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Applying the Reasonable Child Standard to Juvenile Interrogations After *J.D.B. v. North Carolina*

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I. Introduction

In *Miranda v. Arizona*, the U.S. Supreme Court recognized that a suspect who is interrogated while in police custody is subject to "inherently compelling pressures." These pressures increase the likelihood that, in violation of the U.S. Constitution, the resulting confession will be involuntary.[1] The Court, therefore, adopted a rule that police must advise a suspect who is "in custody" of specific rights, known as *Miranda* warnings, before they may question that person.

The requirements of *Miranda* apply only when a person is "in custody."[2] An individual is in custody for purposes of *Miranda* when a reasonable person in the suspect's position would believe he or she had been formally arrested or restrained to the same degree as a formal arrest.[3] Because the test was characterized as an objective one, it did not take into account the personal characteristics of the suspect, such as age. Thus, in the decades since *Miranda*, police officers and judges have applied the same objective test to determine custody for both adults and juveniles.

In *J.D.B. v. North Carolina*,[4] the U.S. Supreme Court changed course. It held that a juvenile suspect's age, when known or objectively apparent to an interrogating officer, is a factor to be considered in the *Miranda* custody analysis.[5] Instead of the "one-size-fits-all reasonable person test" that had been used previously, the Court held that the test is whether, based on the totality of the circumstances, *a reasonable child* in the suspect's position would have felt free to terminate the encounter and leave.[6] Recognizing that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go,"[7] the Court saw no reason for police officers to ignore this commonsense reality during custodial interrogations.

J.D.B. has transformed the way courts and police officers must evaluate whether a juvenile is in custody for the purpose of requiring *Miranda* warnings prior to police questioning. Before *J.D.B.*, the U.S. Supreme Court had not expressly mandated consideration of a suspect's age and even suggested that its inclusion in the *Miranda* analysis was improper due to the objective nature of the test.[8] The Court expressed concern that "consideration of a suspect's individual characteristics—including his age—could be viewed as creating a subjective inquiry."[9] As a result, many jurisdictions, including North Carolina, questioned whether age was a proper factor to consider.[10] Holding that it was, *J.D.B.* mandates that trial courts account for the fundamental differences between children and adults in determining whether a child is in custody.

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1. Miranda v. Arizona, 384 U.S. 436, 467 (1966).
2. *Id.* at 444.
3. J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2402 (2011).
4. *Id.* at ___, 131 S. Ct. at 2406.
5. *Id.*
6. *Id.* at ___, 131 S. Ct. at 2403, 2407.
7. *Id.* at ___, 131 S. Ct. at 2403.
8. Yarborough v. Alvarado, 541 U.S. 652, 666–68 (2004) (holding that a state court had not unreasonably applied clearly established federal law when it failed to consider the age and inexperience of the 17-year-old suspect in determining that his interrogation was not custodial).
9. *Id.* at 668.
10. *See, e.g.*, *In re* J.F., 987 A.2d 1168, 1175 (D.C. 2010) (declining to consider the juvenile's age because "the Supreme Court has not held that a suspect's age or experience is relevant to the *Miranda* custody analysis, 'much less mandated its consideration'" (quoting *Alvarado*, 541 U.S. at 666)); People v. Croom, 883 N.E.2d 681, 689 (Ill. App. Ct. 2008) ("Given the Supreme Court's emphasis on objectiveness, we

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The *J.D.B.* opinion emphasizes that children are more submissive to police officers than adults and therefore may be more overwhelmed by the objective circumstances of an interrogation.[11] However, while it cautions that a child's age may not be dispositive,[12] it does not provide significant guidance on how courts and police officers should evaluate custody based on a "reasonable child" standard. In the five years since the decision, North Carolina appellate courts have occasionally cited *J.D.B.* to acknowledge that age is now a relevant factor in evaluating whether a juvenile was in custody, but they have not specifically discussed how age affects the custody analysis.[13]

This bulletin discusses how a juvenile's age impacts the inquiry of whether a juvenile is in custody for purposes of *Miranda*. It begins with an overview of the traditional *Miranda* custody analysis based on the reasonable person standard. It then explains how *J.D.B.* created a reasonable child standard for juveniles. Recent appellate cases applying *J.D.B.* are examined to illustrate that the usual factors involved in an interrogation are weighed differently when custody is viewed through the lens of a reasonable child. The bulletin concludes with the implications of *J.D.B.*'s holding for the consideration of other personal characteristics in the custody test.

II. The Traditional *Miranda* Custody Analysis

Before *Miranda*, courts "evaluated the admissibility of a suspect's confession under a voluntariness test" rooted in both the Fifth and Fourteenth Amendments.[14] This due process voluntariness test, which remains in effect, "examines whether a [suspect's] will was overborne" by coercive tactics employed by police during questioning.[15] That determination depends on the totality of the circumstances, which includes "both the characteristics of the accused and the details of the interrogation."[16] The test is subjective because it considers the individual's "actual mindset"[17] in evaluating whether his or her confession was a product of coercion or the individual's own

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decline to consider defendant's age when determining whether he was in custody for *Miranda* purposes."); *In re* J.D.B., 363 N.C. 664, 672 (2009) (declining to extend the test for custody to include consideration of age and academic status based on the U.S. Supreme Court's view that the custody inquiry is objective), *rev'd*, 564 U.S. 261 (2011).

11. 564 U.S. at ___, 131 S. Ct. at 2403 ("[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go."; "[E]vents that would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." (internal quotation marks omitted)).

12. *Id.* at ___, 131 S. Ct. at 2406.

13. *See, e.g.*, *In re* C.M., ___ N.C. App. ___, 772 S.E.2d 265, *3–5 (2015) (unpublished) (although the court mentioned that the juvenile's age was a factor, it nonetheless described the test as a "reasonable person" test and did not discuss how the juvenile's age affected the determination that the 15-year-old was not in custody); *In re* A.N.C., Jr., 225 N.C. App. 315, 320–22 (2013) (concluding that a 13-year-old juvenile was not in custody when he made an incriminating statement to an officer during roadside questioning at the scene of an automobile accident without discussing how the juvenile's age affected the court's analysis).

14. Dickerson v. United States, 530 U.S. 428, 433 (2000).

15. *Id.* at 434 (internal quotation marks omitted).

16. *Id.* (quotation omitted).

17. Yarborough v. Alvarado, 541 U.S. 652, 667 (2004).

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free will.[18] As a result, personal characteristics of the suspect, such as age, immaturity, education, and intelligence, have long been deemed relevant in the voluntariness inquiry.[19]

The U.S. Supreme Court created the *Miranda* rule to supplement the voluntariness test due to its concerns that the inherently coercive nature of custodial interrogation "blurs the line between voluntary and involuntary statements."[20] The Court recognized that even when confessions are voluntary under the traditional due process analysis, the "inherently compelling pressures" of in custody interrogation may compel a person to speak when the person "would not otherwise do so freely."[21] To combat these pressures and ensure that suspects have a full opportunity to exercise their Fifth Amendment right to remain silent, the Court established "concrete constitutional guidelines" for police officers and courts to follow.[22]

Under *Miranda*, law enforcement officers may not question a person who "has been taken into custody or otherwise deprived of his freedom of action in any significant way" unless they first provide certain Fifth Amendment warnings.[23] These well-known *Miranda* warnings include that the person has a right to remain silent, that any statement the person makes may be used against him or her at trial, and that the person has the right to an attorney, either appointed or retained.[24] Statements made during custodial interrogation are presumed to be involuntary and, thus, are inadmissible unless the state shows that *Miranda* warnings were given and that the person "knowingly and intelligently" waived his or her rights.[25]

Miranda warnings are required, however, only if the objective circumstances of the interrogation establish that the person's freedom of movement was restricted in such a way as to render him or her "in custody."[26] That determination involves two separate inquiries,

> first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave.[27]

In contrast to the voluntariness test, this determination is objective and involves no consideration of the particular suspect's state of mind.[28] Instead, the "ultimate inquiry" is whether a reasonable person would have believed that he or she had been placed under "a formal arrest or restraint on freedom of movement of the degree associated with formal arrest."[29]

Placing a person under formal arrest triggers the requirement of *Miranda* warnings. This bulletin focuses on situations in which a person has not been placed under formal arrest. North

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18. Lynumn v. Illinois, 372 U.S. 528, 534 (1963).
19. *See, e.g.*, J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2410 (2011) (Alito, J., dissenting); Gallegos v. Colorado, 370 U.S. 49, 54 (1962) ("[N]o matter how sophisticated," a juvenile subjected to police interrogation "cannot be compared" to an adult subject); Haley v. Ohio, 332 U.S. 596, 599 (1948) (plurality opinion) ("That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.").
20. Dickerson v. United States, 530 U.S. 428, 435 (2000).
21. Miranda v. Arizona, 384 U.S. 436, 467 (1966).
22. *Id.*
23. *Id.* at 444.
24. *Id*.
25. *Id*. at 475–76.
26. Oregon v. Mathiason, 429 U.S. 492, 495 (1977).
27. J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2402 (2011) (quotation omitted).
28. *Id*.
29. *Id*.

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Carolina courts have described the relevant inquiry in this context as whether the circumstances present enough "indicia of formal arrest" to support an objective belief that one is in custody.[30]

A. The Pre-*J.D.B.* Objective "Reasonable Person" Test

Under the objective reasonable person test, law enforcement officers and courts do not consider the "subjective views" of the interrogating officers or the person being questioned in determining whether the circumstances present indicia of formal arrest.[31] The test is objective "to give clear guidance to the police" regarding how they may interrogate someone.[32] By limiting the analysis to objective factors, the reasonable person test prevents officers from having to speculate about how each suspect's personal traits influence that person's subjective view of the circumstances.[33] Prior to *J.D.B.*, the U.S. Supreme Court had disregarded or declined to consider personal characteristics of the suspect.[34] It indicated that "the only relevant inquiry [was] how a reasonable *man* in the suspect's position would have understood his situation."[35] Thus, under the reasonable person standard, the custody determination was the same for every suspect questioned under similar circumstances, regardless of the suspect's age, education, or prior experience with law enforcement.[36]

30. *See* State v. Buchanan, 353 N.C. 332, 339 (2001) (stating that "the indicia of formal arrest test has been consistently applied to Fifth Amendment custodial inquiries"); State v. Little, 203 N.C. App. 684, 688 (2010) ("[T]he ultimate inquiry on appellate review is whether there were indicia of formal arrest.").

31. Stansbury v. California, 511 U.S. 318, 323 (1994).

32. *J.D.B.*, 564 U.S. at ___, 131 S. Ct. at 2402 (internal quotation marks omitted); *see also* Fare v. Michael C., 442 U.S. 707, 718 (1979) ("*Miranda*'s holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation[.]").

33. *J.D.B.*, 564 U.S. at ___, 131 S. Ct. at 2402. *But see* Berkemer v. McCarty, 468 U.S. 420, 441 (1984) (recognizing that "police and lower courts will continue occasionally to have difficulty deciding exactly when a suspect has been taken into custody").

34. *See, e.g.*, Yarborough v. Alvarado, 541 U.S. 652, 668 (2004) (holding, as a *de novo* matter, that a suspect's prior experience with law enforcement is irrelevant to the *Miranda* custody analysis); *Berkemer*, 468 U.S. at 423 (holding that a suspect was not in custody during roadside questioning, despite that the suspect's inebriation was apparent to the interrogating officers); California v. Beheler, 463 U.S. 1121, 1124–25 (1983) (per curiam) (rejecting a lower court's determination that the defendant was in custody where he had been drinking and was emotionally distraught (internal quotation marks omitted)).

35. *Berkemer*, 468 U.S. at 442 (emphasis added).

36. An objective reasonable person standard is used also to determine whether a person has been "seized" under the Fourth Amendment. The U.S. Supreme Court has not yet explicitly considered a suspect's age in the Fourth Amendment analysis, which considers whether, under the totality of the circumstances, a reasonable person would have felt "free to leave." *Id.* Despite the lack of authority by higher courts on this question, the North Carolina Court of Appeals held in 2007 that a juvenile's age is a relevant factor in the free-to-leave test. *In re* I.R.T., 184 N.C. App. 579, 584 (2007). The court of appeals reasoned that because a suspect's age "has been used to determine whether he was in custody," there was no "legal or common sense reason" not to consider it in the seizure context. *Id.* When *I.R.T.* was decided, however, neither the U.S. Supreme Court nor the N.C. Supreme Court had held that a juvenile's age was relevant to the *Miranda* custody inquiry. Two years later, the N.C. Supreme Court held that age was not a proper factor to consider. *In re* J.D.B., 363 N.C. 664, 672 (2009), *rev'd*, 564 U.S. 261 (2011). The U.S. Supreme Court's holding that age is a relevant factor for custody purposes provides greater support for the court of appeals' decision in *I.R.T.*

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When *Miranda* was decided, the U.S. Supreme Court likely did not consider the significance of a suspect's age to the custody inquiry. *Miranda* did not even apply to juveniles until the Court decided *In re Gault* one year later and extended Fifth Amendment rights to children.[37] The Court first addressed the relevance of age, several years later, in a habeas proceeding involving the admissibility of a 17-year-old's confession.[38] In *Yarborough v. Alvarado*, the Court held that a lower court had not unreasonably applied clearly established federal law when it failed to consider the age and inexperience of the 17-year-old murder suspect in concluding that his interrogation was not custodial.[39] Noting that its "opinions applying the *Miranda* custody test [had] not mentioned the suspect's age, much less mandated its consideration,"[40] the Court reaffirmed that the test was an objective one. The Court also expressed concern that consideration of a suspect's age and prior experience with law enforcement might require police officers to speculate about how such factors would affect the suspect's "actual mindset."[41]

Because *Alvarado* did not involve a *de novo* review of whether age was relevant to the *Miranda* analysis, the issue remained unsettled until the Court decided *J.D.B.* However, in her concurring opinion in *Alvarado*, Justice O'Connor foreshadowed the holding of *J.D.B.*, as well as the questions it left unanswered, by stating that "[t]here may be cases in which a suspect's age will be relevant to the [*Miranda*] 'custody' inquiry" but that "[e]ven when police do know a suspect's age, it may be difficult for them to ascertain what bearing it has on the likelihood that the suspect would feel free to leave."[42] The latter assertion is particularly true for a juvenile like Alvarado, who was almost 18 at the time of interrogation. Although *J.D.B.* affirmatively answered the first question (i.e., that age is relevant), courts and police officers are left to resolve the remaining issue—how a person's age affects the custody analysis.

B. *J.D.B. v. North Carolina*—"Age" Properly Informs the Objective Test

J.D.B. was a 13-year-old, special education student in the seventh grade at Smith Middle School in Chapel Hill, North Carolina. A Chapel Hill police officer went to J.D.B.'s middle school because J.D.B. was seen in possession of a digital camera matching an item stolen in a recent home break-in. A uniformed school resource officer (SRO) escorted J.D.B. from his classroom to a closed-door conference room where the officer questioned him in the presence of the SRO, an assistant principal, and an intern. Although J.D.B. initially claimed he was only looking for work mowing lawns, he ultimately confessed to the break-in after the assistant principal encouraged him to tell the truth and the officer mentioned the possibility of juvenile detention. Prior to being questioned, J.D.B. was neither provided *Miranda* warnings nor told that he could call his grandmother, who was his legal guardian. The officer did not inform J.D.B. that he was free to leave and could refuse to answer questions until after he confessed. J.D.B. was permitted to leave at the conclusion of the 45-minute interview to catch the bus home.[43]

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37. *See In re* Gault, 387 U.S. 1 (1967); *see also* Hillary B. Farber, J.D.B. v. North Carolina*: Ushering in a New "Age" of Custody Analysis Under Miranda*, 20 J.L. & Pol'y 117, 121 (2011).

38. *Alvarado*, 541 U.S. at 655 (addressing whether a state court decision omitting any mention of the defendant's age was an unreasonable application of clearly established federal law under the deferential standard of review of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)).

39. *Id.* at 664.

40. *Id.* at 666.

41. *Id.* at 667–68.

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

43. J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2399–2400 (2011).

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After J.D.B. was alleged to be delinquent, he moved to suppress his confession on the ground that it was obtained in violation of his *Miranda* rights and juvenile rights under Section 7B-2101 of the North Carolina General Statutes (hereinafter G.S.). Applying the objective "reasonable person" standard, the trial court denied the motion, which was upheld by a divided panel of the N.C. Court of Appeals.[44] Noting that an objective rule provides clear guidance for police, the N.C. Supreme Court affirmed and "decline[d] to extend the test for custody to include consideration of age and academic standing of [the suspect]."[45] The court adhered to the view that "'consideration of a suspect's individual characteristics—including his age—could be viewed as creating a subjective inquiry.'"[46]

Reviewing the issue *de novo*, the U.S. Supreme Court held that "a child's age properly informs the *Miranda* custody analysis."[47] The Court reasoned that childhood is an objective factor because it yields "commonsense conclusions about behavior and perception" that apply universally to children as a class, and these conclusions "are self-evident to anyone who was a child once himslf, including any police officer or judge."[48] Thus, "considering age in the custody analysis in no way involves a determination of how youth subjectively affects the mindset of any particular child."[49]

Noting that "[a] child's age is far more than a chronological fact[,]"[50] the Court discussed several "commonsense conclusions" of childhood: children are immature and less responsible than adults; they lack the experience, perspective, and good judgment to recognize and avoid bad choices; and they are more vulnerable and susceptible to outside pressures.[51] The Court drew these same conclusions in a trio of juvenile sentencing cases—*Roper*, *Graham*, and *Miller*—establishing that children are categorically less culpable than adults.[52] The Court saw no reason for police officers and courts to "blind themselves" to this "commonsense reality" in the context of custodial interrogation.[53]

Despite the concern of the *J.D.B.* dissenters—that the inclusion of age would diminish the clarity of the *Miranda* rule[54]—the *J.D.B.* majority insisted that a child's age is no different than any other objective factor, such as the length of the interview or the number of officers present.[55] According to the Court, law enforcement officers and judges need only have "common sense to know that a 7-year-old is not a 13-year-old and neither is an adult."[56]

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44. *In re* J.D.B., 196 N.C. App. 234, 240–41, *aff'd*, 363 N.C. 664 (2009), *rev'd*, 564 U.S. 261 (2011).
45. *Id.*, 363 N.C. at 672.
46. *Id.* (quoting Yarborough v. Alvarado, 541 U.S. 652, 668 (2004)).
47. *J.D.B.*, 564 U.S. at ___, 131 S. Ct. at 2399.
48. *Id.* at ___, 131 S. Ct. at 2403.
49. *Id.* at ___, 131 S. Ct. at 2405 (quotation omitted).
50. *Id.* at ___, 131 S. Ct. at 2403 (internal quotation marks omitted).
51. *Id.*
52. *See* Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455 (2012) (abolishing mandatory life without parole for juvenile offenders under the Eighth Amendment); Graham v. Florida, 560 U.S. 48 (2010) (abolishing life imprisonment without parole for a juvenile offender who commits a non-homicide offense under the Eighth Amendment); Roper v. Simmons, 543 U.S. 551 (2005) (abolishing the death penalty for juvenile offenders under age 18 pursuant to the Eighth Amendment).
53. *J.D.B.*, 564 U.S. at ___, 131 S. Ct. at 2399.
54. *Id.* at ___, 131 S. Ct. at 2417 (Alito, J., dissenting).
55. *Id.* at ___, 131 S. Ct. at 2407.
56. *Id.*

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The U.S. Supreme Court did not decide whether J.D.B. was in custody at the time of his interrogation. Instead, the Court reversed the decision of the N.C. Supreme Court and remanded the case for the state courts to reevaluate this question, this time considering J.D.B.'s age at the time of his interrogation.[57]

III. Applying the *J.D.B.* Reasonable Child Standard

Under the reasonable child standard, courts and police officers must account for a juvenile's age, if the juvenile's age was known or "objectively apparent" to the interrogating officer.[58] *J.D.B.*, however, does not provide specific guidance on how the evaluation of the objective factors surrounding an interrogation changes when officers know the juvenile's age.[59] Two statements in the court's opinion are instructive: (1) that age is one factor in the totality of circumstances but may not be a "determinative, or even a significant, factor in every case"[60] and (2) that the coercive effect of other circumstances of an interrogation may be heightened when the suspect is a minor.[61] Lower courts and police officers can use these observations to inform their analysis of juvenile interrogations under the reasonable child standard.

A. A Juvenile's Age Is One Factor in the Totality of the Circumstances

J.D.B. did not specify the weight to give age as a factor in the custody analysis, stating that it is one factor but not necessarily a dispositive one. Its impact on the custody analysis may vary depending on the age of the particular juvenile. For older juveniles who are nearing the age of majority, the analysis may not change significantly.[62]

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57. *Id.* at ___, 131 S. Ct. at 2408. It does not appear, however, that the case was ever heard on remand.

58. *Id.* at ___, 131 S. Ct. at 2406.

59. *Cf., e.g.,* Yarborough v. Alvarado, 541 U.S. 652, 669 (2004) (O'Connor, J., concurring) (stating that "[e]ven when police do know a suspect's age, it may be difficult for them to ascertain what bearing it has on the likelihood that the suspect would feel free to leave").

60. *J.D.B.*, 564 U.S. at ___, 131 S. Ct. at 2406.

61. *Id.* at ___, 131 S. Ct. at 2405 ("Neither officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances.").

62. *Id.* at ___, 131 S. Ct. at 2406; *see also Alvarado*, 541 U.S. at 669 (O'Connor, J., concurring) (explaining that a state court's failure to consider the defendant's age was not an unreasonable application of clearly established federal law where the defendant "was almost 18 years old at the time of his interview"); *id.* at ___, 131 S. Ct. at 2417 (Alito, J., dissenting) (suggesting that "teenagers nearing the age of majority" are likely to react to an interrogation as would a "typical 18-year-old in similar circumstances").

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1. Older Juveniles

A few courts, including those in North Carolina, have found that age was not a significant factor in the custody analysis when the juvenile was almost 18.[63] In the North Carolina case *State v. Yancey*,[64] two plain-clothes detectives driving an unmarked car drove the 17-year-old defendant from his home to a location two miles away where they questioned him about recent burglaries. The defendant rode in the front seat of the patrol car, and the detectives told him that he was free to leave at any time and did not touch him during the encounter. The defendant confessed after the detectives confronted him with written reports of the burglaries and told him that he would not be arrested "that day" if he cooperated.[65] Following his conviction for breaking and entering, the defendant appealed, arguing that the trial court erred by denying his motion to suppress his confession.[66] The court of appeals held that the defendant was not in custody because he voluntarily spoke and rode with the officers, who told him that he was free to leave at any time.[67] Noting that the "defendant was seventeen years and ten months old at the time of the encounter[,]"[68] the court stated the defendant's age did not alter its conclusion that he was not in custody.

In *Commonwealth v. Bermudez*, a Massachusetts appellate court similarly concluded that an interrogation of a defendant who was "a few months shy of his eighteenth birthday" was not custodial.[69] Although the interrogation occurred at a police station, "the defendant appeared there voluntarily, accompanied by his mother," sat near the door, was not handcuffed or restrained in any way, and was told he would be allowed to return home, which, in fact, occurred.[70] The questioning lasted for 70 minutes and "was conversational and nonthreatening in tone."[71] Concluding that he was not in custody, the court found that the defendant's age "placed him on the cusp of majority, and far removed from the tender years of early adolescence."[72] The court also rejected the defendant's argument that his status as a special needs student, in combination with his age, made him particularly vulnerable, noting that *J.D.B.* expressly disavowed consideration of other individualized characteristics that would make the inquiry subjective.[73]

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63. *See, e.g.*, S.G. v. State, 956 N.E.2d 668, 680 n.9 (Ind. Ct. App. 2011) (a juvenile defendant's age was "not a significant factor in [the court's] custody determination" where the juvenile was "almost eighteen years old"); State v. Jones, 55 A.3d 432, 440 (Me. 2012) (a juvenile defendant's age was not a significant factor in a custody analysis where defendant was "seventeen years old and had been living on his own with his girlfriend and child" and had "declined to have his mother present during the first two interrogations"; the court stated that "despite [defendant's] status as a juvenile, he was functioning in the world as an adult"); State v. Yancey, 221 N.C. App. 397, 400–01 (2012) (a juvenile defendant's age did not alter the court's conclusion that he was not in custody during the encounter with detectives where he was questioned two months before his eighteenth birthday).

64. *Yancey*, 221 N.C. App. at 400–01.

65. *Id.* at 398.

66. *Id.*

67. *Id.* at 400–01.

68. *Id.* at 401.

69. Commonwealth v. Bermudez, 980 N.E.2d 462, 468 (Mass. App. Ct. 2012).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 469 (quoting J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2402 (2011) (stating that "the objective test avoids burdening police with the task of anticipating the idiosyncrasies of

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2. Younger Juveniles

Long before *J.D.B.*, some courts explicitly recognized that police interrogations are more coercive for younger juveniles and require a heightened standard when assessing the voluntariness of their statements.[74] Many jurisdictions, including North Carolina, also have *per se* rules, either per statute or common law, which deem waivers by juveniles younger than 14 to be involuntary unless a parent or other interested adult was present and had an opportunity to consult with the child.[75] These special considerations are based on the recognition that younger juveniles are more vulnerable to police interrogation due to their extreme "immaturity and inexperience," which lessens their ability to understand their rights.[76] Recent cases applying *J.D.B.* suggest that, similar to the voluntariness inquiry, a juvenile's age is a more significant factor in the custody analysis when the subject of the interrogation is a younger child.[77]

For example, in a recent Ninth Circuit case, *United States v. IMM*, the defendant's status as a 12-year-old weighed heavily in the court's analysis of its "non-exhaustive list of five factors" for determining custody: (1) the juvenile did not voluntarily submit to police questioning where his mother, not the juvenile, agreed to the meeting; (2) the detective's aggressive interrogation tactics involved "intense psychological coercion of a sort to which juveniles are uniquely vulnerable"; (3) the questioning took place in a police station, which was a more coercive setting for a juvenile than an adult; (4) the defendant "was likely more overwhelmed and intimidated than an adult would be by [the] prolonged [50-minute] direct questioning by an adult police officer," and (5) the manner of questioning was "both hostile and accusatory."[78] The decision is one example

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every individual suspect and divining how those particular traits affect each person's subjective state of mind")). For a further discussion of characteristics other than age, see *infra* Section III.B.

74. *See, e.g.*, Hardaway v. Young, 302 F.3d 757, 765 (7th Cir. 2002) (stating that "the younger the child the more carefully we will scrutinize police questioning tactics to determine if excessive coercion or intimidation or simple immaturity that would not affect an adult has tainted the juvenile's confession"); *In re* P.G., 945 N.Y.S.2d 532, 532–33 (N.Y. Fam. Ct. 2012) (discussing a series of decisions establishing the "greater care" standard, which New York appellate courts apply to determine the voluntariness of statements made by younger juveniles to police).

75. *See In re* B.M.B., 955 P.2d 1302, 1310–13 (Kan. 1998) (establishing a bright line rule prohibiting waivers by juveniles younger than 14 unless the juvenile was given an opportunity to consult with a parent, guardian, or attorney; the court also identified numerous states that have similar statutory or common law restrictions on waivers by young juveniles); State v. Presha, 748 A.2d 1108, 1114 (N.J. 2000) (establishing a *per se* rule that confessions by juveniles under the age of 14 are inadmissible if made in the absence of a parent or legal guardian unless the adult was unwilling or unable to be present). *See also* G.S. 7B-2101(b) (providing that an in-custody admission by a juvenile under age 16 is inadmissible unless a parent, guardian, custodian, or attorney was present).

76. *B.M.B.*, 955 P.2d at 1312.

77. *See, e.g.*, United States v. IMM, 747 F.3d 754, 767 (9th Cir. 2014) (concluding that a 12-year-old was "in custody" and thus entitled to *Miranda* warnings when he was interrogated at a police station for nearly an hour by a detective who used "aggressive, coercive, and deceptive interrogation tactics" that "created an atmosphere in which no reasonable twelve year old would have felt free to [terminate the encounter]"); *In re* T.W., 2012 WL 1925656, at *5 (Ohio Ct. App. May 29, 2012) (unpublished) (concluding that a 14-year-old was in custody where he was "involuntarily" taken to Children's Services by his parents, escorted away from his parents upon their arrival by an armed officer and another adult, and questioned behind a closed door without his parents being present; the court held that "at fourteen years of age, a reasonable juvenile in [the suspect's] position would, in all likelihood, be intimidated and overwhelmed" by such circumstances).

78. *IMM*, 747 F.3d at 766–68.

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of how a relatively young juvenile might view the objective circumstances that courts have traditionally found to be relevant to the custody inquiry.

This is not to say that a juvenile's age is dispositive when the subject of custodial interrogation is either a very young child or an older teen.[79] For example, in one case, a police interrogation of a 9 year-old was held to be *noncustodial*,[80] while, in another, an interrogation of a 17-year-old was determined to be *custodial*.[81] These cases confirm that, rather than being a determinative factor, "courts should weigh [the effect of age] alongside other relevant factors to ascertain whether the juvenile was in custody."[82]

B. A Juvenile's Age Changes How Other Objective Factors Are Weighed in the Custody Analysis

Because *J.D.B.*'s holding is fairly recent, a significant body of case law implementing the reasonable child standard has not yet developed. However, lessons are emerging from the early cases in which *J.D.B.* has been applied. In those cases, courts weighed certain factors more heavily in the custody analysis when the juvenile's age was considered. Those factors include: (1) the location or physical surroundings of the interrogation, (2) whether a parent or other trusted adult was present, (3) the presence of other adult participants, (4) whether the juvenile was expressly told that he or she was free to leave, (5) whether the juvenile voluntarily submitted to the interview, (6) the duration of the interview, and (7) the nature of the questioning. Although these factors are relevant in assessing the custodial nature of any interrogation, the following sections discuss how they affect the custody analysis when the suspect is a child.

1. Location or Physical Surroundings

a. Police Stations

In *Miranda*, the U.S. Supreme Court expressed concern that the police-dominated atmosphere and physical isolation of the stationhouse environment could overwhelm adults.[83] This factor likely requires even greater consideration when the interrogation is of a juvenile.

Although the U.S. Supreme Court previously held that conducting an interrogation in a police station does not necessarily render police questioning custodial,[84] recent cases suggest that the coercive pressures of a police station are more significant when the suspect is a child.[85] Some courts have explicitly held that juveniles are more intimidated than adults when they "ent[er] into a police station staffed by armed, uniformed officers."[86] Other courts have expressed

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79. *See* J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2406 (2011) (noting that age is not necessarily a determinative or significant factor in every case).

80. *In re* D.L.H., Jr., 32 N.E.3d 1075, 1088 (Ill. 2015) (concluding that a nine-year-old was not in custody where he was questioned about the murder of his baby brother at his home and with his father present by a plain clothes detective who used a "conversational tone" and provided *Miranda* warnings to the juvenile even though he did not consider the encounter to be custodial).

81. N.C. v. Commonwealth, 396 S.W.3d 852, 862 (Ky. 2013) (concluding that a 17-year-old was in custody when he was questioned at school by the assistant principal in the presence of an armed police officer, who sat right beside him during the closed-door interrogation).

82. People v. N.A.S., 329 P.3d 285, 289 (Colo. 2014).

83. Miranda v. Arizona, 384 U.S. 436, 467 (1966).

84. Oregon v. Mathiason, 429 U.S. 492, 495 (1977).

85. *See infra* notes 86–87.

86. United States v. IMM, 747 F.3d 754, 767 (9th Cir. 2014) (stating that although questioning that takes place at a police station does not necessarily constitute custodial interrogation, "it often does[,]

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the view that familiar settings, such as school or home, are less custodial in nature than a stationhouse.[87]

Note, however, that the intimidation associated with police stations may be less significant for older juveniles[88] and may be mitigated when a parent is present.[89]

b. Juvenile's Own Home

Courts have found that, in contrast to the coercive setting of a police station, a juvenile's own home is a less threatening environment because it is more familiar and usually involves the presence of a trusted adult, such as a parent.

In *In re D.L.H., Jr.*, the Illinois Supreme Court held that a 9 year-old, who was twice interrogated by police about the murder of his 14-month-old brother, was not in custody partly because "[b]oth interviews took place in surroundings familiar to respondent—his home, at his kitchen table."[90] Although the juvenile was especially young, the court found that the noncustodial nature of "at-home questioning . . . is strengthened when the suspect's friends or family members were present at the time."[91] In this case, the juvenile's father was present for both interviews, which were relatively brief, and only one officer, who was not in uniform, questioned the child.[92]

Similarly, in *In re D.A.C.*, the North Carolina Court of Appeals found that one of the factors weighing against a finding that a 14-year-old was in custody was that he "was questioned in an open area in his own yard with his parents nearby."[93] In addition, the two officers asked the juvenile "to step outside" and did not order him to do so, which suggested he was not under arrest, and "remained at arm's length" while questioning him.[94] The court favorably cited *D.A.C.* in a

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[and that] is especially true for juveniles"); *see also In re* B.C., 111 A.3d 690, 696 (N.H. 2015) (noting that a 14-year-old "was more likely [than an adult] to feel coercive pressure" after being arrested and interrogated in a police station booking room); *In re* E.W., 114 A.3d 112, 119 (Vt. 2015) (noting that "the interview did not occur in an inherently intimidating or confining location like a police station or police cruiser, but rather ranged from inside the foster parent's house, to the front porch, to a nearby vegetable stand").

87. S*ee, e.g.*, *In re* D.L.H., Jr., 32 N.E.3d 1075, 1088 (Ill. 2015) (finding that a nine-year-old who was questioned at home, at his kitchen table, did "not face the same pressures as one questioned in a police-dominated atmosphere, such as the station house" (internal quotation marks omitted)); *In re* Marquita M., 970 N.E.2d 598, 603 (Ill. App. Ct. 2012) (favorably noting that a student was questioned at school and "not taken to or questioned at the police station").

88. *See, e.g.*, Commonwealth v. Bermudez, 980 N.E.2d 462, 468 (Mass. App. Ct. 2012) (the interrogation of a 17-year-old was not custodial although it occurred at a police station; the court noted that "defendant's age, a few months shy of his eighteenth birthday, placed him on the cusp of majority, and far removed from the tender years of early adolescence").

89. *See, e.g.*, *In re* Frances G., 30 A.3d 630, 634–35 (R.I. 2011) (a 12-year-old was not in custody where she "voluntarily came into the police station" with her father, was accompanied by her father at all times, and was not arrested or handcuffed when she entered the station).

90. *D.L.H., Jr.*, 32 N.E.3d at 1088.

91. *Id.* (quotation omitted).

92. *Id.*

93. *In re* D.A.C., 225 N.C. App. 547, 553 (2013) (the interrogation of a 14-year-old in his own backyard was not custodial).

94. *Id.*

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more recent case involving a 15-year-old who was interrogated inside his home and in the presence of his mother, who had scheduled the meeting.[95]

While these cases establish that the home setting may "militate against a finding that [a juvenile] was in custody[,]"[96] interrogations of juveniles at home are not always noncustodial.[97] Also, at least one jurisdiction has recognized a difference in a juvenile's "sense of freedom" when the juvenile is a foster child "living in an assigned placement."[98]

c. The School Setting

The school setting is a unique factor in evaluating custody from the perspective of a reasonable child. In *J.D.B.*, the U.S. Supreme Court recognized that a "student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position" from that of various adults who may be voluntarily present on school grounds.[99] In cases after *J.D.B.*, lower courts have expressed competing views regarding whether these circumstances make the schoolhouse setting custodial for children.[100]

Some courts have held that a school official's "directive or request" for a student "to leave class for the purpose of being questioned by a police officer"[101] weighs in favor of finding that the student was in custody. In the view of one court, it is precisely because students are trained to obey the directives of school officials that being summoned by a teacher or principal to a police

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95. *In re* C.M., ___ N.C. App. ___, 772 S.E.2d 265, *5 (2015) (unpublished) (the interrogation of a 15-year-old in his own home was not custodial).

96. *D.L.H., Jr.*, 32 N.E.3d at 1088.

97. *See, e.g.*, *In re* B.C.P., 2013 WL 5314888, at *5 (Ill. App. Ct. Sept. 19, 2013) (unpublished) ("Although respondent was not handcuffed or at the police station, he was also not in the security of his home as the interview took place outside of his residence, at [the officer's] request, next to [the officer's] unmarked squad car.").

98. *See, e.g.*, *In re* E.W., 114 A.3d 112, 119 (Vt. 2015) (a 15-year-old was in custody, although he was questioned at his foster home and in the presence of his foster dad, because he was not expressly told that he was free to leave, which was particularly significant where the juvenile was "a ward of the state, and a foster-home resident").

99. J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2405 (2011).

100. *See, e.g.*, *In re* Elias V., 188 Cal. Rptr. 3d 202, 213 (Cal. Ct. App. 2015) (concluding that a 13-year-old's confession was involuntary, in part, because "the mere fact of police questioning of a minor in the school-house setting may have a coercive effect"); *In re* F.F., 2013 WL 1274706, at *4 (Cal. Ct. App. Mar. 28, 2013) (unpublished) (noting that the juvenile "was a 12 year old in the 'coercive atmosphere' of his middle school principal's office"). *But see* People v. N.A.S., 329 P.3d 285, 290 (Colo. 2014) (concluding that a 13-year-old student was not in custody, in part, because the "interview took place on school grounds [in the assistant principal's office] rather than at a law enforcement facility"); *In re* Marquita M., 970 N.E.2d 598, 603 (Ill. App. Ct. 2012) (concluding that a 15-year-old student was not subjected to custodial interrogation when she was questioned by an officer in a school administrator's office and was "not taken to or questioned at the police station"); S.G. v. State, 956 N.E.2d 668, 680 (Ind. Ct. App. 2011) (concluding that a 17-year-old student was not in custody where he was questioned in the principal's office, which "was not described as a coercive atmosphere").

101. Kalmakoff v. State, 257 P.3d 108, 121 (Alaska 2011) (where a 15-year-old juvenile was directed by his teacher to leave class to go speak to a public safety officer, who then transported the juvenile to a city office where he was questioned by two state troopers about a murder); *see also* N.C. v. Commonwealth, 396 S.W.3d 852, 862 (Ky. 2013) (where a 17-year-old student was removed from class by the assistant principal and an SRO and escorted to the assistant principal's office, where he was questioned about drug possession in the presence of the armed officer with the door shut and without being told he was free to leave).

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interview might be perceived by a reasonable child as a requirement that the student is not free to decline. As a result, the same court found that disregarding the restrictive characteristics of school because they are routine for all students "misunderstands the significance of the school environment in a custody evaluation."[102] The court also found that being summoned to a police interview is not something a typical student would anticipate during the course of a regular school day, such as being directed to go to the auditorium for a standardized test.[103]

Prior to the U.S. Supreme Court's decision in *J.D.B.*, the N.C. Supreme Court took a different approach. That court held, in *In re J.D.B.*, that the school setting is not necessarily custodial for a child because "the typical restrictions . . . apply to all students" and do not amount to indicia of formal arrest under *Miranda*.[104] The court held that a student is not in custody unless law enforcement officers subject the student to restraint "that goes well beyond the limitations that are characteristic of the school environment in general."[105] In other words, the circumstances must reflect that a student's freedom of movement was restrained beyond the fact of the student's mere presence at school.[106] Although the U.S. Supreme Court reversed the state supreme court's opinion in *J.D.B.* based on that court's failure to consider J.D.B.'s age in its custody analysis, it did not directly address the court's heightened standard for school interrogations.

Because only one North Carolina case has addressed custody in the school setting since *J.D.B.*, and that case relied on language from the state supreme court's overruled opinion, it is unclear how the additional restraint requirement will be affected by the consideration of a juvenile's age in the custody analysis. In *In re R.B.L.*, an unpublished decision, the N.C. Court of Appeals rejected a juvenile's argument that "a reasonable 15-year-old in his position"—that is, a high school student who was escorted from his classroom to the front office by the principal and an SRO and then questioned about drug possession by two school officials in the SRO's presence with the door shut and without being told that he was free to leave—would not have felt free to terminate the encounter and leave.[107] Although the court acknowledged that the juvenile would have been subject to disciplinary action had he refused the principal's request, it concluded that

102. *Kalmakoff*, 257 P.3d at 123.

103. *Id.*

104. 363 N.C. 664, 669 (2009), *rev'd*, 564 U.S. 261 (2011). The court's holding is somewhat consistent with the U.S. Supreme Court's holding in *Howes v. Fields*, 565 U.S. ___, 132 S. Ct. 1181, 1191 (2012), that imprisonment alone does not render the questioning of an inmate a custodial interrogation. The Court reasoned that the ordinary restrictions applicable to all inmates do not involve the "inherently compelling pressures" contemplated by *Miranda* because a person who is already confined is in a familiar setting and does not experience the "shock" of being arrested, is not likely to speak in the hope of being released, and knows that officers "lack the authority to affect the duration of [the person's] sentence." *Fields*, 565 U.S. at ___, 132 S. Ct. at 1190–91. North Carolina's assessment of the school setting is similar to the *Fields* approach because it suggests that a juvenile's regular "confinement" at school "without more" does not amount to *Miranda* custody. *Id.* at ___, 132 S. Ct. at 1191. However, this comparison may no longer be valid after *J.D.B.*

105. *J.D.B.*, 363 N.C. at 670, *rev'd*, 564 U.S. 261.

106. *See, e.g.*, *In re* K.D.L., 207 N.C. App. 453, 459 (2010) (a 12-year-old student was in custody where he was frisked by a school resource officer, transported to the principal's office in a patrol car, and "interrogated nearly continuously" for five hours, which reflected restraint on the student's freedom of movement beyond that normally present at school).

107. *In re* R.B.L., ___ N.C. App. ___, 776 S.E.2d 363, *7–8 (July 21, 2015) (unpublished).

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the circumstances did not reflect the "additional restraint" necessary to convert the questioning of a student at school into a custodial interrogation.[108]

As the reasonable child standard is more fully developed, North Carolina courts may take a different approach in evaluating custody in the school setting. Requiring additional restraint may prevent courts and police officers from fully implementing *J.D.B.*'s holding, since the coercive effect of a school "cannot be disentangled from the identity of the person questioned."[109] On the other hand, absent such a requirement, applying the reasonable child standard might frequently compel a finding that police questioning of a student at school is a custodial interrogation, since most students do not feel free to ignore requests by school officials.[110]

2. Presence of Juvenile's Parent or Guardian

All juveniles in North Carolina have a right to the presence of a parent, guardian, or custodian during a custodial interrogation.[111] However, custodial statements made by a juvenile under age 16 are inadmissible unless one of these adults, or an attorney, was present and the juvenile knowingly waived his or her juvenile and *Miranda* rights.[112] North Carolina courts have held that the role of a parent or guardian during a custodial interrogation is "to help the juvenile understand his situation and the warnings he is being given so that he can make a knowing and intelligent decision about whether he should waive his right to be silent."[113] Thus, the presence of a parent, guardian, or other trusted adult is a factor that may militate against a finding that a reasonable child would not have felt free to terminate the encounter and leave.[114]

Previously, the Juvenile Code required the presence of a parent or attorney for juveniles under age 14; beginning at age 14, a child could waive the right to have one of these adults present. However, on December 1, 2015, the General Assembly raised the age limit for such waivers from 14 to 16.[115] The court of appeals found that this change resulted from the legislature's "concerns about the special vulnerability of juveniles subject to custodial interrogation" following *J.D.B.*[116] It is also a recognition that the "'differentiating characteristics of youth' render certain juveniles

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108. *Id.*

109. J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2405 (2011).

110. *See, e.g.*, People v. N.A.S., 329 P.3d 285, 291 (Colo. 2014) (in concluding that a 13-year-old was not in custody, the court noted that "a finding of custody in this case would virtually compel a similar finding in *any* school situation where a police officer questions a student behind a closed door"). *See also*, Kelli L. Ceraolo, Note, *Custody of the Confined: Consideration of the School Setting in* J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)*, 91 Neb. L. Rev. 979, 980, 995 (2013) (arguing that a special rule is necessary in the school setting because a reasonable juvenile would never feel "free to leave" when questioned by an officer at school).

111. G.S. 7B-2101(a)(3).

112. G.S. 7B-2101(b).

113. *In re* M.L.T.H., 200 N.C. App. 476, 488 (2009).

114. *See, e.g.*, *N.A.S.*, 329 P.3d at 290 (a 13-year-old was not in custody where the principal, assistant principal, and the juvenile's uncle were allowed to remain in the office, in part because "the presence of extended family and members of the school's administration belies the formal overtones of a custodial environment").

115. *See* S.L. 2015-58, sec. 1.1, eff. Dec. 1, 2015 (amending G.S. 7B-2101(b) by increasing from 14 to 16 the age at which a juvenile may waive the presence of a parent or attorney during a custodial interrogation).

116. State v. Saldierna, ___ N.C. App. ___, ___, 775 S.E.2d 326, 334, *review allowed*, ___ N.C. ___, 776 S.E.2d 846 (2015).

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particularly dependent on their parents (or other responsible adults) when faced with custodial interrogations."[117]

Not surprisingly, some courts have found that the absence of a parent weighs in favor of custody.[118] On the other hand, a parent's "mere presence" may not be sufficient to protect a juvenile's rights if the parent is acting contrary to the juvenile's interests.[119] Also, while parents may encourage their children to talk to an officer, a parent may cause an interrogation to be deemed custodial by acting as an agent of a law enforcement officer.[120]

3. Presence of Other Adult Participants

The presence of adult participants (other than the juvenile's parents and the interrogating officer) is another factor that courts have considered when evaluating the expectations of a reasonable child. What effect their presence has on the coercive nature of the interrogation varies according to the person's role (e.g., family member, teacher, or officer). For example, the presence of additional police officers or government agents, such as a social worker or child abuse investigator, may tilt the scales toward a finding that the juvenile was in custody.[121] Because children are naturally submissive to adults, a child who is surrounded by several adult authority figures during an accusatory interrogation may become overwhelmed in much the same way that an adult might be overwhelmed by the officer-dominated atmosphere of a police station.[122]

With respect to school officials, however, the coercive effect of their presence is less clear. Lower courts have expressed opposing views regarding whether this circumstance renders the interrogation of a student more or less coercive.[123] The answer is likely connected to how courts

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117. *Id.* (quoting J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2404 (2011)).

118. *See, e.g.*, *In re* K.C., 32 N.E.3d 988, 993 (Ohio Ct. App. 2015) (considering the exclusion of the 12-year-old's mother from the interview to weigh in favor of finding the juvenile was in custody); *In re* T.W., 2012 WL 1925656, at *5 (Ohio Ct. App. May 29, 2012) (considering the exclusion of the 14-year-old's mother and step-father from the interview to weigh in favor of finding the juvenile was in custody).

119. *In re* A.W., 51 A.3d 793, 804 (N.J. 2012) (stating that a parent who is present "must be acting with the interests of the juvenile in mind").

120. *Id.* (distinguishing the juvenile's case from a prior case in which a juvenile's confession was deemed involuntary because her parent "was effectively serving as an agent of the police"); *see also In re* D.A.C., 225 N.C. App. 547, 554 (2013) (in rejecting the juvenile's argument that he was in custody because he was told by his parents to talk to the officers and "tell the truth," the court stated that, under different facts, "a determination that Juvenile's parents were acting as agents of the investigating officers might suffice to support a finding that Juvenile was in custody at the time in question").

121. *Compare, e.g.*, *In re* B.C.P., 2013 WL 5314888, at *5 (Ill. App. Ct. Sept. 19, 2013) (in finding that a 13-year-old was in custody, the court noted that "[t]here were two authority figures present," a police officer and an agent from the Department of Children and Family Services); *and T.W.*, 2012 WL 1925656, at *5 (finding that a reasonable 14-year-old would be "intimidated and overwhelmed" under the circumstances, which included being questioned "by two unfamiliar authoritarian figures, one of whom was dressed in a police uniform and carried a weapon on his person"), *with In re* Marquita M., 970 N.E.2d 598,603 (Ill. App. Ct. 2012) (noting that "[o]nly one law-enforcement officer was present" in finding that the 15-year-old student was not in custody when she was questioned in a school administrator's office).

122. *See, e.g.*, *B.C.P.*, 2013 WL 5314888, at *5 (explaining why the interrogation of a 13-year-old by two authority figures next to an unmarked squad car was custodial in contrast to the interrogation of a 13-year-old by a single police officer, which took place in the juvenile's home with his primary caretaker present).

123. *See, e.g.*, People v. N.A.S., 329 P.3d 285, 290 (Colo. 2014) (concluding that a 13-year-old was not in custody where the principal, assistant principal, and the juvenile's uncle were allowed to remain in the

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account for the inherent restrictions of the school setting, as discussed above, which include the potential for a student to face disciplinary action for noncompliance with school rules.[124]

4. Verbal Warning That the Juvenile Is Free to Leave

Whether a suspect is expressly told that he or she is free to leave is an important factor to consider in any custody analysis.[125] It is, perhaps, even more significant when the suspect is a child because children are trained to obey adults and may not understand that they have the right to refuse to speak to a police officer.[126] Thus, one court observed that a child's "relative inexperience and vulnerability to authority . . . renders this factor even more critical."[127]

In two recent cases, an officer's failure to expressly inform the juveniles that they were free to leave rendered both encounters custodial even though they occurred in the juveniles' own homes. In one case, an Illinois court concluded that "a reasonable 13-year-old would not have felt that he was free to end [an] interrogation," which occurred in his own yard and with his mother present, because the officer questioned him next to an unmarked squad car and did not expressly inform the juvenile that he was free to leave.[128] In the other case, the Vermont Supreme Court held that a 15-year-old was in custody, despite being questioned at his foster home with his foster parent present, because the detective's failure to "expressly" inform him or his foster parent that they were free to leave was especially significant "where the suspect was a juvenile, a ward of the state, and a foster home resident."[129]

Other courts have found that an express verbal warning by an officer informing the juvenile that he or she is free to leave weighs against a finding of custody. For example, in *State v. Yancey*, a 17-year-old was held not to be in custody, although he had been driven approximately two miles away from his home by two police officers, because the detectives told him that "he was

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office and noting that "the presence of extended family and members of the school's administration belies the formal overtones of a custodial environment"). *But see In re* Edgar Z., 2014 WL 3752828, at *3 (Cal. Ct. App. July 31, 2014) (unpublished) (where, among other things, a 13-year-old was interviewed in the presence of the assistant principal; the court stated: "A child in Edgar's situation would reasonably believe that his disobedience would subject him to disciplinary action. Under these circumstances, Edgar was in custody for *Miranda* purposes.").

124. *See supra* note 100.

125. *See, e.g.*, Stansbury v. California, 511 U.S. 318, 325 (1994) ("An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned."); State v. Davis, ___ N.C. App. ___, ___, 763 S.E.2d 585, 590 (2014) (stating that in determining whether a suspect is in custody, "our appellate courts have considered such factors as whether a suspect is told he or she is free to leave" (quotation omitted)).

126. *See In re* J.S., 2012 WL 3157149, at *2 (Ohio Ct. App. Aug. 6, 2012) (unpublished) (finding that because the juvenile was only 13-years-old, he was likely "unaware of his rights, including the right to be silent or request a lawyer"); *see also* Joshua A. Tepfer, *Defending Juvenile Confessions After* J.D.B. v. North Carolina, The Champion, Mar. 2014, at 21 (stating that "[t]he average young person likely has no idea that he could ever, under any circumstances, choose to terminate an encounter with a law enforcement officer").

127. *In re* E.W., 114 A.3d 112, 117 (Vt. 2015).

128. *In re* B.C.P., 2013 WL 5314888, at *5 (Ill. App. Ct. Sept. 19, 2013) (concluding that a 13-year-old was in custody where he was questioned outside his residence by a plain clothes detective and a social worker, mostly in his mother's presence, because the questioning occurred next to an unmarked squad car, "not in the security of his home," and he was not told that he was free to leave).

129. *E.W.*, 114 A.3d at 119.

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free to leave and that he could leave the vehicle at any time."[130] In *State v. B.L.W.*, a 13-year-old was found not to be in custody, although he was interrogated by detectives at the police station, because he "was told on at least two occasions that he was not under arrest and was free to leave at any time; [and he] and his mother signed a form indicating they understood that [the juvenile] was not under arrest and could leave at any time."[131]

5. Voluntary Submission to Questioning

A common factor considered in the *Miranda* custody analysis is whether the person voluntarily agreed to be questioned by police or voluntarily appeared at the location of the interrogation.[132] However, in the context of juvenile interrogations, this factor presents a unique challenge for courts because juveniles are subject to their parents' control, which may render their actions involuntary. The U.S. Supreme Court made this distinction in the pre-*J.D.B.* case *Alvarado*, when it listed factors that weighed in favor of a finding that the 17-year-old was in custody.[133] The Court noted that it was "unclear" whether Alvarado voluntarily appeared at the police station because he was brought there by his legal guardians "rather than arriving on his own accord."[134]

Courts often have failed to account for this circumstance in finding that an interrogation was noncustodial where the juvenile arrived at the place of the interrogation "voluntarily" when delivered there by his or her parent.[135] However, at least one court has recognized that in such circumstances it may not be completely accurate to characterize a juvenile's presence at a particular location as voluntary.[136] Likewise, a reasonable child's perception of his or her freedom to

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130. State v. Yancey, 221 N.C. App. 397, 400 (2012).

131. State v. B.L.W., 2011 WL 5517134, at *3 (Wash. Ct. App. Nov. 14, 2011) (unpublished).

132. *See, e.g.*, Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (concluding that a suspect was not in custody where he voluntarily went to the police station to be interviewed, was told he was not under arrest, and left at the end of the 30-minute interview); State v. Davis, ___ N.C. App. ___, ___, 763 S.E.2d 585, 591 (2014) (concluding that the adult defendant was not in custody, in part, because she voluntarily went to the police station to be interviewed).

133. Yarborough v. Alvarado, 541 U.S. 652, 665 (2004).

134. *Id.*

135. *See, e.g.*, Commonwealth v. Bermudez, 980 N.E.2d 462, 468 (Mass. App. Ct. 2012) (a juvenile "appeared [at the police station] voluntarily, accompanied by his mother, in response to a police request"); *Yancey*, 221 N.C. App. at 400 (noting that the juvenile "voluntarily spoke with and rode with detectives," who picked him up from his home and drove him to a location two miles away to interrogate him); *In re* R.S., 2014 WL 4071562, at *5 (Ohio Ct. App. Aug. 18, 2014) (unpublished) (among other things, the court found it significant that the juvenile and his father "voluntarily showed up at [the] probation office" where the interview took place); *In re* Frances G., 30 A.3d 630, 634 (R.I. 2011) (a 12-year-old "voluntarily came into the police station" when driven there by her father).

136. *See In re* K.C., 32 N.E.3d 988, 993 (Ohio Ct. App. 2015) (concluding that a 12-year-old was in custody where "[t]he evidence did not show that she came to the interview voluntarily. Instead, she was brought by her mother at the detectives' request, which limited her control over events and rendered her presence involuntary."); *In re* T.W., 2012 WL 1925656, at *5 (Ohio Ct. App. May 29, 2012) (concluding that a 14-year-old was in custody where "the evidence reveal[ed] that T.W.'s mother, at [a Children Services employee's] request, agreed to bring T.W. to Children Services, limiting the extent of his control over his being there, and rendering his presence ostensibly involuntary").

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leave a particular place may be affected when the child has no realistic control over the means of transportation.[137]

Despite the natural limitations on a child's freedom of movement, it is appropriate to consider a juvenile's voluntary submission to police questioning as a factor in the custody analysis when the juvenile, and not the juvenile's parent, was the person who agreed to be questioned.[138]

6. Duration of Questioning

In any case, the duration of an interrogation is an important factor in determining "how a suspect would have gauged his freedom of movement."[139] The length of questioning is significant because "the coercion inherent in custodial interrogation derives in large measure from an interrogator's insinuations that the interrogation will continue until a confession is obtained."[140] Because juveniles are more vulnerable to such pressures than adults, they may be "more overwhelmed and intimidated than an adult would be [from] . . . prolonged direct questioning by an adult police officer."[141]

For this reason, some decisions have held that relatively brief questioning strengthens the noncustodial nature of a juvenile interrogation,[142] whereas a longer duration may render the encounter custodial.[143] At least one court has found that the presence of a parent can mitigate the coercive effect of longer questioning.[144]

Some jurisdictions, including North Carolina, also have held that the brief questioning of a juvenile during an investigative detention is not custodial.[145] These cases are consistent with

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137. *See* United States v. IMM, 747 F.3d 754, 767 (9th Cir. 2014) ("[G]iven that the detective had driven [the juvenile] and his mother to the police station, more than a half hour from his home, [the juvenile] may well not have thought that he and his mother would be free to leave whenever they so desired.").

138. *See, e.g.*, *In re* D.A.C., 225 N.C. App. 547, 552–53 (2013) (noting "that the investigating officers asked [the juvenile] to step outside, rather than instructing him to do so," indicating that the juvenile had a choice in the matter).

139. Howes v. Fields, 565 U.S. ___, ___, 132 S. Ct. 1181, 1189 (2012) (internal quotation marks and brackets omitted).

140. Minnesota v. Murphy, 465 U.S. 420, 433 (1984).

141. *See IMM*, 747 F.3d at 768.

142. *See, e.g.*, People v. N.A.S., 329 P.3d 285, 290 (Colo. 2014) (regarding the noncustodial nature of a 13-year-old's interrogation, the court observed that "while Officer Martinez stated that the matter was serious, the discussion was very short, lasting approximately 5–10 minutes. Thus, when viewed in its totality, the interview—which apparently consisted of a single question—cannot be deemed custodial interrogation."); *In re* Marquita M., 970 N.E.2d 598, 604 (Ill. App. Ct. 2012) (concluding that a 15-year-old was not in custody where the "questioning was of limited duration" and that "the record [did] not show the officer badgered [the juvenile]"); *D.A.C.*, 225 N.C. App. at 553 (concluding that a 14-year-old was not in custody where the officer asked the juvenile a "simple, straightforward question" and the questioning "lasted for about five minutes").

143. *See, e.g.*, *IMM*, 747 F.3d at 768 (concluding that 12-year-old was likely "overwhelmed and intimidated" by the "prolonged [50-minute] direct questioning" by the officer); *In re* K.D.L., 207 N.C. App. 453, 461 (2010) (concluding that a 12-year-old who was questioned for nearly six hours at school in the presence of an armed police officer was in custody; although *K.D.L.* was decided before *J.D.B.*, the court's finding that long questioning was a factor appears to remain good law).

144. *See, e.g.*, *In re* D.L.H., Jr., 32 N.E.3d 1075, 1088 (Ill. 2015) (the 50-minute questioning of a nine-year-old was not custodial where the child's father was present and the child was questioned at home).

145. *See, e.g.*, *In re* A.J., 63 A.3d 562, 568 (D.C. 2013) (a 15-year-old was not in custody for *Miranda* purposes where the juvenile was "subjected only to a temporary investigative seizure designed to

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long-standing Supreme Court precedent establishing that a temporary seizure under the Fourth Amendment does not typically involve the indicia of formal arrest required to render a person in custody under *Miranda*.[146]

7. Nature of Questioning

The nature of the questioning is another factor that influences how a person would have perceived the degree of restraint surrounding an interrogation.[147] Given the Supreme Court's recognition in *J.D.B.* that juveniles are more prone than adults to giving false confessions under "the pressure of custodial interrogation,"[148] whether the questioning was overly aggressive or hostile has even greater significance under a reasonable child standard. Citing *J.D.B.*, one court recently suggested that aggressive interrogation methods, such as the "Reid Technique,"[149] should be avoided when interrogating juveniles because they are highly suggestible, easily influenced by authority figures, and "may provide inaccurate reports when questioned in a leading, repeated and suggestive fashion[.]"[150]

In *United States v. IMM*, the Ninth Circuit explained that a detective's aggressive interrogation technique weighed heavily in the court's analysis of whether a 12-year-old was in custody.[151] The detective made "false representations" and adopted an interrogation strategy that "forced [the juvenile] to choose between adopting the detective's false account of events as his own and calling his own grandfather a liar."[152] The court described this technique as "directly play[ing] upon [the juvenile's] close relationship with his grandfather, whom he called 'dad,' and employ[ing] intense psychological coercion of a sort to which juveniles are uniquely

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determine whether he was a truant"; the court also noted that the juvenile's companion had been immediately released from the investigative seizure upon providing evidence that he was currently suspended from school and that the juvenile was not handcuffed or otherwise restrained); *In re* A.N.C., Jr., 225 N.C. App. 315, 321–22 (2013) (concluding that a 13-year-old who made an incriminating statement to an officer during roadside questioning at the scene of an automobile accident was not in custody); *In re* J.T.M., 441 S.W.3d 455, 463 (Tex. App. 2014) (concluding that a "reasonable sixteen-year-old would not have believed he was under restraint to the degree associated with a formal arrest" during an investigative detention related to underage drinking).

146. Berkemer v. McCarty, 468 U.S. 420, 436–40 (1984) (holding that while a routine traffic stop constitutes a temporary seizure since many motorists do not feel "free to leave" the scene, a person temporarily detained pursuant to such stop is not "in custody" under *Miranda* unless the person is restrained to the degree of a formal arrest).

147. *See, e.g.*, Howes v. Fields, 565 U.S. ___, ___, 132 S. Ct. 1181, 1192 (2012) (stating that in determining whether an inmate was in custody, the inquiry must account for "all of the features of the interrogation[,]" including "the manner in which the interrogation is conducted").

148. J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2401 (2011).

149. The Reid Technique is a leading police interrogation methodology that involves isolation, accusations of guilt, persistent questioning, incentives, and other psychological tactics to increase a suspect's vulnerability and obtain a confession. The *Miranda* opinion quotes extensively from the 1962 edition of the Reid training manual to describe the "inherently compelling pressures" of custodial interrogation. *See In re* Elias V., 188 Cal. Rptr. 3d 202, 211–14 (Cal. Ct. App. 2015) (describing the Reid Technique and its influence on the majority opinion in *Miranda*).

150. *Elias V.*, 188 Cal. Rptr. 3d at 210, 218. *See also In re* K.C., 32 N.E.3d 988, 993 (Ohio Ct. App. 2015) (concluding that a 12-year-old's *Miranda* waiver was involuntary where detectives repeatedly pressed her for an admission even though she denied the allegations more than 30 times).

151. United States v. IMM, 747 F.3d 754, 767 (9th Cir. 2014).

152. *Id.*

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vulnerable."[153] Ultimately, the court concluded that "the detective's aggressive, coercive, and deceptive interrogation tactics created an atmosphere in which no reasonable twelve year old would have felt free" to terminate the encounter and leave.[154] In contrast, questioning by an officer that is "conversational and nonthreatening in tone[,]"[155] or "inquisitory . . . rather than accusatory,"[156] has been considered noncustodial.

In the school setting, the questioning of a student by a school official, along with an officer, may render the interrogation more coercive. In *J.D.B.*, the court mentioned that, regardless of whether age was considered, one circumstance bearing on the custody analysis was the effect on a student of "being encouraged by his assistant principal to 'do the right thing.'"[157] In *N.C. v. Commonwealth*, the Kentucky Supreme Court found this type of "in tandem" questioning to be especially coercive for a student.[158] The court found that a 17-year-old was in custody after being escorted by an armed police officer from his classroom to the assistant principal's office, where he was questioned by the assistant principal, with the officer sitting right beside him, and was not told that he was free to leave.[159] The court concluded that under these circumstances, "[n]o reasonable student, even the vast majority of seventeen year olds," would have believed he was free to terminate the encounter and leave.[160] The court found this interrogation method (of the school official asking questions while the officer supervised) to be coercive because the student was led to believe it concerned "a school discipline matter" and did not know that his answers could subject him to criminal charges.[161]

8. Other Factors

This bulletin does not attempt to address every factor that may be relevant to assessing custody under a reasonable child standard. Courts and police officers must evaluate custody based on *all* the circumstances surrounding an interrogation, "including any circumstance that would have affected how a reasonable [child] in the suspect's position"[162] would have understood the situation. This bulletin is intended to help courts and police officers think about how some of those circumstances are perceived differently by children than by adults.

Other factors that have been considered by North Carolina courts in evaluating whether a juvenile was in custody include: (1) the nature of the interrogator, (2) the time of the interrogation, (3) the degree to which suspicion had been focused on the juvenile, (4) whether the juvenile

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153. *Id.*

154. *Id. See also In re* B.C.P., 2013 WL 5314888, at *5 (Ill. App. Ct. Sept. 19, 2013) (finding that a juvenile was in custody, the court noted that "[t]he mood of the interview was such that [the juvenile] was crying during the interview").

155. Commonwealth v. Bermudez, 980 N.E.2d 462, 468 (Mass. App. Ct. 2012).

156. *In re* Marquita M., 970 N.E.2d 598, 604 (Ill. App. Ct. 2012) (a 15-year-old student was not in custody where the "questioning was of limited duration" and "the record [did] not show the officer badgered [the juvenile]"); *see also In re* Frances G., 30 A.3d 630, 634–35 (R.I. 2011) (a 12-year-old was not in custody where an officer asked for a "'general breakdown' of what had happened" and there was "no evidence . . . that [the juvenile] was ever coerced, threatened, or pressured into answering [the officer's] question about why she was at the station").

157. J.D.B. v. North Carolina, 564 U.S. 261, ___, 131 S. Ct. 2394, 2405 (2011).

158. N.C. v. Commonwealth, 396 S.W.3d 852, 862 (Ky. 2013).

159. *Id.*

160. *Id.*

161. *Id.*

162. *J.D.B.*, 564 U.S. 261, ___, 131 S. Ct. at 2402 (internal quotation marks omitted).

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was handcuffed or otherwise physically restrained, (5) the nature of any security around the juvenile, (6) whether the juvenile was searched, and (7) whether the juvenile was transported in a police car.[163] In every case, the relevant inquiry is whether the totality of the relevant circumstances "add up to custody."[164] No one factor is controlling.

C. Relevance of the Suspect's Other Personal Characteristics to the Custody Analysis

The dissenting opinion in *J.D.B.* expressed concern that the consideration of age would open the door for courts to consider other personal characteristics of a suspect—"such as intelligence, education, occupation, or prior experience with law enforcement"—in the *Miranda* custody analysis.[165] Some jurisdictions that included age in the custody analysis before *J.D.B.* already consider such factors.[166] However, the majority opinion in *J.D.B.* calls this practice into question by distinguishing age from "other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action[,]" such as prior experience with law enforcement.[167]

Despite *J.D.B.*'s admonition that age is different, advocates continue to argue for the expansion of the *Miranda* custody test to include other identifiable personal traits, such as mental impairment.[168] North Carolina courts have not addressed whether personal characteristics, other than age, are relevant. Given the renewed momentum in challenging juvenile confessions after *J.D.B.*, this issue will likely be addressed in future cases.

IV. Conclusion

J.D.B. transformed the *Miranda* analysis for juveniles by establishing that age matters in determining custody. Almost five years later, courts are still figuring out how to account for this reality when applying *J.D.B.*'s objective reasonable child standard.

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163. *See* State v. Yancey, 221 N.C. App. 397, 399–400 (2012); *In re* D.A.C., 225 N.C. App. 547, 552 (2013); *In re* K.D.L., 207 N.C. App. 453, 461 (2010).

164. *J.D.B.*, 564 U.S. at ___, 131 S. Ct. at 2407 (quotation omitted).

165. *Id.* at ___, 131 S. Ct. at 2409 (Alito, J., dissenting).

166. *See, e.g., In re* Jorge D., 43 P.3d 605, 608–09 (Ariz. Ct. App. 2002) (including additional factors in the custody analysis "that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult" (quotation omitted)); State v. Doe, 948 P.2d 166, 173 (Idaho Ct. App. 1997) (same); *In re* Joshua David C., 698 A.2d 1155, 1162 (Md. Ct. Spec. App. 1997) (applying "a wider definition of custody" for juveniles that includes "additional factors, such as the juvenile's education, age, and intelligence"); Novak v. Commonwealth, 457 S.E.2d 402, 408 n.3 (Va. Ct. App. 1995) (stating that factors relevant to the *Miranda* custody analysis include "defendant's age, intelligence, [and] background and experience with the criminal justice system").

167. *J.D.B.*, 564 U.S. at ___, 131 S. Ct. at 2404.

168. *See, e.g.*, United States v. Norrie, 2013 WL 1285864, at *16 (D. Vt. Mar. 26, 2013) (unpublished) (rejecting a 22-year-old's argument that due to his mental disability he "was incapable of understanding that he was not under arrest" and did not have to answer the officer's questions); Commonwealth v. Bermudez, 980 N.E.2d 462, 469 (Mass. App. Ct. 2012) (rejecting a 17-year-old's argument that his age combined with his status as a special needs student rendered his interrogation custodial "because a reasonable person of his age and cognitive ability would not have believed he was free to end the interrogation and leave").

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Although North Carolina appellate court decisions have not revealed significant change in the evaluation of custody for juveniles, *J.D.B.*'s influence extends beyond the threshold custody determination. The decision informed recent legislation that requires more juveniles to have a parent present during a custodial interrogation[169] and was cited in a decision by the N.C. Court of Appeals holding that an officer must clarify a juvenile's ambiguous invocation of the statutory right to have a parent present before questioning may proceed.[170] The court of appeals decision, which is being reviewed by the N.C. Supreme Court, distinguishes case law that requires suspects to unambiguously invoke their *Miranda* rights. The court found that by enacting G.S. 7B-2101, the legislature chose to extend greater protection to the children of North Carolina beyond the constitutional rights afforded to all suspects, regardless of age.[171] These recent developments suggest that *J.D.B.*'s impact on juvenile interrogations in this state may become more significant than what is currently reflected by early appellate cases applying the decision.

169. *See supra* note 115.

170. State v. Saldierna, ___ N.C. App. ___, ___, 775 S.E.2d 326, 333–34 (holding that when the juvenile asked "can I call my mom?" officers were required to clarify whether the juvenile was invoking his right to have a parent present before they resumed questioning him), *review allowed*, ___ N.C. ___, 776 S.E.2d 846 (2015).

171. *Id*.

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