

# New York Law Journal

COMMENTARY

## Lying to minors during interrogations should be illegal

Daniel Pollack and Helene M. Weiss | April 21, 2022



Rule 603 (Oath or Affirmation to Testify Truthfully) of the Federal Rules of Evidence is unambiguous: “Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to

impress that duty on the witness's conscience." The U.S. Supreme Court has ruled that similar language does not apply to police officers when they are interrogating a suspect. *Frazier v. Cupp*, 394 U.S. 731 (1969). Nonetheless, a small number of states have banned police from lying or being deceptive when interrogating minors. New York should follow suit.

The Guide to New York Evidence Article 6: Witnesses & Impeachment, in Subdivision (1), explains: "This rule is derived from Court of Appeals precedent that holds that requiring a witness to take an oath or make an affirmation is a 'traditional safeguard[ ] to truthfulness' (*Matter of Hecht v. Monaghan*, 307 NY 461, 474 [1954]). The requirement of an oath or affirmation, the Court has observed, serves two functions: '(1) to awaken the witness to his moral duty to tell the truth, and (2) to deter false testimony by providing a legal ground for perjury prosecutions' (*see Matter of Brown v. Ristich*, 36 NY2d 183,189 [1975])." That same logic should apply during a criminal interrogation of a juvenile.

Law enforcement officials commonly use deceptive tactics during interrogations in order to acquire a confession of guilt, or a partial confession of guilt, with the goal that a prosecutor may subsequently use such incriminating statements in a criminal hearing or trial. While judges already have discretion to throw out statements that are elicited by use of coercion or force, a discretionary call by a judge does not always guarantee similar outcomes. Moreover, *lying* or using *intentionally deceptive* tactics while interrogating an adult should be considered wholly separate from the application of those deceptive tactics on a child or minor.

Notably, according to the National Registry of Exonerations, 38% of exonerations for crimes allegedly committed by children under the age of 18 involved false confessions, compared with only 11% for adults. This 27% gap can be attributed to a number of factors, including: children’s inability to process information as quickly as an adult, tendency to focus on short term gratification, deference to authority figures, and developmental vulnerabilities, among a host of other psychological and biological components. Simply put, juveniles are especially impressionable and highly susceptible to deceptive interrogation tactics. They require additional protections by our lawmakers to protect their liberty during criminal interrogations.

For Huwe Burton, the consequences of facing a custodial interrogation as a minor were life-altering. In 1989, 16-year-old Burton was forced to recall how he discovered his mother, face down on her bed, stabbed to death. After more than 48 hours of grueling interrogations in a windowless room in a Bronx police precinct, Mr. Burton confessed to a murder he did not commit. Like many minors in a custodial interrogation, Mr. Burton’s interview was not recorded, and the law enforcement officials involved used deceptive tactics in order to coerce a confession. In 2019, a judge exonerated Burton in his mother’s killing after the Innocence Project discovered that detectives used “psychologically coercive techniques” to obtain his confession. Sadly, Burton is one of many exonerees whose false confession was obtained by less than ethical police tactics.

Although not yet passed by the Assembly in New York, Senate Bill S324A (SBS324A) has officially been introduced and is currently in committee. Senate Bill S324A “relates to precluding inadmissible

statements made by defendants because of false facts about evidence or because of a statement that undermines the reliability of the defendant's statement ..." Ultimately, if passed, this law would amend the criminal procedure law in New York as well as the Family Court Act to require the recording of interrogations and the prohibition of deceptive practices during the detention and questioning of a minor by law enforcement.

Past president and current Board Member of the New York State Trial Lawyers Association, attorney Jeff Korek, supports the proposed legislation: "I have to think that using deceptive interrogation techniques—especially on juveniles—would enhance the chances of those minors making a false confession. If we want our justice system to be respected, it must be built on a foundation of truth."

Defendants in criminal cases, including minors, are presumed innocent until proven guilty, and a false confession elicited by deceptive tactics should certainly not be considered a reliable indicator of culpability. By recording interrogations and prohibiting deceptive practices during custodial interrogations, New York will be placing itself at the "forefront of fairness and transparency in the justice system." Senate Bill S324A. Indeed, protecting our children from falsely incriminating themselves should be a crucial consideration for law enforcement agencies, district attorney offices, and our legislators alike.

**Daniel Pollack**, MSW, JD, is a Professor at Yeshiva University's School of Social Work in New York. Contact: [dpollack@yu.edu](mailto:dpollack@yu.edu). **Helene M. Weiss** is an associate attorney at the Marsh Law Firm in New York, and Special Professor of Law, Maurice A. Deane School of Law, Hofstra University. Contact: [heleneweiss@marsh.law](mailto:heleneweiss@marsh.law).