Protecting Our Future Generations:

How Coercive Interrogation Methods Endanger Juveniles in Rhode Island and Cause False Confessions

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Executive Summary.....5

I. Background: Current Circumstances.....5

The Reid Technique.....5

Quantitative Evaluation of False Confessions.....7

Qualitative Evaluation of False Confessions.....8

The Psychology of Youth.....9

II. Current Legislation and Legal Standards.....10

Domestic Law.....10

Federal Protections.....10

On Juvenile Rights and the "Totality of Circumstances" Test.....10

On Due Process and the "Voluntariness" Test.....11

State Protections.....12

Previous Legislative Efforts in Rhode Island.....13

Current Protections in Rhode Island.....13

Shortcomings of Current Protections.....14

Protections in Other States.....15

International Law.....16

The International Covenant on Civil and Political Rights (ICCPR).....16

Convention Against Torture (CAT).....17

Convention on the Rights of the Child.....17

III. Alternative Interrogation Methods.....18

The PEACE Method.....18

The HIG Method……20

IV. Financial Considerations……...21

Potential Savings……..……..21

Cost of Incarceration……..……21

Cost of Litigation....……...……..……..……22

Criminal Costs…....……...…….....……..22

Potential Costs……...22

Training……..23

V. Conclusion & Acknowledgements……..23

VI. Appendix: 2024 Bill……...25

Executive Summary

Current legal protections are insufficient to fully protect juveniles from coercive interrogations. Substantial evidence shows that these tactics lead to wrongful convictions, a problem that continues to plague our nation's justice system. While policymakers and stakeholders largely recognize that wrongful convictions and coercive interrogations are an issue, there has been much debate and conflicting ideas on how to best tackle this problem.

To design effective and comprehensive solutions, it is critical that we first understand the underlying reasons behind coercive interrogations and false confessions, how juveniles are particularly vulnerable, what protections currently exist, what are the associated costs, and what potential alternatives to presently used methods may be adopted.

To answer these various questions, the Brown Initiative for Policy's Confession Accountability Team has produced this report: "Protecting Our Future Generations: How Coercive Interrogation Methods Endanger Juveniles in Rhode Island and Cause False Confessions." We first outline the circumstances of the issue, including reviewing popular interrogation techniques utilized by law enforcement and the tension between the goals of law enforcement officials and the propensity of coercive interrogations to produce false confessions and wrongful convictions. We then discuss how juveniles are particularly vulnerable in interrogation settings by examining the literature on youth brain development and the recognition of these findings both within courts of law and in the legislative sphere.

We continue by review the legal standards which have been articulated by both federal and state courts. This helps us understand the constitutional questions surrounding the voluntariness of a confession and the permissibility of certain interrogation settings. In light of court rulings, we also review current statutory provisions and internal police department policies both within Rhode Island and beyond its borders. We review the international standards on these issues to compare the two systems—domestic and international—and recognize the importance of basing justice policies within a human-rights framework.

We conclude with considerations of potential alternative interrogation methods upon which Rhode Island can model its own methodology and a brief discussion on the financial considerations of coercive interrogations and wrongful convictions.

We firmly believe that there is much more to be done to protect our juvenile population—despite legislative currents on this issue, it is time for tangible action. Thus, it is with this context that the Brown Initiative for Policy is proposing our own bill in the upcoming legislative session of the Rhode Island General Assembly.

I. Background: Current Circumstances

This section provides an overview of current interrogation techniques utilized by law enforcement and assesses their impact on the production of false confessions. We examine both quantitative and qualitative evaluations of false confessions and briefly discuss the research on youth psychology to contextualize the graveness of current interrogation techniques being used against youth.

The Reid Technique

The Reid Technique is one of the most commonly used interviewing methods by police departments in the United States. The technique was first developed in 1947 by John E. Reid as an alternative to the polygraph,[1] and since then, John E. Reid and Associates, Inc. has trained over five hundred thousand investigators to use the method.[2] Based on a survey conducted on top administrators of the largest municipal police departments in America, approximately two-thirds of the police departments reported that either "most" or "some" of their officers had received training the Reid

1 "*What is the Reid Technique in Police Interrogations?*", https://www.wicriminaldefense.com/blog/2020/september/understanding-the-reid-technique-in-police-inter/.

2 James Orlando, "Interrogation Techniques," OLR Research Report, https://www.cga.ct.gov/2014/rpt/2014-R-0071.htm.

Technique.[3]

Justin Brooks, former director of the California Innocence Project, describes the Reid Technique as a method that "[isolates] a suspect away from lawyers, family, and friends in a small interrogation room."[4] The technique involves a nine-step process:[5]

> **Step 1.** Tell the suspect there is overwhelming evidence of their guilt. This may involve the interrogator lying about evidence implicating the suspect (e.g., "We've got a video of you committing the murder").
>
> **Step 2.** Shift the blame away from the suspect to some other person or set of circumstances that prompted the suspect to commit the crime (e.g., "I can understand why you would kill him. He was disrespecting you").
>
> **Step 3.** Never allow the suspect to deny guilt (e.g., "There is no point in saying you didn't do it. You did. All the facts tell us that").
>
> **Step 4.** When the suspect gives reasons why he or she did not or could not commit the crime, build them into the guilty narrative (e.g., "I wouldn't kill her. I loved her"; answer: "Sure, you loved her. That's why when she was interested in other men you got so angry").
>
> **Step 5.** Keep the focus of the suspect on the investigator's guilt narrative. Look them in the eye, pose questions, interact. Keep the suspect from thinking about their punishment.
>
> **Step 6.** Look for non-verbal signs (e.g., crying, head nodding) that you are getting closer to moving the suspect toward a confession. Be sympathetic and urge suspect to tell the truth.
>
> **Step 7.** Pose the "alternative question." (e.g., Don't ask, "Did you kill your wife?" Ask, "Did you decide to kill your wife a long time ago or was the decision spontaneous?").
>
> **Step 8.** Once you have an admission of guilt, get the suspect to give details. Do it in front of other witnesses, so the suspect knows more than one person has heard the confession.
>
> **Step 9.** Document the suspect's admissions and have them sign the confession.

While Reid insists that "the purpose of an interrogation is to learn the truth" rather than to merely elicit a confession, Brooks, along with numerous scholars and attorneys, argues that these steps are primarily focused on compelling a suspect to agree with interrogators rather than identifying the truth.[6,7,8] Reid, nonetheless, lends credence

3 Marvin Zalman and Brad W. Smith, "Attitudes of Police Executives toward Miranda and Interrogation Policies, The," *Journal of Criminal Law and Criminology* 97, no. 3 (Spring 2007): 873–942, 920.

4 Justin Brooks, *You Might Go to Prison, Even Though You're Innocent* (Oakland, CA: University of California Press, 2023), 75.

5 Ibid., 75-76.

6 Fred E. Inbau et al., *Criminal Interrogation and Confessions* (Burlington, MA: Jones & Bartlett Learning, 2013), 5.

7 Brooks, *You Might Go to Prison*, 76.

8 For more information regarding the Reid Technique's focus on obtaining confessions, see Saul M. Kassin et al., "Police-Induced Confessions: Risk Factors and Recommendations.," *Law and Human Behavior* 34, no. 1 (February 2010): 6, https://doi.org/10.1007/s10979-009-9188-6; Steven A. Drizin and Richard A. Leo, "The Problem of False Confessions in the Post-DNA World," *North Carolina Law Review* 82, no. 3 (March 1, 2004): 891–1008, 911; Richard A. Leo, *Police Interrogation and American Justice* (Cambridge, MA: Harvard University Press, 2009), 23; Richard A. Leo, "Why Interrogation Contamination Occurs," *Univ. of San Francisco Law Research Paper No. 2013-25*, 2013, 193–215, 198; Richard A. Leo and Brittany Liu, "What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?," *Behavioral Sciences & the Law* 27, no. 3 (April 29, 2009): 381–99, https://doi.org/10.1002/bsl.872, 381; Geoffrey M. Stephenson and Stephen J. Moston, "Police Interrogation," *Psychology, Crime & Law* 1, no. 2 (April 1994): 151–57, https://doi.org/10.1080/10683169408411948, 156; Researchers Say Police Interrogation Technique Elicits False Confessions, https://www.wirthlawoffice.com/tulsa-attorney-blog/2018/01/researchers-say-police-interrogation-technique-elicits-false-confessions; "How Police Officers Get Confessions," Terre Haute Criminal Defense FAQ, July 30, 2020, https://www.rowdywilliams.com/terre-haute-criminal-defense-lawyer/terre-haute-criminal-defense-faq/how-police-officers-get-confessions/.

to the latter stance by emphasizing that interrogations should only occur "when the investigator is reasonably certain of the suspect's guilt" and "should not be used as a primary means to evaluate a suspect's truthfulness."[9]

Given its lack of emphasis on gauging truth, the Reid Technique induces several concerns—most significantly, its penchant to evoke confessions from individuals who may be innocent of the suspected crime. Scholars Leo and Ofshe state that "[i]nvestigators elicit the decision to confess from the innocent in one of two ways: either by leading them to believe their situation, though unjust, is hopeless and will only be improved by confessing; or by persuading them they probably committed a crime about which they have no memory, and that confessing is the optimal course of action."[10]

In light of an increasing amount of research tying the Reid Technique to both false confessions and wrongful convictions, the practice has decreased in popularity.

Quantitative Evaluation of False Confessions

As of March 8, 2024, there have been 3,484 documented exonerations in the United States, 440 of which, or 13% of all exonerations, were due to false confessions.[11] Despite this alarming number, it fails to capture the full gamut of the problem. Megan Crane, Co-Director of the MacArthur Justice Center, highlights that these statistics do not capture the magnitude of false confessions because they "[do] not account for confessions not yet proven false nor confessions that did not result in a conviction."[12] With studies estimating a wrongful conviction rate of approximately 6% and nearly two million individuals incarcerated in our nation's prisons and jails, that means roughly 120,000 individuals are wrongfully incarcerated, with approximately 15,600 cases due to false confessions.[13] In Rhode Island, roughly 2,500 individuals are currently behind bars.[14] This means that, at the lowest estimation, nearly 150 individuals could be wrongfully incarcerated, with twenty cases potentially due to false confessions.[15]

Qualitative Evaluation of False Confessions

In addition to the raw statistics on wrongful convictions and false confessions, it is important to consider qualitative descriptions underscoring the prevalence of coercive interrogation and its unjust outcomes. Marvin Zalman, Professor of Criminal Justice and an expert in wrongful convictions, writes, "Wrongful convictions are inherently difficult to establish because they are 'invisible' when they occur."[16]

Unfortunately, these types of situations are all too common. For example, Claudia Salinas, a staff attorney at The Innocence Center, described how several of her office's clients were threatened with the death penalty by law

9 Inbau et al., *Criminal Interrogation and Confessions*, 5-6.

10 Richard J. Ofshe and Richard A. Leo, "The Decision to Confess Falsely: Rational Choice and Irrational Action," *Denver Law Review* 74, no. 4 (January 1997): 979–1122, 986.

11 Exonerations Contributing Factors by Crime, accessed March 8, 2024, https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx.

12 Megan Crane, Laura Nirider, and Steven A. Drizin, "The Truth about Juvenile False Confessions," *Insights on Law & Society* 16, no. 2 (Winter 2016): 10–15, 12.

13 Charles E. Loeffler, Jordan Hyatt, and Greg Ridgeway, "Measuring Self-Reported Wrongful Convictions Among Prisoners," *Journal of Quantitative Criminology* 35, no. 2 (April 6, 2018): 259–86, https://doi.org/10.1007/s10940-018-9381-1, 259; "50 Years and a Wake Up," Advocacy, December 14, 2023, https://www.sentencingproject.org/advocacy/50-years-and-a-wake-up-ending-the-mass-incarceration-crisis-in-america/.

14 "Rhode Island Profile," State Profiles, n.d., https://www.prisonpolicy.org/profiles/RI.html#:~:text=In%20Rhode%20Island%2C%202%2C500%20people,are%20on%20probation%20or%20parole.

15 Although there have only been eight documented exonerations in Rhode Island according to the National Registry of Exonerations, "the obvious flaw in this approach is that exonerations are a highly inaccurate proxy for wrongful convictions; they represent just the select few that are reinvestigated and exonerated, thus, generating an unreasonably low rate." *See* Robert J. Norris et al., "The Criminal Costs of Wrongful Convictions: Can We Reduce Crime by Protecting the Innocent?," *Criminology & Public Policy* 19, no. 2 (September 2, 2019): 367–88, https://doi.org/10.1111/1745-9133.12463, 381.

16 Marvin Zalman, "Measuring Wrongful Convictions," *Encyclopedia of Criminology and Criminal Justice*, 2014; 3047–3058, https://doi.org/10.1007/978-1-4614-5690-2_162.

enforcement officers who were trying to pressure them to confess.

> I don't know how many times we've had, especially very young defendants, who end up getting into situations where they're either in interrogation rooms for over 12, 15 hours without food or without their parents, or they're very scared, or they're promised things. And so they end up confessing to a crime, sometimes with details. But then sometimes, you know, we come back later, and we're trying to break down that confession, and they don't even line up with the facts at all. And it was very obvious that these are coerced.[17]

Terrill Swift, who testified about his wrongful conviction in Illinois after a false coerced confession at age 17, recalled:

> I was apprehended; taken into custody; threatened; and basically psychologically manipulated into signing a confession for a rape and a murder of a person I did not know.[18]

Testimonies like Swift's, along with those from other formerly incarcerated and exonerated individuals, point to the widespread prevalence of this phenomenon and the immense trauma it leaves in its wake. In the words of exoneree Sean Washington, "I suffer from survivor's guilt. I read about that in prison, like other men who are in prison that I know are innocent."[19]

These issues are not distinct from the experiences of Rhode Islanders. The May 2015 case of *Tracey Barros v. State of Rhode Island* exemplifies how coercive interrogations can generate false confessions. Barros recounted how detectives promised a reduced sentence of ten years as an incentive for him to confess to the murder. Barros was "chained to the wall in an interview room for an entire day, left alone for hours, and deprived of food, water, and bathroom breaks."[20] This withholding of basic necessities constitutes coercive tactics that were used to pressure Barros to confess out of desperation and a desire to alleviate his discomfort. Despite informing the police that he did not want to say anything until his attorney was present, this request was ignored, leading to his false confession.[21]

Although the detectives in this case denied these allegations—and both the Rhode Island Superior Court and the Rhode Island Supreme Court agreed that Barros had lied—this case underscores the potential for coercive tactics to result in false confessions. Implementing a law that prohibits coercive tactics would prevent cases like this from arising in the first place.

Psychology of Youth

Youth psychology, and particularly children's brain development, also proves critical to the larger discussion on coercive interrogation tactics used on minors. For example, one of the reasons for forbidding people from consuming alcohol until they reach the age of twenty-one years is because the brain is not fully developed at such a young age. Yet, law enforcement and investigators fail to take this into account when conducting their investigations on minors.

Hannah Brudney, writing in the Southern California Law Review, explains,

17 Brown University. Mass Incarceration Lab @ CSREA, "Claudia Salinas and Sydnie Mitchell oral history interview, 2023 May 3" *Mass Incarceration Lab collection.* Brown Digital Repository. Brown University Library. https://repository.library.brown.edu/studio/item/bdr:wf739bh4/

18 California Innocence Coalition. "Juvenile Interrogations Reform Bill Signed by Governor Newsom, Makes California the Fourth State to Adopt Anti-Deceptive-Interrogation Reforms." California Innocence Coalition press release, September 15, 2022. https://ncip.org/wp-content/uploads/2022/09/AB-2644-Press-Release.pdf.

19 Brown University. Mass Incarceration Lab @ CSREA, "Sean Washington oral history interview, 2023 April 21" (2023). Mass Incarceration Lab collection. Brown Digital Repository. Brown University Library. https://repository.library.brown.edu/studio/item/bdr:mb5m3keh/.

20 *Barros v. State*, 2015 R.I. Super. LEXIS 66, 3 (R.I. Super. Ct. May 18, 2015).

21 *Barros*, supra.

> Despite the heightened impact that interrogation techniques have on children, police use the same tactics on juveniles as they do on adults. In the thirty-two hours of a Reid technique training program, 'only 10 minutes of instruction were dedicated to youth and this was to advocate the use of the same strategies with youth as with adults.' A 2016 study examining the use of interrogation techniques by investigators confirmed that 'usage patterns were the same for adult and juvenile suspects....' The study noted that over half the officers were trained to use psychologically coercive techniques on both adults and juveniles. Moreover, officers were more likely to have received formal training in the use of specific techniques on adult suspects, suggesting that officers simply extend the adult-designed techniques to their interrogations of children. The study determined that methods such as presenting false evidence, physically intimidating the suspect, discouraging denials of guilt, suggesting a narrative of the crime, minimizing the seriousness of the offense, and blaming the victim are all used with similar or higher frequency on juveniles compared with adults.[22]

In line with these findings, the Providence Police Department's "Juvenile Operations" policy makes no unique reference to the use of deceptive techniques during custodial interrogations of juveniles.[23]

Crucially, youth are at significant risk of police-induced false confessions. The parts of the brain, such as the prefrontal cortex, that regulate forms of judgment, rational decision-making, and doubting processes—all of which are central to preventing a false confession—do not finish developing until the age of twenty-five.[24] For example, cognitive scientists believe that unfinished development of the prefrontal cortex leads to a "doubt deficit"—that is, a failure to produce normal levels of doubt when presented with false information.[25] This "doubt deficit" leaves youth under twenty-five markedly susceptible to individuals, such as police, trying to deceive them.

Ultimately, cognitive development factors help explain why minors are between two and three times more likely to falsely confess than adults.[26] For example, research indicates that of 125 proven false confession cases, 63% of involved individuals were younger than twenty-five years old, and 32% of involved individuals were under eighteen years old.[27] Another study of 340 exonerations found that 42% of innocent juveniles falsely confessed.[28] This percentage rose to 69% for exonerees aged twelve to fifteen.[29]

The importance of this issue has been recognized by the Rhode Island General Assembly. Enacted in 2021, R.I. Gen. Laws § 13-8-14.2, also referred to as "Mario's Law," signaled legislators' acknowledgment of the aforementioned research findings on juvenile brain development. According to Lynette Labinger of the American Civil Liberties Union,

> Mario's [L]aw was basically a response to the current thinking that young people's brains are not as developed and their chance of impetuous and poor judgment does not necessarily mean that

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22 Hannah Brudney, "Confessions of a Teenage Defendant: Why a New Legal Rule Is Necessary to Guide the Evaluation of Juvenile Confessions," *Southern California Law Review* 92, no. 5 (July 2019): 1235–73, 1252.

23 See Providence Police Department's Policy on Juvenile Operations 370.01 (October 18, 2023).

24 *See* Sara B. Johnson, Robert W. Blum, and Jay N. Giedd, "Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy," *Journal of Adolescent Health* 45, no. 3 (September 2009): 216–21, https://doi.org/10.1016/j.jadohealth.2009.05.016; Rep., *The Teen Brain: Still Under Construction* (National Institute of Mental Health, 2011).

25 *See* Erik Asp et al., "Benefit of the Doubt: A New View of the Role of the Prefrontal Cortex in Executive Functioning and Decision Making," *Frontiers in Neuroscience* 7 (2013), https://doi.org/10.3389/fnins.2013.00086 ("Individuals … [who] have underdeveloped prefrontal cortices should have a general doubt deficit which produces credulity to external information.") ("A doubt deficit will produce increases in belief to novel information that is primarily represented."); *see also* D. T. Stuss, "The Frontal Lobes Are Necessary for `Theory of Mind'," *Brain* 124, no. 2 (February 1, 2001): 279–86, https://doi.org/10.1093/brain/124.2.279.

26 Crane, et al., "The Truth about Juvenile False Confessions," 12.

27 Ibid.; *See also* Johnson, et al., "Adolescent Maturity and the Brain"; *The Teen Brain*, National Institute of Mental Health (2011).

28 Samuel R. Gross et al., "Exonerations in the United States, 1989–2012," *Journal of Criminal Law and Criminology* 95, no. 2 (Winter 2005): 523–60, 545.

29 Ibid.

later in life they will be the same person.[30]

For the reasons listed above, it is clear that protecting juveniles from coercive interrogations is paramount. Rhode Island legislators must build on current protections codified at both the federal and state levels. The following section outlines these protections, along with courts' articulated legal standards and recent legislative efforts to address this issue.

II. Current Legislation and Legal Standards

This section will explore the domestic and international jurisprudence and existing pieces of legislation regarding confessions in police interrogations and provide a comparative analysis highlighting the key deficiencies of modern practices.

Domestic Law

Federal Protections

At the federal level, the Supreme Court and the Circuit Courts have articulated clear legal standards regarding juvenile rights during interrogations and police detention, in addition to the veracity and admissibility of confessions. This section will provide a review of these standards and provide clarity on the constitutionality of current interrogation techniques.

On Juvenile Rights and the "Totality of Circumstances" Test

In the landmark case *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court articulated clear principles governing the admissibility of statements obtained from individuals subjected to custodial police interrogation.[31] Specifically, the Court held that a person in custody must, prior to interrogation, be "clearly informed that he has the right to consult with a lawyer and to have a lawyer with him during interrogation[.]"[32] The "warnings required and waiver needed," in the absence of fully effective equivalents, are "prerequisites to the admissibility of *any statement*, inculpatory or exculpatory, made by a defendant."[33]

In the jurisprudence regarding the admissibility of statements made during custodial police interrogations, courts have emphasized the relevance of a child's age to in determining whether a child is "in custody" and thus entitled to *Miranda* protections. Specifically, the Supreme Court has held that a child's age should inform a custody analysis under *Miranda*, recognizing that children are generally "less mature and responsible than adults[,]" more susceptible to outside pressures, and more likely to become overwhelmed in the context of a police interrogation. [34] Thus, juveniles have typically been afforded special attention and protection by the judicial system. It is pertinent that these protections, along with the judiciary's concerns, are heeded in our current uses of custodial interrogation tactics on juveniles.

As noted, courts have extended special attention to juveniles in the context of the Fifth Amendment's protections against self-incrimination. In *In re Gault*, 387 U.S. 1 (1967), the Supreme Court provided minors the right to notice (or the right to be told the nature of their accusations and to be advised in a timely manner), the right to counsel, the right to confront witnesses, and a privilege against self-incrimination in hearings that could result in them being confined in an institution.[35] The seminal ruling providing the legal standard for juvenile interroga-

30 Emma Madgic, Two men sue ACI on grounds of illegal sentencing, February 18, 2022, https://www.browndailyherald.com/article/2022/02/two-men-sue-aci-on-grounds-of-illegal-sentencing.

31 *Miranda v. Arizona*, 384 U.S. 436, 439 (1966).

32 *Miranda*, supra.

33 *Miranda*, supra (emphasis added).

34 *J.D.B. v. North Carolina*, 564 U.S. 261, 262-3 (2011).

35 *See In re Gault*, 387 U.S. 1, 3 (1967) ("[J]uvenile delinquency proceedings which may lead to commitment in a state institution must measure up to the essentials of due process and fair treatment, including (1) written notice of the specific charge or factual allegations, given to the child and his parents or guardian sufficiently in advance of the hearing to permit preparation; (2) notification to the child and his parents of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel

tions came later in *Fare v. Michael C.*, 442 U.S. 707 (1979), in which the Supreme Court held that "a totality of the circumstances test is adequate to determine a valid waiver of rights during an interrogation of a juvenile."[36] Effectively, a court must look into all relevant circumstances of a case, such as the juvenile's age, education, experience, background, intelligence, and capacity to understand, before accepting a confession.[37]

In addition to the standard on the admissibility of a juvenile's confession, federal statutes and case law also articulate requirements for law enforcement and justice officials to preserve juvenile protections. The Federal Juvenile Delinquency Act, 18 USC § 5033, requires arresting officers to inform juvenile delinquents of their rights in a language they understand as soon as they are taken into custody.[38] This is not only confined to the actual language used, but also pertains to diction and word choice. Further, when a juvenile is in custody, the court is responsible for determining if his or her confession was coerced or suggested; for example, if a confession was a product of "ignorance of rights or of adolescent fantasy, fright, or despair," it would be inadmissible.[39] The juvenile must be presented to a judge without delay and cannot be held for an unreasonable period of time.[40] In theory, these protections work to prevent confessions that result from the exhaustion or emotional distress of juveniles.

On Due Process Protections and the "Voluntariness" Test

The Due Process Clause of the 14th Amendment prohibits the admission of an involuntary confession in to evidence in a criminal prosecution. This was determined by the Supreme Court in the 1940 case of *Chambers v. Florida*, 309 U.S. 227 (1940), and was later reaffirmed in both *Haley v. Ohio*, 332 U.S. 596 (1948), and *Miller v. Fenton*, 474 U.S. 104 (1985). In *Miller*, the Court reiterated,

> Certain interrogation techniques … are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment.[41]

In the midst of these decisions, in addition to several cases dealing with coerced confessions,[42] the Supreme Court established a "voluntariness test" to decide whether a confession is voluntary based on an assessment of the characteristics of the accused individual and the details of the interrogation—in other words, the "totality of the circumstances" outlined earlier.[43] While this test only sets general standards for courts to follow, the Court has established specific requirements, including placing the burden of proof on the person alleging their confession was involuntary to demonstrate that the police had engaged in coercive practices. The Court has also found that coercive interrogation tactics do not require the involvement of physical force; tactics that are designed to mentally

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will be appointed to represent the child; (3) application of the constitutional privilege against self-incrimination; and (4) absent a valid confession, a determination of delinquency and an order of commitment based only on sworn testimony subjected to the opportunity for cross-examination in accordance with constitutional requirements.")

36 *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

37 *Fare*, supra. ("The totality approach permits -- indeed, it mandates -- inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.")

38 Pub. L. 93–415, title V, §503, Sept. 7, 1974, 88 Stat. 1135

39 *In re Gault*, supra at 55.

40 "44. Questioning A Juvenile In Custody," Justice Manual, https://www.justice.gov/archives/jm/criminal-resource-manual-44-questioning-juvenile-custody.

41 *Miller v. Fenton*, 474 U.S. 104, 109 (1985); also see *Chambers v. Florida,* 309 U.S. 227, 237 (1940) ("...the rights and liberties of people accused of crime could not be safely entrusted to secret inquisitorial processes. The testimony of centuries, in governments of varying kinds over populations of different races and beliefs, stood as proof that physical and mental torture and coercion had brought about the tragically unjust sacrifices of some who were the noblest and most useful of their generations.")

42 See *Brown v. Mississippi*, 297 U.S. 278 (1936) ("Convictions of murder, which rest solely upon confessions shown to have been extorted by officers of the State by torture of the accused, are void under the due process clause of the Fourteenth Amendment."); *Ashcraft v. Tennessee*, 322 U.S. 143 (1944) ("...if the defendant … made a confession [and] it was not voluntary but compelled, [his] conviction, resting upon the alleged confession, must be set aside as in violation of the Federal Constitution").

43 See *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-6 (1973) ("...the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process."), citing *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961).

and physically exhaust suspects have been expressly condemned.[44] In *Gallegos v. Colorado*, 370 U.S. 49 (1962), a minor was convicted of first-degree murder based on a formal confession he had signed after being held in detention for five days without seeing a lawyer, parent, or other friendly adult. The Court found the circumstances of the case to be a "callous disregard of [the minor's] constitutional rights," as the lack of proper guidance from an adult deprived the minor of protection and placed him on an unequal footing with his interrogators.[45] Further, the Court recognized that the minor's age meant that he lacked the requisite maturity to understand the consequences of his confession and the ability to assert his constitutional rights.[46]

More recently, in *Corley v. United States*, 556 U.S. 303 (2009), the Supreme Court stressed that "'[C]ustodial police interrogation, by its very nature, isolates and pressures the individual,' inducing people to confess to crimes they never committed."[47] These sentiments have consistently been expressed by courts across the nation; for example, the district court in *United States v. Three Juveniles,* 886 F. Supp. 934 (D. Mass. 1995) specifically noted that "a police interrogation in [a minor's parents'] absence has the potential to be highly intimidating."[48]

It remains clear that our nation's courts firmly view the potential for coercive interrogations to violate the rights of juveniles and the Constitution. It is critical that both legislation and law enforcement practices in Rhode Island recognize these sentiments and uphold residents' constitutional rights.

State Protections in Rhode Island

While individuals in Rhode Island enjoy all of the federal-level protections detailed above, Rhode Island has also implemented some of its own protections for people under custodial interrogations.

First, despite lacking a statutory or common law requirement, Rhode Island has implemented statewide recording of custodial interrogations specifically for capital cases.[49] In 2013, the Rhode Island Police Accreditation Commission (RIPAC) required state police departments to implement mandatory recording procedures for all capital cases in order to receive and maintain their accreditation.[50] Further, in order to achieve their intention of creating a secure learning environment and cultivating positive connections with parents and students, the Rhode Island State Legislature has increased the level of parental involvement during law enforcement questioning of minors in school or school-sponsored activities.[51]

Despite these efforts, protections in Rhode Island are not nearly sufficient to protect juveniles from coercive interrogations. The subsequent questions will outline former legislative efforts in Rhode Island to solidify protections for juveniles and outline the shortcomings of our current legal scheme. It is our intention to outline several pathways where policy implementation may remedy current deficiencies in the law.

Previous Legislative Efforts in Rhode Island

In recent years, several bills relating to criminal proceedings with juvenile rights in the legal system have been introduced in Rhode Island. Unfortunately, none have passed.

H6410 (2021),[52] similar to our proposed solution,[53] sought to make the statements of juveniles and those who suffer from mental disability or substance abuse withdrawl inadmissible if the statement was procured during

44 See *Davis v. North Carolina,* 384 U.S. 737 (1966).
45 *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).
46 *Gallegos*, supra.
47 *Corley v. United States*, 556 U.S. 303, 305 (2009), citing *Dickerson v. United States*, 530 U.S. 428, 435 (2000).
48 *United States v. Three Juveniles,* 886 F. Supp. 934, 942 (D. Mass. 1995).
49 Brandon L Bang et al., "Police Recording of Custodial Interrogations," *International Journal of Police Science & Management* 20, no. 1 (January 10, 2018): 3–18, https://doi.org/10.1177/1461355717750172, 12.
50 Ibid, 13.
51 RI Gen L § 16-21.5-1. (2022) ("[I]t is the intent of the legislature to increase the level of participation of parents when their minor children are being questioned by law enforcement in school or at a school-sponsored activity.")
52 See H.6410 (2021). https://legiscan.com/RI/bill/H6410/2021.
53 See Section VI: Appendix for our proposed bill.

custodial interrogation and the law enforcement officer used deception to obtain it. The bill defined deception as "the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer or juvenile officer to a subject of custodial interrogation." However, it allowed for these criteria to be overcome if the state or prosecuting authority could prove by the preponderance of the evidence that the statement elicited had been voluntarily given based on the totality of the circumstances.

S2382 (2022),[54] which died in committee, stipulated that no juvenile, aged fourteen or younger, shall be committed to the training school for any offense, except for juveniles found responsible for a capital offense and if a court determines that there is no other reasonable placement location to ensure the safety of the juvenile and the general public.

S2116/H7096 (2024),[55] which have been introduced in 2021 and subsequently reintroduced in each following legislative session, would prohibit any questioning of a juvenile suspect unless it is conducted in the presence of a parent, legal guardian, or the Department of Children, Youth, and Families in the event parental rights are terminated, or unless an attorney is present, their parent or guardian has waived their presence, or the juvenile, having been emancipated or misrepresented their age as 18 or older, waived their rights. This waiver must be done in writing and can only be obtained after the juvenile, parents, or guardian has been advised of their constitutional rights and the right to have their parent or guardian present during the questioning.

Notably, there is increasing momentum on this topic, as state legislators have recognized the critical nature of juvenile protections during custodial interrogations, evidenced by these recent attempts. These legislative efforts highlight a complex issue that involves balancing the protection of juvenile rights with the need for effective law enforcement practices. While recent attempts have failed, it is paramount that legislators capitalize on the legislative appetite for this issue and codify protections for our state's youth. We believe that this will best be achieved with a nuanced approach that considers juveniles' rights and well-being while acknowledging the need for effective and practicable law enforcement practices. Ongoing education, awareness campaigns, and collaboration with stakeholders are crucial to building support for legislative efforts aimed at protecting vulnerable populations from coercive interrogation tactics.

Current Protections in Rhode Island

Rhode Island has addressed the issue of coercive interrogation tactics against minors through various court rulings, a legislative task force, and policing policies. However, as stated, no comprehensive legislation has yet been passed.

Of note is the "Humane Practice Rule," which the State of Rhode Island has adopted to require the judge and jury to make separate determinations of voluntariness.[56] The standard is achieved by encouraging recordings of custodial, detention-centered interrogations.[57] Our proposed legislation will enhance the Humane Practice Rule by providing judges and juries with an accurate representation of the defendant's proffered confession.[58]

Building on these judicial practices, in 2011, a statute established a Task Force to study and make recommendations on electronically recording custodial interrogations.[59] The Task Force's 2012 Final Report recommended that all law enforcement agencies adopt policies requiring the electronic recording of custodial interrogations in their entirety.[60]

Following the Task Force's recommendations in 2013, the Rhode Island Police Accreditation Commission (RI-

54 See S2382 (2022). https://legiscan.com/RI/bill/S2382/2022.

55 See S2116 (2024). https://legiscan.com/RI/bill/S2116/2024; H7096 (2024). https://legiscan.com/RI/bill/H7096/2024.

56 Rhode Island - Recording Interrogations Compendium, accessed April 2024, https://www.nacdl.org/mapdata/RecordingInterrogationsRhodeIsland.

57 Ibid.

58 Ibid.

59 Ibid.

60 Ibid.

PAC) promulgated a model policy requiring the audio-visual recording of custodial interrogations for capital offenses. All forty-three police departments in Rhode Island agreed to adopt and comply with this policy, with potential loss of accreditation due to non-compliance. The model policy mandates recording custodial interrogations for capital offenses from the Miranda warnings until the end, with some exceptions for exigent circumstances or suspect refusal. It also outlines guidelines for the preservation of recordings as evidence. While the model policy focuses on capital offenses, it fundamentally recognizes the benefits of recording interrogations in preventing false confessions and ensuring legal compliance, which could be extended to interrogations involving minors.

Shortcomings of Current Protections

While various rulings and policies at the state level have extended different protections for juveniles in Rhode Island, current protections fall short of fully protecting juveniles from coercive interrogation tactics.

At the judicial level, the Rhode Island Supreme Court has made it clear that it is not a constitutional requirement for custodial interrogations to be recorded.[61] In *State v. Robinson* (2010), the Supreme Court of Rhode Island held "[i]t is not a constitutional requirement that, for a confession obtained during a custodial interrogation to be deemed voluntary, it must have been contemporaneously recorded."[62] The Court doubled down a year later in *Barros v. State* (2021), in which it rejected the argument that the Due Process Clause of federal or state constitutions requires electronic recordings of custodial interrogations.[63] The Court also declined to exercise supervisory authority to mandate recordings because "neither the federal due process clause nor the Rhode Island criminal due process clause provides a criminal suspect with a right to have his or her custodial interrogation recorded in toto."[64]

Despite rejecting the constitutional requirement of recording custodial interrogations, the Rhode Island Supreme Court has recognized the value of recording interrogations and encouraged law enforcement agencies to adopt such practices. However, current policies do not fully protect juveniles, as they are largely limited to select crimes that carry a potential sentence of life imprisonment.[65] Thus, even without a constitutional mandate, our policies must be revised to ensure the highest levels of protection for juveniles.

Given the host of tactics police use to bypass Miranda rules, Chuck Weisselberg, a professor at University of California, Berkeley, and a former federal defender, writes, "Little is left of Miranda's vaunted safeguards and what is left is not worth retaining."[66] Police often acquire two confessions, the first inadmissible under Miranda, while the second is permitted following the signing of a waiver. This forces suspects to undergo all the steps of the Reid Technique without being advised of their Miranda rights. After eliciting the initial confession, "police can then obtain a waiver and get a second confession" because "in the suspect's mind, it's pointless to assert their right to silence and demand a lawyer be present for the questioning after confessing [the first time]."[67] The Supreme Court specifically upheld this practice in *Oregon v. Elstad*.[68] Additionally, suspects can, and often do, waive their Miranda rights. Ofshe and Leo explain:

> Neither an innocent nor a guilty party is likely to appreciate the full significance of the Miranda warnings. An innocent person will likely believe that he is not in any jeopardy by waiving his rights and answering questions because police have sought out his help in solving the crime and, after all, he is innocent. He may also believe that the Miranda warnings are merely a bureaucratic formality that are significant only for the guilty. The guilty person will likely risk waiving his rights because he doesn't believe the police have decided to arrest him, wants to find out what

61 See *State v. Robinson*, 989 A.2d 965, 977–78 (R.I. 2010).
62 *Berroa,* supra.
63 *State v. Barros*, 24 A.3d 1158, 1164 (R.I. 2011).
64 *Barros*, supra.
65 See "Electronic Recording of Custodial Interrogations," Providence Police Department 360.04 (May 6, 2018).
66 Charles D. Weisselberg, "Mourning Miranda," *Calif. L. Rev.* 96 (2008): 1524.
67 Brooks, *You Might Go to Prison*, 78.
68 Oregon v. Elstad, 470 U.S. 298 (1985).

evidence they have, and hopes to direct their attention elsewhere.[69]

Finally, the value of Miranda protections ultimately hinges on conflicting narratives of events. There is little way to discern whether police are telling the truth if they claim a suspect never invoked their Miranda rights.

Protections in Other States

In 2021, Illinois became the first state to enact legislation regulating coercive interrogation techniques against minors, including false promises of leniency and false claims about the existence of incriminating evidence. The bill, which seeks to reduce the likelihood of false confessions, garnered widespread support from law enforcement, including state attorneys and the chief of police, and passed unanimously with bipartisan support.[70]

Oregon quickly followed suit, passing legislation introduced by State Senator and former police officer Chris Gorsek that prohbits law enforcement from using coercive or deceptive tactics.[71] Statements in Oregon are now presumed involuntary unless proven uncoerced.[72]

In California, law enforcement officers are not allowed to employ threats, physical harm, deception, or psychologically manipulative interrogation tactics.[73] Just last year, Utah enacted similar legislation banning the provision of false information that is likely to elicit an incriminating response from the child.[74] Delaware prohibits the use of deceptive techniques to induce a confession or other incriminating evidence,[75] and Connecticut now restricts the use of statements obtained through the use of deceptive or coercive tactics during an interrogation, regardless of the age of the suspect.[76] Legislation has also been introduced in both New York and Massachusetts with similar aims and provisions.[77]

There is a clear legislative precedent across the country for Rhode Island to follow to ensure the highest levels of protection for our youth.

International Law

The United States is one of the few countries in the global North that still permits the use of police deceptions against youth. Australia, New Zealand, and the majority of European countries have all, for decades, prohibited deception during *all* interrogations, regardless of age.[78] In the United Kingdom, for example, police "do not see interviewing as a secret process, nor feel the need to hide interview techniques."[79] Their law strictly prohibits

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69 Ofshe, Richard J., and Richard A. Leo. "The decision to confess falsely: Rational choice and irrational action." Denv. UL Rev. 74 (1996): 989.

70 Historic deception bill passes Illinois legislature, Banning Police from lying to youth during interrogations, May 1, 2023, https://innocenceproject.org/historic-deception-bill-passes-illinois-legislature-banning-police-from-lying-to-youth-during-interrogations/#:~:text=Illinois%20becomes%20first%20state%20in,from%20using%20deception%20with%20youth.&text=(Springfield%2C%20IL%20%E2%80%93%20May%2030,under%20the%20age%20of%2018; For the full text of the Illinois statute, see Illinois Statutes Chapter 705. Courts § 405/5-401.6. Prohibition of deceptive tactics.

71 Oregon deception bill is signed into law, Banning Police from lying to youth during interrogations, May 1, 2023, https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/.

72 See Senate Bill 418, 81st Oregon Legislative Assembly. (2021).

73 Deception in juvenile interrogations in California, April 28, 2023, https://innocenceproject.org/policies/deception-in-juvenile-interrogations-in-california/#:~:text=State%20statute%20prohibits%20law%20enforcement,17%20years%20old%20or%20younger; For the full text of the California statute, see Cal. Welf. and Inst. Code § 625.7.

74 See Utah Code Annotated § 80-6-206.

75 See House Bill 419, 151st Delaware Legislative Assembly. (2022).

76 See Connecticut PA 23-27.

77 See Senate Bill 4205, New York. (2023); Senate Bill 954, 193rd General Court of the Commonwealth of Massachusetts. (2023).

78 Lakshmi Gandhi, Lying to police suspects is banned in several countries. why is it still legal in the U.S.?, August 30, 2021, https://prismreports.org/2021/08/30/lying-to-police-suspects-is-banned-in-several-countries-why-is-it-still-legal-in-the-u-s/.

79 How the UK police interview suspects, accessed April 2024, https://innocenceproject.org/news/how-the-uk-police-interview-suspects/.

authorities from lying under any circumstances, and all police are trained using the PEACE program.[80] According to the Innocence Project, there is a high degree of cooperation and standardization among police pertaining to this training method.[81] The origins of this policy date back to 1984 law that mandated the recording of interrogations (among other things), and people quickly realized that police were unskilled and inadequate interviewers, often using coercion to produce inaccurate confessions.[82] Seeing that the current methods were ineffective, senior police leaders took action almost immediately to shift the goal of interrogation away from solely confessions.[83]

Additionally, the "Human Rights Standards and Practice for the Police," a guide developed by the Office of the United Nations High Commissioner for Human Rights, outlines the human rights standards for police officers and establishes several key interrogation guidelines for law enforcement. According to the document, "no pressure, physical or mental, shall be exerted on suspects, witnesses, or victims [by police officers] in attempting to obtain information."[84] Further, "no one shall be compelled to confess or to testify against himself or herself."[85] Rather than a focus on merely eliciting confessions, the purpose of investigations is to "identify victims; recover evidence; discover witnesses; discover cause, manner, location and time of crime; and identify and apprehend perpetrators" in an attempt to discover the truth.[86]

Thus, while American courts have attempted to articulate several standards to protect juveniles and their constitutional rights in custodial interrogation settings, international standards offer a human rights-centered approach worth examining.

The International Covenant on Civil and Political Rights (ICCPR)

Much of international law recognizes the rights of juveniles in the legal system and establishes protections to safeguard minors from coercive interrogation techniques that may lead to a false confession. For example, the International Covenant on Civil and Political Rights (ICCPR), a multilateral treaty under the United Nations, recognizes the right of *every* child, without any discrimination, to receive from their family, society, and the State the protection required by their status as a minor.[87] The ICCPR, to which the United States has affirmed its commitment, emphasizes the obligation of state parties to consider age and the promotion of rehabilitation in juvenile cases.[88] Additionally, Article 7 of the ICCPR specifies that no individual "shall be subjected to torture or cruel, inhuman or degrading treatment or punishment,"[89] and Article 14(3)(g) states that an individual is "not to be compelled to testify against himself or to confess guilt," with special considerations to be made in the case of juveniles.[90] This framework establishes a legal foundation for safeguarding the well-being of children and individuals, aligning with international standards and principles of justice.

Convention Against Torture (CAT)

In addition to its commitment to the ICCPR, the United States, along with nearly 140 other countries, is party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). This legally binding treaty imposes an obligation on state parties to prohibit the use of torture within their territorial jurisdiction. Article 1 of the Convention provides,

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80 Ibid.
81 Ibid.
82 Ibid.
83 For more detail on the extensive protections against police deception in Germany, see https://ij.org/wp-content/uploads/2021/03/Eichen_Prevalence-of-police-lying_.pdf, 6-7.
84 Office of the United Nations, "Human Rights Standard and Practice for the Police," United Nations, United Nations Publication, 2004, 10, https://www.ohchr.org/sites/default/files/Documents/Publications/training5Add3en.pdf
85 Ibid, 11.
86 Ibid.
87 General Assembly Resolution 2200A. "International Covenant on Civil and Political Rights." | Ohchr." United Nations. Accessed March 2024. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
88 Ibid.
89 Ibid.
90 Ibid.

> Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[91]

The Convention not only represents a global commitment to condemn torture; its prevention of other cruel, inhuman, or degrading acts also underscores the importance of respecting individuals' dignity. The use of coercive interrogation techniques, particularly when applied to minors with the intent of obtaining a confession, inflicts mental suffering and is fundamentally at odds with the spirit of these international standards.

Convention on the Rights of the Child

The United Nations has also articulated protections for children through the Convention on the Rights of the Child (CRC), a human rights treaty signed in 1989. The CRC is the most comprehensive international treaty focusing on children's rights, having garnered acceptance from virtually every country worldwide (192 of 194), excluding the United States and Somalia.[92] Although the U.S. signed the treaty in 1995, it has yet to ratify it.

According to the CRC, a child is defined as any individual under the age of eighteen.[93] Article 37 of the CRC states that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment" and "no child shall be deprived of his or her liberty unlawfully or arbitrarily."[94] Because coercive interrogation techniques can lead to wrongful convictions, they are, in part, responsible for the unlawful detention of juveniles. This right against unlawful and arbitrary detention is underscored multiple times throughout numerous international human rights treaties, including Article 9 of the Universal Declaration of Human Rights, Article 9 of the ICCPR, and Article 7 of the American Convention of Human Rights.[95]

Finally, international conventions highlight the importance of providing special care to juveniles, contrasting with the current approach of American police, who often employ tactics designed for adults. Article 7 of the The American Declaration on the Rights and Duties of a Man states that children have the right to "special protection."[96] This is reinforced in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), which emphasize reducing the amount of harm experienced by a juvenile, recommend having special instructions and training for police on how to deal with juveniles, and stress the importance of using research to inform and evaluate policies on juvenile justice administration.[97]

Given the outlined United Nations treaties above, it is important to note that treaty obligations are incorporated into U.S. law by the Supremacy Clause of the U.S. Constitution, which states that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in

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91 General Assembly Resolution. "Convention Against Torture and Other Cruel, Inhumane Punishment or Degrading Treatment or Punishment." United Nations. Accessed March 2024. https://treaties.un.org/doc/publication/unts/volume%201465/volume-1465-i-24841-english.pdf

92 United Nations. Convention on the Rights of the Child. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

93 Ibid.

94 United Nations. Convention on the Rights of the Child. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

95 Know your rights: right to freedom from arbitrary detention, accessed April 2024, https://environment-rights.org/rights/right-to-freedom-from-arbitrary-detention/.

96 OAS. https://humanrightscommitments.ca/wp-content/uploads/2018/10/American-Declaration-of-the-Rights-and-Duties-of-Man.pdf

97 See "United Nations Standard Minimum Rules for the Administration of Juvenile Justice," at https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf.

every State shall be bound thereby."[98] Upon ratification of a treaty, the U.S. is obligated to adhere to and enforce its provisions.

III. Alternative Interrogation Methods

"It's human nature to deny and defend oneself. Confrontation is not an effective way of getting truthful information," said said Shane Sturman, the President and CEO of Wicklander-Zulawski & Associates, an internationally-recognized training firm specializing in effective, ethical, evidence-based interview methods. "Rather than primarily seeking a confession, it's an important goal for investigators to find the truth ethically through a respectful, non-confrontational approach." Sturman added, "Because of the possible abuses inherent in the confrontational Reid style, we believe it is time to move away from the practices of the 1970s when it was developed."[99]

This section outlines potential methodologies that Rhode Island may adopt; however, this is not an exhaustive list. Several jurisdictions utilize other non-confrontational approaches that do not necessarily adhere to a uniform methodology.

The PEACE Method

The PEACE Method, which originated in England and Wales in the 1980s, persists as an effective interrogation technique to combat coercive tactics.[100] This method is a form of "investigative interviewing" a technique rooted in facts, rather than accusations. In contrast to the Reid Technique, which uses interrogations as a means to elicit confessions irrespective of their validity, the PEACE Method was designed to encourage suspects to provide sufficient relevant information so its contents can either be verified or challenged by other accounts. Since the 1980s, this method has spread to other countries like Australia, New Zealand, Norway, and more.[101]

The PEACE Method was developed in response to a wave of false confession incidents in England and Wales: the false implications of the Birmingham Six and Guildford Four in suspected terrorism cases. Through studies led by Dr. Andy Griffiths, an English detective superintendent, the idea of false confessions stemming from a lack of training by the police in how to properly handle interrogations shines through.[102] Under their previous techniques, police officers heavily relied on confirmation biases and false premises to infer a suspect's guilt, leading to inaccurate judgments of truth.[103] As a result, false confessions have contributed to 23% of wrongful convictions in the US, with the root cause of these false confessions being "the investigator's use of improper, coercive interrogation techniques."[104]

To rectify the issue of inadequate training in techniques leading to false confessions, the PEACE Method employs a fact-finding approach that is better attuned to the interviewee's ability to accurately recall events. Under the PEACE Method, which is designed to gather information rather than seek confessions, interviewers are explicitly

98 Overview of the Supremacy Clause | Constitution Annotated. Accessed March 24, 2024. https://constitution.congress.gov/browse/essay/artVI-C2-1/ALDE_00013395/#:~:text=This%20Constitution%2C%20and%20the%20Laws,Constitution%20or%20Laws%20of%20any.

99 Calibration Group. "Wicklander-Zulawski Discontinues Reid Technique Method Instruction After More Than 30 Years. Cision PRWeb, March 6, 2017. https://www.prweb.com/releases/wicklander_zulawski_discontinues_reid_method_instruction_after_more_than_30_years/prweb14123356.htm.

100 Bull, Ray. "PEACE-Ful Interviewing/Interrogation." Diversity in Harmony -- Insights from Psychology, August 2018. https://www.researchgate.net/publication/326961165_PEACE-ful_InterviewingInterrogation.

101 Ibid.

102 Griffiths, Andy. "How the UK Police Interview Suspects." Innocence Project, December 21, 2012. https://innocenceproject.org/news/how-the-uk-police-interview-suspects/.

103 Leo, Richard A. "Why Interrogation Contamination Occurs." SSRN, March 19, 2013. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2235152.

104 Hritz, Amelia, Michal Blau, and Sara Tomezsko. "False Confessions." Cornell University Law School Social Science and Law. https://courses2.cit.cornell.edu/sociallaw/student_projects/FalseConfessions.html.

prevented from lying under any circumstances. This method can be outlined in five steps:[105]

Step #1: Preparation and Planning

Before beginning the interview, police must delineate a clear plan that identifies the key issues and objectives of the interview. During this stage, all information present should be considered such that the interviewer can build a picture of the event to compare with the interviewee's account. Furthermore, the interviewer should identify the points necessary to prove a suspect's criminality or exoneration based on currently avalible information. Lastly, the interviewer should take into account the characteristics of the interviewee, particularly to the degree that cultural differences, physical or mental status, or age and gender can be accommodated to ensure an impartial interview. This might look like allowing juveniles, older interviewees, or those with learning disabilities extra time for responses and avoid interrupting.

In numerous false confession cases, physical evidence is dismissed as irrelevant. Through the required preparation and a better understanding of the facts, evidence is less likely to be discounted, leading to fewer wrongful convictions.

Step #2: Engage and Explain

Once the interviewee has been accommodated in a distraction-free environment, it remains crucial to immediately establish rapport with the interviewee and clearly explain the reasons and objectives for the interview. Not only will a clear establishment of the ground rules enable the interview to move smoothly, but the initial establishment of rapport leads to the attainment of more accurate information. Especially in more complex investigations that may necessitate multiple interviews with the same individual, interviewees will be more compliant and cooperative if they are treated comfortably and respectfully. By contrast, an interviewee who is less relaxed and subjected to a heightened emotional state will be more defensive, obstructive, and less reliable.

Step #3: Account, Clarify, and Challenge

As the interview commences, the PEACE Method emphasizes the use of appropriate questions to adequately elicit the interviewee's responses. The PEACE Method encourages dividing questioning by topic and using an hourglass approach that probes the topic, allows for challenges and clarifications, and arrives at a final, accurate determination.

Under the hourglass approach, the first questions should always be open-ended, which enable an interviewee's free recall of how an event occurred. These open-ended questions (for example: "tell me everything that happened about _____") enable the interviewee to describe an event in as much detail as possible without restriction, interruption, or direction. Eventually, the interviewer transitions to a series of closed questions, which seek to target specific details that the interviewee may have omitted in their initial recount and allow the interviewer to clarify or challenge the interviewee's claims.

Step #4: Closure

The PEACE Method also advises a structured conclusion to interviews, discouraging abruptly ending interviews. Instead, interviewers should summarize the interviewee's account of events, allow for any remaining clarifications, and discuss other relevant information and next steps. Through these steps, interviewers can better ensure future cooperation and that interviewees leave with a clear understanding of potential outcomes.

Step #5: Evaluate

After the interview, law enforcement should evaluate the interviewee's account and examine how this new in-

105 "Cheat Sheet on Peace Interviewing Skills." The BIG Question Company. Accessed December 8, 2023. https://uploads-ssl.webflow.com/5d7283bdea8b4683127fa133/5da03eed675e837968aa7241_BQC_Cheat_Sheet.pdf.

formation fits with the investigation as a whole. A thorough evaluation can ensure that all relevant information is considered and can help inform future police action. The evaluation process is also a time to assess whether any actions should be taken in further interviews to enhance the collection of accurate information.

Ultimately, the PEACE Method has had demonstrably positive effects where it has been implemented. For instance, authorities using the PEACE Method have been able to collect correct information in their investigations at a rate 30-50% higher than before.[106] Furthermore, the UK has experienced a significant decrease in the prevalence of false confessions, therefore enabling greater trust in law enforcement authorities.[107] In fact, since the UK implemented the PEACE Method, there has only been one notable false confession case, and the police unit involved admitted to not having been trained in the method..[108]

Despite criticism over the practicality of implementing the PEACE Method in the United States and its imposition of enhanced restrictions on law enforcement,[109] Dave Walsh and Ray Bull of the British Psychological Society note its effectiveness at the "securing of full accounts, including confessions."[110] Compared to more coercive styles, the PEACE Method is equally effective at eliciting confessions from the guilty while reducing false confessions from innocent individuals.[111] In fact, the PEACE Method was found to be the "most reliable," enabling "police officers to gather testimonies with a great amount of detail, without having to diminish the statement's accuracy."[112] By using the PEACE Method, Rhode Island can reduce rates of false confessions and ensure the collection of more accurate and useful pieces of information.

The HIG Method

The High-Value Detainee Interrogation Group (HIG) consists of three groups: the CIA, the Department of Defense, and the FBI.[113] It was established in 2009 with the mission of coordinating intlligence professionals to conduct interrogations focused on national security.[114] While the director and deputies come from these three groups, the HIG is staffed by intelligence professionals from around the country. Its main function is for intelligence gathering, rather than law enforcement.[115]

The HIG uses Mobile Interrogation Teams to gather information to protect security, both in the United States and abroad.[116] Because the team has "extensive interviewing and interrogation experience, and they are trained based on the latest scientific research," HIG personnel should not be engaged in any unlawful interrogation practices.[117] Instead, they rely on lawful and **non-coercive practices** to obtain voluntary confessions while avoiding accusatory questioning.

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106 Davison, Jonathan. "P.E.A.C.E A Different Approach to Investigative Interviewing." The Science of Interviewing. Accessed October 2023. https://www.fis-international.com/assets/Uploads/resources/PEACE-A-Different-Approach.pdf.

107 Rhodes, Ella. "United Nations May Recommend Peace Approach." BPS, November 7, 2016. https://www.bps.org.uk/psychologist/united-nations-may-recommend-peace-approach.

108 Ibid.

109 See "PEACE Article," *John E. Reid and Associates*, http://archive.reid.com/pdfs/peacearticle.pdf.

110 Dave Walsh and Ray Bull, "What Really Is Effective in Interviews with Suspects? A Study Comparing Interviewing Skills against Interviewing Outcomes," *Legal and Criminological Psychology* 15, no. 2 (2010): 305, https://doi.org/10.1348/135532509X463356.

111 Rhodes, Ella. "United Nations May Recommend Peace Approach." BPS, November 7, 2016. https://www.bps.org.uk/psychologist/united-nations-may-recommend-peace-approach.

112 Neal, Cassandra. "An Evaluation of Police Interviewing Methods: A Psychological Perspective." Digital Commons@University of Nebraska - Lincoln, March 2019. https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1103&context=honorstheses.

113 FBI. "High Value Detainment Group." FBI. November 16, 2016. https://www.fbi.gov/investigate/terrorism/high-value-detainee-interrogation-group.

114 Ibid.

115 Ibid.

116 Ibid.

117 FBI. "High Value Detainment Group." FBI. November 16, 2016. https://www.fbi.gov/investigate/terrorism/high-value-detainee-interrogation-group

The second part of HIG is its research program. This program examines the success of various interrogation approaches and techniques.[118] They identify and study the comparative effectiveness of existing techniques and develop new, lawful techniques that can improve interrogation.[119] In the HIG's report, they analyze the best practices for interrogation. This report focuses on tactics such as regulating first impressions and emphasizing active rather than passive listening.[120] Because of their commitment to finding just practices, the HIG has funded over 100 projects (i.e. social influence tactics, the impact of interpreters, the cognitive interview, and science-based methods of detecting deception).[121]

Policymakers can look toward both HIG's research and use of non-coercive practices as potential models for law enforcement practices in our state. Implementing a methodology that prioritizes truth and upholds individual rights must always take precedence over coercive practices which aim to simply elicit confessions regardless of their veracity.

IV. Financial Considerations

In addition to solidifying constitutional protections, comprehensive legislation to protect juveniles from coercive interrogations would extend significant financial benefits to the State of Rhode Island and its taxpayers. This section outlines the costs—both economic and social—associated with wrongful convictions, such as incarceration, legal fees, and additional crimes. Legislation to prevent coercive interrogations would provide remedies and opportunities for the State to procure savings.

Potential Savings

The potential savings of legislation preventing coercive interrogations may be approximated with an examination of the various costs associated with the consequences of such interrogation procedures.

Costs of Incarceration

Incarceration poses one of the most significant costs associated with our justice system. To illustrate, the State of Rhode Island, in 2021, expended approximately $100,000 to incarcerate an individual.[122] However, that number vastly underestimates the true cost of incarceration. As researchers from the Institute for Justice Research and Development note, "For every dollar in corrections costs, incarceration generates an additional ten dollars in social costs," with "more than half [...] borne by families, children, and community members who have committed no crime."[123] This means that for every wrongfully convicted individual that Rhode Island incarcerates, the burden of a six- to seven-figure bill is shifted onto taxpayers. Comprehensive legislation to prevent coercive interrogation techniques may reduce the number of wrongful convictions, and in turn, save the state and its residents a significant amount of money.

Costs of Litigation

In addition to the costs of incarceration, there are exorbitant costs related to litigation following wrongful conviction cases. In 2021, Rhode Island passed legislation to provide $50,000 in compensation per year of wrongful

118 Ibid.

119 Ibid.

120 FBI. "HIG Interrogation Best Practices Report." FBI. August, 2016. https://www.fbi.gov/file-repository/hig-report-august-2016.pdf/view.

121 FBI. "High Value Detainment Group." FBI. November 16, 2016. https://www.fbi.gov/investigate/terrorism/high-value-detainee-interrogation-group

122 Dennis Malloy," Rhode Island spends too much to incarcerate too many people," *Boston Globe*, August 25, 2022, https://www.bostonglobe.com/2022/08/25/metro/rhode-island-spends-too-much-incarcerate-too-many-people/#:~:text=In%202021%2C%20the%20state's%20cost,implement%20other%20cost%20saving%20measures.

123 Michael McLaughlin et al., rep., *The Economic Burden of Incarceration in the United States* (Institute for Justice Research and Development, 2016), https://ijrd.csw.fsu.edu/sites/g/files/upcbnu1766/files/media/images/publication_pdfs/Economic_Burden_of_Incarceration_IJRD072016_0_0.pdf, 2.

imprisonment. With these payments to exonerees totaling $2.2 billion nationally, decreasing wrongful convictions based on false confessions will save both time and money.[124]

Criminal Costs

Wrongful convictions also carry significant societal burdens arising from the occurrence of additional crimes committed while the true perpetrator remains at large. To quantify, scholars Norris, Redlich, and Acker reviewed three true perpetrator studies:[125]

TABLE 1 Summary findings of previous true perpetrator studies

Study	Wrongful Conviction Cases Examined	Additional Crimes of True Perpetrators Identified
Conroy and Warden (2011)	85 exoneration cases from Illinois, 1989–2010[a]	97 additional felonies
West and Meterko (2016)	325 DNA exonerations across U.S., 1989–2014[b]	142 additional violent crimes
Baumgartner et al. (2018)	36 exoneration cases from North Carolina, 1943–2013[c]	99 additional crimes

Each study examined wrongful conviction cases and found that they led to a myriad of additional crimes by the "true perpetrator" of the crime. Clearly, there are real consequences to convicting the wrong person. It not only hurts the individual wrongfully convicted but inflicts avoidable suffering onto victims of additional crimes and their families.

Potential Costs

The main costs associated with implementing legislation limiting the use of coercive interrogation methods for juveniles can be estimated by evaluating the investment required to re-train law enforcement officers in non-confrontational interrogation techniques.

Training

As per the 2018 Census of State and Local Law Enforcement Agencies, Rhode Island employs a total of 3,615 full-time state and local law enforcement personnel, 2,762 of whom are sworn officers.[126] Officers tasked with conducting custodial interrogations would require training on non-confrontational ways to interview and interrogate individuals. According to Christopher P. Norris, Director of International Training for Wicklander-Zulawski and Associates Inc., who has over twenty-three years of experience in training and course curriculum development, the requisite interview training consists of a three-day program that provides a solid foundation to move away from coercive interrogation approaches.[127] The program encompasses ethical, non-confrontational interviewing methods for gathering actionable information from victims, witnesses, and suspects, emphasizing rapport-building, multiple strategies adaptable to varying circumstances, and prioritizing truth over eliciting confessions.[128] The city of Chicago, for example, has a contract with Wicklander-Zulawski and Associates Inc. to

124 "Exoneree Compensation in Rhode Island," *Innocence Project*, https://innocenceproject.org/policies/exoneree-compensation-in-rhode-island/#:~:text=A%20person%20whose%20conviction%20was,per%20year%20of%20wrongful%20incarceration.

125 Robert J. Norris et al., "The Criminal Costs of Wrongful Convictions," *Criminology & Public Policy* 19, no. 2 (September 2, 2019): 367–88, https://doi.org/10.1111/1745-9133.12463.

126 Andrea M. Gardner and Kevin M. Scott, "Census of State and Local Law Enforcement Agencies, 2018 – Statistical Tables," *Bureau of Justice Statistics (*October 2022), 6, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/csllea18st.pdf.

127 The authors of this report interviewed Chris P. Norris on December 28, 2023; "Level I - Investigative Interviewing Techniques," *Wicklander-Zulawski and Associates Inc.*, https://www.w-z.com/register/?id=3923.

128 Interview with Norris, December 28, 2023; "Level I - Investigative Interviewing Techniques," *Wicklander-Zulawski and Associates Inc.*, https://www.w-z.com/register/?id=3923; Calibration Group, "Wicklander-Zulawski Completes Interview & Interrogation Training For 150 New Detectives at the Chicago Police Department," *Wicklander-Zulawski and Associates Inc.*, March 9, 2017, https://www.prweb.com/releases/wicklander_zulawski_completes_interview_interrogation_training_for_150_new_detectives_at_the_chica-

train hundreds of their officers during an academy class.[129] Norris detailed how courses normally consist of forty officers and provided an estimated cost of approximately $450 per officer.[130] He believed it to be realistic and feasible to provide training within six weeks of enacting legislation to any Rhode Islanf officers requiring immediate instruction on non-confrontational interviewing.

V. Conclusion and Acknowledgments

Conclusion

In conclusion, the current landscape of juvenile interrogation practices in Rhode Island reveals significant shortcomings in protecting the rights and well-being of young individuals. The prevalence of coercive interrogation tactics poses a grave risk of eliciting false confessions and wrongful convictions, undermining the integrity of our justice system. By drawing on international standards, legislative reforms in other states, and proven non-coercive interrogation methods, Rhode Island can safeguard the rights of juveniles. It is, therefore, strongly recommended that Rhode Island pass S2435/H7954, which aims to regulate coercive interrogation tactics against minors and ensure the highest levels of protection for our youth. This legislation represents a vital step towards promoting justice, accountability, and respect for human rights in Rhode Island's criminal justice system.

Acknowledgements

The Brown Initiative for Policy's Confession Accountability Team would like to acknowledge the extraordinary people who have helped our team throughout the past two years, allowing us to be where we are today.

This report would not have been the same without Christopher P. Norris. Norris's extensive knowledge in the field of police investigations, interrogations, and training proved invaluable, and we are incredibly grateful for his expertise, honesty, and experience.

We thank Michael DiLauro, a representative for the Association of Criminal Defense Attorneys, for his flexibility and sharing his experience from his four decades working in the Rhode Island Public Defender's Office. His time and expertise have been priceless, helping us inform our arguments and testimony in support of our bill.

To the bill sponsors for HB7954 and SB2435 (Representatives Ajello, Potter, Cruz, Felix, and Tanzi; Senators Bissaillon, Lombardi, and Euer): you have helped actualize what was once a mere idea into proposed legislation in the Rhode Island General Assembly. We thank you for your advocacy, commitment, and genuine concern on this issue. We also extend special thanks to Senator Bissaillon for his extensive communication with our team and for connecting us with Mr. DiLauro. It is these relationships that truly underpinned and enabled all of our work.

We would finally like to acknowledge all those who have supported our team, our report, and our bill in any capacity. Your encouragement has helped motivate all of us. Here is to a brighter future.

go_police_department/prweb14135147.htm#.

129 Calibration Group, "Wicklander-Zulawski Completes Interview & Interrogation Training."

130 Interview with Norris, December 28, 2023. (While the cost of Level 1 training is normally $595 per individual according to https://www.w-z.com/training-schedule/, Norris explained that this is reduced with a government contract and large scale training initiatives.)

VI. Appendix: Our Bill – H7954 (2024)

Link: https://legiscan.com/RI/text/H7954/2024

2024 -- H 7954

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LC005281

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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO DELINQUENT AND DEPENDENT CHILDREN -- PROCEEDINGS IN FAMILY COURT

Introduced By: Representatives Ajello, Potter, Cruz, Felix, and Tanzi

Date Introduced: March 05, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 14-1 of the General Laws entitled "Proceedings in Family Court" is hereby amended by adding thereto the following section:

14-1-30.3. Use of statements made in custodial interrogation.

(a) A peace officer, as defined in § 12-7-21, shall not employ threats, physical harm, deprivation, deception, coercion, or psychologically manipulative interrogation tactics during the custodial interrogation of a juvenile.

(b) As used in this section, the following terms shall have the following meanings:

(1) "Coercion" means, but is not limited to, the disclosure of facts pertaining to a crime or crimes that were not previously articulated by the person interrogated.

(2) "Deception" means, but is not limited to, the knowing communication of false facts about evidence, misrepresenting the accuracy of the facts or false statements regarding leniency.

(3) "Deprivation" means the withholding of physical or mental needs, including, but not limited to, food, drink, sleep, use of the restroom, or prescribed medications from the person being

interrogated.

(4) "Psychologically manipulative interrogation tactics" means, but is not limited, to the following:

(i) Maximization and minimization and other interrogation techniques that rely on a presumption of guilt or deceit;

(A) Maximization includes techniques to scare or intimidate the person by repetitively asserting the person is guilty despite their denials, or exaggerating the magnitude of the charges or the strength of the evidence, including suggesting the existence of evidence that does not exist;

(B) Minimization involves minimizing the moral seriousness of the offense, a technique that falsely communicates that the conduct is justified, excusable, or accidental:

(ii) Making direct or indirect promises of leniency, such as indicating the person will be released from custody if the person cooperates;

(iii) Employing the "false" or "forced" choice strategy, where the person is encouraged to select one of two (2) options, both incriminatory, but one is characterized as morally or legally

justified or excusable; and

(iv) Employing undue pressure that impairs the person's physical or mental condition to the extent of undermining the ability to decide whether or not to make a statement;

(5) "Threats" means, but is not limited to, using or threatening the arrest or incrimination of another person, or using or threatening the use of enhanced penalties against the person being interrogated or against another person.

(c) A statement obtained through or utilizing any of the tactics referenced in subsections (a) and (b) of this section shall not form the basis of any further investigative activities. Any evidence that is obtained by or flows from the statements of the juvenile shall be considered tainted and shall be presumed inadmissible as evidence against the juvenile making the statement in any criminal proceeding or a juvenile court proceeding for an act that if committed by an adult would

be a misdemeanor or a felony offense as those terms are defined in § 11-1-2

(d) The presumption of inadmissibility of a statement of a juvenile as outlined in subsection (c) of this section, may be overcome if proven beyond a reasonable doubt that the confession or incriminating statements were given free from any of the tactics described in subsections (a) and (b) of this section, based on the totality of the circumstances. The burden of going forward with the evidence and the burden of proving that a statement was given voluntarily and free from any of the tactics prohibited by this section shall be on the state. Objection to the failure of the state to call all or any material witnesses on the issue of whether the confession or statements were voluntary must be made in the trial court.

(e) Nothing in this section shall abrogate the state's burden to prove a statement of a juvenile was given voluntarily and free from any of the tactics referenced in subsections (a) and (b) of this section, prior to introducing those statements or confession into evidence.

SECTION 2. This act shall take effect upon passage.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO DELINQUENT AND DEPENDENT CHILDREN -- PROCEEDINGS IN FAMILY COURT

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This act would prohibit a peace officer, as defined in § 12-7-21, from employing threats, physical harm, deprivation, deception, coercion, or psychologically manipulative interrogation tactics during the custodial interrogation of a juvenile.

This act would take effect upon passage.

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LC00528

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