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Truth Over Lies: Why Nebraska Must End Deceptive Interrogation Tactics

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Truth Over Lies: Why Nebraska Must End Deceptive Interrogation Tactics

Jennifer Craven*

ABSTRACT

Nearly every law enforcement agency in the United States uses tactics derived from the interrogation method known as the Reid Technique. Police are taught that they can identify guilty suspects through behavior analysis. They can then attempt to get the suspect to confess by using deception—for example, by claiming to have physical evidence that doesn't exist. These interrogation tactics are not just unnecessary; they have led to wrongful convictions based on false confessions.

Juveniles and individuals with mental illness or disability are the most vulnerable to giving into the pressure of deceptive interrogation and providing false confessions. Most exonerated defendants who falsely confessed fall into one or both categories. However, there are also cases of neurotypical adults who gave false confessions after being subjected to deceptive interrogation techniques. These interrogation techniques are used by law enforcement agencies in Nebraska, and there are several prominent cases of exonerated Nebraskans who gave false confessions after interrogators used deception.

This Comment argues for ending the use of deceptive interrogation tactics in Nebraska. There are changes that could be implemented by law enforcement agencies, courts, and defense attorneys. Ultimately, the Nebraska Legislature should enact statutory changes, starting with the passage of LB 135, which would protect juveniles from deceptive interrogation.

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I. INTRODUCTION

In the landmark 1966 case *Miranda v. Arizona*, the U.S. Supreme Court placed new guardrails on police interrogations to protect the constitutional rights of suspects.¹ While the Court recognized that confessions could be a powerful tool for law enforcement, it required that a statement by a suspect must be given “freely and voluntarily without any compelling influences. . . .”² After *Miranda*, interrogators could no longer use “overt threats, promises, or physical coercion” to obtain confessions.³ Over time, however, interrogators have developed deceptive psychological tactics to persuade suspects to confess.⁴

The interrogation tactics developed after *Miranda* had unintended consequences, including false confessions. At least 12% of all exonerated defendants gave false confessions.⁵ By some accounts, the number is much higher; some researchers have found that, since 1989, approximately 29% of DNA-based exonerations involved defendants who falsely confessed.⁶ Generally, these exonerated defendants were mentally or intellectually challenged, interviewed without an attorney present, or interrogated for extended periods of time.⁷ And in other cases, interrogators revealed details of the crime.⁸ Individuals with mental illnesses or intellectual disabilities are particularly vulnerable to deceptive interrogation. 69% of all exonerated defendants, includ-

1. *Miranda v. Arizona*, 384 U.S. 436, 467–69 (1966).

2. *Id.* at 478.

3. Deborah Davis & Richard A. Leo, *Psychological Weapons of Influence: Applications in the Interrogation Room*, 14 NEV. LAW. 14 (2006).

4. *Id.*

5. *Age and Mental Status of Exonerated Defendants Who Falsely Confess*, NAT'L REGISTRY OF EXONERATIONS, (Apr. 10, 2022), <https://www.law.umich.edu/special/exoneration/Pages/False-Confessions.aspx> (choose “Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess – 18 April 2022”) [<https://perma.cc/4GGW-4CN3>].

6. Wyatt Kozinski, *The Reid Interrogation Technique and False Confessions: A Time for Change*, 16 SEATTLE J. SOC. JUST. 301, 303 (2017).

7. *Id.*

8. *Id.*

ing 79% of those under the age of eighteen and 66% of adults, had a known mental illness or intellectual disability.⁹

Juveniles were more likely to give false confessions when they did not have an attorney or guardian present.¹⁰ Psychological research has shown that juveniles are particularly susceptible to deceptive interrogation techniques.¹¹ According to the National Registry of Exonerations, 34% of false confessions were made by individuals under the age of eighteen.¹² For exonerated defendants under the age of fourteen, false confessions occurred in 78% of cases.¹³ The younger the suspect, the more likely they were to falsely confess.¹⁴

This Comment argues that deceptive interrogation tactics pose an unacceptable risk of wrongful conviction. Section II provides an overview of deceptive interrogation techniques and explains how these tactics can lead to false confessions. Section II will also discuss two Nebraska cases of false confessions that led to wrongful convictions: the Beatrice Six in Gage County and the murder of Nancy Parker. Section III will suggest possible solutions for professionals in Nebraska, examine the debate surrounding a failed 2022 bill in the Nebraska Legislature that would have prohibited deceptive tactics from being used against juveniles, and urge Nebraska lawmakers to adopt such legislation in the current session.

II. BACKGROUND

A. Overview of Deceptive Interrogation Techniques

1. *The Reid Technique*

Nearly every police department and law enforcement agency in the United States uses tactics from the interrogation method known as the Reid Technique.¹⁵ Fred Inbau and John Reid first introduced this method in their 1962 interrogation manual, *Criminal Interrogation and Confessions*.¹⁶ The Reid Technique gets its name from co-author John Reid, a former Chicago police officer who popularized and com-

9. NAT'L REGISTRY OF EXONERATIONS, *supra* note 5.

10. Kozinski, *supra* note 6, at 303.

11. *See, e.g.*, Patrick McMullen, Comment, *Questioning the Questions: The Impermissibility of Police Deception in Interrogations of Juveniles*, 99 NW. U. L. REV. 971, 975 (2005).

12. NAT'L REGISTRY OF EXONERATIONS, *supra* note 5.

13. *Id.*

14. *See id.*

15. Kozinski, *supra* note 6, at 301–02.

16. Miriam S. Gohara, *Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 FORDHAM URB. L.J. 791, 808 (2006); FRED E. INBAU, & JOHN E. REID, *CRIMINAL INTERROGATION AND CONFESSIONS* (1962).

mercialized the method.¹⁷ The Reid Technique is an accusatory interrogation tactic that police use when they are confident that a suspect is guilty of the crime they are investigating.¹⁸ Applying this technique, interrogators can supposedly determine if a suspect is lying by observing their verbal and nonverbal behavior.¹⁹ Interrogators are trained to watch for nonverbal cues such as the suspect slouching, avoiding eye contact, crossing their arms, or scratching their nose.²⁰ Interrogators also listen for verbal answers such as “I don’t know” and “I don’t recall.”²¹ Studies, however, have debunked the idea that any unique behaviors can accurately reveal deception, and many of the listed behaviors are quite normal for a suspect in a stressful situation.²²

The Reid Technique consists of three primary steps.²³ The first step is the “Factual Analysis,” in which investigators examine the available evidence to eliminate unlikely suspects and identify possible suspects.²⁴ The second step is the “Behavior Analysis Interview,” which consists of a non-accusatory question and answer session.²⁵ During this step, investigators ask questions designed to provoke verbal and nonverbal responses to gauge whether the suspect is lying.²⁶ If the investigators believe that the suspect is lying and is likely guilty, they proceed to the third step, “Interrogation.”²⁷ According to the Reid Manual, investigators should only subject suspects believed guilty to this step.²⁸ The goal of interrogation is not to simply collect information, but to get the suspect, who is now presumed guilty, to confess.²⁹ Interrogation has three components. First, investigators claim to have proof of the suspect’s guilt and cut off any attempted denials.³⁰ Second, investigators offer various possible scenarios for the crime to get the suspect to confess to the least culpable version.³¹ Third, investigators overstate the strength of the evidence against the

17. Gohara, *supra* note 16, at 808; Kozinski, *supra* note 6, at 301–02.

18. Megan Crane et al., *The Truth About Juvenile False Confessions*, 16 *INSIGHTS ON L. & SOC’Y* 10, 12 (2016).

19. *Id.* at 12–13.

20. *Id.* at 13.

21. *Id.*

22. *Id.*

23. Kozinski, *supra* note 6, at 310.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 310.

28. *Id.* at 311.

29. *Id.*

30. *Id.*

31. *Id.*

suspect, which may include misrepresenting or inventing physical evidence.³²

After identifying suspects in the Factual Analysis, the interrogator begins the Behavior Analysis Interview by attempting to gain the suspect's trust.³³ This step is premised on the belief that the interrogator can determine a suspect's guilt or innocence based on verbal responses and nonverbal cues.³⁴ Despite having no scientific basis for this belief,³⁵ it is the foundation for everything that comes after. The interrogator uses a friendly, conversational tone to ask the suspect non-accusatory questions about their background and connection to the parties or the situation.³⁶ Gaining the suspect's trust sets the stage for getting them to confess because people are more likely to be persuaded by the requests of those they like.³⁷ The interrogator then attempts to convince the suspect that the outcome of the situation will be determined by what happens in the interrogation room, and that there may be ways to minimize the consequences of the alleged crime.³⁸ For example, the interrogator may ask the suspect whether the person who committed the crime should go to jail or get a second chance.³⁹ This establishes the idea that there is hope for a lesser punishment if the suspect is cooperative.⁴⁰ Investigators are encouraged to use a "bait question" to help determine if the suspect is guilty.⁴¹ For example, they may ask a question such as, "[i]s there any reason why we would find your fingerprints at the scene of the crime?"⁴² If the suspect's behavior following this question appears to show uncertainty about the possibility of such evidence, the Reid Manual views this as evidence of guilt.⁴³

At the start of the third step, Interrogation, the investigator claims that the facts have established the suspect's guilt.⁴⁴ The investigator claims that "the only reasons for . . . talking to [the suspect] . . . are to determine the circumstances of the crime and to obtain an explana-

32. *Id.* at 311–12.

33. Davis & Leo, *supra* note 3, at 15.

34. Ariel Spierer, Note, *The Right to Remain a Child: The Impermissibility of the Reid Technique in Juvenile Interrogations*, 92 N.Y.U. L. REV. 1719, 1726 (2017).

35. *See id.* (stating that laypeople can only discern the truth from lies about 54% of the time and "police interrogators are only marginally more successful"); Kozinski, *supra* note 6, at 331 (arguing that trained detectives are "no better than a coin-flip" when attempting to discern lies from the truth).

36. Davis & Leo, *supra* note 3, at 15.

37. *Id.* at 17.

38. *Id.* at 16.

39. *Id.*

40. *Id.*

41. Gohara, *supra* note 16, at 812.

42. *Id.*

43. *See id.* at 812–13.

44. Davis & Leo, *supra* note 3, at 15.

tion for its commission.”⁴⁵ They may confront the suspect with real or fabricated evidence such as a witness identification or accounts of alleged co-perpetrators.⁴⁶ Also, they often claim to have fingerprints, hair, blood, or semen that implicate the suspect when such evidence does not exist.⁴⁷ The goal of this deception is to convince the suspect that the evidence against them is overwhelming.⁴⁸ It is easy to imagine how investigators could convince a frightened suspect facing overwhelming evidence to admit to a crime they did not commit.

The next part of the interrogation is “theme development.”⁴⁹ The goal is to persuade the suspect to admit to the crime by providing an excuse or rationalization that makes the crime seem more acceptable.⁵⁰ The interrogator attempts to frame themselves as “the sympathetic detective with the limited-time offer.”⁵¹ This framing employs the psychological concept of *scarcity*: people are more likely to pursue outcomes they perceive as limited.⁵² The interrogator expresses sympathy for the suspect and states that they would like to help if the suspect “tells the truth.”⁵³ The interrogator may tell the suspect that they do not need a confession due to the overwhelming evidence, but that they want to allow them to tell their side of the story.⁵⁴

The Reid Manual describes how the investigator should reject any denials by the suspect and keep them talking.⁵⁵ The interrogator presents alternative scenarios about the alleged crime.⁵⁶ Some alternative scenarios include versions of the crime that are clearly less reprehensible than others.⁵⁷ Scenarios involving an accident or self-defense are often successful in obtaining an initial confession.⁵⁸ If a suspect resists confessing, the interrogator may imply the threat of legal outcomes.⁵⁹ For example, they may ask the suspect, “[h]ow do you think the judge or jury is going to feel about someone who won’t take responsibility for what [they] did?” or state, “I want to help you . . . but if you don’t tell the truth, I might as well go home to my family and let the [District Attorney] take it from here.”⁶⁰ The interrogator

45. Spierer, *supra* note <CITE_Ref126820797>, at 1727–28.

46. *See* McMullen, *supra* note 11, at 971.

47. *Id.*

48. *Id.*

49. Spierer, *supra* note 34, at 1728.

50. *Id.*

51. Davis & Leo, *supra* note 3, at 15.

52. *Id.* at 17.

53. *Id.* at 15.

54. *Id.* at 15–16.

55. Spierer, *supra* note 34, at 1728.

56. Davis & Leo, *supra* note 3, at 16.

57. Spierer, *supra* note 34, at 1728–29.

58. Davis & Leo, *supra* note 3, at 16.

59. *Id.*

60. *Id.*

may suggest that the suspect will get help instead of punishment or imply that they will get to go home.⁶¹ This may include false promises of leniency such as assurances of non-prosecution, lesser charges, or a lighter sentence.⁶² Confessions elicited through explicit threats or promises of leniency would not be given “freely and voluntarily without any compelling influences,” as required by *Miranda*.⁶³ In order to ensure that any confession is admissible in court, the interrogator must convey threats or promises by implication.⁶⁴ The goal is to persuade the suspect that confessing is in their best interest.⁶⁵

Once the suspect agrees to confess, the investigator’s focus shifts to ensuring that the confession is legally acceptable and includes details of the crime.⁶⁶ The suspect is asked to record their admission in writing or on video.⁶⁷ At this stage, “contamination” can occur, in which the interrogator intentionally or unintentionally provides the suspect with details only the actual perpetrator could know.⁶⁸ This can happen through leading questions that include information about the crime.⁶⁹ The interrogator may do most of the talking and suggest different versions of the events.⁷⁰ When the suspect’s account later appears to contain details they could only know if they were guilty, it lends credibility to the false confession.⁷¹ The Reid Technique and its derivative tactics can be extremely successful at convincing suspects to confess.⁷² False confessions can and do occur as a result.⁷³

2. *Related Interrogation Tactics*

The Reid Technique’s overwhelming influence is not limited to police departments and law enforcement agencies that have explicitly adopted it. Several other prominent interrogation manuals incorporate elements of the Reid Technique.⁷⁴ For example, *Fundamentals of Criminal Investigation* by Charles E. O’Hara and Gregory L. O’Hara recommends using false evidence to induce confessions.⁷⁵ This manual advises detectives to “mix pseudoscience in [their] statements” with the assumption that the average suspect will be unable to recog-

61. See Crane et al., *supra* note 18, at 13.

62. McMullen, *supra* note 11, at 983.

63. See *Miranda v. Arizona*, 384 U.S. 436, 478 (1966).

64. Davis & Leo, *supra* note 3, at 16.

65. *Id.* at 15.

66. Spierer, *supra* note 34, at 1729.

67. Crane et al., *supra* note 18, at 13.

68. *Id.*

69. *Id.*

70. Davis & Leo, *supra* note 3, at 16.

71. Crane et al., *supra* note 18, at 13.

72. Davis & Leo, *supra* note 3, at 16.

73. *Id.*

74. Gohara, *supra* note 16, at 813–16.

75. *Id.* at 813.

nize it as such.⁷⁶ The authors specifically point to false fingerprint evidence, stating that fingerprints are “the most effective form” of evidence because “[t]he layman believes that [fingerprints] can be left on any object.”⁷⁷ Officers are encouraged to take advantage of a suspect’s trust and lack of knowledge of forensic science. These deceptive tactics should be highly concerning to those who truly believe in the ideals of our legal system because they show blatant disregard for the concept of “innocent until proven guilty.”

The Confession: Interrogation and Criminal Profiles for Police Officers by John M. Macdonald and David L. Michaud, takes a somewhat softer approach to deception.⁷⁸ The authors advise against blatant trickery not out of ethical considerations, but because the technique can backfire if the deception is too obvious and the suspect catches on.⁷⁹ They do not, however, discourage investigators from *implying* the existence of overwhelming evidence; for example, by placing a large case folder in view of the suspect.⁸⁰ Similarly, *The Gentle Art of Interviewing and Interrogation: A Professional Manual and Guide* by Robert F. Royal and Steven R. Schutt, does not explicitly advise making claims of false evidence.⁸¹ However, it does point out that suspects are more likely to be enticed to confess with specific illustrations and physical evidence.⁸² The authors state that there is “no justification . . . for deliberate lies or false promises” but suggest that “bluffing” is permissible.⁸³ The manual does not draw a clear line between “deliberate lies” and “bluffing.”⁸⁴ Taken together, this implies that investigators should consider bluffing to obtain a confession, despite the manual’s supposed condemnation of deliberate lies.

3. *Defenses of Deceptive Interrogation*

Defenders of the Reid Technique and related interrogation tactics often downplay the risk of eliciting false confessions.⁸⁵ They argue that, if used properly, the Reid Technique would not cause an innocent

76. *Id.* (citing CHARLES E. O’HARA & GREGORY L. O’HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION 149–50 (7th ed. 2003) [hereinafter O’HARA & O’HARA MANUAL]).

77. *Id.* at 814 (citing O’HARA & O’HARA MANUAL at 150).

78. *Id.*

79. *Id.* at 814–15.

80. *Id.* at 815.

81. *Id.*

82. *Id.*

83. *Id.* at 815–16 (citing ROBERT F. ROYAL & STEVEN R. SCHUTT, THE GENTLE ART OF INTERVIEWING AND INTERROGATION: A PROFESSIONAL MANUAL AND GUIDE 68 (1976)).

84. *Id.* at 816.

85. *Id.* at 811–16.

person to confess.⁸⁶ Investigators are advised to avoid using specific threats, and in their absence, the use of false evidence alone should not convince a truly innocent person to falsely confess.⁸⁷ Some Reid Technique advocates, like Professor Paul G. Cassell, express skepticism about the factual innocence of defendants who confessed under interrogation and were later exonerated.⁸⁸ Cassell believes that the concern over false confessions is overblown and concentrated among “a narrow population,” namely those with “serious mental problems.”⁸⁹

Another defender of the Reid Technique is Jonathan Goodman, a former detective and training supervisor for the Portland Police Department in Portland, Maine, who then attended law school at the University of Maine School of Law.⁹⁰ He argues that the Reid Technique’s overall structure has a system of “checks and balances” that, if used correctly, is unlikely to produce false confessions.⁹¹ In particular, Goodman sees evidence of these checks and balances across all stages of the Reid Technique. In the Factual Analysis phase, investigators gather reliable evidence before identifying suspects.⁹² During the Behavior Analysis Interview, investigators look for signs of deception but are told not to put too much weight on any one indicator.⁹³ Goodman argues that the steps of the Interrogation phase ensure that “innocent people are likely to forcefully deny guilt” early in the process.⁹⁴ According to Goodman, innocent suspects will give many indications of truthfulness before the investigator reaches the more forceful, suggestive part of the interrogation, so they will not be subjected to it.⁹⁵

These defenders overlook numerous variables that can lead to false confessions. When presented with supposedly convincing evidence of guilt, a suspect may conclude that someone is lying about them or that the police have planted evidence.⁹⁶ Human psychology is complicated. The pressures of interrogation can overwhelm suspects and lead them to falsely confess.⁹⁷ This is true of all suspects. However, some seg-

86. See Jonathan Goodman, *Getting to the Truth: Analysis and Argument in Support of the Reid Technique of Interview and Interrogation*, 21 MAINE BAR J. 20, 25 (2006); Gohara, *supra* note 16, at 826.

87. Gohara, *supra* note 16, at 826.

88. Paul G. Cassell, *The Guilty and the “Innocent”: An Examination of Alleged Cases of Wrongful Conviction from False Confessions*, 22 HARV. J.L. & PUB. POL’Y 523, 575–76 (1999).

89. *Id.* at 577.

90. Goodman, *supra* note 86, at 21.

91. *Id.* at 24–25.

92. *Id.* at 24.

93. *Id.* at 24–25.

94. *Id.* at 25.

95. *Id.*

96. Kozinski, *supra* note 6, at 318.

97. See *infra* Section II.B.

ments of the population are particularly vulnerable to deceptive interrogation techniques. Juveniles and those with mental illness or disability are less capable of making rational decisions during lengthy interrogations, and they are more likely to feel intimidated.⁹⁸ Reid Technique proponents, like Professor Cassell, see this problem as relatively minor since this is a “narrow population” of individuals.⁹⁹ However, juveniles and people with mental illnesses make up the majority of exonerated defendants who falsely confess.¹⁰⁰ Reassurances that this problem is overblown, or that deceptive tactics will not work on the truly innocent, fail to consider the demonstrable harm caused to some of the most vulnerable members of society.

B. The Most Vulnerable Populations

1. Juveniles

As of April 10, 2022, there were 365 known exonerations of defendants who had given false confessions.¹⁰¹ Ninety-one of those defendants, approximately 25% of all known false confessions, were under the age of eighteen.¹⁰² The human brain is not fully developed until one’s early twenties, making juveniles particularly susceptible to deceptive interrogation tactics.¹⁰³ As discussed above, interrogators sometimes imply threats or promises of leniency to encourage suspects to confess.¹⁰⁴ A recent study compared the psychological impact of these implied threats and promises in the interrogation room.¹⁰⁵ This study compared the impact of pragmatic implication on adults and juveniles.¹⁰⁶ Pragmatic implication is a phenomenon in which humans process information that is implied but not directly stated.¹⁰⁷ In the interrogation room, this occurs when the investigator implies that confessing will lead to a lighter sentence, or failure to confess will lead to harsher consequences.¹⁰⁸ The study found that both adults and juveniles remember “pragmatically interpreted” information,

98. Gohara, *supra* note 16, at 826.

99. Cassell, *supra* note 88, at 577.

100. NAT’L REGISTRY OF EXONERATIONS, *supra* note 5.

101. *Id.*

102. *Id.*

103. Crane et al., *supra* note 18, at 12 (noting that children and adolescents are “two to three times more likely to falsely confess . . . than adults.”).

104. *See supra* notes 54–60 and accompanying text.

105. Allison D. Redlich et al., *Pragmatic Implication in the Interrogation Room: A Comparison of Juveniles and Adults*, 16 J. EXPERIMENTAL CRIMINOLOGY 555, 556 (2020).

106. *Id.*

107. *Id.*

108. *Id.*; *see also* Davis & Leo, *supra* note 3, at 15 (describing how the investigator implies that the interrogation will determine the outcome and that the investigator wants to “help” the suspect if they confess).

meaning that the actual statement (“I’d like to help you if you tell me what really happened”) is replaced with a reconstructed, reinterpreted meaning (“I will help you if you tell me what really happened”).¹⁰⁹ Compared to the adults in the study, juveniles were more likely to think that if a suspect in a hypothetical scenario confessed, they could go home; more likely to believe that the suspect’s sentence would be harsher if they did not confess; more likely to trust the police officer and think they were being fair; and almost twice as likely to think that the suspect should confess.¹¹⁰

Although juveniles mature at different rates, even older juveniles with more developed reasoning skills have deficiencies in their decision-making capacity.¹¹¹ This can impact how juveniles respond to deceptive interrogation tactics.¹¹² They are more impulsive, more susceptible to influence, and have a greater propensity to comply with authority figures than adults.¹¹³ Additionally, they are less future-oriented than adults and consider short-term consequences more than long-term consequences.¹¹⁴ Moreover, juveniles have less ability than adults to perceive the long-term consequences of a false confession.¹¹⁵ They are not able to evaluate hypothetical future outcomes and consider the consequences of confessing to a crime they did not commit.¹¹⁶ Their difficulty in understanding long-term consequences makes juveniles more likely than adults to waive their *Miranda* rights and agree to a police interview.¹¹⁷ Once *Miranda* rights are waived, the interrogation of juveniles proceeds the same way as the interrogation of adults,¹¹⁸ despite the fact that juveniles have less understanding of their legal rights and potential legal consequences.¹¹⁹

The naïve expectation that a confession will result in their release is one of the most common explanations that exonerated juvenile defendants give for falsely confessing.¹²⁰ All five defendants in the infamous Central Park Five case listed this as a reason they falsely

109. Redlich et al., *supra* note 105, at 556.

110. *Id.* at 562.

111. Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 *LAW & PSYCH. REV.* 53, 62 (2007).

112. *Id.*

113. *Id.*

114. *Id.*

115. McMullen, *supra* note 11, at 994.

116. *Id.* at 995.

117. Scott-Hayward, *supra* note 111, at 65.

118. *Id.* at 66.

119. Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 *J. CRIM. L. & CRIMINOLOGY* 219, 228–29 (2006) (discussing studies of juveniles’ legal competency that found juveniles “cannot exercise their rights as effectively as adults.”).

120. Scott-Hayward, *supra* note 111, at 68.

confessed.¹²¹ In that case, five Harlem teenagers were accused of the brutal assault of a jogger in 1989.¹²² During the interrogation, the teens repeatedly incriminated themselves and each other.¹²³ One of the five, Kharey Wise, initially told police that he knew nothing about the crime.¹²⁴ After police falsely told Wise that his friends had implicated him, he started making up facts to “give them what they wanted to hear” because the police implied that he could go home if he confessed.¹²⁵ The Central Park Five were convicted based on their false confessions.¹²⁶ They were finally exonerated in 2002 when the real perpetrator was caught for another crime and confessed; in the meantime, he had committed three more rapes and a rape-murder.¹²⁷ Thus, the harm of using deceptive interrogation techniques extends not just to the wrongfully convicted defendants, but to subsequent victims of the real perpetrators who are not held responsible.

2. *Individuals with a Mental Illness or Disability*

Of the 365 known exonerations that involved false confessions, 120 of the defendants, approximately one-third, had a known mental illness or intellectual disability.¹²⁸ This number includes twenty-seven juveniles and ninety-three adults.¹²⁹ Like juveniles, individuals with mental illness or disability are particularly susceptible to deceptive interrogation tactics.¹³⁰ They may struggle to understand their legal rights or recognize when they are being misled or manipulated, and they are less able to resist the pressure to confess.¹³¹ Like juveniles, individuals with severe mental illness or lower cognitive abilities struggle to understand long-term consequences of confessing to a crime.¹³² They may be motivated to please others, making them more susceptible to leading questions and more responsive to positive reinforcement from the interrogator.¹³³

121. *Id.*

122. Gohara, *supra* note 16, at 791.

123. *Id.*

124. *Id.* at 792.

125. *Id.*

126. *Id.* at 791.

127. *Id.*

128. NAT'L REGISTRY OF EXONERATIONS, *supra* note 5.

129. *Id.*

130. William C. Follette, Deborah Davis & Richard A. Leo, *Mental Health Status and Vulnerability to Police Interrogation Tactics*, 22 CRIM. JUST. 42, 43 (2007); Kozinski, *supra* note 6, at 319; Gohara, *supra* note 16, at 826.

131. Follette et al., *supra* note 130, at 43.

132. *Id.* at 47.

133. *Id.* at 45.

Those who demonstrate symptoms of mental illness or disability are more likely to be arrested in the first place.¹³⁴ Common stereotypes associate mental illness with criminality and violence, so a mentally ill individual with a reasonable opportunity to commit a crime may be targeted.¹³⁵ Once arrested, they may display behaviors during the Behavioral Analysis Interview that investigators associate with deception: signs of anxiety, evasiveness, and refusal to make eye contact.¹³⁶ Like juveniles, those with mental impairments are more likely to waive their *Miranda* rights.¹³⁷ During the interrogation, they may struggle to regulate their emotional responses and agree to confess because they see confession as the only way to make the interview stop.¹³⁸

Anyone may struggle with these challenges during a stressful interrogation, especially if they lack knowledge of the legal system.¹³⁹ Those with mental illness or disability have a higher tendency to be impulsive, have difficulty regulating their thoughts and emotions, and may be more prone to suggestion.¹⁴⁰ In some cases, interrogation can change the suspect's internal beliefs, even to the point of implanting false memories and convincing them that they committed the crime.¹⁴¹ This is more likely to occur when the suspect is uncertain of what happened because they lack knowledge or the ability to understand, or struggle to differentiate between what is real and what is not.¹⁴² Those with mental illness or disability who exhibit these traits are particularly vulnerable to the effects of deceptive interrogation tactics.

C. Consequences of Deceptive Interrogation

1. Legal and Social Consequences

For many, the idea of an innocent person confessing to a crime they did not commit is counterintuitive.¹⁴³ After all, most suspects who

134. *Id.* at 44 (explaining that “the probability of arrest was 67 times greater for persons demonstrating symptoms of mental illness than those without such symptoms” because “common stereotypes” associate mental illness and intellectual disability with “criminality and violence,” so “any mentally ill individual with the reasonable opportunity to commit the crime . . . may be unfairly targeted as a suspect.”).

135. *Id.*

136. *Id.*

137. *Id.* at 45.

138. *Id.* at 47.

139. *Id.* at 43.

140. *Id.* at 47.

141. *Id.* at 48.

142. *Id.*

143. Richard A. Leo & Brittany Liu, *What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?*, 27 *BEHAV. SCI. & L.* 381, 381 (2009).

confess are guilty, and most confessions have evidentiary corroboration.¹⁴⁴ However, as the preceding discussion shows, false confessions still occur, and they often result from deceptive interrogation tactics.¹⁴⁵ Law enforcement officers are often uninformed about the possibility of false confessions.¹⁴⁶ Interrogation manuals like *Criminal Interrogation and Confessions* insist that their psychologically manipulative methods will not convince an innocent person to confess.¹⁴⁷ Because of this false assurance, investigators and prosecutors who obtain a confession may become so confident of the suspect's guilt that they neglect to consider even overwhelming exculpatory evidence.¹⁴⁸ Once a suspect confesses, the investigation usually ends, regardless of whether investigators have evidence corroborating the confession.¹⁴⁹ As a result, investigators develop tunnel vision, allowing the actual perpetrator to remain at large while the innocent suspect faces charges.¹⁵⁰

Judges typically admit confessions obtained through deceptive interrogation, even when the defendant is a juvenile or has a mental impairment.¹⁵¹ Attorneys, judges, and jurors often view confession evidence as highly convincing.¹⁵² One study found that false confessors who went to trial were three times more likely to be convicted than acquitted.¹⁵³ A false confession is very likely to convince a jury of the defendant's guilt and lead to the conviction of an innocent person.¹⁵⁴ Confessions are often regarded by juries to be the most persuasive evidence of guilt.¹⁵⁵ A confession may outweigh even strong evidence of the defendant's factual innocence.¹⁵⁶ Mock jury studies have shown that confessions have more impact than any other form of evidence and that jurors are unable to distinguish true confessions from false ones.¹⁵⁷ Even when people recognize interrogation methods as coercive, they believe that such methods are unlikely to elicit false confessions.¹⁵⁸

144. Richard A. Leo & Richard J. Ofshe, *Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 434 (1998).

145. *See supra* Sections II.B.1–2.

146. Leo & Ofshe, *supra* note 144, at 443.

147. *Id.*; Gohara, *supra* note 16, at 811.

148. Leo & Ofshe, *supra* note 144, at 440.

149. *Id.*; *see* Kozinski, *supra* note 6, at 323.

150. Kozinski, *supra* note 6, at 323; *see* Gohara, *supra* note 16, at 791.

151. Kozinski, *supra* note 6, at 306.

152. Leo & Ofshe, *supra* note 144, at 478.

153. *Id.* at 482.

154. *See* Spierer, *supra* note 34, at 1733.

155. Leo & Ofshe, *supra* note 144, at 434.

156. *Id.*; Leo & Liu, *supra* note 143, at 383.

157. Leo & Liu, *supra* note 143, at 383–84.

158. *Id.* at 387, 390.

The consequences of a false confession can be severe. Some defendants have been incarcerated for life or even executed for their false confessions.¹⁵⁹ Those who are exonerated may still face suspicion from their communities who are skeptical of their innocence.¹⁶⁰ For example, after the exoneration of the Beatrice Six defendants, discussed below, many in the community remain convinced that they were somehow involved in the crime.¹⁶¹ Even if false confessions are rare, the harm caused when they occur is cause enough to question the use of deceptive interrogation techniques.

2. *Wrongfully Convicted Nebraskans*

Deceptive interrogation techniques occur throughout the United States, including the State of Nebraska. Perhaps the most notorious case in Nebraska is that of the Beatrice Six. Dr. Richard Leo, an expert on false confessions, has maintained that the convictions, in this case, resulted from deceptive tactics used by the Gage County investigators.¹⁶²

Helen Wilson, age sixty-eight, was murdered on February 6, 1985.¹⁶³ Police were initially unable to solve the case.¹⁶⁴ Burt Searcey, who at the time was a hog farmer and former officer for the Beatrice police department, heard about the case and began looking into it as an unpaid private investigator.¹⁶⁵ He built his theory of the case on the statements of a teenager who claimed that one of the defendants had bragged about the killing.¹⁶⁶ The teenager's story had many factual inconsistencies, but Searcey—who was hired as a sheriff's deputy in 1987—continued to pursue his theory.¹⁶⁷ It was not un-

159. Leo & Ofshe, *supra* note 144, at 472 (“Cases involving suspected or established false confessions typically result in some deprivation of the false confessor’s liberty. The amount of deprivation may vary from a brief wrongful arrest and detention to lifelong incarceration or execution.”).

160. Jack Healy, *A Rural County Owes \$28 Million for Wrongful Convictions. It Doesn’t Want to Pay.*, N.Y. TIMES (Apr. 1, 2019), <https://www.nytimes.com/2019/04/01/us/beatrice-six-nebraska.html> [https://perma.cc/J99Z-4TD2].

161. *Id.*

162. Joe Duggan, *Expert on False Confessions Blames Investigators in Beatrice Six Lawsuit*, OMAHA WORLD HERALD (Jan. 11, 2014), https://omaha.com/news/expert-on-false-confessions-blames-investigators-in-beatrice-six-%20lawsuit/article_74bf5414-440d-5de0-ae3e-8d5170d3b664.html [https://perma.cc/9RYX-36KY].

163. Joe Duggan, *Deputy Behind Beatrice Six Murder Investigation: It Wasn’t Reckless*, OMAHA WORLD HERALD (June 11, 2016), https://omaha.com/news/crime/deputy-behind-beatrice-six-murder-investigation-it-wasn-t-%20reckless/article_23d97774-2f87-11e6-8c2e-176223ea3ff9.html [https://perma.cc/8SP2-CVTX].

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

til years later that Searcy acknowledged he revealed crime scene information to the suspects after they repeatedly gave wrong answers about key details.¹⁶⁸ Searcy justified this by saying he was “just asking questions” and that his goal was to solve the case.¹⁶⁹

None of the Beatrice Six defendants were juveniles, but the three defendants who gave false confessions—Ada JoAnn Taylor, James Dean, and Debra Shelden—all had a history of mental illness or low cognitive ability.¹⁷⁰ Dr. Leo has criticized Searcy and other investigators for contaminating the interviews by providing crime scene information when the suspects gave inaccurate answers.¹⁷¹ He has also criticized the role of Dr. Wayne Price, a psychologist who worked as a reserve deputy for the police department.¹⁷² When one of the defendants, James Dean, repeatedly told investigators that he could not recall having a role in the crime, Price suggested he may have repressed the memories.¹⁷³ Additionally, another defendant, Ada JoAnn Taylor, has claimed that law enforcement officers implied that she was facing the death penalty in informal conversations, although these threats did not occur during the taped interrogations.¹⁷⁴ The prosecutor eventually agreed to take the death penalty off the table in exchange for Taylor’s cooperation.¹⁷⁵

The Beatrice Six were all convicted and collectively served more than 70 years in prison for a crime they did not commit.¹⁷⁶ In 2008, Joseph E. White, the only defendant who refused a plea bargain and maintained his innocence, won a court challenge that allowed DNA testing of blood and semen samples from the crime scene.¹⁷⁷ The tests led to the exoneration of all six defendants.¹⁷⁸ The Beatrice Six defendants filed a civil rights lawsuit against Gage County.¹⁷⁹ In 2016, a

168. Joe Duggan, *Deputy in Beatrice Six Case Denies Telling Suspects to Confess or Face the Death Penalty*, OMAHA WORLD HERALD (June 30, 2016), https://omaha.com/news/crime/deputy-in-beatrice-six-case-denies-telling-suspects-to-confess-or-face-%20the-death-penalty/article_9ae766d6-81f3-52af-9787-cefb3b240205.html [https://perma.cc/5V3N-24QL].

169. *Id.*

170. Duggan, *supra* note 162.

171. *Id.*

172. *Id.*

173. *Id.*

174. Joe Duggan, *Beatrice Six Member Says Threat of Death Penalty Persuaded Her to Confess to a Slaying She Didn't Commit*, OMAHA WORLD HERALD (Oct. 25, 2016), https://omaha.com/news/crime/beatrice-six-member-says-threat-of-death-penalty-persuaded-her-to-%20confess-to-a-slaying/article_51ebcf4f-7299-5d08-8dfebae55f0f5c2.html [https://perma.cc/RGK6-89P4].

175. *Id.*

176. Duggan, *supra* note 168.

177. *Id.*

178. Duggan, *supra* note 163 (mentioning that DNA tests identified the actual killer as Bruce Allen Smith, a former Beatrice resident who died in 1992).

179. Healy, *supra* note 160.

jury in the civil rights case awarded a \$28 million judgment against Gage County.¹⁸⁰ This financial burden now falls on the taxpayers of Gage County.¹⁸¹

Another prominent Nebraska conviction resulting from a false confession involved the 1955 murder of Nancy Parker in Lincoln.¹⁸² Nancy's husband, Darrel Parker, was a forester for the City of Lincoln.¹⁸³ On the morning of December 14, 1955, Darrel left for work.¹⁸⁴ When he left, Nancy was addressing Christmas cards.¹⁸⁵ He returned home at lunch to find her body in their bed; she had been bound, raped, and strangled to death.¹⁸⁶ A few days later, Darrel Parker was questioned by John Reid, for whom the Reid Technique is named, for twelve hours in a windowless room.¹⁸⁷ By the end of the interrogation, he confessed.¹⁸⁸ He recanted the next day, but it was too late.¹⁸⁹ Parker was tried in the Lancaster County District Court.¹⁹⁰ There was little evidence against him aside from his confession.¹⁹¹ He was convicted by a jury on June 2, 1956, and sentenced to life in prison.¹⁹² John Reid's involvement in getting Parker to confess was well-publicized, and it helped him gain a reputation for getting criminals to confess, which increased the popularity of the Reid Technique.¹⁹³ For the rest of his life, Parker maintained that he had been psychologically tortured during this interrogation.¹⁹⁴

Darrel Parker continued to maintain his innocence. Parker's legal challenges are described in an entry in the National Registry of Exonerations:

After his direct appeal was denied, Parker filed a federal petition for a writ of habeas corpus. In February 1969, the U.S. Court of Appeals for the Eighth Circuit ruled that the confession had been coerced and ordered Parker retried

180. *Id.*

181. *Id.* (providing an account from one resident in Gage County, who expects to pay an additional \$3,500 per year in property taxes because of the settlement).

182. Maurice Possley, *Darrel Parker*, NAT'L REGISTRY OF EXONERATIONS (May 2, 2022), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4015> [<https://perma.cc/KS9E-BKHR>].

183. *Id.*

184. Possley, *supra* note 182; Peter Salter, *Darrel Parker, Convicted of Lincoln Murder in 1956 and Cleared Five Decades Later, Dies at 90*, LINCOLN J. STAR (June 29, 2022), https://journalstar.com/news/local/darrel-parker-convicted-of-lincoln-murder-in-1956-and-cleared-five-decades-later-dies-at/article_a0543ab6-1ce5-55ab-afe0-b86bdd08dac5.html [<https://perma.cc/8HSY-MJDV>].

185. Salter, *supra* note 184.

186. *Id.*

187. Possley, *supra* note 182; Salter, *supra* note 184.

188. *Id.*; Possley, *supra* note 182.

189. Salter, *supra* note 184.

190. Possley, *supra* note 182.

191. *Id.*

192. *Id.*

193. Kozinski, *supra* note 6, at 302.

194. Salter, *supra* note 184.

or released. The state appealed and the U.S. Supreme Court reversed and sent the case back to the trial court for a hearing on whether the confession was voluntary.¹⁹⁵

Eventually, in 1970, the Nebraska Board of Pardons commuted Parker's sentence and released him on parole.¹⁹⁶ Parker moved to Moline, Illinois, remarried, and tried to move on with his life, but continued to be "haunted" by the coerced false confession that put him in prison for fifteen years and sullied his name.¹⁹⁷

In the meantime, the true killer committed several other murders.¹⁹⁸ In 1975, a Lancaster County jury convicted Wesley Peery of murder.¹⁹⁹ Peery was sentenced to death, and while on death row, he told his lawyers about thirteen other murders he had committed.²⁰⁰ His victims included Nancy Parker.²⁰¹ The police questioned Peery before they interrogated Darrel Parker but ruled him out as a suspect.²⁰² While on death row, Peery provided his lawyers with numerous details of Nancy's murder that aligned with evidence from the crime scene.²⁰³ However, Peery refused to allow his lawyers to share this information while he was alive.²⁰⁴ When Peery died in 1988, his lawyers revealed his confession.²⁰⁵

In 1991, the Nebraska Board of Pardons granted Darrel Parker a full pardon.²⁰⁶ Twenty years later, in 2011, Parker filed a lawsuit under the Nebraska Wrongful Conviction and Imprisonment Act.²⁰⁷ In August 2012, the State issued a declaration of innocence and agreed to pay Parker \$500,000, the maximum amount allowed by law.²⁰⁸ The Attorney General at the time, Jon Bruning, publicly declared that Parker was wrongfully convicted and apologized.²⁰⁹ During this public apology, Bruning stated, "It became crystal clear that Mr. Parker is innocent . . . this was the most important thing I could do as attorney general, to right this wrong."²¹⁰ The cases of the Beatrice Six and Darrel Parker demonstrate that wrongful convictions based on false confessions have caused harm in the State of Nebraska.

195. Possley, *supra* note 182.

196. *Id.*; Salter, *supra* note 184.

197. Salter, *supra* note 184.

198. *See* Possley, *supra* note 182.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*; Salter, *supra* note 184.

207. Possley, *supra* note 182; Salter, *supra* note 184.

208. Possley, *supra* note 182; Salter, *supra* note 184.

209. Salter, *supra* note 184.

210. *Id.*

Even more, deceptive interrogation techniques have caused Nebraskans to be wrongfully convicted and incarcerated, have allowed true perpetrators to go free and commit other crimes, and have cost Nebraska taxpayers who must pay to atone for the lives damaged by wrongful convictions.

III. ANALYSIS

A. Solutions

1. *Alternatives and Incentives*

There are steps that legal professionals and law enforcement in Nebraska can take to decrease the chance of another such miscarriage of justice. Police departments should seek alternatives to the Reid Technique and its derivatives. One such alternative is the PEACE method.²¹¹ PEACE stands for Preparation, Engagement, Accounting, Closure, and Evaluation.²¹² It was developed in England after several high-profile wrongful convictions.²¹³ PEACE shares similarities with the Reid Technique but also contains several key differences. Like the Reid Technique, the first step involves gathering information.²¹⁴ Police attempt to gain as much reliable information about the crime as possible before conducting any interviews.²¹⁵ When they identify a witness or suspect to interview, they begin by asking non-accusatory, open-ended questions.²¹⁶ Unlike investigators using the Reid Technique, investigators using PEACE allows the witness or suspect to do most of the talking.²¹⁷ They may ask for clarification and point out inconsistencies in the suspect's story.²¹⁸ They may also bring up contrary evidence; however, they do not make up false evidence, bully the suspect to confess, or attempt to minimize the crime to gain the suspect's trust.²¹⁹ The PEACE method has been adopted in the United Kingdom, Norway, and New Zealand with a similar rate of success at eliciting confessions as the Reid Technique.²²⁰ Some research even indicates that less confrontational approaches such as the PEACE method may be more likely to encourage true confessions.²²¹

211. Kozinski, *supra* note 6, at 333.

212. *Id.*

213. *Id.* at 334.

214. *Id.* at 333.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* at 334.

219. *Id.*

220. *Id.* (citing research that shows no decrease in the success rate of gaining confessions and even a potential increase in true confessions with less confrontational interrogation methods).

221. *Id.*

The adoption of new techniques in the interrogation room is one solution. Additionally, defense attorneys can play a role in protecting their clients from the consequences of false confessions. When a client has made an incriminating statement during an interrogation, the attorney should find out whether the police made any false statements about evidence connecting the suspect to the crime.²²² If so, the attorney should object to the admission of the client's confession and argue that it is *per se* inadmissible.²²³ Even if the court admits the confession into evidence, the attorney will at least preserve the objection for appeal and postconviction actions.²²⁴ The attorney should also seek discovery of any evidence that corroborates the client's statement.²²⁵ Police investigators often stop investigating once they obtain a confession, but the attorney should not take the confession at face value if there is no other evidence clearly linking the defendant to the crime. In cases involving possible coerced confessions, the defense attorney should move for the discovery of the law enforcement agency's interrogation manuals or policies.²²⁶ If the agency uses deceptive tactics, this could provide a basis for suppression hearings and jury instructions.²²⁷ In cases where a seemingly coerced confession is the only evidence, the defense attorney should move for dismissal.²²⁸

Courts can also play a role in disincentivizing the use of deceptive interrogation tactics. One solution is requiring recorded interrogations, which provide an accurate, objective record of the interview.²²⁹ Video recording is one of the most common suggestions by scholars for decreasing the likelihood of wrongful convictions from false confessions.²³⁰ Video recording also allows attorneys and fact finders to review the interrogation methods used by law enforcement and determine if the suspect was inappropriately provided information about the crime that could make their confession appear more legitimate.²³¹ Courts can insist on recording interrogations by excluding

222. Gohara, *supra* note 16, at 836.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.* at 836–37.

227. *Id.* at 837.

228. *Id.*

229. *Id.* at 839.

230. *Id.*; Kozinski, *supra* note 6, at 337–39; Steven A. Drizin & Marissa J. Reich, *Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions*, 52 *DRAKE L. REV.* 619, 620 (2004); Steven A. Drizin & Beth A. Colgan, *Let the Cameras Roll: Mandatory Videotaping of Interrogations is the Solution to Illinois' Problem of False Confessions*, 32 *LOY. U. CHI. L.J.* 337, 384 (2001) (providing a detailed account of the proposed plans in Illinois for video interrogations).

231. Kozinski, *supra* note 6, at 337.

unrecorded confessions from trial.²³² In many cases, recording interrogations may actually help investigators by protecting them from frivolous claims that a confession was coerced.²³³

2. Proposed Statutory Changes

While these changes in professional practice could have a significant impact, it is essential that the Nebraska Legislature takes action to protect all Nebraska citizens from the dangers of deceptive interrogation. Nebraska can look to other states for guidance in implementing these changes.²³⁴ The Illinois legislature passed a law prohibiting deceptive interrogation of juveniles with support from the Illinois Chiefs of Police and the State Attorneys' Association.²³⁵ Illinois was previously known as the "false confession capital" of the country due to high-profile cases like the Englewood Four, the Marquette Park Four, the Dixmoor Five, and the Uptown Seven.²³⁶ Oregon passed similar legislation, and a bill was introduced in New York that would ban all deceptive interrogation tactics and establish a pre-trial assessment of recorded confessions to determine their reliability and admissibility.²³⁷

Prohibiting deception in all police interrogations should be the ultimate goal, but it may be easier to build consensus first to protect the most vulnerable. Nebraska State Senators John Cavanaugh and Terrell McKinney attempted to do so during the second session of the 107th Legislature in January 2022.²³⁸ The bill they introduced, Legislative Bill (LB) 732, would have prohibited police officers from using deception while interrogating juveniles.²³⁹ Any statement given by a juvenile suspect obtained by using deceptive tactics would be inadmissible in court.²⁴⁰ The bill defined deception as intentionally or knowingly communicating false facts about evidence or regarding leniency.²⁴¹

On January 19, 2022, the Nebraska Judiciary Committee held a hearing on LB 732.²⁴² At the hearing, the legislature heard testimony

232. *Id.* at 338.

233. Gohara, *supra* note 16, at 839.

234. *Illinois Becomes the First State to Ban Police from Lying to Juveniles During Interrogations*, INNOCENCE PROJECT (July 15, 2021), <https://innocenceproject.org/illinois-first-state-to-ban-police-lying> [https://perma.cc/YJ7S-UYSW].

235. *Id.*

236. *Id.*

237. *Id.*

238. L.B. 732, 107th Leg., 2d Sess. (Neb. 2022).

239. *Id.*

240. *Id.*

241. *Id.*

242. *Judiciary Comm. Hearing January 19, 2022: Hearing on L.B. 732 Before the Judiciary Comm.*, 107th Leg., 2d Sess. 32–74 (Neb. 2022).

from several proponents—among them was Taylor Givens-Dunn on behalf of Voices for Children in Nebraska.²⁴³ Givens-Dunn, who works with juveniles through the Nebraska Youth Justice Policy Fellowship, testified to personal experience with juveniles who gave false confessions.²⁴⁴ She provided two reasons that she has heard from juveniles for why they falsely confessed.²⁴⁵ First, they told her that they were scared and intimidated by the interrogation and just wanted it to be over.²⁴⁶ Second, they wanted someone on their side and wanted to please the police officer who seemed to be offering leniency.²⁴⁷ Givens-Dunn’s testimony reinforces the findings of the research cited in Section II.²⁴⁸

Opponent testimony included Jim Maguire on behalf of the Omaha Police Officers’ Association and the Nebraska Fraternal Order of Police, and Captain Tracy Scherer on behalf of the Omaha Police Department.²⁴⁹ Maguire and Scherer testified that the goal of interrogation is simply to find the truth.²⁵⁰ Both also acknowledged that police in Nebraska use deceptive interrogation techniques in their attempts to accomplish this goal.²⁵¹ Maguire stated that officers sometimes “come up with something to just judge [suspects’] body language.”²⁵² Scherer said that, while she is personally not comfortable with lying about the existence of physical evidence, she knows of officers that do it.²⁵³ Maguire expressed his opinion that LB 732 was an attempt to fix a problem that does not exist.²⁵⁴ However, the testimony before the Judiciary Committee coupled with research on false confessions and incidents of real-life exonerations—including in Nebraska—clearly demonstrate that the problem is real.

Unfortunately, LB 732 was dealt its fate on April 20, 2022, when the Legislature indefinitely postponed it.²⁵⁵ The 108th Legislature had another opportunity to protect Nebraska juveniles from the risks associated with deceptive police interrogations. On January 6, 2023, Senator John Cavanaugh re-introduced the proposed legislation as LB 135.²⁵⁶ On January 10, it was again referred to the Judiciary Commit-

243. *Id.* at 41–54.

244. *Id.* at 54.

245. *Id.*

246. *Id.*

247. *Id.*

248. *See supra* Section II.

249. *Id.* at 54–66.

250. *Id.* at 5, 62.

251. *Id.* at 54–56, 63.

252. *Id.* at 56.

253. *Id.* at 63.

254. *Id.* at 55.

255. LEGIS. J., 107th Leg. 1428 (Neb. 2022).

256. LEGIS. J., 108th Leg. 116 (Neb. 2023).

tee.²⁵⁷ The committee held a hearing on February 8,²⁵⁸ but LB 135 has not been advanced to General File. Committee members should give this bill the careful consideration it deserves and then refer it to the full body for debate. While LB 135 would not prevent all Nebraskans from being subjected to deceptive interrogation, protecting juveniles is a clear step in the right direction. If adopted, this law could encourage Nebraska police departments to explore alternative tactics like the PEACE method discussed above. With time, hopefully, this would decrease the use of deception with all suspects.

IV. CONCLUSION

No one wants to cause wrongful convictions by eliciting false confessions. It seems likely that police officers simply underestimate the risk of doing so and only use deception when they truly believe they have the right suspect. By understating these risks, officers fail to consider the great harm caused by a false confession. It harms the individual who is punished for a crime they did not commit. It prevents investigators from continuing the search for the true perpetrator and allows that perpetrator to go free. In the case of an eventual exoneration, it can place a great financial burden on the community to repay the exonerated person for the damage caused by the interrogators' deception. The search for truth should not require lies. Based on the research and conclusions of experts in false confessions, several other states have passed legislation limiting or banning the use of deceptive interrogations. The Nebraska Legislature has a responsibility to do the same.

257. *Id.* at 182.

258. *Id.* at 441.