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## Recess is Over: Granting Miranda Rights to Students Interrogated Inside School Walls

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## **RECESS IS OVER: GRANTING *MIRANDA* RIGHTS TO STUDENTS INTERROGATED INSIDE SCHOOL WALLS**

### ABSTRACT

*When school officials and law enforcement question students about suspicious activities without parents or legal counsel present, students are overmatched. This power imbalance raises questions about whether students' constitutional rights are being adequately protected. These questions have gone largely unanswered, as the Supreme Court has never addressed the applicability of Miranda warnings in school interrogation settings. However, the 2011 J.D.B. v. North Carolina decision, in which the Supreme Court held a defendant's age relevant to custody for Miranda purposes, has opened the door for a reevaluation of the dynamics of school interrogations.*

*This Comment argues that the mere presence of a law enforcement officer at a student's interrogation, occurring on school grounds in the absence of legal counsel, transforms the encounter into custodial interrogation, thus requiring Miranda warnings to be given. This argument rests on two foundations: (1) scientific evidence demonstrating that adolescents' brains are developmentally different from adults' brains, rendering them more vulnerable to shows of authority; and (2) the coercive effect of increasing law enforcement presence on school grounds in recent decades. Students deserve Miranda's protections when law enforcement is present during questioning because this police-dominated, inherently coercive interrogation environment is what the Miranda Court sought to protect against.*

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## INTRODUCTION

[I]n the school environment, where juveniles are faced with a variety of negative consequences—including potential criminal charges—for refusing to comply with the requests or commands of authority figures, the circumstances are inherently more coercive and require more, not less, careful protection of the rights of the juvenile.<sup>1</sup>

Determining what constitutional rights children have while on school grounds has always presented unique challenges for the criminal justice system. School officials seek to maintain order, implement discipline, and provide a safe place for children to learn. Yet “children assuredly do not ‘shed their constitutional rights . . . at the schoolhouse gate.’”<sup>2</sup>

This Comment focuses on a troubling area in which students lack adequate protection—interrogation by school officials and law enforcement on school grounds without parents or legal counsel present. The Supreme Court has never decided a case addressing the applicability of *Miranda* warnings in school interrogation settings. In *Miranda v. Arizona*, the Supreme Court protected individuals’ Fifth Amendment privilege against self-incrimination by requiring law enforcement to warn individuals of their *Miranda* rights when subject to custodial interrogation,<sup>3</sup> and this protection was later extended to adolescents.<sup>4</sup> Under this formula, self-incrimination protections depend on custodial status.<sup>5</sup> For *Miranda* purposes, custody exists when an individual is formally arrested or has his freedom of movement restricted to the degree associated with formal arrest.<sup>6</sup> The custody analysis is crucial because if a court finds that custody did not exist, then an individual’s Fifth Amendment

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<sup>1</sup> *In re J.D.B.*, 686 S.E.2d 135, 147 (N.C. 2009) (Hudson, J., dissenting), *rev’d and remanded sub nom. J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

<sup>2</sup> *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655–56 (1995) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)).

<sup>3</sup> 384 U.S. 436, 468–69 (1966). *Miranda* rights are the warnings given to a criminal suspect by law enforcement to protect the suspect’s privilege against self-incrimination during custodial interrogation. *Miranda* rights include the right to remain silent, the right to counsel prior to questioning, the right to have counsel present during any questioning, and the right to an appointed attorney if the individual wants an attorney and cannot afford to hire one. *Id.* at 467–73.

<sup>4</sup> *In re Gault*, 387 U.S. 1, 55 (1967). The terms *adolescent*, *child*, and *student* are used interchangeably throughout this Comment to refer to a child under the age of eighteen. This Comment avoids using the term *juvenile* because of the word’s negative association with the criminal justice system. This Comment does not use the term *teenager* because this would include individuals who are eighteen or nineteen years old.

<sup>5</sup> *Miranda*, 384 U.S. at 444.

<sup>6</sup> *See id.*; *see also Berkemer v. McCarty*, 468 U.S. 420, 442 (1984).

privilege against self-incrimination is not implicated, *Miranda* warnings are not required, and all of his statements will be admissible in court.<sup>7</sup>

In cases that involve interrogations conducted on public school grounds, courts must assess custody in one of four different scenarios: (1) when school officials question students independently and law enforcement is not present or involved; (2) when law enforcement is present during the questioning but does not speak or otherwise participate; (3) when law enforcement is involved in the questioning but makes a minimal contribution; or (4) when law enforcement actively participates in the questioning with the school official. Currently, most courts have a high custody threshold—finding that custody exists only when law enforcement actively participates in the student’s interrogation.<sup>8</sup>

This Comment argues that the custody threshold should be lowered in the school setting because the mere presence of law enforcement is enough to create a coercive effect that requires *Miranda* warnings.

In *J.D.B. v. North Carolina*, a case decided in 2011, the Court expanded its prior custody analysis to include the defendant’s age as a relevant factor.<sup>9</sup> Although the Court did not decide the issue of custodial interrogation in *J.D.B.*,<sup>10</sup> the Supreme Court in that case, and other recent cases like *Roper v. Simmons*<sup>11</sup> and *Graham v. Florida*,<sup>12</sup> extended additional constitutional protections to adolescents. Citing scientific research that details the stark developmental differences between adolescent and adult brains, the Court recognized that adolescents need special protection under certain circumstances.<sup>13</sup>

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<sup>7</sup> See *Miranda*, 384 U.S. at 444.

<sup>8</sup> See *infra* Part I.C.1.

<sup>9</sup> 131 S. Ct. 2394, 2408 (2011). Previously, in *Yarborough v. Alvarado*, 541 U.S. 652, 666–68 (2004), the Court declined to address the objective, reasonable person analysis to include the defendant’s age as a relevant factor. That case involved a seventeen-year-old boy. *Id.* at 656.

<sup>10</sup> The Court had the opportunity to take its holding one step further by addressing how custody should be analyzed in school interrogation settings, but instead left this determination to the state court. *J.D.B.*, 131 S. Ct. at 2408.

<sup>11</sup> 543 U.S. 551, 578 (2005) (holding that the Eighth and Fourteenth Amendments forbid imposing the death penalty on offenders who were under the age of eighteen when their crimes were committed).

<sup>12</sup> 130 S. Ct. 2011, 2034 (2010) (holding that the Constitution prohibits imposing a sentence of life without parole on an adolescent who did not commit homicide). In 2012, the Supreme Court extended *Graham*, holding that mandatory life imprisonment without parole was unconstitutional when imposed on adolescent offenders, including adolescent offenders who committed homicide. *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012).

<sup>13</sup> See *infra* Part II.A.

This Comment argues for a natural extension of what the Court has already held by asking courts to consider how these scientific findings apply when adolescents are interrogated in the school setting. It contends that an interrogation attended by both school and law enforcement officials creates a coercive environment that turns questioning into custodial interrogation, even when law enforcement officials do not speak.<sup>14</sup> In short, students will be overmatched by law enforcement and school officials and compelled to respond to questioning. When students are questioned in this type of environment, they must be warned of their *Miranda* rights.

Part I of this Comment provides the constitutional backdrop for the custody analysis. It begins with an explanation of the state action doctrine's relevance in the public school setting, describing which state actors are required to give *Miranda* warnings during custodial interrogations. Next, it discusses the constitutional protection afforded to targets of custodial interrogation by introducing *Miranda* and its progeny. It defines "custodial interrogation" and the test courts use to determine when it has occurred. Lastly, Part I explores the holdings and rationales of the pre-*J.D.B.* lower court decisions addressing school interrogation issues, analyzing the factors that supported a custody finding and influenced a no-custody finding.

Part II focuses on the Supreme Court's willingness to extend special protections to adolescents and its citation to social science research on brain development. This Part introduces the social science research in this area and argues that this research demonstrates that adolescents are more vulnerable than adults in general interrogation settings. To this end, Part II examines the Supreme Court's use of social science research in *Roper*, *Graham*, and *J.D.B.* Part II discusses studies by neuroscientists and developmental psychologists that reveal adolescents' vulnerability in general interrogation settings. Part II.B identifies three factors that make adolescents particularly vulnerable in general interrogation settings: (1) adolescents' vulnerability to make false confessions; (2) adolescents' immaturity of judgment; and (3) adolescents' compliance with demands from authority figures.

Part III argues that the distinctive aspects of the public school setting exacerbate adolescents' vulnerability during interrogations and ultimately create a coercive environment akin to custody. It contends that interrogating adolescents in the school setting is uniquely coercive for four reasons: (1) the

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<sup>14</sup> This Comment does not address what protections, if any, should be afforded to students when they are questioned solely by school officials.

increased presence of law enforcement in public schools; (2) the increased reporting of student behavior to law enforcement; (3) the adversarial relationship between school officials and students; and (4) the restriction of students' freedom of movement while attending school. This Part argues that these coercive factors create the need for *Miranda* warnings because students will be overmatched by law enforcement and school officials, leaving students with no choice but to submit to the interrogation.

Lastly, Part IV addresses the countervailing concerns about this Comment's proposal. Part IV includes the concerns that requiring *Miranda* warnings will (1) impede law enforcement's ability to obtain confessions; (2) conflict with custody's totality-of-the-circumstances test; (3) create a more adversarial relationship between school officials and students; and (4) inadequately protect students' constitutional rights during interrogation.

## I. CONSTITUTIONAL GUIDELINES FOR CUSTODIAL INTERROGATION

*Miranda* warnings, which protect an individual's Fifth Amendment privilege against self-incrimination, are implicated whenever an individual is subject to custodial interrogation.<sup>15</sup> Over the years, the Supreme Court has recognized that the protections of *Miranda* apply to adolescents as well as to adults,<sup>16</sup> and the Court has recently held that a defendant's age is a relevant factor in the *Miranda* custody analysis.<sup>17</sup> However, *Miranda* rights only apply when law enforcement state actors have initiated questioning. Accordingly, this Part opens with an explanation of the state action doctrine as it applies in the school setting. Then it discusses the *Miranda* decision and its progeny. These cases govern the protections given to individuals who are subject to custodial interrogation. Part I.B.2 defines custodial interrogation and describes the test courts use to determine custody. Lastly, Part I examines how lower courts determined school interrogation issues before *J.D.B.*

### A. *The State Action Doctrine*

Under the state action doctrine, the constitutional protections set forth in the Bill of Rights protect individuals from constitutional violations by state

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<sup>15</sup> See *Miranda v. Arizona*, 384 U.S. 436, 444, 467–73 (1966); see also *infra* note 47 and accompanying text.

<sup>16</sup> *In re Gault*, 387 U.S. 1, 55 (1967).

<sup>17</sup> *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2408 (2011).

actors.<sup>18</sup> Accordingly, actions taken by the government can violate an individual's constitutional rights whereas actions by private individuals generally cannot trigger constitutional violations.<sup>19</sup> For purposes of the *Miranda* custody analysis, there are three types of people who conduct questioning: (1) law enforcement state actors; (2) other state actors; and (3) private actors. Because the Court in *Miranda* was concerned about protecting those subjected to the inherently coercive environment of police-dominated custodial interrogations,<sup>20</sup> law enforcement and those acting as agents of law enforcement are the only state actors required to give *Miranda* warnings.<sup>21</sup> Public school officials are state actors,<sup>22</sup> but they are not law enforcement;<sup>23</sup> for that reason, courts have not required public school officials to give

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<sup>18</sup> See, e.g., *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991) (“The Constitution’s protections of individual liberty and equal protection apply in general only to action by the government.”).

<sup>19</sup> See, e.g., *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 191 (1988) (“Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendment’s Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be.” (footnote omitted)).

<sup>20</sup> *Miranda*, 384 U.S. at 444 (“[C]ustodial interrogation . . . mean[s] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.”). Law enforcement officers and their agents are not required to give *Miranda* warnings when the person being interrogated is unaware that he is being questioned by a law enforcement officer. *Illinois v. Perkins*, 496 U.S. 292, 294 (1990). Questioning by undercover agents does not implicate *Miranda* concerns because no coercion exists when the person being questioned is unaware that he is being questioned by law enforcement. *Id.* at 296.

<sup>21</sup> See, e.g., *Commonwealth v. Snyder*, 597 N.E.2d 1363, 1369 (Mass. 1992) (“The *Miranda* rule does not apply to a . . . school administrator who is acting neither as an instrument of the police nor as an agent of the police pursuant to a scheme to elicit statements from the defendant by coercion or guile.”). Private actors who act independently of law enforcement are not required to give *Miranda* warnings, even though their questioning may help law enforcement. See *State v. Etheridge*, 352 S.E.2d 673, 679 (N.C. 1987) (“[S]tatements made to private individuals unconnected with law enforcement are admissible so long as they were made freely and voluntarily.”).

<sup>22</sup> *New Jersey v. T.L.O.*, 469 U.S. 325, 334, 336 (1985) (“[T]he Fourteenth Amendment protects the rights of students against encroachment by public school officials . . . . In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State . . . .”). Courts sometimes make the mistake of referring to school officials as private actors, but this label is incorrect. See, e.g., *People v. Butler*, 725 N.Y.S.2d 534, 540–41 (Sup. Ct. 2001) (“A [d]ean interrogating a student on school grounds on a matter of school discipline—even a matter that would carry criminal sanctions—is still a *private individual*, with respect to whose questioning *Miranda* is inapplicable.” (emphasis added)).

<sup>23</sup> See *K.L. v. State*, 2010 Ark. App. 644U, at 6–7, 2010 WL 3769277, at \*3–4 (holding that school principals are not law enforcement officers); *In re Corey L.*, 250 Cal. Rptr. 359, 361 (Ct. App. 1988) (“Questioning of a student by a principal, whose duties include the obligations to maintain order, protect the health and safety of pupils and maintain conditions conducive to learning, cannot be equated with custodial interrogation by law enforcement officers.”).



*Miranda* warnings when they alone question students for disciplinary reasons.<sup>24</sup>

## B. *Protecting the Privilege Against Self-Incrimination*

### 1. *Miranda v. Arizona and Its Progeny*

The Supreme Court in *Miranda* sought to protect an individual's Fifth Amendment privilege against self-incrimination during custodial interrogations.<sup>25</sup> Recognizing that police interrogations can contain "inherently compelling pressures,"<sup>26</sup> the Court was concerned with the way interrogations occur—they are conducted in isolation,<sup>27</sup> they are psychologically oriented,<sup>28</sup> and they sometimes involve trickery.<sup>29</sup> Because the sole purpose of an interrogation is "to subjugate the individual to the will of his examiner,"<sup>30</sup> the Court opined that an interrogation "carries its own badge of intimidation."<sup>31</sup> To protect an individual's privilege against self-incrimination, the *Miranda* Court imposed procedural requirements on law enforcement that must be followed before law enforcement ask questions during custodial interrogation.<sup>32</sup>

These procedural protections require law enforcement officers to warn an individual of his *Miranda* rights before initiating questioning in a custodial setting.<sup>33</sup> Law enforcement must warn the individual that he has the right to remain silent and that, if he chooses not to remain silent, what he says can be used against him in court.<sup>34</sup> Additionally, law enforcement must inform the individual that he has the right to legal counsel prior to questioning and the right to have legal counsel present during any questioning.<sup>35</sup> *Miranda* also

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<sup>24</sup> *Snyder*, 597 N.E.2d at 1369 ("There is no authority requiring a school administrator not acting on behalf of law enforcement officials to furnish *Miranda* warnings.").

<sup>25</sup> 384 U.S. at 444. The Fifth Amendment reads that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V.

<sup>26</sup> *Miranda*, 384 U.S. at 467.

<sup>27</sup> *Id.* at 449.

<sup>28</sup> *Id.* at 448.

<sup>29</sup> *Id.* at 453.

<sup>30</sup> *Id.* at 457.

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

<sup>32</sup> *Id.* at 467–73.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 467–69.

<sup>35</sup> *Id.* at 469–70.

requires law enforcement to explain to the individual that an attorney will be appointed for him if he wants an attorney but cannot afford to hire one.<sup>36</sup>

Once *Miranda* rights have been read, an individual may choose to “voluntarily, knowingly and intelligently” waive these rights and proceed to answer law enforcement’s questions.<sup>37</sup> However, if *Miranda* warnings are not read, any statements made during the custodial interrogation will be inadmissible during the prosecutor’s case-in-chief.<sup>38</sup> Similarly, if a custodial suspect initially waives his *Miranda* rights but later decides to invoke his rights, all questioning must cease.<sup>39</sup> Any statements made after the suspect has invoked his rights are inadmissible in the prosecution’s case-in-chief.<sup>40</sup>

More than twenty years after its *Miranda* opinion, the Supreme Court explicitly extended *Miranda*’s privilege against self-incrimination to adolescents.<sup>41</sup> In *In re Gault*, the Court opined that confessions from adolescents require “special caution.”<sup>42</sup> Explaining that adolescents need procedural safeguards during custodial interrogation, the *In re Gault* Court pointed to its reasoning in *Haley v. Ohio*.<sup>43</sup> In *Haley*, the Court stated that an

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<sup>36</sup> *Id.* at 479.

<sup>37</sup> *Id.* at 444. Whether a suspect’s statement constitutes a valid waiver of his *Miranda* rights is outside the scope of this Comment. Courts assess whether a waiver was voluntary, knowing, and intelligent based on a totality-of-the-circumstances test. *Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979). The factors relevant in this totality-of-the-circumstances inquiry include the suspect’s age, intelligence, background, education, experience with the justice system, and capacity to understand the *Miranda* rights and the consequences of waiving these rights. *Id.* at 725.

<sup>38</sup> *Miranda*, 384 U.S. at 479. The language in *Miranda* provides that “unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against [the defendant].” *Id.* Despite this seemingly broad prohibition, the Court in *Harris v. New York* stated that this language was not necessary to the Court’s holding and therefore could not be regarded as controlling. 401 U.S. 222, 224 (1971). The Court in *Harris* held that when a defendant chooses to testify at trial, he can be impeached by his own statements to police even if the statements were taken in violation of *Miranda*. *Id.* at 226.

<sup>39</sup> *Miranda*, 384 U.S. at 444–45.

<sup>40</sup> *Id.* at 444.

<sup>41</sup> *In re Gault*, 387 U.S. 1, 55 (1967).

<sup>42</sup> *Id.* at 45.

<sup>43</sup> *Id.* at 45–46; *Haley v. Ohio*, 332 U.S. 596 (1948) (plurality opinion). In *Haley*, the Court reversed a murder conviction against a fifteen-year-old, holding that the police officer violated the child’s Fifth Amendment due process rights by questioning him in isolation from midnight until dawn. *Id.* at 598–601. The Court held that the resulting confession could not be used, explaining as follows:

The age of [the child], the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, [and] the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction.

adolescent “cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.”<sup>44</sup> The Court in *Haley* was concerned that adolescents’ vulnerability, combined with coercive police tactics, would lead adolescents to incriminate themselves.<sup>45</sup> Echoing this concern, the Court in *In re Gault* recognized that adolescents need safeguards because a “distrust of confessions made in certain situations . . . is imperative in the case of [adolescents].”<sup>46</sup>

## 2. *Defining Custodial Interrogation*

While the *Miranda* opinion created new protections for criminal suspects, its holding applies only to people who are interrogated by law enforcement in a custodial setting.<sup>47</sup> For the court to find that custodial interrogation occurred, law enforcement must have initiated the questioning after the person was formally arrested or “otherwise deprived of his freedom of action in any significant way.”<sup>48</sup> In *Berkemer v. McCarty*, the Court further defined “deprived of his freedom of action in any significant way” to mean that the individual’s movement must have been restricted to a degree akin to formal arrest.<sup>49</sup> If a court finds that custodial interrogation occurred and *Miranda* warnings were not administered, any statements made by a suspect are inadmissible during the prosecution’s case-in-chief against the suspect.<sup>50</sup>

Courts use an objective, two-part inquiry to determine whether an individual was in custody at the time of the questioning.<sup>51</sup> First, courts look at

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*Id.* at 600–01.

<sup>44</sup> *Haley*, 332 U.S. at 599.

<sup>45</sup> *See id.* at 599–600.

<sup>46</sup> *In re Gault*, 387 U.S. at 48 (internal quotation marks omitted).

<sup>47</sup> *Stansbury v. California*, 511 U.S. 318, 322 (1994) (per curiam). For *Miranda* warnings to be implicated, an individual must be (1) in custody and (2) interrogated. *See Rhode Island v. Innis*, 446 U.S. 291, 298 (1980) (holding that it was uncontested that the suspect was in custody and that the only issue was whether the suspect was interrogated). “Interrogation” in the *Miranda* context includes express questioning and “any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 301 (footnote omitted). This Comment focuses solely on the custody analysis.

<sup>48</sup> *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

<sup>49</sup> *See* 468 U.S. 420, 442 (1984). The *Berkemer* custody test refines the *Miranda* Court’s original definition of custody.

<sup>50</sup> *Miranda*, 384 U.S. at 479. Statements obtained in violation of *Miranda* are admissible to impeach the suspect at trial. *Harris v. New York*, 401 U.S. 222, 225 (1971) (holding that the privilege to testify in one’s own defense “cannot be construed to include the right to commit perjury”).

<sup>51</sup> *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011).

all of the circumstances surrounding the interrogation.<sup>52</sup> Courts conducting a custody analysis will consider many non-determinative factors including, but not limited to: (1) the time, location, and purpose of the encounter; (2) the people present during the questioning; (3) the interaction between the officer and the suspect, including any words spoken to the suspect by the officer; (4) the officer's tone and demeanor; (5) the length of the interrogation; and (6) whether the suspect was restrained or experienced any restrictions on his movement.<sup>53</sup> Second, courts ask, given the circumstances, "would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave"?<sup>54</sup> Because courts use an objective, reasonable person standard, courts do not consider the subjective mindset of the person being questioned.<sup>55</sup>

The Supreme Court's decision in *J.D.B. v. North Carolina* significantly altered the *Miranda* custody analysis as it applies to adolescents.<sup>56</sup> In *J.D.B.*, the Court held that the defendant's age should be considered when determining whether custodial interrogation occurred.<sup>57</sup> The Court stated that while custody should still be gauged using an objective test, the defendant's age should be included in that analysis as long as the defendant's age was known to the officer at the time of questioning or "would have been objectively apparent to a reasonable officer."<sup>58</sup>

*J.D.B.* is a landmark holding because it expands the custody analysis to offer broader protections for adolescents' privilege against self-incrimination.<sup>59</sup> Before *J.D.B.*, adolescents were at risk because the custody analysis did not reflect the reality that adolescents are developmentally different from adults. The *J.D.B.* Court recognized that failing to consider age is "nonsensical" in

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<sup>52</sup> *Id.*; *Stansbury*, 511 U.S. at 322.

<sup>53</sup> *See, e.g.*, *People v. Holt*, 233 P.3d 1194, 1197 (Colo. 2010) (en banc); *R.D.S. v. State*, 245 S.W.3d 356, 364 (Tenn. 2008).

<sup>54</sup> *J.D.B.*, 131 S. Ct. at 2402.

<sup>55</sup> *Stansbury*, 511 U.S. at 323. The interrogator's subjective intent as to custody is irrelevant except when it is communicated to the target. *Id.* at 325.

<sup>56</sup> *See* 131 S. Ct. at 2408.

<sup>57</sup> *Id.* Prior to this decision, the Court had declined to alter the objective, reasonable person standard to include age as a factor. *See Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004). In *Yarborough*, the Court considered whether a seventeen-year-old was in custody when questioned by law enforcement. *Id.* Affirming the state court's finding that the defendant was not in custody, the majority declined to consider the defendant's age. *Id.* In her concurrence, Justice O'Connor left open the possibility that the defendant's age would sometimes be relevant to the custody analysis, but said that in the particular case at hand, the failure to consider age was not pivotal because the defendant was almost eighteen years old. *Id.* at 669 (O'Connor, J., concurring).

<sup>58</sup> *J.D.B.*, 131 S. Ct. at 2406.

<sup>59</sup> *See id.* at 2408.

many cases involving adolescent suspects because “[n]either officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances.”<sup>60</sup>

Despite the Court’s landmark holding in *J.D.B.*, adolescents need additional protections when they are interrogated at school in the presence of law enforcement. The facts of *J.D.B.* illustrate the reasons for this. Police first questioned J.D.B.—a thirteen-year-old, seventh-grade boy—away from school property about his involvement in home break-ins.<sup>61</sup> A few days later, police received information that one of the stolen items from the break-ins had been found at J.D.B.’s school and seen in his possession.<sup>62</sup> Instead of questioning J.D.B. at his home with his legal guardian present, police officers confronted and questioned him at school.<sup>63</sup> J.D.B. was removed from his classroom by a police officer and taken to a conference room.<sup>64</sup>

Inside the conference room, J.D.B. was questioned by four adults—two police officers and two school officials—about his involvement in the home break-ins.<sup>65</sup> The questioning took at least half an hour.<sup>66</sup> J.D.B. was not given *Miranda* warnings and was not given the opportunity to speak with his legal guardian or with counsel, nor was he informed that he was free to leave the room.<sup>67</sup>

During the questioning, the assistant principal told J.D.B. to “do the right thing” because “the truth always comes out in the end.”<sup>68</sup> One police officer applied pressure by telling J.D.B. that he might be sent to juvenile detention.<sup>69</sup> Upon learning that he might be sent to juvenile detention, J.D.B. confessed to the crime.<sup>70</sup> At this point in the questioning, the officer told J.D.B. he did not have to answer questions and could leave if he wanted.<sup>71</sup> Ultimately J.D.B. was

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<sup>60</sup> *Id.* at 2405.

<sup>61</sup> *Id.* at 2399.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 2400.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

allowed to ride the bus home that day, but he was later charged with breaking and entering and larceny.<sup>72</sup>

On the basis of these facts, the Supreme Court reversed the North Carolina Supreme Court's holding that J.D.B. was delinquent and remanded the custody question back to the state court.<sup>73</sup> The Court ordered that on remand the state court must consider all of the relevant circumstances of the interrogation setting, including J.D.B.'s age at the time.<sup>74</sup> The Court opined that the defendant's age is relevant to the custody analysis because "[i]n 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.'"<sup>75</sup> The Court reasoned that adolescents and adults will often experience police questioning differently, causing adolescents to feel compelled to respond even though adults subjected to the same interrogation would feel free to leave.<sup>76</sup>

The *J.D.B.* Court's decision to incorporate age into the custody analysis has opened the door for lower courts to reevaluate their approach to custody in the school interrogation context. Now that *J.D.B.* has set the stage for considering age as relevant to custody, courts should take the next logical step and alter their custody analyses to reflect the coerciveness of school interrogations when law enforcement is present.

### *C. Lower Courts Grappling with Custodial Interrogation in School Settings*

Before *J.D.B.*, lower courts engaged in cursory custody analyses, relying on legal conclusions instead of analyzing each fact pattern for signs of coercion. Accordingly, this section highlights some of these lower court decisions and argues that courts need to alter their custody determinations in light of *J.D.B.*

In general, there are four school interrogation scenarios: (1) school officials question students independently, and law enforcement is not present or involved; (2) law enforcement is present during the questioning but does not speak or otherwise participate; (3) law enforcement is involved in the questioning but makes a minimal contribution; and (4) law enforcement actively participates in the questioning with the school official. This Comment

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 2408.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 2402–03 (quoting *Stansbury v. California*, 511 U.S. 318, 325 (1994) (per curiam)).

<sup>76</sup> *Id.* at 2398–99.

focuses only on school interrogation scenarios involving law enforcement because courts have generally held that when a school official questions a student alone, the student's statements are admissible in court because the school official, although a state actor, is not considered law enforcement under the Fifth Amendment.<sup>77</sup>

When school officials question students in the presence of law enforcement, instead of alone, the custody analysis becomes much murkier. Courts have generally found custody exists only when (1) school officials act as agents or instruments of law enforcement<sup>78</sup> or (2) law enforcement actively participates in the questioning.<sup>79</sup> Typically, courts will find that no custodial interrogation occurred when (1) law enforcement is merely present during the interrogation<sup>80</sup> or (2) law enforcement's contribution to the questioning is minimal.<sup>81</sup> When courts find that no custodial interrogation occurred, the factual analysis is surprisingly thin and rarely includes consideration of how a reasonable person in the student's situation would experience the encounter.<sup>82</sup> Instead, courts simply resort to legal conclusions, opining that the mere presence of law enforcement during questioning is not enough to transform the interaction into custodial interrogation.<sup>83</sup> This Comment proposes that courts need to reevaluate this distinction between a law enforcement officer's mere presence and active participation. It also argues that a law enforcement officer's mere presence turns the questioning into custodial interrogation.

### *1. Factors in Support of a Custody Finding*

Lower courts that addressed school interrogation issues before *J.D.B.* generally held that custodial interrogation exists in two circumstances: (1) when school officials act as agents of law enforcement<sup>84</sup> or (2) when law enforcement actively participates in the questioning.<sup>85</sup> Courts rarely have

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<sup>77</sup> See *supra* note 24 and accompanying text. A strong argument could be made that the coercive aspects of the school setting are enough to implicate *Miranda* even when a school official is interrogating a student alone. However, that topic is outside the scope of this Comment.

<sup>78</sup> See *infra* Part I.C.1.

<sup>79</sup> See *infra* Part I.C.1.

<sup>80</sup> See *infra* Part I.C.2.

<sup>81</sup> See *infra* Part I.C.2.

<sup>82</sup> See *infra* note 123.

<sup>83</sup> See *infra* note 123.

<sup>84</sup> See, e.g., *In re T.A.G.*, 663 S.E.2d 392 (Ga. Ct. App. 2008).

<sup>85</sup> See, e.g., *In re Killitz*, 651 P.2d 1382, 1383–84 (Or. Ct. App. 1982); *State v. D.R.*, 930 P.2d 350, 351–53 (Wash. Ct. App. 1997).

found that school officials are agents of law enforcement.<sup>86</sup> One case in which a court did find agency was *In re T.A.G.*<sup>87</sup> In that case, the school official asked for the law enforcement officer's advice and guidance during questioning, and the adolescent was questioned by a school administrator in the presence of the officer.<sup>88</sup> Although the police officer did not ask any questions, he did advise the assistant principal, in T.A.G.'s presence, what criminal charges T.A.G. could face.<sup>89</sup>

Other facts suggested agency: the school administrator conferred with the officer about what questions she should ask in the interview, the school administrator told the officer not to ask questions because they both knew that could implicate *Miranda* warnings, and the results of the assistant principal's investigation were turned over to the police.<sup>90</sup> Once the trial court determined that the school administrator was an agent of law enforcement, the court concluded that T.A.G. was in custody because a reasonable person in T.A.G.'s situation would not have thought that he was free to leave,<sup>91</sup> a conclusion affirmed by the appellate court.<sup>92</sup>

Some courts have held that custodial interrogation occurs when law enforcement actively participates in the questioning of students.<sup>93</sup> In *In re Welfare of G.S.P.*, for example, a school custodian found a backpack that contained a BB gun.<sup>94</sup> The custodian turned the bag over to the assistant principal, who then determined that the backpack belonged to G.S.P., a twelve-

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<sup>86</sup> In the school interrogation context, agency is an extremely high threshold. *See, e.g., In re Navajo Cnty. Juvenile Action No. JV91000058*, 901 P.2d 1247, 1249 (Ariz. Ct. App. 1995) (concluding that the school official was not an agent of law enforcement despite his intention to report the fruits of his investigation directly to police); *State v. J.T.D.*, 851 So. 2d 793, 795–96 (Fla. Dist. Ct. App. 2003) (holding that the assistant principal was not an agent of law enforcement even though the assistant principal and law enforcement officer shared information before the assistant principal conducted the interrogation).

<sup>87</sup> 663 S.E.2d 392.

<sup>88</sup> *Id.* at 393. This was actually the second time that T.A.G. was interviewed. During the first interview, in which T.A.G. was questioned only by a school administrator, he confessed to robbing a fellow student. *Id.* at 394. The juvenile court denied suppression of this statement because the law enforcement officer was not involved in the questioning. *Id.*

<sup>89</sup> *Id.* at 393.

<sup>90</sup> *Id.* at 395.

<sup>91</sup> *Id.* at 395–96.

<sup>92</sup> *Id.* at 396.

<sup>93</sup> *See, e.g., In re Killitz*, 651 P.2d 1382, 1383–84 (Or. Ct. App. 1982) (finding that the adolescent was in custody when the police officer conducted the questioning with the principal in the room); *State v. D.R.*, 930 P.2d 350, 351–53 (Wash. Ct. App. 1997) (holding that the adolescent was in custody when questioned by a police officer in the presence of an assistant principal and a social worker because the police officer facilitated the interrogation and asked questions in an accusatory manner).

<sup>94</sup> 610 N.W.2d 651, 653 (Minn. Ct. App. 2000).



year-old boy.<sup>95</sup> The assistant principal and a police officer took G.S.P. from his classroom and escorted him to the assistant principal's office.<sup>96</sup> G.S.P. "was not told why he was called out of class and felt he had no choice but to accompany them."<sup>97</sup>

Once inside the office, G.S.P. was questioned by both the assistant principal and the police officer.<sup>98</sup> During the questioning, the assistant principal told G.S.P. "that he had no choice but to answer the questions."<sup>99</sup> The police officer told G.S.P. that the questioning would be tape-recorded.<sup>100</sup> The assistant principal and police officer jointly told the boy that they found a BB gun in his backpack and explained the school discipline and criminal charges he was facing.<sup>101</sup> Thereafter, G.S.P. made self-incriminating statements, telling the assistant principal and the police officer that the gun was his and that he had accidentally brought it to school.<sup>102</sup>

The trial court refused to suppress G.S.P.'s statements, holding that he was not in custody and thus was not entitled to *Miranda* warnings.<sup>103</sup> The appellate court reversed, determining that G.S.P. was in custody when questioned by both the assistant principal and police officer.<sup>104</sup> The court opined that the police officer had actively participated in the questioning and that "the circumstances suggest[ed] the coercive influence associated with a formal arrest."<sup>105</sup>

## 2. *Factors Influencing a No-Custody Finding*

Before *J.D.B.*, lower courts often held that custodial interrogation does not occur if (1) law enforcement is merely present but remains silent during questioning<sup>106</sup> or (2) law enforcement is mostly silent and makes only minimal

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<sup>95</sup> *Id.* at 653–54.

<sup>96</sup> *Id.* at 654.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* A counselor and teacher were also present during the questioning. *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 654–55.

<sup>102</sup> *Id.* at 655.

<sup>103</sup> *Id.* at 653.

<sup>104</sup> *Id.* at 657–58.

<sup>105</sup> *Id.* at 658.

<sup>106</sup> *See, e.g.,* State v. J.T.D., 851 So. 2d 793, 796 (Fla. Dist. Ct. App. 2003) (finding no custodial interrogation when the student was questioned by the principal and assistant principal in the presence of the school resource officer, who did not ask any questions); *see also infra* note 123. *But see In re K.D.L.*, 700 S.E.2d 766 (N.C. Ct. App. 2010). The court in *In re K.D.L.* held that a twelve-year-old student was in custody

contributions during questioning.<sup>107</sup> Consider, for example, the case *J.D. v. Commonwealth*, in which a fourteen-year-old boy was questioned about a series of thefts that had occurred at the school.<sup>108</sup> J.D. was pulled out of class, taken to the assistant principal's office, and questioned by the assistant principal.<sup>109</sup> The principal and the school resource officer were also present during the questioning.<sup>110</sup> The school resource officer did not participate in the questioning and did not confer with the assistant principal prior to the questioning about what questions the assistant principal should ask or possible criminal charges pending against J.D.<sup>111</sup>

The trial court determined that the assistant principal was not acting in the capacity of law enforcement during the questioning.<sup>112</sup> The court found that J.D. was not in custody during the questioning, despite testimony from both the assistant principal and J.D. that pointed to the opposite conclusion.<sup>113</sup> The assistant principal testified that a student could be disciplined if he refused to obey school officials.<sup>114</sup> J.D.'s testimony confirmed that this threat of discipline restricted his movement—he testified that he believed he had to go to the assistant principal's office and cooperate or else he would be disciplined.<sup>115</sup> Notwithstanding this testimony, the appellate court affirmed the trial court's decision, opining that the mere presence of the police officer did not turn the questioning into custodial interrogation.<sup>116</sup> The court concluded that there was no evidence of coercion on the part of the school administrators because J.D. had not been expressly threatened with disciplinary action.<sup>117</sup>

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when questioned at school by a principal in the presence of a police officer because of the interrogation's other highly coercive factors. *Id.* at 772. Although the police officer was merely present during questioning, the student was questioned for five to six hours, frisked, and transported in a police car. *Id.* These coercive factors led the court to determine that the interrogation was functionally equivalent to an arrest. *Id.*

<sup>107</sup> See *infra* notes 118–19 and accompanying text.

<sup>108</sup> 591 S.E.2d 721, 723 (Va. Ct. App. 2004).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* School resource officers are usually police officers who have been placed in schools to perform traditional law enforcement functions along with other duties, such as teaching and counseling. See Michael Pinard, *From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*, 45 ARIZ. L. REV. 1067, 1077–78 (2003).

<sup>111</sup> *J.D.*, 591 S.E.2d at 723.

<sup>112</sup> *Id.* at 725.

<sup>113</sup> *Id.* at 723.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 725.

<sup>117</sup> *Id.* at 727.

Some lower courts have refused to find custody even when there was some participation by law enforcement in the questioning process, as long as the school official dominated the interrogation.<sup>118</sup> One example is *M.H. v. State*, in which a school official questioned M.H., a seventh-grader, in the presence of a school resource officer.<sup>119</sup> The school official asked all of the questions but one.<sup>120</sup> The trial court distinguished the statements M.H. made to the school official from the statement he made to the school resource officer, holding that the statements M.H. made to the school official were admissible.<sup>121</sup> Only the lone statement M.H. made to the school resource officer was suppressed.<sup>122</sup> The appellate court affirmed—without considering the effect of the resource officer’s presence—stating that “[t]he mere presence of a law enforcement officer, when a student is being questioned by a school official, does not amount to a custodial interrogation requiring *Miranda* warnings.”<sup>123</sup>

In *In re J.C.*, a case with similar facts to *M.H. v. State*, the court held that none of the student’s statements needed to be suppressed because the police officer remained mostly silent during the student’s interrogation.<sup>124</sup> The police officer was present while an assistant principal questioned J.C. about smoking marijuana on school property.<sup>125</sup> The police officer may have also asked one or two questions during the interrogation.<sup>126</sup> Despite the police officer’s participation, the trial court failed to consider the coercive effect this would have on a reasonable person in J.C.’s situation.<sup>127</sup> The appellate court affirmed

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<sup>118</sup> See, e.g., *In re Tateana R.*, 883 N.Y.S.2d 476, 478 (App. Div. 2009) (holding that minimal input by the police officer was not enough to turn the interview into custodial interrogation); *State v. Schloegel*, 2009 WI App 85, ¶¶ 10–12, 769 N.W.2d 130, 133–34 (holding that the student was not in custody when the interrogation was conducted primarily by the assistant principal even though two police officers were present during questioning and one officer asked a few questions).

<sup>119</sup> 851 So. 2d 233, 233 (Fla. Dist. Ct. App. 2003).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 233–34. Lower court decisions addressing the custody analysis in the school interrogation context are full of legal conclusions lacking any analysis of whether coercive aspects existed when police officers were present during questioning. See, e.g., *In re J.C.*, 591 So. 2d 315, 316 (Fla. Dist. Ct. App. 1991) (stating that “if the policeman stands mute and does not participate, his mere presence does not” create a custodial interrogation); *In re Drolshagen*, 310 S.E.2d 927, 927 (S.C. 1984) (opining that the questioning was not transformed into a custodial interrogation “[m]erely because the questioning took place in the principal’s office, in the presence of police officers”).

<sup>124</sup> 591 So. 2d at 316.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* (“[T]he trial judge here was apparently satisfied that the deputy’s contribution was de minimis . . .”).

the trial court's holding that the police officer's contribution was minimal and did not create a custodial interrogation.<sup>128</sup>

Lower courts that distinguish between an officer's mere presence and his active participation fail to adequately consider the adolescent student's perspective on the interrogation. These decisions are typically marked by a lack of analytical depth, as courts seem unwilling to analyze each individual fact pattern for signs of coercion.<sup>129</sup> Instead of considering adolescents' developmental immaturity and how their responses are affected when law enforcement is present during interrogations at school, lower courts rely on legal conclusions—stating that law enforcement's mere presence in the room is not enough to turn the questioning into custodial interrogation.<sup>130</sup>

This Comment takes issue with the lower courts' distinction between law enforcement's mere presence and active participation. From a reasonable adolescent's perspective, the mere presence of law enforcement during questioning creates apprehension and fear.<sup>131</sup> It turns the public school setting into a coercive environment that the student reasonably would believe he is not allowed to leave. Adolescents are uniquely susceptible in school interrogation settings when both law enforcement and school officials are present, regardless of whether the law enforcement officer actively participates in the questioning. Therefore, the mere presence of a law enforcement officer at a student interrogation transforms the encounter into a custodial interrogation, and *Miranda* warnings must be given.

## II. ADOLESCENTS' VULNERABILITY TO INTERROGATIONS

Within the last ten years, the Supreme Court has demonstrated its willingness to extend special protections to adolescents.<sup>132</sup> In doing so, the Court has pointed to social science research that demonstrates stark differences

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<sup>128</sup> *Id.* The court limited its holding by stating, "We would stress that this opinion is limited to the facts and circumstances of this particular case. As a general rule, where a student is detained . . . and a law enforcement officer participates in the interrogation, *Miranda* warnings should be given . . ." *Id.* at 316.

<sup>129</sup> See *supra* note 123. Given that custody is judged according to a totality-of-the-circumstances test, it is remarkable that courts can analyze school interrogations so briefly. See, e.g., *M.H. v. State*, 851 So. 2d 233, 233–34 (Fla. Dist. Ct. App. 2003) (devoting less than a paragraph to the custody analysis); *In re J.C.*, 591 So. 2d at 316 (assessing the police officer's contribution to the interrogation in one paragraph); *In re Drolshagen*, 310 S.E.2d 927, 927 (S.C. 1984) (addressing the custody analysis in three sentences).

<sup>130</sup> See *supra* note 123.

<sup>131</sup> See Paul Holland, *Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse*, 52 LOY. L. REV. 39, 65 (2006).

<sup>132</sup> See *infra* Part II.A.

between the development of adolescents and adults.<sup>133</sup> The Supreme Court's acceptance of these studies in *Roper v. Simmons*,<sup>134</sup> *Graham v. Florida*,<sup>135</sup> and *J.D.B. v. North Carolina*<sup>136</sup> shows the Court's recognition that adolescents are uniquely vulnerable and need special protections from state actors and state policies.

This Part first discusses the Court's use of social science studies and then explores these studies with respect to adolescents' vulnerability in interrogation settings. Part II.B asserts that adolescents are vulnerable in interrogation settings for three main reasons: (1) adolescents are more likely to falsely confess; (2) adolescents make immature decisions because they have a natural risk-weighting handicap and they are present-oriented; and (3) adolescents show a strong propensity to comply with authority figures.

#### A. *The Supreme Court's Recent Tendency to Cite Scientific Findings*

In *Roper*, the Court pointed to scientific and sociological findings when it opined that adolescents should be treated differently than adults in the death penalty context.<sup>137</sup> Relying on these studies, the Court reasoned that adolescents lack maturity, have an underdeveloped sense of responsibility, are more susceptible to negative influences and outside pressures, and have characters less developed than adults.<sup>138</sup> In striking down the death penalty for adolescents, the *Roper* Court found the differences between adolescents and adults too overwhelming to ignore.<sup>139</sup>

Five years later in *Graham*, the Court cited the opinion in *Roper* referring to the scientific studies and noted that “[n]o recent data provide reason to reconsider the Court's observations in *Roper* about the nature of [adolescents].”<sup>140</sup> The Court held that the punishment of life without parole was not justified as a deterrent for adolescents who had not committed homicide because adolescents' “lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and

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<sup>133</sup> See *infra* Part II.A.

<sup>134</sup> 543 U.S. 551 (2005).

<sup>135</sup> 130 S. Ct. 2011 (2010).

<sup>136</sup> 131 S. Ct. 2394 (2011).

<sup>137</sup> 543 U.S. at 569.

<sup>138</sup> *Id.* at 569–70.

<sup>139</sup> *Id.* at 572–73.

<sup>140</sup> 130 S. Ct. at 2026.

decisions.”<sup>141</sup> The Court concluded that adolescents, unlike adults, should not be sentenced to life without parole for any crime other than homicide.<sup>142</sup>

In *J.D.B.*, the Court confirmed that the developmental differences between adolescents and adults were relevant to the *Miranda* custody analysis.<sup>143</sup> Drawing from the studies cited in *Roper* and *Graham*, the Court stated that “[t]he law has historically reflected the . . . assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”<sup>144</sup>

The Court in *J.D.B.* also highlighted recent studies that have found high numbers of false confessions by adolescents.<sup>145</sup> In holding that age is relevant to the *Miranda* custody analysis, the Court opined that “[i]t is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.”<sup>146</sup> The Court stated that this was a “commonsense reality.”<sup>147</sup>

This commonsense reality—that adolescents are developmentally different than adults and deserve additional protection—has yet to translate into additional protection for adolescents who are interrogated in school settings by school officials and law enforcement. Research revealing adolescents’ susceptibility to make false confessions,<sup>148</sup> underdeveloped ability to make mature judgments,<sup>149</sup> and propensity to comply with authority figures<sup>150</sup> should

<sup>141</sup> *Id.* at 2028 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)) (internal quotation marks omitted).

<sup>142</sup> *Id.* at 2034. This reasoning was later used by the Court in *Miller v. Alabama* to strike down life-without-parole sentences for adolescents who had committed homicide. 132 S. Ct. 2455, 2465 (2012) (“[N]one of what it said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. . . . So *Graham*’s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to nonhomicide offenses.”).

<sup>143</sup> *See* 131 S. Ct. 2394, 2398–99 (2011).

<sup>144</sup> *Id.* at 2403. The *J.D.B.* Court cited overwhelming precedent to support its statement that the law cannot treat adolescents the same way that it treats adults. The Court opined that adolescents are “most susceptible to influence.” *Id.* at 2405 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)) (internal quotation marks omitted). Furthermore, the Court stated, adolescents “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *Id.* at 2397 (quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality opinion)) (internal quotation marks omitted).

<sup>145</sup> *Id.* at 2401 (citing Brief of Ctr. on Wrongful Convictions of Youth, et al., as Amici Curiae in Support of Petitioner at 21–22, *J.D.B.*, 131 S. Ct. 2394 (No. 09-11121)).

<sup>146</sup> *Id.* at 2398–99.

<sup>147</sup> *Id.* at 2399.

<sup>148</sup> *See infra* Part II.B.1.

<sup>149</sup> *See infra* Part II.B.2.

<sup>150</sup> *See infra* Part II.B.3.

push courts to reconsider the custody analysis from the perspective of an adolescent student.

## B. Scientific Findings About the Susceptibility of Adolescents

### 1. Adolescents' Vulnerability to Make False Confessions

Perhaps the most compelling example of adolescents' vulnerability in interrogations is the frequency with which adolescents falsely confess to crimes. A number of recent studies have focused on adolescents' susceptibility to make false confessions.<sup>151</sup> These studies all come to the same conclusion: "[Y]outh are particularly likely to react to pressure-filled interrogation by falsely confessing."<sup>152</sup>

The correlation between adolescence and false confessions was highlighted by Joshua Tepfer and his colleagues in a study of exonerees and the basis for their exoneration.<sup>153</sup> Tepfer's data showed that 31.1% of the youth exonerees secured their exoneration on the basis of a false confession.<sup>154</sup> Most of these false confessions occurred during police questioning.<sup>155</sup> In contrast, only 17.8% of adults who were exonerated had falsely confessed.<sup>156</sup> Tepfer and his colleagues attributed this stark difference between adults and adolescents to the

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<sup>151</sup> See Samuel R. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 544–45 (2005). Gross and his colleagues collected data on adolescents (those under the age of eighteen) and adults who had been exonerated between 1989 and 2003. *Id.* at 523. The data collected showed that 42% of the exonerated adolescents had falsely confessed compared to only 13% of adult exonerees. *Id.* at 545. The rates were even higher among the youngest adolescents: 69% of twelve- to fifteen-year-old exonerees falsely confessed. *Id.*; see also Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 19 (2010) (stating that there is a "staggering overrepresentation of [adolescents] in the population of proven false confessions"); Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 952 (2010) ("Juveniles are over-represented in proven false confession cases, typically accounting for about one-third of the samples.").

<sup>152</sup> Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 893 (2010); accord *supra* note 151.

<sup>153</sup> Tepfer et al., *supra* note 152, at 904. For the purposes of this study, an individual was considered a youth if he was under the age of twenty when he was wrongfully accused. *Id.* at 896. The study shows a correlation between age and false confession rates. *Id.* at 904. The younger the adolescent, the more likely the adolescent will falsely confess. *Id.*

<sup>154</sup> *Id.* at 904.

<sup>155</sup> *Id.* The study showed that thirty of the thirty-two adolescents who gave false confessions did so during police questioning. *Id.*

<sup>156</sup> *Id.*

fact that “children’s brains are wired such that they think and make decisions about the world differently than older persons.”<sup>157</sup>

A study on false confessions performed by Steven Drizin and Richard Leo also led them to conclude that adolescents are more vulnerable than adults to the pressures of interrogation and thus are more likely to succumb to coercive interrogation methods.<sup>158</sup> Adolescents under the age of eighteen were prevalent in Drizin and Leo’s database of false confession cases.<sup>159</sup> In fact, false confessions by adolescents constituted about one-third of the total false confessions identified during the study.<sup>160</sup> These studies show that adolescents are extremely vulnerable during general police interrogations, resulting in a devastatingly high number of false confessions in the adolescent exoneree population<sup>161</sup>

## 2. *Adolescents’ Brain Development Shows Immaturity of Judgment*

Neuroscientific evidence, which has garnered the Court’s support in recent years, raises questions about adolescents’ abilities to make mature decisions when interrogated.<sup>162</sup> Recent brain development studies conducted by neuroscientists and developmental psychologists demonstrate the remarkable difference between the development of adolescent and adult brains.<sup>163</sup> Magnetic resonance imaging (MRI) technology has produced images that enable scientists to more effectively study brain development.<sup>164</sup> These MRI images show that adolescents’ brains undergo huge transformations, and that these changes affect judgment.<sup>165</sup>

Perhaps most importantly, the prefrontal cortex, which is the area of the brain that operates as the “chief executive,” is not fully developed until

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<sup>157</sup> *Id.* at 892.

<sup>158</sup> Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 919 (2004); *see also* Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 PSYCHOL. SCI. PUB. INT. 33, 52 (2004) (“It is clear that juvenile suspects are highly vulnerable to false confessions, particularly when interrogated by police and other figures of authority.”).

<sup>159</sup> Drizin & Leo, *supra* note 158, at 944.

<sup>160</sup> *Id.*

<sup>161</sup> *See, e.g., id.*

<sup>162</sup> *See* BARBARA STRAUCH, *THE PRIMAL TEEN: WHAT THE NEW DISCOVERIES ABOUT THE TEENAGE BRAIN TELL US ABOUT OUR KIDS* (2003); *infra* note 163 and text accompanying notes 163, 165–66.

<sup>163</sup> *See, e.g.,* Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 77, 83 (2004).

<sup>164</sup> *See, e.g., id.* at 78.

<sup>165</sup> STRAUCH, *supra* note 162, at 15, 19–20.



adulthood.<sup>166</sup> Neuroscientist Peter R. Huttenlocher found that this gradual development of the “[m]ore complex executive functions of [the] prefrontal cortex” affects adolescents’ “reasoning, motivation and judgment.”<sup>167</sup> The slow maturation of the prefrontal cortex affects judgment because it “is linked to the ability to inhibit impulses, weigh consequences of decisions, prioritize, and strategize.”<sup>168</sup>

Underdeveloped judgment makes adolescents more susceptible in interrogation settings because adolescents cannot properly understand the situation and weigh their options.<sup>169</sup> This section highlights two specific aspects of judgment that are underdeveloped in adolescents: (1) the ability to identify and weigh risks and (2) the ability to take into account long-term consequences.

Analysis of adolescents’ brain development has revealed that adolescents have a natural risk-weighting handicap.<sup>170</sup> In his article, *Risk Taking in Adolescence*, Laurence Steinberg detailed from a developmental neuroscience perspective why adolescents have difficulty weighing the risks in a given situation.<sup>171</sup> During adolescence, two different core areas of the brain vie for control—the socio-emotional network that handles how humans perceive rewards and the cognitive-control network that is responsible for weighing risks.<sup>172</sup> Steinberg states that the cognitive-control network takes longer to mature and can often be overwhelmed by the socio-emotional network, which

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<sup>166</sup> *Id.* at 16; accord L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCIENCE & BIOBEHAVIORAL REV. 417, 439 (2000). The prefrontal cortex is the brain’s chief executive because it performs essential functions such as “response inhibition, emotional regulation, planning and organization.” Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 NATURE NEUROSCIENCE 859, 860 (1999). The prefrontal cortex also assesses risk, evaluates reward and punishment, and controls impulses. See Brief for the Am. Med. Ass’n & the Am. Acad. of Child & Adolescent Psychiatry as Amici Curiae in Support of Neither Party at 16–17, *Graham v. Florida*, 130 S. Ct. 2011 (2010) (Nos. 08-7412, 08-7621).

<sup>167</sup> STRAUCH, *supra* note 162, at 20 (second alteration in original) (quoting another source); accord Giedd, *supra* note 163, at 83 (stating that the prefrontal cortex matures last and does not reach adult levels until the individual reaches his twenties).

<sup>168</sup> Giedd, *supra* note 163, at 83. See generally Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, CRIM. JUST., Summer 2000, at 26 (analyzing the maturity of seventeen adolescent delinquents using a developmental perspective).

<sup>169</sup> See Kim Taylor-Thompson, *States of Mind/States of Development*, 14 STAN. L. & POL’Y REV. 143, 143 (2003) (“[A]dolescent decision-making bears little resemblance to the mental operation that adults—and adult courts—treat as typical.”).

<sup>170</sup> See Spear, *supra* note 166, at 420–21.

<sup>171</sup> Laurence Steinberg, *Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science*, 16 CURRENT DIRECTIONS PSYCHOL. SCI. 55, 56 (2007).

<sup>172</sup> *Id.*

develops more quickly.<sup>173</sup> Therefore, when adolescents become emotionally excited, the perceived rewards are in the forefront of their minds.<sup>174</sup>

In a study comparing the decision-making ability of adolescents and young adults, Bonnie Halpern-Felsher and Elizabeth Cauffman found that adults were more likely than adolescents to consider the risks associated with their decisions.<sup>175</sup> The results of the study led Halpern-Felsher and Cauffman to conclude that “overall, adults outperform adolescents on decision-making competence, as defined by their spontaneous consideration of options, risks, long-term consequences, and benefits associated with each decision.”<sup>176</sup>

Adolescents are thus handicapped when they are interrogated; they will often make impulsive,<sup>177</sup> short-sighted decisions to maximize what they perceive as the reward—being allowed to go home, avoid jail, or end the interrogation as quickly as possible.<sup>178</sup> When adolescents are confronted with a stressful situation like an interrogation, they are less likely to adequately assess the risks associated with their decisions and understand all of their options when authority figures demand answers to questions.<sup>179</sup>

Brain development studies demonstrate that adolescents make impulsive, short-sighted decisions not only because of their risk-weighting handicap,<sup>180</sup> but also because their thinking is “present-oriented”<sup>181</sup> and because of their weak

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. APPLIED DEVELOPMENTAL PSYCHOL. 257, 265, 268 (2001) (comparing the responses of sixth-, eighth-, tenth-, and twelfth-grade students with adults' responses to three open-ended hypothetical situations).

<sup>176</sup> *Id.* at 268.

<sup>177</sup> Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEVELOPMENTAL PSYCHOL. 1764, 1774 (2008) (finding that adolescents are still developing impulse control well into young adulthood and that the data gathered “indicat[ed] a linear decline in impulsivity between ages 10 and 30”).

<sup>178</sup> Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHOL. REV. 53, 55 (2007); see Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 357 (2003) (“[W]hen being interrogated by the police . . . younger adolescents are less likely, or perhaps less able, than others to recognize the risks inherent in the various choices they face or to consider the long-term, and not merely the immediate, consequences of their legal decisions.”).

<sup>179</sup> See Grisso et al., *supra* note 178, at 357.

<sup>180</sup> See *supra* note 178 and accompanying text.

<sup>181</sup> Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD. RTS. J. 16, 17 (1999).

“future orientation.”<sup>182</sup> Jari-Erik Nurmi defined future orientation as a three-stage process that includes setting goals for the future, making plans to achieve those goals, and evaluating those goals and plans to determine whether they are realizable.<sup>183</sup> Nurmi concluded that adolescents’ thoughts about their futures only extend to the end of the second decade and the beginning of the third decade of their lives.<sup>184</sup> Not only do adolescents focus on short-term consequences, but adolescents are also less likely than adults to even consider the long-term consequences of their decisions.<sup>185</sup> Even when adolescents do consider long-term consequences, they place more weight on immediate risks and benefits.<sup>186</sup>

Elizabeth Cauffman and Laurence Steinberg’s research supports the assertion that adolescents have weaker future orientation than adults.<sup>187</sup> Cauffman and Steinberg compared maturity of judgment in over one thousand adolescents and adults.<sup>188</sup> Part of the study focused on the “perspective” of adolescents and adults, which was in part measured by the ability to recognize short- and long-term consequences.<sup>189</sup> Cauffman and Steinberg found that adolescents have difficulty assessing long-term consequences.<sup>190</sup> Adolescents—even twelfth-grade students—scored lower than adults in the perspective category.<sup>191</sup>

Adolescents’ weak future orientation increases their vulnerability in interrogation settings because they often look for the quickest and easiest way

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<sup>182</sup> Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, FUTURE CHILD., Fall 2008, at 15, 20 [hereinafter Scott & Steinberg, *Adolescent Development*]; accord Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1012 (2003) [hereinafter Steinberg & Scott, *Less Guilty*].

<sup>183</sup> Jari-Erik Nurmi, *How Do Adolescents See Their Future? A Review of the Development of Future Orientation and Planning*, 11 DEVELOPMENTAL REV. 1, 4 (1991).

<sup>184</sup> *Id.* at 27. Nurmi also stated that “few 11- to 15-year-old adolescents expressed hopes which they expected to be realized after the age of 30.” *Id.*

<sup>185</sup> Scott & Steinberg, *Adolescent Development*, *supra* note 182, at 20.

<sup>186</sup> GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 196 (2003) (noting that although an adolescent may be aware of the negative consequences of confessing, “the perceived immediate gains outweigh the perceived and uncertain long-term consequences”); Scott & Steinberg, *Adolescent Development*, *supra* note 182, at 20.

<sup>187</sup> Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable than Adults*, 18 BEHAV. SCI. & L. 741, 759 (2000).

<sup>188</sup> *Id.* at 745–46. Cauffman and Steinberg used psychosocial factors—responsibility, perspective, and temperament—to measure maturity of judgment in adolescents and adults. *Id.* at 745.

<sup>189</sup> *Id.* at 748.

<sup>190</sup> *Id.* at 759.

<sup>191</sup> *Id.* at 754.

out of their predicament—confessing to the crime so that they can leave the interrogation room.<sup>192</sup> Adolescents' failure to consider the long-term consequences of their decisions in the interrogation room, combined with their risk-weighting handicap, causes them to make poor decisions that have serious long-term consequences.

### 3. *Adolescents' Compliance with Demands from Authority Figures*

Research confirms that adolescents display a greater desire than adults to comply with authority figures.<sup>193</sup> Adolescents perceive adult authority figures as cooperative and truthful.<sup>194</sup> Because adolescents are eager to please,<sup>195</sup> they try to satisfy their adult questioners by giving adults the type of information they want.<sup>196</sup> In an interrogation setting, this has serious consequences for adolescents, who may fail to recount their actual knowledge of an event because they are tailoring their responses to satisfy their questioners.<sup>197</sup> Even if adolescents give accurate answers to a question the first time, when the interrogator repeats the question it will cause many adolescents to "assume they gave the 'wrong' answer the first time, and feel pressure to provide the 'right' answer when the question is repeated."<sup>198</sup>

Thomas Grisso has raised similar concerns about adolescents' compliance with authority figures in interrogation settings, finding that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of a plea agreement."<sup>199</sup> Adolescents' propensity to comply with authority figures will be even more pronounced when police officers are present during the interrogation because

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<sup>192</sup> See Scott-Hayward, *supra* note 178, and accompanying text.

<sup>193</sup> Stephen J. Ceci & Maggie Bruck, *Suggestibility of the Child Witness: A Historical Review and Synthesis*, in ANNUAL PROGRESS IN CHILD PSYCHIATRY AND CHILD DEVELOPMENT 1994, at 195, 230 (Margaret E. Hertzog & Ellen A. Farber eds., 1995); Grisso et al., *supra* note 178, at 357.

<sup>194</sup> Ceci & Bruck, *supra* note 193, at 230.

<sup>195</sup> Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 BEHAV. SCI. & L. 757, 764 (2007).

<sup>196</sup> Ceci & Bruck, *supra* note 193, at 230.

<sup>197</sup> See Meyer & Reppucci, *supra* note 195, at 763.

<sup>198</sup> Steven A. Drizin & Beth A. Colgan, *Tales from the Juvenile Confession Front: A Guide to How Standard Police Interrogation Tactics Can Produce Coerced and False Confessions from Juvenile Suspects*, in INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 127, 141 (G. Daniel Lassiter ed., 2004) (quoting John E.B. Myers, Karen J. Saywitz & Gail S. Goodman, *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 PAC. L.J. 3, 23 (1996)).

<sup>199</sup> Grisso et al., *supra* note 178, at 357.

police officers are powerful authority figures and “often occupy an elevated position of power relative to children.”<sup>200</sup>

Adolescents’ propensity to comply with authority figures is molded by the process of socialization, and socialization causes adolescents to feel significant pressure to acquiesce to adults’ wishes.<sup>201</sup> Because of the process of socialization,<sup>202</sup> many adolescents “literally regard their rights as those entitlements that adults permit them to exercise.”<sup>203</sup> In the context of an interrogation, this means that when a police officer “requests” that an adolescent respond to his questions, the adolescent perceives that he has no option other than to answer the questions, and that if he refuses to answer questions he will face consequences for exercising his right.<sup>204</sup> Even if a law enforcement officer is merely present during the interrogation, an adolescent may feel added pressure to comply because of the law enforcement officer’s authoritative presence.<sup>205</sup>

When adolescents are interrogated, scientific research shows that they are more likely than adults to falsely confess; to make immature, impulsive decisions; and to provide information to satisfy their adult questioners.<sup>206</sup> These vulnerabilities demonstrate the coercive effect of law enforcement’s presence on adolescents in general interrogation settings and support this Comment’s proposal that the mere presence of law enforcement at a school interrogation triggers the *Miranda* rights that accompany custody. As discussed below, the public school setting further intensifies adolescents’ vulnerabilities during school interrogations.

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<sup>200</sup> Barbara Kaban & Ann E. Tobey, *When Police Question Children: Are Protections Adequate?*, 1 J. CENTER FOR CHILD. & CTS. 151, 155 (1999).

<sup>201</sup> Gerald P. Koocher, *Different Lenses: Psycho-Legal Perspectives on Children’s Rights*, 16 NOVA L. REV. 711, 716 (1992).

<sup>202</sup> Socialization refers to the process through which adolescents learn their roles in society. *See id.* at 715. Adolescents are “socialized” in large part by their families, social institutions, and schools. *Id.*

<sup>203</sup> *Id.* Adolescents might also acquiesce to the authority figures’ requests because they feel powerlessness. *See* Lila Ghent Braine et al., *Conflicts with Authority: Children’s Feelings, Actions, and Justifications*, 27 DEVELOPMENTAL PSYCHOL. 829, 839 (1991). This feeling of powerlessness diminishes as adolescents get older. *Id.*

<sup>204</sup> Koocher, *supra* note 201, at 716.

<sup>205</sup> *See id.*; *see also* Holland, *supra* note 131, at 65.

<sup>206</sup> *See supra* Part II.B.

### III. UNIQUE ASPECTS OF PUBLIC SCHOOLS EXACERBATE ADOLESCENTS' VULNERABILITY DURING INTERROGATION

In modern-day public schools, the increased presence of law enforcement has led to a greater level of cooperation between school officials and law enforcement.<sup>207</sup> At the same time, students' behaviors are being reported to the police more frequently than ever.<sup>208</sup> The relationship between school officials and students has also undergone a transformation and can now be described as adversarial in many instances, thus causing many students to assume that school officials and law enforcement are working together on criminal investigations.<sup>209</sup> These changes, together with how schools restrict students' freedom of movement, combine to make interrogations conducted at school uniquely coercive.

#### A. Greater Cooperation Between School Officials and Law Enforcement

In response to growing safety concerns, schools have increased the presence of law enforcement in their buildings.<sup>210</sup> As a result, the number of student interactions with law enforcement has dramatically increased.<sup>211</sup> Law enforcement officers who work in schools—usually called school resource officers—perform both traditional law enforcement duties and school duties.<sup>212</sup> In some school districts, local police departments and schools have developed liaison programs through which police officers are stationed at schools.<sup>213</sup> Accordingly, Michael Pinard argued that the increased presence of law enforcement in schools has “fostered more cooperative, formalized and interdependent relationships between . . . schools and law enforcement

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<sup>207</sup> Pinard, *supra* note 110, at 1079; *see infra* Part III.A.

<sup>208</sup> Pinard, *supra* note 110, at 1079–80; *see infra* Part III.B.

<sup>209</sup> Holland, *supra* note 131, at 76–77 (stating that it is “understandable for students to view the [law enforcement] officers and the administrators as interchangeable”).

<sup>210</sup> Besides the increased presence of law enforcement officers, many schools now subject students to metal detectors and drug tests. *See generally* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995); Eugene C. Bjorklund, Commentary, *Using Metal Detectors in the Public Schools: Some Legal Issues*, 111 EDUC. L. REP. 1 (1996).

<sup>211</sup> Lisa H. Thureau & Johanna Wald, *Controlling Partners: When Law Enforcement Meets Discipline in Public Schools*, 54 N.Y.L. SCH. L. REV. 977, 978 (2009–2010) (attributing the increased presence of law enforcement to (1) increased federal funding to support police in schools; (2) high-profile school shootings; and (3) an increasingly strict approach to adolescent crime).

<sup>212</sup> *See id.*; *see also* Pinard, *supra* note 110, at 1077–78. For a more detailed discussion of school resource officers, *see* Holland, *supra* note 131, at 74–76.

<sup>213</sup> Pinard, *supra* note 110, at 1077.

agencies.”<sup>214</sup> In other words, law enforcement and school officials are no longer working independently, but instead rely on each other to achieve their respective goals.<sup>215</sup>

The cooperation between law enforcement and school officials creates confusion in the minds of students subjected to questioning.<sup>216</sup> When school officials repeatedly and openly cooperate with law enforcement, interrogated students may no longer believe that the school officials are primarily concerned with the students’ welfare.<sup>217</sup> Interrogated students may not believe the questioning is aimed at determining whether school rules were violated.<sup>218</sup> Instead, with law enforcement present, students may perceive questioning as more intense and likely to produce criminal charges, since law enforcement and school officials cooperate daily and transparently to achieve their respective goals.<sup>219</sup> The presence of law enforcement officers increases the coercion that adolescent students feel during interrogation because law enforcement officers have “the power to arrest and [their] actions carry a threat of compulsion no [school official] acting alone can ever convey.”<sup>220</sup> Because a law enforcement officer’s presence greatly intensifies the situation, his mere presence at a school interrogation transforms the encounter into custody.

#### *B. Dramatic Increase in the Amount of Student Behavior Reported to Police*

Students are increasingly vulnerable when questioned by school officials in the presence of law enforcement because statements obtained during questioning are often used against them in criminal proceedings.<sup>221</sup> In today’s public schools, school officials are reporting more student activities to law enforcement, in part because modern laws require the reporting of certain types of criminal activity to law enforcement.<sup>222</sup> For example, school officials must report certain criminal behavior to law enforcement, such as violations of “zero

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<sup>214</sup> *Id.* at 1079.

<sup>215</sup> *Id.*

<sup>216</sup> Holland, *supra* note 131, at 76–77 (noting that collaboration between school officials and law enforcement may blur the lines of authority and create confusion for students).

<sup>217</sup> *Id.* at 89 (“It is unrealistic . . . to assume that a modern student, especially a student suspected of misconduct, would view a principal as someone looking out for her interests . . .”).

<sup>218</sup> *See id.* at 76–77.

<sup>219</sup> *Id.* at 89 (noting that a school official who works closely with law enforcement “must appear [to students] to be as much a law enforcement figure as an educator”).

<sup>220</sup> *Id.* at 60.

<sup>221</sup> *See Pinard, supra* note 110, at 1099.

<sup>222</sup> *Id.* at 1079–80.

tolerance” policies.<sup>223</sup> In addition to reporting violations of zero tolerance policies, some states have laws that require school officials to contact law enforcement authorities whenever the school officials suspect criminal activity.<sup>224</sup> As a result of these requirements, school officials now report to law enforcement student behavior that used to be handled solely through school internal disciplinary processes.<sup>225</sup>

Because students who break school rules are likely to be subject to both school discipline and criminal charges, students who are interrogated by school officials in the presence of law enforcement may feel they cannot terminate the conversation and leave.<sup>226</sup> Pinard found that “the increased placement of law enforcement officers . . . in public schools, along with the broader reporting requirements imposed upon school officials, has in many ways melded the criminal justice system with school disciplinary processes.”<sup>227</sup> The presence of a law enforcement officer during questioning, combined with the possibility that the student will face criminal charges, creates a more coercive environment because the student may no longer think that the school official is conducting questioning for school disciplinary purposes.<sup>228</sup> This environment is custodial because even if the school official asks all of the questions and the

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<sup>223</sup> *Id.* at 1109–12. The first zero tolerance policies stemmed from the Gun-Free Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3907 (repealed 2002). This Act required schools to expel a child for at least one year if the child brought or possessed a gun at school. *Id.* Since the statute was enacted, many states and schools have expanded their zero tolerance policies. The consequences of these policies have been discussed. *See* Am. Psychological Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852, 856 (2008) (“Research indicates that many schools appear to be using the juvenile justice system to a greater extent and, in a relatively large percentage of cases, for infractions that would not previously have been considered dangerous or threatening.”).

<sup>224</sup> *See, e.g.*, S.C. CODE ANN. § 59-24-60 (2004).

<sup>225</sup> Pinard, *supra* note 110, at 1080; *see also* Michael Easterbrook, *Taking Aim at Violence*, PSYCHOL. TODAY, July/Aug. 1999, at 52, 56 (“As schools begin to resemble police precincts, school officials are abdicating their duty to counsel and discipline unruly students and letting the cops down the hall handle the classroom disruptions, bullying and schoolyard fights.”).

<sup>226</sup> *See* Brief of Juvenile Law Ctr., et al. as Amici Curiae in Support of Petitioner at 17, *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011) (No. 09-11121), 2010 WL 5535752 (arguing that J.D.B. would not have felt free to leave).

<sup>227</sup> Pinard, *supra* note 110, at 1096–97.

<sup>228</sup> *See Over-Policing in Schools’ Education and Privacy Rights*, N.Y. CIV. LIBERTIES UNION, <http://www.nyclu.org/content/over-policing-schools-students-education-and-privacy-rights> (last visited Nov. 16, 2012) (noting that the over-policing of schools “foster[s] environments where children perceive that they are being treated as criminals . . . consequentially, [students] cultivate negative attitudes toward their schools”); *see also* Pinard, *supra* note 110, at 1107–08 (stating that law enforcement officers are “gatekeepers” who make the initial decisions regarding which students will be introduced into the criminal justice system).



officer is merely present during questioning, the officer's presence will surely impact the student's response.<sup>229</sup>

### C. *The Adversarial Relationship Between Students and School Officials*

The adversarial relationship between students and school officials is a coercive factor that weighs in favor of finding that students are in custody when questioned by school officials in the presence of law enforcement. When both law enforcement and school officials are present during questioning, the student may perceive both of these adult authority figures as opponents.<sup>230</sup>

The assertion that students and school officials have an adversarial relationship runs counter to the Supreme Court's underlying rationale in *New Jersey v. T.L.O.*<sup>231</sup> Accordingly, this section argues that the underlying rationale of *T.L.O.* no longer accurately depicts school officials' relationships with students in modern public schools.

In *T.L.O.*, the Court held that, in the Fourth Amendment context, school officials have a "substantial interest . . . in maintaining discipline in the classroom and on school grounds"<sup>232</sup> and that this need requires leniency when school officials conduct searches.<sup>233</sup> Because school officials have "special needs," the Court concluded that school officials do not need to obtain search warrants or have probable cause before searching their students.<sup>234</sup> Instead, the Court held that school officials could conduct searches if the search was reasonable under all of the circumstances.<sup>235</sup> The Court opined that this lesser standard was necessary to accommodate school officials' "freedom to maintain order in the schools."<sup>236</sup>

Concurring in *T.L.O.*, Justice Powell described the relationship between school officials and students as a "special relationship."<sup>237</sup> He stated that, while law enforcement's relationship with criminal suspects was adversarial, the relationship between school officials and students was rarely adversarial because "there is a commonality of interests between teachers and their

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<sup>229</sup> Holland, *supra* note 131, at 65.

<sup>230</sup> See *supra* note 219.

<sup>231</sup> 469 U.S. 325 (1985).

<sup>232</sup> *Id.* at 339.

<sup>233</sup> *Id.* at 340.

<sup>234</sup> *Id.* at 332 n.2, 340–41.

<sup>235</sup> *Id.* at 341.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 349 (Powell, J., concurring).

pupils.”<sup>238</sup> According to Justice Powell, this commonality of interests arises because school officials are personally responsible for students’ welfare and education.<sup>239</sup> Although the Court in *T.L.O.* applied the special needs doctrine to Fourth Amendment searches, “[m]any courts have simplistically combined *T.L.O.* and *Miranda* and assumed that *Miranda* does not apply to questioning by school officials unless those officials are acting as agents of law enforcement.”<sup>240</sup>

*T.L.O.*’s rationale that school officials and students share a commonality of interests no longer realistically depicts modern public schools.<sup>241</sup> Because school officials are often required to report students’ criminal activity and any suspicion of criminal activity to law enforcement, school officials and interrogated students now have a more adversarial relationship.<sup>242</sup> Furthermore, the increased presence of law enforcement in schools and the cooperation between school officials and law enforcement suggest that school officials do not always consider the best interests of interrogated students.<sup>243</sup> Instead, questioning that is purportedly undertaken for school disciplinary purposes “frequently become[s] subterfuge[], if not pretext, for the quick referral of minors to the local police department and criminal prosecution.”<sup>244</sup>

A student subject to interrogation by a school official in the presence of law enforcement may assume that the two adult authorities are working together on the criminal investigation. The reasons for this are: the increased presence of law enforcement in schools, the greater cooperation between school officials and law enforcement, and the adversarial relationship between school officials

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<sup>238</sup> *Id.* at 349–50.

<sup>239</sup> *Id.* at 350.

<sup>240</sup> Holland, *supra* note 131, at 41.

<sup>241</sup> Many scholars have argued that the assumptions underlying the Court’s holding in *T.L.O.* are no longer accurate. See, e.g., Josh Kagan, *Reappraising T.L.O.’s “Special Needs” Doctrine in an Era of School-Law Enforcement Entanglement*, 33 J.L. & EDUC. 291, 294 (2004) (arguing that *T.L.O.*’s assumption that schools and law enforcement are “fundamentally separate institutions” has been undermined by recent developments); Pinard, *supra* note 110, at 1097–98 (arguing that *T.L.O.* must be revisited because of the interdependent relationships between law enforcement and school officials). See generally A. James Spung, Comment, *From Backpacks to Blackberries: (Re)Examining New Jersey v. T.L.O. in the Age of the Cell Phone*, 61 EMORY L.J. 111 (2011) (arguing that *T.L.O.*’s “heavily abridged safeguards” need to be reevaluated in the school search context).

<sup>242</sup> Cf. Josh Kagan, *supra* note 241, at 291, 320 (arguing that *T.L.O.* is inapplicable in schools where excessive entanglement between school officials and law enforcement exists).

<sup>243</sup> See *supra* notes 217–18 and accompanying text.

<sup>244</sup> Meg Penrose, *Miranda, Please Report to the Principal’s Office*, 33 FORDHAM URB. L.J. 775, 778 (2006).

and students.<sup>245</sup> Even if the law enforcement officer does not ask questions, his presence will likely cause the interrogated student to feel apprehensive and fearful, affecting the way the student responds to the school official's questions.<sup>246</sup> Thus, the law enforcement officer's mere presence is authoritative and creates an overwhelming power imbalance in a student interrogation occurring at school. To combat this power imbalance, students need to be warned of their *Miranda* rights when a law enforcement officer is present at school interrogations.

#### *D. Students' Restricted Freedom of Movement in Public Schools*

Students are subject to many restrictions that limit their movement while they are on school grounds. Mandatory attendance laws require students to attend school;<sup>247</sup> they cannot leave when they want or roam the building at will, but must ask for permission to leave their classrooms or the building.<sup>248</sup> When students receive orders by school officials, they are expected to comply or face disciplinary action.<sup>249</sup> These factors increase the coerciveness that students perceive in school interrogation settings. The Court in *J.D.B.* seemed to recognize that the school setting was unique, stating that “the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer.”<sup>250</sup>

The restraint of movement that students experience during interrogation in school settings is analogous to the restraint of movement that military service members experience during interrogation in their own homes. Although interrogations in the home have not been traditionally protected,<sup>251</sup> the First

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<sup>245</sup> See *supra* note 219.

<sup>246</sup> Holland, *supra* note 131, at 65.

<sup>247</sup> See *Ingraham v. Wright*, 430 U.S. 651, 660 n.14 (1977) (documenting that compulsory school attendance laws existed in all states by 1918); Holland, *supra* note 131, at 85 n.175 (arguing that law enforcement officers can take advantage of adolescents' compulsory presence at school by interviewing them at school); Lee Remington, Note, *The Ghost of Columbine and the Miranda Doctrine: Student Interrogations in a School Setting*, 41 BRANDEIS L.J. 373, 390 (2002) (arguing that children have no choice but to obtain an education because of compulsory attendance laws and truancy laws).

<sup>248</sup> See Remington, *supra* note 247, at 390 (comparing teachers and school officials to prison wardens because they decide when students may leave the classroom and where students are allowed to go).

<sup>249</sup> See *infra* note 267 and accompanying text.

<sup>250</sup> *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2405 (2011).

<sup>251</sup> Courts have been very reluctant to find custodial interrogation when individuals are interrogated in their homes. See, e.g., *United States v. Craighead*, 539 F.3d 1073, 1083 (9th Cir. 2008) (opining that “courts

Circuit recently demonstrated that it is willing to extend the custody analysis to this area under certain circumstances.<sup>252</sup> In *United States v. Rogers*, the United States Court of Appeals for the First Circuit held that a service member was in custody when questioned in his home.<sup>253</sup> The court recognized that the interrogation was coercive because the service member had been ordered to report home by a commanding officer.<sup>254</sup> In determining that the service member had been subjected to custodial interrogation, the court noted that the most significant factor was that “the military had made certain that [the service member] did not walk into [his home] voluntarily, or confront the police with free choice to be where he was.”<sup>255</sup> The court inferred that the service member’s “situation at the house would have left any member of the armed services reasonably feeling that he lacked free choice to extricate himself, and sufficiently compelled to answer to authority.”<sup>256</sup>

The First Circuit’s analysis of the coercive factors in *Rogers* has implications for courts’ custody analyses in school interrogation settings. A school official’s orders to students are analogous to a military officer’s orders to his subordinates because both are premised on a culture that demands submission to authority—resulting in little autonomy for the students and lower-ranked military personnel.

In schools, as in the military, students must follow orders or face disciplinary action by those in authority.<sup>257</sup> These orders were explicit at J.D.B.’s school, as his student handbook “instructs students to ‘[f]ollow directions of all teachers/adults the first time they are given,’ ‘[s]top moving

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have generally been much less likely to find that an interrogation in the suspect’s home was custodial in nature” because the *Miranda* concerns about coercion are less likely to be present when the suspect is in the comfort of his home).

<sup>252</sup> *United States v. Rogers*, 659 F.3d 74, 79 (1st Cir. 2011).

<sup>253</sup> *Id.* The Ninth Circuit also recently reexamined the custody analysis as it applies to the home. See *Craighead*, 539 F.3d at 1073. In *Craighead*, the court held that the defendant, a member of the Air Force, was in custody in his home when eight law enforcement officers from three different enforcement agencies were present during questioning. *Id.* at 1084–85, 1089.

<sup>254</sup> *Rogers*, 659 F.3d at 76, 79.

<sup>255</sup> *Id.* at 78.

<sup>256</sup> *Id.* at 79.

<sup>257</sup> See, e.g., *J.D. v. Commonwealth*, 591 S.E.2d 721, 723–24 (Va. Ct. App. 2004) (finding no custody existed despite testimony from the assistant principal that a student could be disciplined if he refused to obey school administrators and testimony from the student confirming that this threat of discipline made him feel like he had no choice but to go to the office and cooperate).

when an adult addresses' them, and '[w]alk away only after the adult has dismissed' them."<sup>258</sup>

Adolescents' propensity to comply with authority figures may lead them to comply with the demands of school officials and law enforcement.<sup>259</sup> Studies have shown that adolescents gauge the weight of an adult's authority by examining the social context.<sup>260</sup> Psychologists Marta Laupa and Elliot Turiel determined that "[c]hildren will accept as authorities those persons who hold social positions at school when they issue directives in the context of the school."<sup>261</sup> Therefore, the social context of the school setting may enhance adolescents' perceptions of authority figures whom they encounter there.<sup>262</sup>

Students' perception of authority has important implications when analyzing the coerciveness of school interrogation settings.<sup>263</sup> Because students generally consider principals to have the most authority in the school,<sup>264</sup> the student will perceive both the school official and law enforcement officer as having great authority when both figures are present during questioning.<sup>265</sup>

Just as a service member cannot protest his daily schedule, students cannot challenge the rules that restrict them in school because they must submit to authority.<sup>266</sup> When a student is called to the principal's office, that student has no choice but to go to the office.<sup>267</sup> Like J.D.B., students may even be escorted

<sup>258</sup> *In re J.D.B.*, 686 S.E.2d 135, 143 (N.C. 2009) (Brady, J., dissenting) (alterations in original), *rev'd and remanded sub nom.* *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

<sup>259</sup> Braine et al., *supra* note 203, at 835.

<sup>260</sup> See, e.g., Marta Laupa & Elliot Turiel, *Children's Concepts of Authority and Social Contexts*, 85 J. EDUC. PSYCHOL. 191, 191 (1993) [hereinafter Laupa & Turiel, *Children's Concepts*] (stating that "children judge that holding a social position . . . is one attribute that legitimizes a teacher's directives within the social context of the school"); Marta Laupa, *Children's Reasoning About Three Authority Attributes: Adult Status, Knowledge, and Social Position*, 27 DEVELOPMENTAL PSYCHOL. 321, 321 (1991) [hereinafter Laupa, *Children's Reasoning*].

<sup>261</sup> Laupa & Turiel, *Children's Concepts*, *supra* note 260, at 192.

<sup>262</sup> See *id.* (stating that children perceive adults who hold social positions at school as authority figures who must be obeyed).

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* at 196.

<sup>265</sup> Laupa, *Children's Reasoning*, *supra* note 260, at 328.

<sup>266</sup> For example, if J.D.B. had refused to accompany the officer to the principal's office, he could have been prosecuted for disturbing the peace. See N.C. GEN. STAT. § 14-288.4(a)(6) (2011) (stating that a person engages in disorderly conduct when he intentionally "[d]isrupts, disturbs, or interferes with the teaching of students at any public . . . educational institution").

<sup>267</sup> *In re J.D.B.*, 686 S.E.2d 135, 144 (N.C. 2009) (Brady, J., dissenting) ("J.D.B. had no choice but to comply with his removal from the classroom and [the officer's] instructions to walk to the conference room. If J.D.B. had refused to accompany [the officer] he likely would have faced disciplinary action from the school."), *rev'd and remanded sub nom.* *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011); *In re Killitz*, 651

to the principal's office by a police officer.<sup>268</sup> As in *Rogers*,<sup>269</sup> a student lacks the freedom to extricate himself from the principal's office, and he is thus in custody because he is sufficiently compelled to answer to the school official and law enforcement officer.

The unique aspects of modern public schools demonstrate the power imbalance that exists when school officials and law enforcement question students in tandem. When students are confronted by school and law enforcement officials, students may view them both as opponents.<sup>270</sup> The mere presence of law enforcement transforms the encounter in the eyes of students—creating fear and apprehension.<sup>271</sup> Because adolescents are already incredibly vulnerable in regular interrogation settings, the added coercive aspects of the school environment tip the scales heavily in the questioners' favor. Therefore, students need to be given *Miranda* warnings to restore balance to these types of interrogations.

#### IV. COUNTERVAILING CONCERNS

This Comment proposes that the mere presence of law enforcement while a student is being questioned by a school official—on school grounds and about potential criminal behavior—amounts to custody and triggers the administration of *Miranda* warnings.

Accordingly, this Part addresses the anticipated counterarguments to this proposal, including: (1) giving *Miranda* warnings to students will result in fewer confessions; (2) requiring *Miranda* warnings whenever a law enforcement officer is present conflicts with the totality-of-the-circumstances test that currently determines custody; (3) administering *Miranda* warnings will create an even more adversarial relationship between school officials and students; and (4) changing the custody analysis is not enough to provide meaningful constitutional protections to adolescent students.

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P.2d 1382, 1384 (Or. Ct. App. 1982) (“[D]efendant cannot be said to have come voluntarily to the place of questioning. He would likely have been subject to the usual school disciplinary procedures had he not complied with the principal’s request that he come to the office.”).

<sup>268</sup> J.D.B. v. North Carolina, 131 S. Ct. 2394, 2398–99 (2011).

<sup>269</sup> United States v. Rogers, 659 F.3d 74, 79 (1st Cir. 2011) (asserting that “whenever a member of the services is questioned in circumstances mandated by a superior’s order, he is in the situation that *Miranda* was meant to address, where the line between voluntary and involuntary response is at least so blurred that the Fifth Amendment guarantee is in jeopardy”).

<sup>270</sup> See *supra* note 219.

<sup>271</sup> See *supra* note 131 and accompanying text.

This Comment's thesis may be resisted because of the possibility that administering *Miranda* warnings will result in fewer confessions. This argument has been used to attack the *Miranda* decision for years.<sup>272</sup> However, many scholars argue that *Miranda* has had little impact on the number of confessions<sup>273</sup> and less impact on the effectiveness of criminal investigations than originally feared.<sup>274</sup> Indeed, many scholars believe that *Miranda* has increased police professionalism instead of decreasing the number of prosecutions.<sup>275</sup>

To the extent that giving *Miranda* warnings does serve as an impediment to obtaining confessions, this is inherent in the Bill of Rights.<sup>276</sup> When law enforcement is involved in school interrogations, inadequate protections exact a high price—adolescents' entrance into the criminal justice system.<sup>277</sup> Requiring *Miranda* warnings when law enforcement is present encourages law enforcement to slow down and conduct interrogations using methods that protect adolescent students' rights.<sup>278</sup>

To minimize the loss of confessions, Professor Paul Holland proposed a preliminary custody analysis that would require little change to the current

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<sup>272</sup> See GARY L. STUART, *MIRANDA: THE STORY OF AMERICA'S RIGHT TO REMAIN SILENT* 100 (2004) (stating that the most frequent criticism of *Miranda* has been that *Miranda* warnings hamper law enforcement's ability to obtain confessions quickly before the subject of the interrogation has an opportunity to create an alibi).

<sup>273</sup> See, e.g., *id.* at 101 (responding to critics' assertions that *Miranda* would prevent the admissibility of freely given confessions before any police investigation and showing that "as of 1988, less than 1 percent of all American criminal cases had been dismissed because of 'unwarned' confessions. And only a fraction of that 1 percent was dismissed for noncompliance with *Miranda*" (footnote omitted)); George C. Thomas III, *Plain Talk About the Miranda Empirical Debate: A "Steady-State" Theory of Confessions*, in *THE MIRANDA DEBATE: LAW, JUSTICE, AND POLICING* 236, 237–38 (Richard A. Leo & George C. Thomas III eds., 1998).

<sup>274</sup> See, e.g., Richard A. Leo, *The Impact of Miranda Revisited*, in *THE MIRANDA DEBATE: LAW, JUSTICE, AND POLICING*, *supra* note 273, at 208, 208–09 (noting, however, that some inefficiencies may occur).

<sup>275</sup> STUART, *supra* note 272, at 101.

<sup>276</sup> See *In re Gault*, 387 U.S. 1, 47 (1967) ("The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. . . . [T]he privilege reflects the limits of the individual's attornment to the state and—in a philosophical sense—insists upon the equality of the individual and the state."). In *Dickerson v. United States*, 530 U.S. 428, 432 (2000), the Court held that *Miranda* was a constitutionally based decision, although the warnings themselves are not constitutionally required.

<sup>277</sup> See, e.g., Paul J. Hirschfield, *Preparing for Prison? The Criminalization of School Discipline in the USA*, 12 *THEORETICAL CRIMINOLOGY* 79, 82 (2008) (describing how the importation of the criminal justice system into schools has led to the increased criminalization of student behavior).

<sup>278</sup> See generally Kassir et al., *supra* note 151, at 30 (arguing that law enforcement should receive special training so that they will appreciate how their interrogation techniques affect adolescents).

administration of *Miranda* warnings.<sup>279</sup> In his article, Holland advocated for a custody analysis focused on the relationships of the parties involved in the questioning.<sup>280</sup> He argued that courts should engage in a preliminary analysis to determine whether *Miranda* applies to a particular school interrogation.<sup>281</sup> This analysis involves asking whether, under the particular circumstances, a reasonable student would believe that he “was the subject of law enforcement activity.”<sup>282</sup> To determine what a reasonable student would believe, Holland argued that the court should examine the relationships among all parties involved.<sup>283</sup> This would include examining “the background norms within the school as to how authority is asserted in such situations.”<sup>284</sup>

Although Holland’s proposal respects the purpose of the custody analysis by requiring an analysis of the coercive elements of the school interrogation environment,<sup>285</sup> it fails to give school officials and law enforcement a way to predict which types of student interrogations will require *Miranda* warnings. Under his model, school officials and law enforcement have little direction as to what constitutes custody, which would likely cause them to inconsistently protect interrogated students. In contrast, this Comment proposes a clear rule that would provide direction to school officials and law enforcement.

Second, because this Comment proposes a clear rule, requiring *Miranda* rights whenever law enforcement is present seems to conflict with custody’s totality-of-the-circumstances test. However, there is doctrinal precedent for identifying a highly coercive factor that drives the custody analysis.<sup>286</sup> For example, courts have held that transporting a suspect in a police car<sup>287</sup> or

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<sup>279</sup> Holland, *supra* note 131, at 43–44. Holland argued that consideration of the relationships among students, officers, and administrators “need not interfere greatly with the effective administration of school safety or discipline. A school administrator and even a school-based police officer could question a student in most school settings without the need to advise the student of his *Miranda* rights.” *Id.*

<sup>280</sup> *See id.* at 72.

<sup>281</sup> *See id.*

<sup>282</sup> *See id.* (emphasis omitted).

<sup>283</sup> *See id.*

<sup>284</sup> *See id.*

<sup>285</sup> *Id.*

<sup>286</sup> *See infra* notes 287–88.

<sup>287</sup> *See, e.g.,* Weaver v. State, 806 S.W.2d 615, 620 (Ark. 1991) (noting that transportation in a police car is a significant factor in finding that a person was in custody); Mulligan v. State, 271 A.2d 385, 390 (Md. Ct. Spec. App. 1970) (“The taking of [the suspect] to the police station in the police car was, in the circumstances, depriving him of his freedom of action in a significant way; he was in custody within the contemplation of *Miranda*.”); People v. Butler, 436 N.Y.S.2d 76, 78 (App. Div. 1981) (stating that the defendant was in custody when he was placed inside the police car and transported to the police precinct).



threatening or using force transforms an encounter into custody.<sup>288</sup> Conversely, courts treat certain other factors as determinative that an individual was not in custody, such as when an individual was interrogated in his own home.<sup>289</sup> Therefore, this Comment's proposal is consistent with courts' previously demonstrated willingness to identify certain factors that drive the custody analysis.

Third, there may be concern that giving *Miranda* warnings to students will make the relationship between school officials and students more adversarial.<sup>290</sup> This Comment argues that the relationship between school officials and students is already adversarial.<sup>291</sup> Even if this relationship was made more adversarial by the administration of *Miranda* warnings, the positives of giving *Miranda* warnings to students outweigh the negatives. At the very least, warning students of their *Miranda* rights would allow students to understand their custodial situation more clearly and would give them the ability to better gauge the intentions of school and law enforcement officials participating in the interrogation.<sup>292</sup>

A fourth concern focuses on the idea that requiring *Miranda* warnings when law enforcement is present does not do enough to protect interrogated students' constitutional rights.<sup>293</sup> For example, to truly combat the power imbalance between law enforcement officers and students in school interrogation settings, some scholars have argued that courts and legislatures should consider four additional protections: (1) requiring all school

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<sup>288</sup> Courts often find custody existed when a suspect was handcuffed. *See, e.g.*, *United States v. Newton*, 369 F.3d 659, 676 (2d Cir. 2004) (stating that “[h]andcuffs are generally recognized as a hallmark of a formal arrest”); *United States v. Peterson*, 506 F. Supp. 2d 21, 23–24 (D.D.C. 2007) (stating that the use of handcuffs is a significant factor in the custody analysis and holding that the suspect was in custody when officers forcibly entered his home and handcuffed him during the execution of a search warrant).

<sup>289</sup> *See supra* note 251 and accompanying text.

<sup>290</sup> *Cf. Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 676–78 (1995) (O'Connor, J., dissenting) (discussing whether a suspicion-based drug testing program would cause the school environment to become more adversarial and discussing schools' adversarial disciplinary measures).

<sup>291</sup> *See supra* Part III.

<sup>292</sup> *See In re Gault*, 387 U.S. 1 (1967). *In re Gault*'s holding is premised on the Court's recognition that in adversarial settings people need rights to protect themselves from government power. Indeed, the *In re Gault* Court opined that one of the purposes of the privilege against self-incrimination “is to prevent the state, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his conviction.” *Id.* at 47.

<sup>293</sup> *See Overview of the Miranda Debate*, in *THE MIRANDA DEBATE: LAW, JUSTICE, AND POLICING*, *supra* note 273, at 1, 3 (asking if *Miranda* warnings are helpful when police officers use deceptive interrogation techniques to easily obtain confessions).

interrogations to be video recorded;<sup>294</sup> (2) requiring a parent or “interested adult” to be present during questioning;<sup>295</sup> (3) requiring a lawyer to be present during questioning;<sup>296</sup> and (4) changing *Miranda* warnings so that adolescents adequately understand their rights.<sup>297</sup> Whether these protections would ultimately be beneficial is beyond the scope of this Comment. Suffice it to say, this is meant to be the first step toward achieving a more meaningful balance in school interrogation settings.

## CONCLUSION

Much of the school interrogation jurisprudence originated when courts had a rosier image of the public school environment and knew less about brain development. The realities of modern-day public schools and the evidence from neuroscientists and developmental psychologists require the custody analysis to be altered to reflect modern understanding. This Comment’s proposal—that the mere presence of a law enforcement officer at a student interrogation transforms the encounter into custody—is sensitive to modern realities and accordingly grants additional constitutional protection to adolescents.

The Supreme Court in *J.D.B.* opened the door for a reevaluation of the dynamics of school interrogations when it considered scientific studies that show adolescents are incredibly vulnerable in general interrogation settings. Courts must take the next logical step: applying these scientific findings to the school environment and taking a critical look at what the reasonable adolescent student feels when interrogated by a school official in the presence of law

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<sup>294</sup> See Kassir et al., *supra* note 151, at 25 (discussing electronic recording of interrogations).

<sup>295</sup> See Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1288–89 (2004) (discussing which states have adopted “interested adult” statutes and the possible negative consequences associated with adoption); Thomas Grisso & Melissa Ring, *Parents’ Attitudes Toward Juveniles’ Rights in Interrogation*, 6 CRIM. JUST. & BEHAV. 211, 221–23 (1979) (arguing that parents are unhelpful and can sometimes even be harmful when adolescents are interrogated); Gerald D. Robin, *Juvenile Interrogation and Confessions*, 10 J. POLICE SCI. & ADMIN. 224, 226 (1982) (stating that “parental guidance . . . often is not an adequate substitute for the advice of trained legal counsel” (internal quotation marks omitted)).

<sup>296</sup> See Scott-Hayward, *supra* note 178, at 70 (discussing policy recommendations to reduce the risk of interrogation-induced false confessions).

<sup>297</sup> See A. Bruce Ferguson & Alan Charles Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39, 54 (1970) (concluding that only “a small percentage of juveniles [are] capable of knowingly and intelligently waiving *Miranda* rights”); Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1153 (1980) (finding that less than 21% of adolescents were able to adequately understand all aspects of *Miranda* warnings).

enforcement. Until this happens, courts will continue to perpetuate outdated assumptions instead of dealing with present-day challenges.

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