



Legislative Affairs  
125 Broad Street, 19<sup>th</sup> Fl  
New York, NY 10004  
212-607-3300  
www.nyclu.org

## 2023-2024 Legislative Memorandum

**Subject: Youth Interrogation Bill  
S.1099 (Bailey) / A.1963 (Joyner)**  
**Position: SUPPORT**

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In 1989, five teenage boys known as the Central Park Five—including Korey Wise, Kevin Richardson, Raymond Santana, Antron McCray, and Yusef Salaam—were falsely arrested, charged, and prosecuted on assault, attempted murder, and rape charges. There was no DNA evidence linking them to the alleged crime and they maintained their innocence throughout the trial and in the years afterward.<sup>1</sup> Nonetheless, each child spent between six and thirteen years behind bars based on the evidence of four coerced confession tapes—tapes that were recorded after the children had been interrogated for 14-30 hours, under extreme police pressure, and before they had the opportunity to speak with an attorney.<sup>2</sup> In 2002, when another man came forward and confessed to the crime, far too much damage had already been done.

Today, the Exonerated Five stand as a critical reminder of the fact that police interrogation of children is inherently problematic. Indeed, scientists and child developmental specialists have long recognized that adolescent brains, by nature, are not primed for police interrogation. *Miranda* warnings do little – if anything – to change this fact. Even when police officers do not intend to coerce statements, young people are biologically more likely to tell law enforcement officers what they think that officer wants to hear, regardless of truth, in order to end a stressful encounter.<sup>3</sup>

More than three decades after the police interrogations that ultimately caused the Exonerated Five to spend their youth in cages, New York law governing the interrogation of young people has not changed. To address this injustice, the New York Civil Liberties Union urges the legislature to promptly pass the Youth Interrogation Bill, **S1099/A1963 (Bailey/Joyner)**. This bill will provide critical protections for children under the age of 18 during police interrogations. Chiefly, the bill will require that all children subject to police interrogation speak with an attorney before any

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<sup>1</sup> Kassin, *False Confessions and the Jogger Case*, NY TIMES (Nov. 1, 2022)

<https://www.nytimes.com/2002/11/01/opinion/false-confessions-and-the-jogger-case.html>

<sup>2</sup> *Id.*

<sup>3</sup> See generally, Barry Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, Law & Society Review, 47(1), 1–35 (March 2013), available at: <http://www.jstor.org/stable/23357929>; Crane et. al, *The Truth About Juvenile False Confessions*, 16.2 INSIGHTS ON LAW AND SOCIETY 10, 12 (2016).

police questioning can begin. Unlike the *Miranda* Rights themselves, which children frequently unknowingly waive, this right to speak with an attorney would be unwaivable under the bill.

### **The United States Supreme Court has been decimating *Miranda's* protections for decades**

When the Supreme Court rendered its decision in *Miranda v. Arizona* in 1966, it fundamentally changed the relationship between accused persons and arresting officers. Dictating that the police must warn a person before they are subject to custodial interrogation that: (1) they have a right to remain silent, (2) what they say can be used against them in court, (3) they have a right to an attorney, and (4) if they cannot afford an attorney, one will be provided to them, the Court created an immense safeguard for accused persons.<sup>4</sup>

However, as with many of the civil rights victories of the mid-twentieth century, *Miranda* protections were weakened by the United States Supreme Court. Today, *Miranda* warnings need not convey any specific words, giving police officers significant leeway in how they present a person's rights.<sup>5</sup> When a "public safety" concern is present, police need not give a *Miranda* warning prior to questioning.<sup>6</sup> Similarly, law enforcement need not give a *Miranda* warning to ask "routine booking questions."<sup>7</sup> Moreover, even when a *Miranda* violation has occurred, physical evidence that was found as a result of such violation can still be introduced against an accused person.<sup>8</sup> And prosecutors are frequently allowed to introduce statements that violate *Miranda* as a way of impeaching accused persons who choose to take the stand.<sup>9</sup>

Further, court precedent specifically allows law enforcement officers to deceive and otherwise misinform adults and children in obtaining statements. For example, law enforcement officers do not need to tell a person that an attorney has been retained and is waiting to speak with them.<sup>10</sup> Law enforcement officers do not need to give *Miranda* warnings while speaking to a person while the officer is undercover.<sup>11</sup> Nor do officers need to tell a person what crime they are being suspected of.<sup>12</sup> And police officers have even been allowed to create two-step traps: generating a confession before any rights have been read, and then *Mirandizing* a person suspected of a crime only at this post-confession stage, at which point a person is likely to believe another

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<sup>4</sup> *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)

<sup>5</sup> *California v. Prysock*, 453 U.S. 355, 355 (1981); *Duckworth v. Eagan*, 492 U.S. 195, 197 (1989).

<sup>6</sup> *New York v. Quarles*, 467 U.S. 649, 651 (1984).

<sup>7</sup> *Pennsylvania v. Muniz*, 496 U.S. 582, 590 (1990).

<sup>8</sup> *United States v. Patane*, 542 U.S. 630, 634 (2004).

<sup>9</sup> *Harris v. New York*, 401 U.S. 222, 226 (1971).

<sup>10</sup> *Moran v. Burbine*, 475 U.S. 412, 432 (1986).

<sup>11</sup> *Illinois v. Perkins*, 496 U.S. 292, 294 (1990).

<sup>12</sup> *Colorado v. Spring*, 479 U.S. 564, 577 (1987).

confession is harmless.<sup>13</sup> Finally, during an investigation the police “can lie and make false claims”<sup>14</sup> – they can, for example, falsely claim that another co-defendant has confessed, that a friend has implicated them,<sup>15</sup> or that they have indisputable DNA or fingerprint evidence.

This degradation of *Miranda*’s promise has culminated in the Supreme Court’s recent 2022 term. Ruling in *Vega v. Tekoh* that a person whose *Miranda* rights were violated cannot seek redress under federal civil rights law, the Supreme Court “further widen[ed] the gap between the guarantees found in the Constitution . . . and the people’s ability to hold government officials accountable for violating them.”<sup>16</sup>

In short, despite the fact that *Miranda* still remains good law, the Supreme Court has left law enforcement officers with a wide range of weapons to coerce statements from accused persons.

### **Science indicates that adolescents are not capable of fully understanding and prioritizing their *Miranda* rights**

The downfall of *Miranda* has been particularly problematic for youth under the age of 18. Their ability to fully appreciate *Miranda* rights has always been limited and their susceptibility to coercive interrogation tactics is far higher than the susceptibility of an average adult.<sup>17</sup> As a result, 90% of youth waive their *Miranda* rights.<sup>18</sup>

A number of factors contribute to this stunningly high waiver rate. Although the wording of *Miranda* warnings varies, a majority of *Miranda* warnings require at least an eighth-grade reading level.<sup>19</sup> And the stress of being arrested likely reduces reading comprehension by at least 20 percent.<sup>20</sup> Memory problems further compound reading comprehension issues as adolescents are able to remember just 32.3% of a basic

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<sup>13</sup> *Oregon v. Elstad*, 470 U.S. 298, 318 (1985).

<sup>14</sup> Quiroz, *Five Facts About Police Deception and Youth You Should Know*, THE INNOCENCE PROJ. (May 13, 2022), <https://innocenceproject.org/police-deception-lying-interrogations-youth-teenagers/>

<sup>15</sup> *Frazier v. Cupp*, 394 U.S. 731, 737 (1969).

<sup>16</sup> *ACLU Comment on Supreme Court Decision in Vega v. Tekoh*, ACLU (Jun. 23, 2022), <https://www.aclu.org/press-releases/aclu-comment-supreme-court-decision-vega-v-tekoh>

<sup>17</sup> Kassin, *Law Enforcement Experts on Why Police Shouldn’t be Allowed to Lie to Suspects*, TIME (Dec. 16, 2022), <https://time.com/6241531/police-deception-tactics-suspects-consequences/>

<sup>18</sup> Laird, *Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them?*, ABA (Aug. 1, 2016), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/)

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

<sup>20</sup> *Id.*

*Miranda* warning.<sup>21</sup> Put simply, many kids don't understand what it is they are waiving when they sign their rights away: They lack the cognitive capacity.<sup>22</sup>

Moreover, developmental neuroscience research suggests that the adolescent brain is not well-prepared to handle the difficult decision of whether to speak to police. As the Scientist Action and Advocacy Network reports, "Adolescents' bias towards prioritizing immediate over future outcomes may cause them to take action (e.g., waiving their rights and falsely confessing) to escape custody without adequately considering the more distant consequences of this choice."<sup>23</sup> And adolescents increasingly make poor decisions in stressful environments. For youth under the age of 18, stress and emotional situations can cause impulsivity, impaired decision making, and increased risk-taking.<sup>24</sup>

Finally, well-documented power imbalances change the dynamic of youth interrogations. Adolescents—unlike adults—are swayed toward compliance when it comes to interacting with police.<sup>25</sup> Their susceptibility to outside influence, particularly their susceptibility to authority figures, inherently impacts any decision they make in an interrogation. This is particularly true when "police officers present the waiver decision as an inconsequential formality or imply that waiver is in the youth's best interests."<sup>26</sup>

As a result of all these factors, when adolescents hear the reading of their *Miranda* rights, sometimes by multiple officers towering over them, they often interpret them as mere meaningless formalities, rather than the consequential words they should be seen as. This leads children to making statements against their interests, including false confessions, like those that cost the Exonerated Five their youth.

### **The Youth Interrogation Bill contains important protections for young New Yorkers**

The Youth Interrogation Bill reduces the impact of coercive interrogation in eliciting statements from children. The bill requires that a child speak with an attorney in person, by phone, or by video before any police questioning. Such a consultation would allow a child under the age of 18 to grasp a far better understanding of their rights, allowing them to make informed choices about whether or not to speak with police officers before being placed in more coercive environments. It is a fundamental

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<sup>21</sup> *Id.*

<sup>22</sup> Goldman et al., *Waving Goodbye to Waiver: A Development Argument Against Youths' Waiver of Miranda Rights*, 21 N.Y.U. J. Legis. & Pub. Pol'y 1, 25 (2018).

<sup>23</sup> Scientist Action and Advocacy Network, *Scientific Support for a Developmentally Appropriate Approach to Miranda Rights*, (May 2, 2018), <https://scaan.net/docs/20180607-MirandaReport.pdf>

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

<sup>25</sup> Goldman *supra* note 22 at 26.

<sup>26</sup> *Id.* at 27

principle of our legal system that all *Miranda* waivers should be knowing, voluntary, and intelligent; this bill helps ensure that this bedrock principle is actually realized in practice.

Additionally, the requirement that a child first speak with an attorney would be unwaivable: Any statement made by a child who has not yet first consulted with an attorney would be excluded. Additionally, exclusion would also be required for statements made when a parent or legally responsible person is present and has not been read and voluntarily waived their *Miranda* rights. Simply, ensuring an actual remedy for coerced statements will discourage law enforcement from eliciting statements by coercion.

These critical components will ensure that all New Yorkers under the age of 18 are able to make informed and voluntary decisions about whether to speak to law enforcement officers and that only the children who truly need to be interrogated are questioned. In turn, this bill will reinstall the bedrock principles that *Miranda* had promised for all adolescents in the state so many years ago.

### **The Youth Interrogation Bill will not decrease public safety**

Opponents of this bill claim that strengthening protections for youth being interrogated inherently hinders the ability of police to investigate crimes. However, data show the exact opposite is true. Youth are statistically far more likely to make false confessions than their adult counterparts.<sup>27</sup> These false confessions could not only cause youth to be imprisoned, but it means law enforcement focuses on factually innocent people rather than factually culpable parties. Indeed, a 2020 study analyzed 109 wrongful conviction cases where DNA evidence was eventually used to identify the actual individual that committed the crime.<sup>28</sup> In 94% of these cases, the individuals who had escaped arrest were deemed responsible for additional offenses, including 43 homicide-related offenses and 94 sex-offenses.<sup>29</sup>

Public safety requires reducing the number of juvenile false confessions. Imprisoning factually innocent children, subjecting them to the traumas of incarceration, and branding them with criminal convictions or juvenile records that reduce future earnings does not make communities safer.<sup>30</sup> Seen through this lens, the Youth Interrogations Bill is a critical step forward for public safety. Ensuring that youth under the age of 18 have access to a lawyer before

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<sup>27</sup> Crane et. al, *The Truth About Juvenile False Confessions*, 16.2 INSIGHTS ON LAW AND SOCIETY 10, 12 (2016).

<sup>28</sup> Norris et. al, *The criminal costs of wrongful convictions: Can we reduce crime by protecting the innocent?*, Criminology & Pub. Pol'y 1, 1 (2019).

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

<sup>30</sup> Melanie Taylor, *Adult Earnings of Juvenile Delinquents: The Interaction of Race/Ethnicity, Gender, and Juvenile Justice on Future Earnings*, 13 CJCJ JUST. POL'Y J., Fall 2016, at 5.

they speak to the police should significantly curb the number of children who give false confessions.

Most importantly, this discussion on public safety distracts from the ultimate issue at stake: That all individuals, no matter their age, should have an intelligent understanding of their rights. As the Supreme Court continues to weaken *Miranda*, this state legislature can take a stand in the opposite direction by ensuring that children are not placed in overly coercive situations without fully understanding the consequences of their actions. The California State Legislature has already taken such a stand, passing a bill in September of 2020 to require youth under the age of 17 to speak with an attorney before police questioning.<sup>31</sup> New York's legislature and Governor Hochul should act similarly to protect New York's children from coerced confessions. Along with a broad and growing group of supporters, including numerous child developmental specialists, the NYCLU urges lawmakers to pass the Youth Interrogation Bill this session.

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<sup>31</sup> *California: New Law Protects Children in Police Custody*, HUMAN RIGHTS WATCH (September 30, 2020). <https://www.hrw.org/news/2020/09/30/california-new-law-protects-children-police-custody>