Miranda* warnings nor the opportunity to speak to his grandmother," who was his legal guardian). Other factors include the juvenile's understanding of the *Miranda* warnings, the seriousness of the alleged offense, the possibility of criminal prosecution, and the perceived coerciveness of the environment. See Holland, *supra* note 10, at 54–55.

76. See *supra* Part II.

77. *J.D.B.*, 131 S. Ct. at 2402. Specifically, the Court noted that two inquires are relevant to the in-custody determination: "[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave." *Id.* (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)).

78. *Id.*

79. See *id.* at 2408 ("To hold, as the State requests, that a child's age is never relevant to whether a suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.").

80. See Remington, *supra* note 1, at 389–93 (arguing that a "reasonable child . . . would feel as if he or she were in 'custody'" when questioned by police in a school setting and should therefore be entitled to protections similar to those provided by *Miranda*).

experience, background, and intelligence.⁸¹ This information is available to the police prior to the interrogation and the administration of *Miranda* rights. Additionally, the child suspect's parents are usually not contacted to join the police at the schoolhouse prior to questioning or arrest, and the child may only be given the opportunity to contact his or her parent *after* incriminating statements have been made or the police have otherwise obtained sufficient information during the interrogation process to sustain an arrest.⁸²

The schoolhouse interrogation setting is, therefore, contrary to establishing a knowing and voluntary confession that is incident to the in-custody determination and invocation of *Miranda* rights. That is, once the child suspect is questioned under the unique circumstances that operate together in the schoolhouse setting, timing is key in the reading of *Miranda* rights *before* incriminating statements are made. Child suspects might mistakenly believe that if they comply with the school rules and cooperate during the interrogation, then they will be able to return to class without further incident. On the contrary, child suspects may be read their *Miranda* rights and be asked to knowingly and voluntarily sign a written waiver form.⁸³

Ultimately, police-conducted school interrogations invite multiple interconnected concerns that link to whether proper constitutional protections against coerced confessions are made. The importance of the preliminary determinations, involving whether the child suspect, under the totality of circumstances believes that his freedom of movement is restricted, is heightened. Once that first custodial determination is made, the police secondarily provide the *Miranda* warnings as a procedural safeguard that informs the suspect that incriminating statements, if made, will be used against him. However, children cannot be effectively protected in the same manner when they are questioned in an environment where the adult authority is constantly and consistently dominant, and their usual propensity is to respond when questioned by an authority figure without regard to restrictions on movement.⁸⁴ Therefore, the States must adopt a presumptive in-custody approach to all police-conducted school interrogations based on the totality of the circumstances. This approach can be employed under the States' juvenile *Miranda* statutes.

Furthermore, there are several notable aspects of a schoolhouse interrogation that should compel a legal in-custody determination. Examination of the facts in *J.D.B.* exemplifies this point. Specifically, the police utilized persuasion tactics prior to J.D.B.'s incriminating statements while interrogating the young suspect for close to one hour behind closed

81. *Id.*

82. *Id.* at 393.

83. See Holland, *supra* note 10, at 112. The signing of a waiver form provides no indication that the juvenile understood the implications involved. *Id.*

84. Turner, *supra* note 36, at 708–09.

doors.⁸⁵ All of the adults in the room were school or police officials.⁸⁶ J.D.B. was not informed of his right to remain silent before the interrogation or to have his grandmother present.⁸⁷ When the police asked questions about the neighborhood burglaries, J.D.B. was “pressed” or “urged” by the school’s assistant principal to “do the right thing” and was told “the truth always comes out in the end.”⁸⁸ J.D.B. responded by questioning whether return of the stolen goods would result in him “still be[ing] in trouble.”⁸⁹ The police officer then resorted to threats of juvenile detention.⁹⁰ J.D.B. confessed to the crimes only after he understood the threat of juvenile incarceration.⁹¹ Once he confessed, the police officer advised him that he did not have to answer more questions and that he could leave.⁹² J.D.B. continued to talk and provided more details of the crime until the interrogation ended and police officers and school officials allowed him to leave the room and the school.⁹³

If the totality-of-circumstances test is used to make custodial determinations in the schoolhouse setting, and if confessions made during police questioning are challenged based on this test, then perhaps an in-custody presumption will expansively protect the rights of the juvenile against self-incrimination. The case precedent addressing the issue of juvenile confessions supports the link between the totality of a custodial interrogation and the subsequent statements made incident to the interrogation.⁹⁴ If the courts make determinations about, first, whether the suspect is in custody when addressing false, incriminating confessions, then concluding that the suspect is in custody presumptively will immediately invoke the suspect’s *Miranda* rights and cause the authorities to make other considerations (e.g., presence of a parent or guardian) proscribed in the State’s juvenile *Miranda* statutes.

For example, in *Transcoso*,⁹⁵ a U.S. district court recently examined challenges to a voluntary confession where a child was questioned for fifty-five hours regarding a murder investigation.⁹⁶ The sixteen-year-old

85. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2399 (2011).

86. *Id. Compare In re T.A.G.*, 663 S.E.2d 392, 394–95 (Ga. Ct. App. 2010) (holding that any police involvement, even mere presence, violated a juvenile’s Fourth Amendment rights and should result in the exclusion of evidence), *with State v. Schloegel*, 769 N.W.2d 130, 134, 136–37 (Wis. Ct. App. 2009) (holding that a *Miranda* evaluation is irrelevant until the juvenile is in custody).

87. *See J.D.B.*, 131 S.Ct. at 2399.

88. *Id.*

89. *Id.*

90. *Id.* at 2400.

91. *Id.*

92. *Id.*

93. *Id.*

94. *See State v. Oglesby*, 648 S.E.2d 819, 822 (N.C. 2007); *State v. Burrell*, 697 N.W.2d 579, 592–97 (Minn. 2005).

95. United States *ex rel. Carter v. Transcoso*, No. 10 C 1270, 2011 WL 1636994 (N.D. Ill. Apr. 28, 2011).

96. *Id.* at *3. On appeal to obtain a certificate of appealability, the U.S. district court considered

defendant was given *Miranda* warnings; however, the court's decision referred back to the circumstances incident to when she was interrogated.⁹⁷ Consideration of these circumstances directly addressed the custodial environment—although the defendant had waived her *Miranda* rights, rendering her confession voluntary, the court found that while in police custody she was not told that she was free to leave or that she did not have to answer police questions.⁹⁸ These are the considerations made when deciding preliminarily whether the juvenile is in custody and therefore entitled to Fifth Amendment protection.⁹⁹ The court ruled that the totality of circumstances governs any determination of whether a statement was voluntary,¹⁰⁰ and the determination “includes evaluation of the juvenile's age, experience, education, background, and intelligence, and [considers] 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.”¹⁰¹

Despite the fact that the totality of circumstances supported the state appellate court determination that the juvenile's confession in this case was voluntary,¹⁰² the U.S. district court did not believe that the state appellate court properly considered the magnitude of the conditions under which her confession was given.¹⁰³ Because the state court did not specifically address the circumstances involving fifty-five hours in the police station and the stress generated by those circumstances, further review of the voluntariness issue was warranted.¹⁰⁴ The court's analysis in *Transcoso* highlights the

the voluntariness of a confession given by a sixteen-year-old girl who was originally questioned by the police as a witness to her nineteen-year-old roommate's murder. *Id.* at *9. The Court aptly considered the voluntariness of Carter's confession in the context of factors which we commonly refer to as the totality of circumstances (evaluation of the juvenile's age, experience, education, background, and intelligence), but goes further to consider whether she had the capacity to understand the warnings given her, the nature of her Fifth Amendment rights, and the consequences of waiving those rights. *Id.*

97. *Id.* at *9–*10.

98. *Id.* at *2.

99. *See id.* at *8 (“A person is seized ‘within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.’” (quoting *United States v. Mendenhall*, 446 U.S. 544, 545 (1980))).

100. *Id.* at *9.

101. *Id.* (citing *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)). The district court determined that the state appellate court appropriately applied these standards. *Id.* The district court's only question was whether the manner in which the state court applied the standards was unreasonable. *Id.*

102. Carter confessed to murdering Thompson without prompting or questioning from the police. *Id.* at *10. Police gave her opportunity to speak with her father prior to her confession. *Id.* at *5. She was read her *Miranda* rights at the time of the polygraph examination, and then again before any further statements were taken. *Id.* at *9. When her father suggested that he hire an attorney for her, she refused. *Id.* at *10.

103. *Id.* at *9–*10.

104. *Id.* at *13. The court referenced the unusual and unfortunate circumstances of Carter's interrogation, which might not have been coercive. *Id.* Even still, they were, “undoubtedly far from ideal, and certainly unfortunate.” *Id.* at *10. Specifically, Carter was unable to go home because she was without an available legal guardian and, at the time, she feared what might happen to her at the hands of the murderer. *Id.* “Once there, the fact that she spent the night in uncomfortable and potentially embarrassing conditions, and that she was never told she could leave, certainly weigh against a finding that her ultimate confession was voluntary.” *Id.* The court stated,

importance of the totality of circumstances surrounding a juvenile's questioning even when the police provide *Miranda* warnings. It shows that even when *Miranda* warnings are given, juveniles are not always protected if they have previously been subjected to a potentially coercive custodial environment. The *Transcoso* court's analysis represents the depth of consideration that must be given so that child suspects receive constitutional protection. Amending the states' juvenile *Miranda* statutes to include a presumptive in-custody approach would facilitate the constitutional protection for child suspects who are subjected to police questioning in the school environment.

In the school setting, a child suspect might be originally questioned as a witness just like the Defendant was in *Transcoso*. Once statements are made or information is obtained, the tenor of police questioning changes. *Miranda* rights might be given. The problem is that the inherently coercive nature of a school interrogation creates a totality of circumstances that heightens the risk of coercion.¹⁰⁵ When challenged on appeal, as in the *Transcoso* case, reasonable jurists can still potentially regard the circumstances as coercive when a trusted adult was present, like the father in *Transcoso*, who had access to the child intermittently, and the child suspect remained in the physical presence of a police station for over two nights. School interrogations often occur without the legal guardian because the police have purposively chosen to question the child at school.¹⁰⁶ The freedom to leave is already regulated by the school rules.¹⁰⁷ Arguably, these rules compromise the child suspect's ability to protect himself under the Fifth Amendment when the school setting does not ordinarily raise concerns over possible self-incrimination incident to a criminal investigation. A presumptive in-custody approach would protect the child suspect from the inherently-coercive totality of circumstances in the school setting.

If Fifth Amendment protection guards against the heightened risk of coerced false statements, then children subjected to police questioning about a crime are at even greater risk of sustaining a Fifth Amendment constitutional violation of their rights.¹⁰⁸ *J.D.B.* leaves the door open for possible admissions of guilt by a minor who is subjected to school

[O]ther indicia of reliability make a finding that Carter's confession was voluntary reasonable. Nonetheless, the Court is disturbed by the fact that a sixteen-year-old girl with no available legal guardian was subject to repeated questioning, sometimes without the benefit of *Miranda* warnings, while she was kept at a police station for 55 consecutive hours without access to basic comforts and amenities and without being told she was free to leave. The Court recognizes that reasonable jurists might disagree regarding the effects of these conditions.

Id. at *13.

105. *See supra* notes 20, 71 and accompanying text.

106. *See Remington, supra* note 1, at 377–79.

107. *Id.* at 379 (“This is because, once inside the confines of the classroom, the student's freedom to leave is already restrained because he or she is under the control of the school.”).

108. *See State v. Burrell*, 697 N.W.2d 579, 591–92 (Minn. 2005).

interrogation in the absence of *Miranda* warnings.¹⁰⁹ The in-custody analysis should be made with emphasis on not just the age of the child, but also on the heightened risk of self-incrimination when interrogations are conducted in the school setting.¹¹⁰ The *Miranda* protections against coerced, self-incriminating statements are required when the person perceives that he is in custody and is no longer free to relieve himself from police questioning.¹¹¹ For child suspects, this means that the law will protect them from self-incrimination via proper *Miranda* warnings *only if* the police questioner considers the child's age as it relates to his perceived restriction on his freedom.¹¹²

The problem is that the *J.D.B.* Court did not perceive that a child's "freedom" of movement is inherently restricted in the school setting.¹¹³ Even the thirteen-year-old seventh grader in *J.D.B.* had to be "removed" from his classroom by a uniformed officer and "escorted" to the school's conference room.¹¹⁴ The expectations of the child, the teacher, the school officials, and the police were that J.D.B. would not be "free" to leave the interview without permission. If school interrogations are usually conducted in this environment of repressed physical movement, then the presumptive in-custody analysis would operate to provide the required constitutional protection.

Because the in-custody analysis is an objective inquiry requiring police officers to examine the circumstances,¹¹⁵ schoolhouse interrogations offer one of the more "objective" settings for making that analysis.¹¹⁶ The circumstances are essentially predetermined by the school's rules and policies for management of student conduct.¹¹⁷ The "custodial" inquiry of *Miranda* is satisfied because a child suspect is more likely to make a self-incriminating statement in the school setting rather than merely walk away from an inherently coercive interrogation.¹¹⁸

V. The States' Juvenile *Miranda* Statutes and Case Precedent Provide the Appropriate Forum for Implementation of the Presumptive In-Custody Approach

The States' juvenile *Miranda* statutes already provide the framework

109. See *supra* Part II.

110. See *supra* notes 20, 71 and accompanying text.

111. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011).

112. See *supra* notes 42–48 and accompanying text.

113. *J.D.B.*, 131 S. Ct. at 2402 (omitting school setting from the freedom-of-movement analysis).

114. *Id.* at 2399.

115. *Id.* at 2402.

116. The Court observed that one of the "benefit[s] of the objective custody analysis is that it is 'designed to give clear guidance to the police.'" *Id.* (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004)).

117. See *Remington*, *supra* note 1, at 379.

118. See *J.D.B.*, 131 S. Ct. at 2409 (acknowledging the heightened risk of school interrogations).

that affords juveniles the appropriate constitutional rights.¹¹⁹ These statutes are usually applied to cases that challenge whether the juvenile has made a knowing and willing confession.¹²⁰ For instance, under the North Carolina statute, a juvenile is entitled to request the presence of a “guardian” during police questioning.¹²¹ In *State v. Oglesby*, the defendant filed a motion to suppress statements made when the police did not honor his request for his aunt to be present.¹²² The trial court determined whether the juvenile knowingly, willingly, and understandingly waived his rights.¹²³ Because the court was unwilling to extend the interpretation of the term “guardian” to encompass anything other than a relationship established by legal process, the motion to suppress was denied.¹²⁴

While the majority opinion in *Oglesby* straightforwardly applied the term, “guardian,” within the plain meaning of the word,¹²⁵ the dissent provided a relevant and interesting recitation of the North Carolina precedent on the issue of juvenile confessions.¹²⁶ Specifically, Justice Timmons-Goodson referenced the greater obligation of the state to protect the rights of

119. *See, e.g.*, COLO. REV. STAT. § 19-2-511 (2005); CONN. GEN. STAT. § 46b-137(c) (Supp. 2012); GA. CODE ANN. § 15-11-7 (2012); N.M. STAT. ANN. § 32A-2-14 (2010); N.C. GEN. STAT. § 7B-2101 (2011); WASH. REV. CODE § 13.40.140 (2004).

120. *See State v. Oglesby*, 648 S.E.2d 819 (N.C. 2007).

121. N.C. GEN. STAT. § 7B-2101 (2011). In addition to the right to request the presence of a guardian during police questioning, the North Carolina statute provides juveniles with several other protections. *Id.* Specifically, the North Carolina statute provides:

- (a) Any juvenile in custody must be advised prior to questioning:
 - (1) That the juvenile has a right to remain silent;
 - (2) That any statement the juvenile does make can be and may be used against the juvenile;
 - (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
 - (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.
- (b) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.
- (c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.
- (d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

Id.

122. *Oglesby*, 648 S.E.2d at 820–21.

123. *Id.* at 822.

124. *Id.*

125. *Id.*

126. *Id.* at 823–24 (Timmons-Goodson, J., dissenting).

a respondent in a juvenile proceeding than in a criminal prosecution.¹²⁷ The dissent further recognized how juvenile proceedings are unlike an ordinary criminal proceeding such that the burden upon the State to see that a juvenile's rights are protected is increased rather than decreased.¹²⁸

Oglesby is relevant because it shows how the law considers protections against false confessions as inextricably linked to protections against self-incrimination, especially in cases involving juveniles.¹²⁹ *Oglesby* illustrates how the juvenile *Miranda* statutes provide the legally relevant context for ensuring that school officials and the police who question a child in the school setting adhere to a process that protects the child from self-incrimination.¹³⁰

The adoption of a presumptive in-custody status as a matter of statutory law would facilitate the necessary protection. If the burden rests on the State to show that a juvenile has provided a knowing and intelligent waiver,¹³¹ then a presumptive approach to in-custody police questioning assists in the analysis. Because the presumption places the juvenile in custody under the juvenile *Miranda* statute, the police must then comply with the requirement that the juvenile be advised of his rights, inclusive of the right to a parent or guardian's presence during questioning.¹³²

Even though an independent and separate determination must be made as to the knowing and intelligent waiver¹³³ that may come thereafter, at least the presumption potentially averts an underlying challenge made by the juvenile defendant as to his initial right to remain silent. When a defendant asserts a false confession, the courts will examine the language in the relevant juvenile *Miranda* statute.¹³⁴ If the child suspect is presumptively in custody during the schoolhouse interrogation, then the court will determine whether the *Miranda* warnings were given.¹³⁵ This Article asserts that the totality-of-circumstances test supports the adoption of the presumptive in-custody approach, and the states' case precedent supports guarding juveniles, especially, from the dangers of constitutional infringement on their right to remain silent.¹³⁶

127. *Id.* at 823 (citing *In re T.E.F.*, 614 S.E.2d 296, 299 (N.C. 2005)).

128. *Id.* at 823.

129. *See id.* at 821–23.

130. *Id.* at 822.

131. *See State v. Miller*, 477 S.E.2d 915, 920 (N.C. 1996).

132. North Carolina, for instance, provides such a right. *See supra* notes 121–128 and accompanying text.

133. *Oglesby*, 648 S.E.2d at 823 (Timmons-Goodson, J., dissenting) (considering age as an important factor in assessing the possible violation of constitutional or statutory rights).

134. *Cf. id.* at 822 (looking to section 7B-2101 of the North Carolina Juvenile Code to determine the juvenile defendant's rights regarding custodial interrogation).

135. *See supra* notes 41–43 and accompanying text.

136. *See, e.g., In re T.A.G.*, 663 S.E.2d 392, 394–95 (Ga. Ct. App. 2010) (holding that *any* police involvement, even mere presence, violated a juvenile's Fourth Amendment rights and should result in the exclusion of evidence); *Oglesby*, 648 S.E.2d at 822 (acknowledging a juvenile's right, under North Carolina law, to have a guardian present during police interrogation); *State v. Burrell*, 697 N.W.2d 579,

In Minnesota, the state supreme court in *State v. Burrell* noted the number of times that the juvenile requested his parent, as well as the timing of his request at the onset of police interrogation.¹³⁷ The court believed that a totality-of-circumstances analysis should particularly address the juvenile's propensity to be misled as to his constitutional rights when he is questioned in a non-adversarial setting.¹³⁸ If the juvenile court process is generally viewed as protective,¹³⁹ then a child who is subject to police questioning in the school setting is more likely to improperly perceive the gravity of the circumstances that he faces. Therefore, the concern for potentially coerced statements is even more heightened, especially when the police employ commonly used tactics such as deceit and trickery.¹⁴⁰ The police must be given the structure of statutory authority to guide the school interrogation process. A presumptive in-custody approach would provide that structure.

The *Burrell* court ultimately ruled that the juvenile's waiver was not knowing and intelligent because he repeatedly requested the presence of his parent. In addition, the court noted the police interrogator's "pre-*Miranda* mischaracterization" of the case.¹⁴¹ Most importantly, this case points out, as part of the totality-of-circumstances-test, how the tactics and trickery of the police interrogation process pre-*Miranda* warnings can lead to false statements by a juvenile.¹⁴² While the presence of a parent was not applied in *Burrell* as a per se rule, the court deemed the circumstances of the juvenile's repeated request as directly relevant to his statements made to the police.¹⁴³

The presumptive in-custody approach in the states' juvenile *Miranda* statutes guards against the heightened risk of false statements made by juveniles where the totality of the school setting creates a false sense of

592–97 (Minn. 2005) (reviewing prior case law on the waiver of *Miranda* rights by juveniles, and noting that "courts must closely examine under the totality of the circumstances whether the juvenile is able to make a valid *Miranda* waiver without a parent's presence").

137. *Burrell*, 697 N.W.2d at 595–97, 605 (holding "that the district court committed error by ruling that Burrell's *Miranda* waiver was knowing, intelligent, and voluntary" in light of his "repeated requests" for his mother's counsel and granting him a new trial on first-degree murder for the benefit of a gang and attempted first-degree murder for the benefit of a gang).

138. *Id.* at 592. The court indicated, "We have stated that the best course is to specifically warn the minor that his statement can be used in adult court, particularly when the juvenile might be misled by the 'protective, non adversary' environment that juvenile court fosters." *Id.* (quoting *State v. Loyd*, 212 N.W.2d 671, 676–77 (Minn. 1973)). The court also considered other factors, such as the juvenile's "maturity, intelligence, education, physical deprivations, prior criminal experience, length and legality of detention, lack of or adequacy of warnings, and the nature of the interrogation." *Id.* at 595.

139. *Id.* at 592.

140. *Id.* at 596 (citing *State v. Thaggard*, 527 N.W.2d 804, 810 (Minn. 1995) (regarding consideration for the nature of the interrogation and whether the police used deception or trickery in an attempt to secure a waiver and eventual confession)).

141. *Id.* at 597.

142. *See id.* at 596 (citing *Miranda v. Arizona*, 384 U.S. 436, 476 (1966)) (noting the *Miranda* Court's criticism of "trickery, threats, and cajolment to persuade a suspect to waive his Fifth Amendment rights" and finding that pre-*Miranda* mischaracterization of evidence was a circumstance indicating that the defendant's waiver of his rights was not knowing, intelligent and voluntary).

143. *Id.* at 596–97.

constitutional protection. Courts have also employed the reasonable-child test in addressing the constitutional rights of juveniles.¹⁴⁴

A. The Reasonable School-Aged Child Experiences Sufficient Restriction of Freedom to Support A Presumptive In-Custody Approach

In a case involving statements made by four juveniles to a school administrator, the court in *Commonwealth v. Ira I.*¹⁴⁵ determined that *Miranda* warnings should not have been given because the juveniles were not subject to custodial interrogation.¹⁴⁶ This case is particularly relevant because the juvenile judge had made specific findings regarding the impact of the school interrogation setting based on application of the reasonable-person test.¹⁴⁷ He noted the role assumed by the assistant principal and the impact of his actions on possible infringement of the juveniles' constitutional rights.¹⁴⁸ Since the assistant principal conducted the investigation, the juvenile judge determined that he was representing himself to the children as a member of law enforcement.¹⁴⁹ And, if the children were not free to leave but instead were treated in a custodial fashion as opposed to in a school

144. See, e.g., *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402–03 (2011) (“In some circumstances, a child’s age ‘would have affected how a reasonable person’ in the suspect’s position ‘would perceive his or her freedom to leave.’ That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.” (quoting *Stansbury v. California*, 511 U.S. 318, 325 (1994))).

145. 791 N.E.2d 894 (Mass. 2003).

146. *Id.* at 902.

147. The court applied a reasonable person test and considered the following factors:

where the interrogation took place; whether the officers have conveyed to the person being questioned any belief or opinion that that person is a suspect, the tone and nature of the questioning; and whether, at the time the incriminating statement was made, the person was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave, as evidenced by whether the interview terminated with an arrest.

Id. (quoting *Commonwealth v. Brum*, 777 N.E.2d 1238 (Mass. 2002) (internal quotation marks omitted). The *J.D.B.* Court ruled that age is relevant when deciding what a reasonable school child would perceive. *J.D.B.*, 131 S. Ct. at 2402–06. Dissenting justices in the North Carolina Supreme Court pointed to the historical content under North Carolina’s civil common law for consideration of a child’s age on issues of contributory negligence. *In re J.D.B.*, 686 S.E.2d 135, 142 (N.C. 2009). The civil common law imposes responsibility based on negligence principles where the jury examines “the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do, under facts similar to those shown by the evidence.” *Carlson v. Construction Co.*, 761 N.W.2d 595, 599 (S.D. 2009). Under the criminal application, “the ‘reasonable person’ standard presupposes an innocent person.” *Florida v. Bostick*, 501 U.S. 429, 438 (1991). However, the evaluation of whether a person is in custody for *Miranda* purposes includes consideration of all of the circumstances surrounding the interrogation, including those that “would have affected how a reasonable person in [the suspect’s position] would perceive his or her freedom to leave.” *Stansbury v. California*, 511 U.S. 318, 322, 325 (1994).

148. *Ira I.*, 791 N.E.2d at 900. During the investigation of an alleged assault and battery, the assistant principal, Lapan, questioned students who might have been on a bus with the victim. *Id.* at 897. Lapan spoke with them individually in his office and questioned each one for approximately fifteen to twenty minutes. *Id.* He took written statements from five students. *Id.*

149. *Id.* at 900.

fashion, then they should be afforded certain due-process rights.¹⁵⁰

The Massachusetts Supreme Court's ruling suggests that if, in fact, the police had called the juveniles into the assistant principal's office to question them regarding the alleged incident, then the custodial setting would have indicated the need for constitutional protections.¹⁵¹ Any elicited statements given by the juveniles would be under Fifth Amendment scrutiny. In addition, the court concluded that the juveniles were not in custody based on how a reasonable person in the juvenile's position would have understood his situation.¹⁵² Questioning in the principal's office did not constitute a formal arrest, or the indication that formal arrest was impending.¹⁵³ *Ira* supports the argument that if, instead, the police had questioned the juveniles in the principal's office, constitutional protections would have been required.

Students who make statements to a school official are not generally protected against false incrimination because they are not considered in custody.¹⁵⁴ Accordingly, since police interrogations have become commonplace in the schools, we must consider the impact that interrogation sessions might have on the reasonable juvenile's perception. Often, the reasonable-child test is applied when examining the issue of incriminating statements made by juveniles to non-police officials.¹⁵⁵ If the presumptive in-custody

150. *Id.* The juveniles asserted that they were in custody because they were summoned to the assistant principal's office regarding a potentially criminal matter, and they did not consider themselves free to leave. *Id.* at 903.

151. *See id.* at 900–903 (“School officials acting within the scope of their employment, rather than ‘as [instruments] of the police [or] as [agents] of the police,’ are not required to give *Miranda* warnings prior to questioning a student in conjunction with a school investigation.” (quoting *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1369 (1992))). The court also noted, “A trip to the principal's office for an interview is not a ‘formal arrest,’ nor does it suggest to the student that he or she faces such an arrest.” *Id.* at 902.

152. *Id.* at 902.

153. *Id.* The court viewed the investigative process conducted by the assistant principal as within the realm of expected school-official conduct when addressing student behavioral issues. *Id.*

154. *See generally* Price, *supra* note 10. A school official acting alone may question a student without complying with *Miranda*'s requirements, and the juvenile's responses will be admissible in criminal proceedings. Holland, *supra* note 4, at 40–41.

155. *See, e.g.,* *Commonwealth v. A Juvenile*, 521 N.E.2d 1368, 1369–70 (Mass. 1988). The juvenile moved to suppress his confessions and the victim's in-court identification of him regarding an alleged assault because he did not receive *Miranda* warnings. *Id.* at 1369. Additionally, he argued that he did not have an opportunity to consult with an interested adult on the question of waiver. *Id.* The court held that the district judge properly suppressed the juvenile's confession to the assistant director of a troubled-adolescent house where the accused was living. *Id.* at 1370. When the director interrogated the juvenile, he was acting as an instrument of the police; therefore, appropriate *Miranda* warnings were warranted. *Id.* at 1370. The decision in *A Juvenile* parallels the same court's later decision in *Ira I.* where a juvenile was entitled to *Miranda* warnings; however, the court in *Ira I.* found that the juvenile was not in custody when questioned by the school assistant principal. *Ira I.*, 791 N.E.2d at 902. Instead, the court in *A Juvenile* reasoned that a reasonable person would have believed himself to be in custody since the child was interrogated in a Department of Youth Services detention facility where he was subject to continuous supervision, and from which he was not free to leave. *A Juvenile*, 521 N.E.2d at 1370. On the issue of his confession, the Massachusetts common law, rather than statutory *Miranda* warnings, requires that a child who has attained the age of fourteen be given a meaningful consultation with a parent, interested adult, or attorney to ensure that any waiver is knowing and intelligent. *Id.* at 1371. The court found no evidence to support that the juvenile had a high degree of knowledge, experience or

approach is adopted in the states' juvenile *Miranda* statutes, then there will be fewer false confessions incident to police-conducted interrogations in the school setting. In effect, the States' can kill two proverbial birds with one stone.

B. Amending the States' Juvenile *Miranda* Statutes to Include an In-Custody Presumption during Police-Conducted School Interrogations Will Alleviate the Problem of Coerced Confessions

State appellate courts recognize the importance of establishing uncoerced confessions obtained during custodial interrogations because of the heightened risk of false confessions or inculpatory statements made by juveniles.¹⁵⁶ The Florida Court of Appeals applied their juvenile *Miranda* statute in a case that links the custodial questioning of a child with false confessions.¹⁵⁷ In *B.M.B. v. State*, the juvenile was not provided the opportunity to consult with a parent *before* being questioned.¹⁵⁸ The governing Florida statute required that the police attempt to notify the parent when a child is taken into custody.¹⁵⁹ The court used the police's failure to comply with the statutory requirement as a factor in ultimately determining that the confession was involuntary.¹⁶⁰ If the states incorporate a presumptive in-custody approach into their juvenile *Miranda* statutes, then factors such as parental involvement as well as other considerations for obtaining a knowing waiver can be addressed early in the investigative process.¹⁶¹ The constitutional protection of the child suspect is, therefore, more meaningfully ensured because procedures will be in place to prevent a coercive environment.¹⁶²

Furthermore, the North Carolina Supreme Court in *State v. Smith*¹⁶³ applied the principles of the Fifth and Sixth Amendment protections articulated by the United States Supreme Court regarding custodial interrogations.¹⁶⁴ This is extremely persuasive in the states' adoption of a presumptive in-custody approach because the amendment of their juvenile

sophistication. *Id.*

156. See Remington, *supra* note 1, at 375–76.

157. See *B.M.B. v. State*, 927 So. 2d 219 (Fla. Dist. Ct. App. 1998).

158. *Id.* at 223; Meyer, *supra* note 1, at 1061 (describing a Kansas statute prohibiting the use of incriminatory statements made by juveniles under the age of fourteen unless they have had a consultation with their parent or guardian about waiving their rights *before* the statement was made).

159. *B.M.B.*, 927 So. 2d at 223.

160. *Id.*; see also FLA. STAT. § 985.101(3) (2012) (“When a child is taken into custody as provided in this section, the person taking the child into custody shall attempt to notify the parent, guardian, or legal custodian of the child.”).

161. See Larson, *supra* note 21, at 640.

162. See, e.g., COLO. REV. STAT. § 19-2-511 (2005) (showing a similarity to Florida's statute by requiring a juvenile's parent be present in order for a child to make a statement).

163. 343 S.E.2d 518 (N.C. 1986).

164. *Id.* at 521 (recognizing that the U.S. Supreme Court cases were not controlling; however, the established principles were applicable under the state's juvenile *Miranda* statute).

Miranda statutes in accordance with the presumption embodies the constitutional protection principles used by the North Carolina State Supreme Court in deciding challenges to custodial interrogations.¹⁶⁵ In *Smith*, even though the juvenile was asked very few questions by the police, the court held that the conversation focused primarily around the juvenile's participation in the crime and created the "functional equivalent" of questioning, such that the police should have expected that the juvenile would feel compelled to respond.¹⁶⁶ Specifically, the court stated, "Interrogation refers to 'not only express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.'"¹⁶⁷

The analysis is particularly relevant when the police conduct school interrogations because the physical environment is not an overt custodial setting, like the police department. In fact, the police utilize the perception of a noncustodial setting to their advantage to elicit information in response to their interview tactics, such as those used in the *Smith* case.¹⁶⁸ The court's in-custody analysis was paramount to its determination of constitutional protection from involuntary confession¹⁶⁹ as specifically provided by the state statute.¹⁷⁰ Under the circumstances, the North Carolina Supreme Court held that a sixteen-year-old robbery suspect might have reasonably believed that his freedom of action was being deprived.¹⁷¹ Therefore, he was in custody.¹⁷²

Likewise, when a juvenile is questioned pursuant to an ongoing police investigation in the confines of a room populated entirely by police and other school administrators and in the absence of a parent or trusted adult, he is in custody.¹⁷³ The risk of coercion and fear is high.¹⁷⁴ Since juveniles are likely to make false statements to the police under those circumstances, a presumptive in-custody approach protects their constitutional rights. Existing state statutes already define parameters that consider the environment in which juveniles are questioned and the circumstances under

165. *See id.*

166. *Id.* at 522.

167. *Id.* at 521–22 (citing *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980)).

168. *See id.* at 521 (describing how the police escorted a sixteen-year-old robbery suspect to the police station and, while waiting for the parent to arrive, stated to the juvenile, "[Y]ou do what you want to; and certainly I don't want you to make any remarks until your mother gets here. . . . [J]ust listen to me . . . I want you to know these facts of the case. I want you to know the circumstances that surround what we're hoping to interview you about.").

169. *Id.* at 520.

170. N.C. GEN. STAT. § 7B-2101 (2011); *Smith*, 343 S.E.2d at 520.

171. *Smith*, 343 S.E.2d at 520.

172. *Id.* at 520–21.

173. Ryan Patterson, *In Re Andre M.: Analyzing the Totality of Circumstances When a Parent is Intentionally Excluded From a Juvenile Interrogation*, 46 ARIZ. L. REV. 601, 604–06 (2004).

174. *See id.* at 604 ("A parent's presence protects the juvenile from the coercive environment of interrogations.").

which incriminating statements are admissible against them.

VI. What are the States Doing?

A. Texas

The States generally codify constitutional protections against self-incrimination in statutory provisions addressing the custodial-interrogation determination and the voluntariness of waived statements made while in custody.¹⁷⁵ Texas statutes¹⁷⁶ and case law address the admissibility of false statements and custodial interrogation.¹⁷⁷ Texas case law employs a two-step analysis that includes consideration for the totality-of-circumstances and reasonable-child tests.¹⁷⁸ Both the statute and the case law set forth circumstances under which a child's statements are admissible; however, the statutory language more specifically refers to situations where written and oral statements can be used.¹⁷⁹

The Texas courts first examine the circumstances surrounding the interrogation in order to assess whether there was a formal arrest or restraint

175. *See, e.g.*, COLO. REV. STAT. § 19-2-511 (2005); CONN. GEN. STAT. § 46b-137(c) (Supp. 2012); GA. CODE ANN. § 15-11-7 (2012); N.M. STAT. ANN. § 32A-2-14 (2010); N.C. GEN. STAT. § 7B-2101 (2011); WASH. REV. CODE § 13.40.140 (2004).

176. *See* TEX. FAM. CODE ANN. § 54.03(e) (West Supp. 2012) (providing the requirements for adjudication hearings including the protections against self-incrimination); TEX. FAM. CODE ANN. § 51.095(a)(1)(A) (West Supp. 2012) (governing the admissibility of statements made by a child).

177. *See generally In re D.J.C.*, 312 S.W.3d 704, 711–22 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (discussing the various provisions of the Texas Family Code dealing with custodial interrogation of a juvenile); *Martinez v. State*, 131 S.W.3d 22, 31–32 (Tex. App.—San Antonio 2003, no pet.) (“If the juvenile is not given the statutorily required admonishments, then the juvenile’s statement is inadmissible. However, a statement which is not the product of a custodial interrogation is not required to be suppressed, even if the juvenile does not receive the statutory admonishments.” (citations omitted) (citing TEX. FAM. CODE ANN. § 51.095(a); *Melendez v. State*, 873 S.W.2d 723, 725 (Tex. App.—San Antonio 1994, no pet.)); *In re D.A.R.*, 73 S.W.3d 505, 512–13 (Tex. App.—El Paso 2002, no pet.) (declaring that because the juvenile was in custody at the time of the interrogation, any statement made was inadmissible under section 51.095(a)(5) of the Texas Family Code, which provides that a juvenile’s “statement is only admissible if the child is given warnings by a magistrate before the statement is made and the child knowingly, intelligently, and voluntarily waives each right stated in the warning”).

178. *See D.J.C.*, 312 S.W.3d at 712 (“A two-step analysis is employed in a juvenile delinquency proceeding to determine whether an individual is in custody.”). In *D.J.C.*, a sixteen-year-old juvenile who was adjudicated delinquent argued for the suppression of statements he made to an officer’s questioning conducted in a police station interview room without the presence of his grandmother. *Id.* at 708–10, 713–15. The court elaborated on its two-step analysis as follows:

First, the court examines all the circumstances surrounding the interrogation to determine whether there was a formal arrest or restraint of freedom of movement to the degree associated with a formal arrest. This initial determination focuses on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. Second, the court considers whether, in light of the given circumstances, a reasonable person would have felt he or she was at liberty to terminate the interrogation and leave.

Id. at 712 (citations omitted).

179. *See generally*, TEX. FAM. CODE ANN. § 51.095(a)–(d) (West Supp. 2012).

of freedom of movement.¹⁸⁰ The test imposes an objective standard, but case law sets forth specific situations that generally constitute custody.¹⁸¹ The school setting uniquely satisfies the previously contemplated circumstances that present a significant, physical deprivation of freedom and creation of a situation that would lead the reasonable child to believe his freedom is restricted.¹⁸² Because children are generally regarded under the law as susceptible to influence,¹⁸³ the law that purports to protect their constitutional rights against self-incrimination should take into account how children in the school setting are indoctrinated into compliance with those in authority over them.

The *D.J.C.* court concluded that a child who was prevented from access to his grandmother, read his rights, and later returned to a locked interview room for police questioning, was restrained from movement sufficient to satisfy the totality-of-circumstances test.¹⁸⁴

Police-conducted school interrogations, however, do not evolve from non-custodial to custodial¹⁸⁵ where the child suspect is potentially questioned in the absence of a parent or guardian, but then detained in a locked or closed door conference room, and given *Miranda* warnings by the officer once he gains sufficient information to support probable cause.¹⁸⁶ Instead, a child suspect like J.D.B can be immediately placed into a room where he is

180. *D.J.C.*, 312 S.W.3d at 712.

181. The *D.J.C.* court declared,

The following situations generally constitute custody: (1) when the suspect is physically deprived of his freedom of action in any significant way; (2) when a law enforcement officer tells the suspect that he cannot leave; (3) when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted; or (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave.

Id. at 713 (citing *Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996); *Jeffley v. State*, 38 S.W.3d 847, 855 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd)).

182. *See id.* at 712 (“Custodial interrogation is questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of his freedom in any significant way. . . . A child is in custody if, under the objective circumstances, a reasonable child of the same age would believe his freedom of movement was significantly restricted.” (citations omitted)). *See generally* Henry-Mays, *supra* note 3 at 358–60.

183. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2405 (2011).

184. *D.J.C.*, 312 S.W.3d at 714; *see also In re L.M.*, 993 S.W.2d 276, 290–291 (Tex. App.—Austin 1999, pet. denied). In *L.M.*, the appellant, an eleven-year-old, was arrested after she allegedly beat another child to death. *Id.* at 278, 280. The appellant was classified as a delinquent when a jury found her guilty of committing the offense of injury to a child. *Id.* at 281. Three days after the appellant was removed from her home, two police officers and a representative of the Austin Police Department met with the appellant in a room at the administrative offices of the children’s shelter. *Id.* at 280. The interview took about two hours and was recorded. *Id.* At the end of the interview the appellant signed a written statement, which was prepared by the officers, and implicated her in the victim’s death. *Id.*

185. *See D.J.C.*, 312 S.W.3d at 713 (“The mere fact that an interrogation begins as non-custodial, however, does not prevent it from later becoming custodial; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation” (quoting *Dowthitt*, 931 S.W.2d at 255)).

186. *See supra* notes 77–84 and accompanying text.

restrained from leaving until those in authority have dismissed him.¹⁸⁷ If the Texas courts apply the totality-of-circumstances test, acknowledging the impact of police interrogation on a child suspect, then the Texas statutes can be amended to consider children in the school setting as presumptively in custody.

B. Other States

Aside from Texas, other states, such as Colorado and Connecticut, have juvenile statutes with very broad terms of protection for their juveniles.¹⁸⁸ Connecticut's juvenile statute provides for a totality-of-circumstances approach that supports the argument for a presumptive in-custody approach in the school setting.¹⁸⁹ The statute gives judges authority to broadly consider how a valid waiver is given by a juvenile,¹⁹⁰ but when applied in the school setting, the police can argue their "good-faith belief" that the child was at least eighteen, if not older.¹⁹¹

Some state statutes require that *Miranda* warnings be given to juveniles based on a sixteen- to seventeen-year-old cutoff limit.¹⁹² Connecticut's statute provides that juveniles under the age of sixteen must have a parent or guardian present during an interrogation in order for a statement to be used against them.¹⁹³ However, it further requires that before any statement, admission, or confession of a child sixteen- or seventeen-years-old can be admissible, the child shall have the opportunity to contact a parent or guardian, and be afforded his *Miranda* rights.¹⁹⁴ Arguably, a child who is seventeen-and-a-half is just as vulnerable to constitutional infringements as a thirteen-year-old. Other statutes have incorporated a provision requiring a parent, guardian or attorney to be present.¹⁹⁵

Colorado's case law and juvenile statute provide a totality-of-circumstances approach that supports the argument for a presumptive in-

187. *J.D.B.*, 131 S. Ct. at 2404–06.

188. See COLO. REV. STAT. § 19-2-511 (2005); CONN. GEN. STAT. § 46b-137(c) (Supp. 2012).

189. See CONN. GEN. STAT. § 46b-137(c) (Supp. 2012).

190. *Id.*

191. *Id.*

192. See, e.g., *id.* § 46b-137(a) (providing that statements obtained specifically from children "under the age of sixteen" are inadmissible unless the child's parents are present and certain warnings are given); *id.* § 46b-137(b)–(c) (providing similar protections for children "sixteen or seventeen years of age").

193. *Id.* § 46b-137(a)

194. *Id.* § 46b-137(b).

195. See, e.g., COLO. REV. STAT. § 19-2-511(1) (2005) ("No statements or admissions of a juvenile made as a result of the custodial interrogation . . . shall be admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation . . ."); N.C. GEN. STAT. § 7B-2101(a)(3), (b) (2011) ("Any juvenile in custody must be advised prior to questioning . . . [t]hat the juvenile has a right to have a parent, guardian, or custodian present during questioning When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney.").

custody approach in the school setting.¹⁹⁶ This approach, like Connecticut's, suggests that it is imperative for judges to consider broadly how a valid waiver is given by a juvenile.¹⁹⁷

VII. Conclusion

When police question children in a school setting, they should be considered presumptively in custody, signaling that appropriate *Miranda* warnings be given. Many states have enacted juvenile *Miranda* statutes that generally mandate the exclusion of a child's statements made during custodial interrogation unless they are offered the presence of a trusted adult, legal guardian, or attorney.¹⁹⁸ However, the application of these statutes is predicated on the initial determination that the child is subject to in-custody interrogation.¹⁹⁹ This article advocates for the states to implement procedural safeguards provided by *Miranda* prior to questioning, based on the assumption that the school setting inherently misleads child suspects into believing that their statements will not generate legally binding consequences such as a criminal conviction.²⁰⁰

The states should adopt presumptive language specifically into their statutes to fully afford Fifth Amendment protection to juveniles in the school setting because the totality-of-circumstances approach²⁰¹ that is typically applied under a *Miranda* analysis is insufficient protection for a child suspect in the school setting. The *J.D.B.* Court did not directly answer whether the child was in custody based on the totality of circumstances, but instead provided guidance to the lower courts in making that determination based on consideration of the child's age.²⁰² Even when the trial courts consider age

196. COLO. REV. STAT. § 19-2-511 (2005).

197. *Id.*

198. *See, e.g.*, CONN. GEN. STAT. § 46b-137(a) (Supp. 2012) ("Any admission, confession or statement, written or oral, made by a child under the age of sixteen . . . shall be inadmissible . . . unless made by such child in the presence of the child's parent or parents or guardian . . ."); *id.* § 46b-137(b) ("Any admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age . . . shall be inadmissible . . . unless (1) the police or Juvenile Court official has made reasonable efforts to contact a parent or guardian of the child, and (2) such child has been advised that (A) the child has the right to contact a parent or guardian and to have a parent or guardian present during any interview . . ."); statutes cited *supra* note 195.

199. *See supra* note 41 and accompanying text.

200. *See supra* Part III.

201. Courts have applied the following factors for determining whether, under the totality of circumstances, a juvenile suspect's Fifth Amendment rights against self-incrimination were violated when being questioned by the police:

- (1) the manner in which the *Miranda* rights were administered, including any cajoling or trickery;
- (2) the suspect's age, experience, background and intelligence;
- (3) the fact that the suspect's parents were not contacted and the juvenile was not given an opportunity to consult with his or her parents before questioning;
- (4) the fact that the questioning took place in the station house; and
- (5) the fact that the interrogators did not secure a written waiver of the *Miranda* rights at the outset.

Ramirez v. State, 739 So.2d 568, 575–76 (Fla. 1999) (citations omitted).

202. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2408 (2011).

as relevant, as constitutionally mandated by *J.D.B.*, the influential impact of police presence in the school still provides a substantial possibility for constitutional infringement. The ruling that age is relevant expands the considerations for affording constitutional protections to juveniles, but, unfortunately, it drastically underestimates the presence, pressure, and power of the police. The school venue for questioning a child suspect raises fundamental custodial interrogation issues, especially when the parent, guardian, or trusted adult is rarely or never present.²⁰³ Accordingly, the States must promote attention to the issues of coerced confessions and involuntary waivers since ample case precedent indicates the frequency of false and coerced confessions by juveniles.²⁰⁴ The state bears the burden of establishing a knowing and voluntary waiver resulting from in-school interrogations,²⁰⁵ and the burden is significantly harder to meet without the presumptive in-custody approach.

203. Remington, *supra* note 1, at 377–78.

204. Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 *LAW & PSYCHOL. REV.* 53, 59–62 (2007). *See* Turner, *supra* note 36, at 713 (discussing how the North Carolina Supreme Court in *J.D.B.* incentivizes the police to target school children and intimidate them into giving false confessions).

205. *Id.*