I. Introduction

Currently courts in Illinois use the totality of the circumstances test in determining whether any statements made by juveniles were voluntary and therefore admissible at trial. One of the factors that courts in Illinois consider in evaluating the totality of the circumstances is whether a “concerned adult” was present before or during the custodial interrogation by the police and/or prosecutors. Until recently, the weight given to this factor varied by the different courts. Some courts weighed the factor equally with the other factors. Other courts, however, gave substantial weight to the "concerned adult" factor than to the other factors reasoning that juveniles needed far greater protection in interrogation proceedings. The Illinois Supreme Court in In re G.O. overruled an appellate court's holding that this factor was a significant factor and was dispositive in determining if the statements were voluntary. However, even after the Supreme Court’s decision, the weight given to this factor has still varied. The trial and appellate courts have interpreted In re G.O. as either holding that the factor was to be weighed equally or was to be given greater weight but not be dispositive for determining that the statements were coerced.

Considering the vulnerability of juveniles, the weight given to whether a "concerned adult" is present before or during questioning by the police should be significant and even dispositive in determining if the statements were coerced. The purpose of this paper to show that In re G.O. was wrongly decided and to propose that the Illinois courts weigh the factor significantly against the other factors. Weighing the "concerned adult" factor equally with the other factors does not effectively protect
children from being coerced to making an incriminatory or false statement. Illinois courts should placed more weight on whether a concerned adult who has an interest in the juvenile was present to ensure that the juvenile understand his rights and is protected from the psychological coercion by the police and state.

II. Case of False Confessions:

In 1998, the country was horrified by the sexual assault and fatal beating of eleven year old Ryan Harris. What was even more shocking was the false confessions from two boys aged seven and eight that they committed the heinous crime. Chicago Detective James Cassidy obtained the confessions from the boys that they had killed Ryan when they hit her in the head with a brick when they tried to steal her bike. The police then filed charges against the boys without any physical evidence to corroborate the confessions. Even though there was strong evidence that suggested that an adult was involved in a sex crime, the police focused primarily on the boys. The police only dropped the charges when lab tests showed that there was semen on Ryan's underwear for which the prepubescent boys could not have produced.

Unfortunately, these cases of false confessions are not isolated to Illinois. False confessions have been taken and have been used to convict juveniles of crimes that they might not have committed. Take for instance the high profiled case of Michael Crowe in California. On January 21, 1998, twelve year old Stephanie Crowe was found in her bedroom stabbed to death. Although neighbors informed the police that a transient was in the neighborhood on January 20, 1998, the police two weeks later charged Stephanie’s brother Michael and his two friends with the murder. After Stephanie was found, Michael and his younger sister were taken into police custody. While in police custody and separated from his parents, Michael
was repeatedly questioned and told that the police would help him if he would confess to killing his sister. The police confronted Michael with a false failed lie detector test and nonexistent blood evidence that linked him to the killing. Michael confessed claiming that although he did not remember any of his actions that contributed to his sister’s death that since the police had so much evidence that he must have killed his sister. The trial court suppressed the confession in a pretrial hearing on the grounds that the police had made illegal promises to Michael in that they could “help” him with leniency if he confessed. Later DNA evidence ruled out Michael by linking the transient the neighbors saw in the neighborhood to the murder.

These cases highlight the problems of using police interrogation procedures designed for adults in children. Children are more likely to be “coerced” into falsely confessing than are adults. As such children should be given greater protection than adults when they face the police in a custodial interrogation setting.

III. Illinois: Standard and Weight if the “Concerned Adult” Factor

A. Background

In the United States, the juvenile justice system developed in the late nineteenth century. It developed in response to a growing recognition to the special need of errant children, and under the premise that children were different physically, mentally, and intellectually from an adult. Unlike the juvenile systems in Europe where the systems were part of the country’s educational system, in the United States, the system was placed under its legal system. However, the focus of the system was to rehabilitate the juvenile and not merely punish him. The founders wanted to provide assistance to the juveniles, with the state acting as a surrogate parent under the theory of parens patriae. Because of this focus on rehabilitating the juvenile
instead of punishing him, children were not given the same safeguards as adults who were prosecuted.\textsuperscript{[21]} The focus on rehabilitate has waned in recent years. One example of this is the new terminology used to describe of juvenile court proceedings in Illinois. “Adjudicatory hearings” are now called “trials” and “dispositional hearings are now called “sentencing hearings.”\textsuperscript{[22]} Recently, the trend has been to punish the juvenile than to rehabilitate.

In Illinois, the state has the burden to show by a preponderance of the evidence that the accused's confession was made knowingly and intelligently. Courts look to the totality of the circumstances in determining whether any statements a defendant made were voluntary.\textsuperscript{[23]} The factors that are weighed by the courts include the “defendant’s age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning, the legality and duration of the detention; the duration of the questioning; and any physical or mental abuse by the police, including any threats or promises.”\textsuperscript{[24]} When assessing statement made by a juvenile, the courts are to consider additional factors such as the “time of day when questioning occurred and the presence or absence or a parent or other adult interested in the minor’s welfare.”\textsuperscript{[25]}

\textbf{B. Case law prior to \textit{In re G.O.} supported weighing the "concerned adult" factor significantly against the other factor.}

In \textit{Illinois v. Robinson}, the Illinois Appellate Court found under the totality of the circumstances that the juvenile's statements were inadmissible. The fourteen-year-old defendant was taken from his bed at 4 am to the station for questioning about a house fire that resulted in the death of a baby.\textsuperscript{[26]} The defendant was mentally retarded with an intelligence quotient (IQ) of 49, which was lower than 99 percent of children his age.\textsuperscript{[27]} He also suffered from attention deficit hyperactive disorder.\textsuperscript{[28]} The officer
did not inform the defendant’s mother that the defendant would be asked to waive his
right or that the defendant was even being arrested. The officer escorted the
defendant to an interview room where he patted the defendant down and asked him to
remove his shoes. The officer told the defendant that he wanted to find out about
his involvement in the fire. The officer gave the juvenile a *Miranda* waiver form
and advised him of his rights. When asked, the defendant responded that he
understood his rights. The officer then told the defendant to read the waiver out
loud. The defendant couldn't pronounce the word coercion and stated that he did
not know the meaning of the word. After the officer explained the meaning, the
defendant signed the form and made a confession. The defendant then made three
corrections to his statement and signed the typed form.

The court held that the lack of an adult or parent who was interested in the juvenile's
welfare, prior to and during questioning, to be material in determining whether the
waiver was voluntary. The defendant had no opportunity to confer with his
mother before he was questioned nor before he made his confession. The failure
by the officer to inform the defendant's mother that the defendant would be asked to
waive his right when the mother had indicated an interest in talking with the defendant
and the failure to take the defendant to see a juvenile officer favored that the waiver
was involuntary since "sufficient care was not taken to assure that his statement was
free from compulsion."

C. The two *In re G.O.* cases.

The first *In the Interest of G.O.* case, the appellate court held that whether a concerned
adult was present before or during in the interrogation to be a significant factor in
determining whether the waiver was voluntary. G.O. was a thirteen-year-old who was
charged with first-degree murder for the shooting of Rafeal Kubera. He was
arrested at 10:15 pm and was taken to the police station. At the station he made a total of three statements; the first at 12:30 am, the second at 3 am and the last one at about 3:30 am. A youth officer was present for all three confessions.

The Court noted that the absence of a concerned adult does not mandate a suppression like the presence of a youth officer does not make the statement voluntary. The Court found that although "[t]here is no per se right to consult with a parent before or during questioning, … police conduct which frustrates a parent's attempt to confer with a juvenile is a significant factor in determining voluntariness of a juvenile's confession." The Court found that the officer's phone conversation with the juvenile's mother to be notable. The officer failed to inform his mother that G.O. was under arrest. He also failed to inform her that G.O would be asked to waive his rights. From the information given to his mother, she could not make an informed decision on whether she should leave her home after midnight and travel to a distant police station. The court noted that "speaking" with the defendant is quite different from questioning him about a murder for which he has been arrested. The court also found that the presence of the youth officers was useless since although they were physically present there was no indication that either youth officer spoke to the defendant. To the defendant the youth officers were just more police officers that were questioning him. The court found that the confessions were not voluntary under the totality of the circumstances test.

The appellate court ruling was overturned by the Illinois Supreme Court a year later. In In re G.O., the Supreme Court held that the concerned adult factor was not a dispositive factor but that it was just another factor to be considered. Weighing the factors equally under the totality of the circumstances test, the court found that G.O.'s confessions were voluntary. Justice McMorrow, however in his dissent
suggested that "the most critical element in the totality of the circumstances is the admonition by the United States Supreme Court that, in the absence of legal counsel to advise a juvenile before or during the interrogation, 'the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy.'" According to Justice McMorrow, the youth officers' interests inevitably conflicted since they were police officers that were employed by the law enforcement authorities while trying to aid juveniles that were in trouble. He favored the per se rule where the confession made by a juvenile fifteen years of age and younger would be suppressed unless the juvenile had the opportunity to consult an attorney or a personally interested adult.

D. Post In re G.O.: The different interpretations by the appellate courts.

In In re G.O., the Illinois Supreme Court found that no single factor was dispositive. The Court, however, did indicate that the concerned adult factor of whether the juvenile had an opportunity to speak with an adult who was interested in his welfare before or during the interrogation to be an important element in determining the voluntariness of defendant’s confession. Because of this dual reasoning by the Illinois Supreme Court, the appellate courts have differed still on the proper weight that the "concerned adult" factor should have in determining whether the statements the juvenile made were voluntary.

In People v. Griffin, the 1st District Appellate court held that whether the juvenile had an opportunity to speak with a concerned adult before or during an interrogation to be a significant factor to be considered in the totality of the circumstances. The court ruled that the absence of a concerned adult significantly contributed to a coercive atmosphere, and “strongly weigh[ed] against a finding that the defendant’s statement
was voluntary.\[^{61}\] There is a presumption that the juvenile’s will was compelled when the minor’s parents are present, requested to see their child and are denied by the police from doing so.\[^{62}\]

In *Griffin*, the defendant was a 15-year-old juvenile that was convicted as an adult of first degree murder.\[^{63}\] He appealed his conviction claiming that his confessional statements were made involuntarily.\[^{64}\] He claimed that the police prevented his parents from speaking with him and for being interrogated without the presence of a concerned adult.\[^{65}\] The defendant was first questioned when he was arrested around 11 pm at night.\[^{66}\] He was not further questioned until around 5 pm the next day.\[^{67}\] This interview, however, lasted about 3 hours after which he confessed to shooting the victim.\[^{68}\]

The defendant’s parents were not notified that their son was at the station for questioning in relation to a murder charge.\[^{69}\] Although both his parents were at the station for most of the time that the juvenile was kept for questioning, neither were able to speak to their son even though they repeatedly asked to do so.\[^{70}\] For the 18 hours that the juvenile was detained, the police refused to let his parents see him.\[^{71}\] The court held that the police had an affirmative duty to stop their questioning once the juvenile’s parents indicated an interest in seeing their child and to allow the parents to do so.\[^{72}\] The court further held that it was irrelevant that the juvenile did not ask for his parents before the interrogation.\[^{73}\]

If even the parents were not allowed to speak to the defendant, a youth officer can serve in place as a concerned adult. It is the youth officer’s duty to act in the role of the concerned adult by informing the juvenile of his rights. But “just as the absence of a parent does not *per se* make a confession involuntary, the presence of a youth officer does not *per se* make a juvenile’s confession voluntary.”\[^{74}\] In *Griffin*, the
youth officer who was present during the interrogations failed his duties to act as a concerned adult for the juvenile in custody. The officer was actively involved in the investigation of the case and had gathered evidence against the defendant. The youth officer was not an adult who was interested in the juvenile’s welfare but was instead working against the juvenile’s interest.

The Fourth District Appellate court, in People v. Donald R., more stringently followed the ruling led out by the Illinois Supreme Court in In re G.O. A 16 year-old defendant was convicted of sexual exploitation. The juvenile was alleged to have pulled down his pants and underwear and exposed his penis to a 6 year-old girl. When the officers arrived to the juvenile's home, they initially told his parents that they wanted to talk to him about an altercation at school. When the defendant arrived home, the officers placed him under arrest and, without giving the defendant the chance to speak with his parents, took him to the police station. While he was being transported, the police informed his parents that he had been arrested for a sexual offense and was being transported. The juvenile’s father asked if he could act as his son’s attorney and was told that he could not. After questioning, the juvenile admitted to pulling down his pants, but only because he wanted to quiet the young girl who had wanted to see it. The trial court found that the juvenile's prior experiences with juvenile adjudications and that he had not been threatened or promised leniency by the police to be factors that weighed in the favor of his confession being voluntary.

The defendant appealed his conviction claiming that his confession was not voluntary and therefore should have been suppressed. He alleged that the statements could not have been voluntary because his parents were not allowed to come to the police station nor be present during the interrogation. Using the totality of the
circumstances standard, the court found that the statements were voluntary.\textsuperscript{[88]} This court, unlike the \textit{Griffin} court, did not place significant weight on the fact that he was not able to confer with a concerned adult before or during questioning by the police. This court did, however, find relevant that the juvenile did not ask for his parents to be present before and during the interrogation.\textsuperscript{[89]}

IV. United States Supreme: Juvenile Need Protections During a Police Interrogation

On three occasions the United Supreme Court warned of the particular susceptibility of juveniles to being overcome by the pressure of a custodial interrogation. The first of the three cases was \textit{Haley v. Ohio}, where the Court reasoned that the age of the defendant was a decisive factor in ruling that the defendant’s confession was inadmissible.\textsuperscript{[90]} The defendant was a fifteen-year-old African American boy who was arrested close to midnight for questioning about his involvement in a murder.\textsuperscript{[91]} Five or six police officers interrogated the juvenile defendant for over five hours while denying him access to counsel or to his mother.\textsuperscript{[92]} Around 5 a.m. after he was confronted with alleged confessions of his co-defendants, the defendant confessed to shooting the confectionery storeowner.\textsuperscript{[93]} Based on his confession, the defendant was convicted of first-degree murder and was sentenced to life imprisonment.\textsuperscript{[94]} The Court held that the confession should have been suppressed because it was involuntary and extracted by methods that violated the due process requirements of the Fourteenth Amendment.\textsuperscript{[95]} It went on to further state that “[w]hen the police are so unmindful of these basic standards of conduct in their public dealings, their secret treatment of a 15-year-old boy behind closed doors in the dead of night becomes darkly
suspicious."[96] Justice Douglas cautioned trial judges to be particularly sensitive to the vulnerability of juveniles:[97]

What transpired would make is pause for careful inquiry if a mature man were involved. And when, as here, a mere child – an easy victim of the law – is before us, special case in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. …[W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel support if he is not to become the victim first of fear, then of panic.

The Court also focused on the fact that the defendant was held incommunicado.[98] The defendant was unable to talk to a concerned adult or counsel. The court stated that the need for counsel was important since a juvenile “needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. … No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion” [99]

In 1962, the Court in Gallegos v. Colorado reiterated that age was a crucial factor in determining whether the juvenile’s confession was voluntary. [100] The defendant was a fourteen-year-old juvenile who along with other juvenile assaulted and robbed an elderly man.[101] After he was arrested, he was held incommunicado for five days until he signed a formal confession.[102] Although his mother tried to see him on the second day, the police denied her permission stating that it was not during visiting hours.[103] Unlike in Haley, there was no evidence of any prolonged questioning.[104] But the Court found troubling the five-day detention of the juvenile where he was kept from contact with any lawyer or adult advisor even though the prosecutors stated that the juvenile was advised of his right to counsel:[105].
“a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. … [W]e deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests of or how to get the benefits of his constitutional rights. He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions…. Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as had.\textsuperscript{[106]}

The Court equated admitting the confession with depriving the defendant of his constitutional rights stating that a concerned adult or lawyer could have aided the defendant by placing him on a closer footing with the police.\textsuperscript{[107]}

The U.S. Supreme Court in \textit{In re Gault}, further extended protection to children by holding that “neither the Fourteenth Amendment not the Bill of Rights is for the adults alone.”\textsuperscript{[108]} A fifteen-year-old juvenile boy was charges with misconduct for making lewd phone calls.\textsuperscript{[109]} While the penalty for an adult that committed the same offense was a fine of $5 to $50 or imprisonment in jail for not more than two years, the defendant was committed as a juvenile delinquent until he reached majority, twenty-one years of age.\textsuperscript{[110]} The Court states that “[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court.”\textsuperscript{[111]} If the defendant had been an adult, he would have the rights and protections in regards to the arrest, search and seizure, and pretrial interrogation.\textsuperscript{[112]} He would have been given specific notice of the charges and been given adequate time to decide on what he should do and to prepare a defense if needed.\textsuperscript{[113]} If the offense were a felony, an adult would have had the right to an attorney and if he could not afford one be provided with one by the court.\textsuperscript{[114]} The Court held that the Due Process Clause of the Fourteenth Amendment requires in proceedings to determine delinquency, which may curtail a juvenile’s freedom, that the juvenile and his parents be notified of his right to be represented by counsel and if they could not afford one that one would be appointed to him.\textsuperscript{[115]} Also
the Court held that the constitutional privilege against self-incrimination was also applicable to juvenile—stating that the privilege was a necessary safeguard to assure that the confession were “reasonably trustworthy” and not the product of coercion.

The Court advised that “[i]f counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance or rights or of adolescent fantasy, fright, or despair.”

The U.S. Supreme Court, in *Miranda v. Arizona*, established procedural safeguards to protect the accused from compelled self-incrimination during a custodial interrogation. The accused has the right to remain silent and to consult with an attorney ceasing the interrogation temporarily. If any confessions are made after the request for an attorney, they are not admissible at trial. In *Fare v. Michael C.*, the Court was asked to decide if asking for a probation officer had the same effect as asking for an attorney under *Miranda*. The sixteen-year-old juvenile defendant who was already on probation was implicated in a murder. He was taken into custody where he was interrogated by two police officers. During the interrogation when ask if he wanted to give up his right to have an attorney present, the defendant asked to speak with his probation officer who had told him to contact him if the defendant ever had contact with the police. The defendant moved to have his statements suppressed on the ground that when he asked to speak to his probation officer that he invoked his Fifth Amendment right to remain silent. He contended that asking for his probation officer was the same as asking for an attorney. The Supreme Court held however that since a probation officer was unable to offer the type of independent advice that an attorney that was retained or was assigned to a defendant that asking for a probation officer did not invoke the
defendant right to remain silent.\textsuperscript{128} Miranda was based on the perception that an attorney plays a "a critical position in our legal system because of his unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation."\textsuperscript{129} The Court reasoned that it was the special ability of the attorney to help his client preserve his Fifth Amendment rights when faced with the adversary process by placing guards against the overreaching of the police and ensuring that any obtained statements were accurate and not coerced.\textsuperscript{130} "It is this pivotal role of legal counsel that justifies the \textit{per se} rule established in \textit{Miranda}, and that distinguishes the request for counsel from the request for a probation officer, a clergyman, or a close friend."\textsuperscript{131}

V. "Concerned Adult" Factor in Federal Court: The Case of A.M.

Detective Cassidy, from the Ryan Harris Case, was also involved in the false confession of a juvenile in the murder of Anna Gilvis.\textsuperscript{132} The minor, A.M., was a ten-year old boy when he allegedly savagely beating and stabbing to death killed his 83 year old neighbor, Gilvis.\textsuperscript{133} The victim was found murdered in her home on Oct 5, 1993.\textsuperscript{134} She had been brutally beaten, tied with a telephone cord, with her throat slit.\textsuperscript{135} Her home was had been ransacked, the kitchen cabinets left opened, and the refrigerator covered with streaks of blood.\textsuperscript{136} There was a broken cane on the floor and the contents of her purse were spilled on the floor.\textsuperscript{137} The rear door had been "jimmied" and there were scratches on the bolts.\textsuperscript{138} On the outside of the bathroom, there was a palm print on the wall and on the rear porch, there was a partial footprint.\textsuperscript{139} No physical evidence was found that linked the defendant to the crime.\textsuperscript{140}

The juvenile was initially interviewed as a witness and was not questioned as a suspect until a year later.\textsuperscript{141} The police informed A.M.’s mother that they wanted to speak him at the station about the murder.\textsuperscript{142} When his mother asked if she should
accompany the defendant, the police told her that it was not necessary for her to do so. At the station, the juvenile was questioned by the police and although a youth officer participated in the interview, the defendant received no assistance. During the interrogation one of the officer’s told the defendant to “tell the police that he had killed the victim, and that if he confessed, God would forgive him, the police would forgive him, and he could go home in time for his brother’s birthday party.” After several hours of questioning and several stories later, the defendant confessed to killing the neighbor and to tying her up with a rope from a hanging plant. When the juvenile saw his mother, however, he backtracked and told his mother that even though he told the police that he did it that he really did not do it. The trial court found that the defendant’s statements were voluntary under the totality of the circumstances.

The district court, in the habeus corpus, however held that the statements should not have been admitted. The court held that the trial court must evaluate the voluntariness of a juvenile’s confession with great care. In this case, the defendant was only eleven years old when he made the incriminating statements. His mother had asked if she should accompany her son to the police station, but the police informed her that it was not necessary. No youth officer was present in the initial stages of the questioning. When the defendant first made his initial statements, no concerned adult was present. Although a youth officer was present when the defendant made is incriminating statements, he had already been questioned for over an hour and a half and was very upset and crying. The court held that where a juvenile is involved the standard for whether a statement was voluntary was to be heightened, since “children do not have the same mental capacity as adults, either to understand the nature of their rights, or to understand what it means to waive them.”
The 7th Circuit Court agreed with the district court that the juvenile’s statements should have been suppressed. The defendant was convicted solely on his statements. The State did not introduce any physical evidence which linked the juvenile to the murder. The court noted that the defendant was young in age and had no prior experience with the police. During his questioning, there was never a friendly adult present. Even when the youth officer was present, he offered no protection to the juvenile’s rights. The court found that a youth officer who was just an observer was not a friendly adult for the purposes of the totality of the circumstances and therefore affirmed the district court decision.

VI. Studies on Children and Confessions

A confession is one of the most damaging pieces of evidence against a defendant. A recent study showed that juries convicted the defendant in 73 percent of the cases where there was a confession and contrary physical evidence. Unfortunately there are no reliable method to determine how many false confessions juveniles give. Children do not think or act like adults and should therefore be treated differently than adults. They are immature and vulnerable, lacking the ability to understand that significance and consequences of making a statement during an interrogation. The juvenile brain is not yet capable for adult reasoning due to its long maturation process. Juveniles have "[i]mmature thought processes, difficulty with comprehension, unstable identities, moral values that are overshadowed by a sense of loyalty, or effects of child trauma" that can affect their competency to help in their. It is not until at the age of twelve to fifteen that a child is able to think abstractly. Research has shown that there is substantial brain development during adolescence. The juvenile's brain develops in integrating information and in emotional control. This development is not at a set rate
dependant on the juvenile's age, which is why even juveniles in their late teens have immature thought.\[173\]

Studies have shown that children want to and try to please authorities either out of fear or respect.\[174\]. Children have been taught by their parents that the police officers are there to help them get out of trouble and to trust them.\[175\]. Juveniles try to give what they think is the "right" answer and constantly seek for the adult's approval.\[176\]. They use the adult's facial and physical expressions as a sign of whether they answered the questions correctly.\[177\]. Children tend to also believe that they are talking back to the adult when they say that they do not know or do not understand.\[178\]. Since children are more susceptible when they interrogated than adults are, they are more likely to admit to a false confession.\[179\]. The police, however, use interrogation techniques on juveniles very similar to those used on adults. In one of the techniques, the police makes the juvenile feel powerless by forcing him to have an escort whenever he leaves the room.\[180\]. Another technique often used is for the interrogator to be friendly when giving the juvenile *Miranda* warnings so that the juvenile will be more comfortable and more likely to talk.\[181\]. Children do not completely understand the context of the interrogation process and few understand that they even have legal rights.\[182\]. According to Richard Leo\[183\], the tactics that police use in interrogations are dangerously more persuasive to children than to adults.\[184\]. Children are often more likely than adults to take the blame or heat for crimes that they did not commit just so that the interrogation would stop.\[185\]

In the case of A.M., the juvenile was anxious for the four-hour interrogation to stop.\[186\]. He wanted to go to his younger brother birthday party.\[187\]. The police told A.M. that they would forgive him and that he could go home if he told them the
truth. A.M. changed his story five times until the police had the truth they were looking for. Similarly, in the Ryan Harris case, the police gave the seven-year-old boy candy and McDonald's. He was asked to hold Officer Cassidy hands since they were all friends while telling them the story that led to his arrest. In the high profile case of the Central Park jogger, five juveniles aged fourteen, fifteen, and sixteen confessed to the beating and rape of a white investment banker after being interrogated for up to thirty hours. Although no physical evidence was found, all five were convicted of the brutal rape. Thirteen years later in 2002, a serial rapist confessed to the rape of the jogger stating that he acted alone. Review of the videotape confessions showed that the five confessions conflicted in the details of what had happened. One juvenile changed his story several times trying to please the prosecutor conducting the interrogation. “First, he said the jogger was punched. Then, with prompting, it was a rock. Then, with prompting, it was a brick.”

Studies have shown that a juvenile with normal I.Q. and no mental illness does not mean that he juvenile is mentally competent to understand what their rights are. In one study of the developmental assessments of 17 juveniles, the researcher found that juveniles do not have the capacity for independent judgment. The juveniles in that study ranges for the age of eleven to seventeen at the time of their offense. The study showed that fear played a large role in the adolescent's ability to make choices. Where an adult might have seen several choices, the juveniles only seem to see one choice feeling cornered by the interrogation.

Empirical studies show that most children do not understand the Miranda warnings and therefore are incapable of intelligently waving their Miranda rights. According to Thomas Grisso, even if a child may
understand that they can have an attorney, they do not understand what difference there is in having an attorney. In the study of the seventeen juveniles, ten did not understand the *Miranda* warnings either in words or its concept. One fourteen-year-old, when asked to explain what "you have the right to remain silent" was, answered "don't make noise." He thought that the phrase "anything you say can be used against you" meant "you better talk to the police or they're gonna beat you up." In a study by Grisso in 1980, he found that "(1) juveniles demonstrated less comprehension than adults of the actual *Miranda* rights; (2) juveniles demonstrated less understanding of the words used in *Miranda* warnings; (3) juveniles are more likely than adults to misunderstand the right to counsel; and (4) many juveniles did not understand the comprehensiveness of the right to remain silent and thought that they could later be punished for exercising that right." Grisso employed a method that required the development of "objective, reliable methods for measuring comprehension" of one's *Miranda* rights encompassing the measurement of two indicia of comprehension. The first indicia was whether the juvenile could understand the words and phrased use in the standard *Miranda* waiver form. The second was whether the juvenile understands the function and significance of the warnings and rights the warnings contain. The date showed that 30-50 percent of the juveniles aged fifteen and under were not able to adequately understand the *Miranda* warning in their formal form. Of all the children tested, 55.3 percent were not able to understand at least one of the warnings and 63.3 percent misunderstood one of the crucial words in the warnings. Only 20 percent of the children were able to show that they adequately understood the entire *Miranda* warnings.

**VII. Conclusion: Why the “Concerned Adult” Factor Should Weighed Significantly**
In Illinois, like in thirty-eight other states, the courts follow the totality of the circumstances test in determining whether a juvenile's confession was made knowingly and voluntarily by weighing a number of factors such as age, mental capacity, intelligence, whether a concerned adult was present, and prior experience with the police.\textsuperscript{[215]} One of the factors, whether a “concerned adult” was present before or during the interrogation, has been weighed differently by the trial and appellate courts. The Illinois Supreme Court recently held that the “concerned adult” factor was not dispositive and even though it was important, it was to be weighed as just another factor.\textsuperscript{[216]} However, weighing this factor equally to the other factors do not give juveniles enough protection when they are confronted by the police in an interrogation.

This factor should be weighed significantly against the other factors. Currently eleven states have adopted the \textit{per se} interested adult test.\textsuperscript{[217]} Unlike in the totality of the circumstances test where a trial judge weighs all the factors in determining whether the confession was voluntary and knowing, in the interested adult test the court considers whether the confession was voluntary on whether the juvenile had an opportunity to consult with an adult interested in his or her welfare, either before or during the interrogation.\textsuperscript{[218]} The reasoning for the \textit{per se} rule is that the interested adult is in the position to assist the juvenile in understanding their rights.\textsuperscript{[219]} If a statement is taken without the presence of a “concerned adult”, then that statement has to be suppressed since it is \textit{per se} invalid. While the \textit{per se} rule gives the juvenile greater protection against false incrimination and against coercion by the police and prosecutors, it may needlessly suppress statements that are voluntary. There may be situations where a “concerned adult” is not present but the statement is completely voluntary and the waiver valid. An older juvenile may understand all his constitutional rights as explained and be of the mental capacity to voluntarily make a
statement or confession. Giving substantial weight to the “concerned adult” factor allows the courts the leeway to find that the juvenile intelligently and knowing waived their Fifth Amendment rights, while still adequately protecting the rights of the juvenile.

In Illinois, when a juvenile is brought into custody, a youth officer is assigned to notify the juvenile’s parents and to help the juvenile understand his rights. However, the youth officer is part of the police department that the court has an interest in protecting the juvenile against. It is not enough to just have a youth officer present before or during the police questioning. The youth officer has to take an active role in protecting the juvenile against the harsh nature of an interrogation. Making the “concerned adult” factor dispositive in determining if a juvenile’s statement is voluntary, will induce the youth officers to not just passively be present in the room with the juvenile but help him to understand his constitutional rights.

In *Miranda*, the United States Supreme Court held that an individual’s Fifth Amendment right was "fundamental to our system of constitutional rule." The warnings were meant to prevent the state from infringing on an individual right not to self incriminate himself. In *Haley v. Ohio*, the Court held that age was a decisive factor in determining if a juvenile’s statements were admissible since juveniles were at the age of “great instability”. The Court reiterated the importance of age in determining whether a juvenile’s confession was admissible in *Gallegos v. Colorado*. The importance of age stemmed from the fact that juveniles could not fully comprehend the consequences of waiving his rights and was unable in protecting his own interests. In *In re Gault*, the Court extended the constitutional privilege
against self-incrimination to ensure that their statement were “reasonably trustworthy” and not the product of police coercion.\footnote{Szymanski, “Juvenile Wavier of Miranda Rights: Totality of the Circumstances Test. 7 NCJJ Snapshot 1 Pittsburg, PA National Center for Juvenile Justice, 2002.}

Studies have also shown that juveniles are not able to completely knowing and intelligently waive their Fifth Amendment rights. They are not yet capable of adult reasoning and lack the ability to understand the significance or the consequences of making an incriminating statement.\footnote{In re G.O., 191 Ill.2d 37 (2000).} Children have difficulty in understanding the \textit{Miranda} warnings that are given by the police.\footnote{Maurice Possley, “Boy Convicted of Slaying at Age 10 Appeals,” Chicago Tribune Jan 11, 2000.} Children also have a desire to try and please the authority figure, changing their story until they believe that they got it “right” and that the authority figure was satisfied.\footnote{Steve Mills and Maurice Possley, “Cops Ignored Clues That Case Was Weak,” Chicago Tribune Sept 6, 1998.} Because of their immaturity and desire to please, they are more easily coerced by police interrogation techniques.\footnote{Id.} Because of these reasons, juveniles would greatly benefit from having a “concerned adult” present before or during the interrogation process, who can help the juvenile understand his rights and assist in his protecting his interests. Merely weighing this factor as just another factor will fail to sufficiently protect children in Illinois. It needs to be weighed significantly to avoid coercing a child into make an incriminating statement.

\footnote{Maurice Possely and Steve Mills, “Charges Dropped Against 2 Boys; Prosecutors Give Up Their Murder Case Against A 7 Year Old And An 8 Year Old, But Questions Persist About How Police Handles The Investigation Of Ryan Harris’ Death; Tests Find Semen On Girl’s Clothes.”}

[8] Id.


[10] Id.


[14] Id.


[16] Id.


[18] supra note at 15.


[20] Id.


[22] Juvenile Court Act, 705 ILCS 405/5-105(9).

[23] In re G.O., 191 Ill.2d at 54.

[24] Id.


[27] Id. at 638.

[28] Id.

[29] Id. at 637.
[30] Id. at 635.

[31] Id.

[32] Id.

[33] Id.

[34] Id.

[35] Id.

[36] Id.

[37] Id. at 637.

[38] Id. at 640.

[39] Id. at 641.

[40] Id. at 642.


[42] Id. at 729.

[43] Id.

[44] Id.

[45] Id.

[46] Id.

[47] Id. at 732.

[48] Id.

[49] Id.

[50] Id.

[51] Id.

[52] Id. at 733.

[53] Id.

[54] In re G.O., 191 Ill.2d at 55.
[55] *Id.* at 64 Justice Morrow’s dissent.

[56] *Id.*

[57] *Id.*

[58] *In re G.O.*, 191 Ill.2d at 54.

[59] *Id.*


[61] *Id.*


[63] *People v. Griffin*, 327 Ill.App.3d at 540.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.* at 541.

[70] *Id.*

[71] *Id.* at 544.

[72] *Id.* at 546.

[73] *Id.*

[74] *Id.*

[75] *Id.* at 546.

[76] *Id.* at 547.

[77] *Id.*


[79] *Id.*
[80] Id.

[81] Id. at 241.

[82] Id.

[83] Id.

[84] Id.

[85] Id. at 242.

[86] Id. at 245.

[87] Id.

[88] Id.

[89] Id.


[91] Id. at 597-598.

[92] Id. at 598.

[93] Id.

[94] Id. at 597.

[95] Id. at 599.

[96] Id. at 600.

[97] Id. at 599-600.

[98] Id. at 600.

[99] Id.


[101] Id.

[102] Id. at 50.

[103] Id.

[104] Id. at 54.
[105]Id.

[106]Id.

[107]Id. at 54-55.

[108]In Re Gault, 387 U.S. 1, 13 (1967)

[109]Id. at 4.

[110]Id. at 29.

[111]Id. at 28.

[112]Id. at 29.

[113]Id.

[114]Id.

[115]Id. at 41.

[116]Id. at 55.

[117]Id. at 47.

[118]Id. at 55.


[120]Id. at 444-445.

[121]Id. at 473-474.


[123]Id. at 709-710.

[124]Id.

[125]Id.

[126]Id. at 711-712.

[127]Id. at 712.

[128]Id. at 721.

[129]Id. at 719.
Amy Bach, “Children Try to Please Adults. That’s a Danger When Police are Unscrupulous. True Crime, False Confession,” The Nation, Feb 8, 1999.

A.M. v. Jerry Butler, 360 F.3d 787, 789 (7th Cir. 2004)

Id. at 55.

Id. at 56.

A.M. v. Jerry Butler, 360 F.3d at 800.

Id. at 794.

Id.

Id. at 800.

Id. at 801.

Id.

Marty Beyer, "Immaturity, Culpability & Competency In Juveniles A Study Of 17 Cases", 28.

supra note 132.


Id. at 525.

supra note 162 at 27.

Id.

supra note 132.

supra note 162 at 27.

Id.

Id.

supra note 132.


supra at note 173.

Id.

Id.

supra at note 132.
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[204] supra note 132.
[205] supra note 162 at 27.
[206] Id. at 28.
[207] Id.
[208] supra note 165 at 526.
[209] supra note 174 at 413.
[210] Id.
[211] Id.
[212] Id. at 414.
[213] Id.
[214] Id.
[216] In re G.O.
[217] supra at note 1.
[218] Id.
[219] Id.
[221] supra at note 17.
[222] Id.
[225] Id.
[226] In re Gault, 387 U.S. at 47.
[227] supra at note 165.
[228] supra at note 173.
[229] *Id.*