

THE ADA APPLIES TO POLICE INTERROGATIONS:
A FRAMEWORK FOR ACCOMMODATING AND
PROTECTING ACCUSED DISABLED PEOPLE

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I. INTRODUCTION

Imagine you are a d/Deaf person¹ accused of a crime you did not commit. You are brought to an interrogation room by cps who do not

¹ The Difference Between d/Deaf and Hard-of-Hearing, AI-MEDIA: INSIGHTS, <https://www.ai-media.tv/ai-media-blog/the-difference-between-d-deaf-and-hard-of-hearing-2/> (last visited May 3, 2023) (“The ‘uppercase D’ Deaf is used to describe people who identify as culturally Deaf and are actively engaged with the Deaf community. Deaf with a capital D indicates a cultural identity for people with hearing loss who share a common culture and who usually have a shared sign language The ‘lowercase d’ deaf simply refers to the physical condition of having

know sign language. Your verbal communication is fair but requires some patience. You try to explain, but the officers just get angrier with each question as they press on. They are talking fast, but you can somewhat make out what they are saying by reading their lips. You understand a few words every sentence. You nod, not in agreement, but as a signal of trying to understand their questions. Yet, they take those nods as affirming their questions, adopting their statements. You have “confessed.” Case closed, as they would have it.

Or imagine you are someone with an intellectual/developmental disability. You are accused of being an accomplice to a murder. You have a rock-solid alibi, and hardly know the people that you are alleged to have helped commit this crime. The police threaten you, not physically, but with power. They will take your possessions, tell your parents or other people you care about that you committed a violent crime, get you kicked out of school, or fired from your job. Eventually you catch on to their questions and start giving baseless details to a crime you know nothing about. They promised that you could go home if you told them what they wanted to hear, the “truth.” You do. But it is not the truth, and you never go home. Instead, you confessed to murder. You are going to prison.

Unfortunately, these stories are all too common for disabled people accused of crimes. Because Title II of the Americans with Disabilities

hearing loss. People who identify as deaf with a lowercase ‘d’ don’t always have a strong connection to the Deaf community and don’t always use sign language. They may prefer to communicate with speech.”)

Act (“ADA”) applies to law enforcement, disabled people are entitled to reasonable accommodation in interrogations.² Namely, interrogation techniques should be reasonably modified to accommodate disabilities. Yet, currently, there are no universally practiced comprehensive guidelines and safeguards for interrogating people with disabilities.

The Supreme Court of the United States continues to chip away at the protections afforded to factually and legally innocent incarcerated individuals.³ It is more important than ever to modify the way we police to ensure the innocent never get there in the first place. This Comment argues that because disabled people are highly susceptible to coercive police tactics and disproportionately likely to falsely confess or say things that can be used against them when taken out of context,⁴ we must revisit the way we interrogate disabled people as the United States reimagines the way it polices. Specifically, Section II of this Comment examines the

² See 42 U.S.C. § 12132.

³ See Jones v. Hendrix, 143 S. Ct. 1857, 1877 (2023) (Sotomayor, J., dissenting) (no relief for individuals convicted for conduct which is not actually a crime); see also Shinn v. Ramirez, 14 S. Ct. 1718, 1737-40 (2022) (no federal judicial right of innocent incarcerated people to present new evidence which was not previously presented in a state court in a Sixth Amendment ineffective assistance of counsel claim).

⁴ Jeanne Shaner, Vulnerability: What Characteristics Can Predict a False Confession? (May 2021); Rob Hoopes, Trampling Miranda: Interrogating Deaf Subjects, LANGUAGE AND THE LAW IN DEAF COMMUNITIES, 21(Ceil Lucas ed., 2003).

ADA's applicability to law enforcement and the constitutionally protected rights to which individuals are entitled during interrogations. It further analyzes the ways in which disabled people are disproportionately harmed by commonly used coercive police tactics and, consequently, more likely to falsely confess. Section II illustrates these facts through an examination of the cases of Stephen Brodie and Jessie Misskelley Jr., and details the harms of these false confessions on disabled people and society as a whole.

Section III argues that because Title II of the ADA applies to law enforcement, disabled people are entitled to and need comprehensive reasonable accommodation while being interrogated in police custody. This Section explains how not reasonably modifying coercive interrogation tactics is not only facially and directly discriminatory against people with disabilities, but also has a disproportionate impact on them, making it dually ADA-violative. It concludes by offering several suggestions of accommodating custodial interrogation to combat the pervasive impact of the interrogation tactics which disabled people experience. By adopting reasonable accommodation for interrogation of disabled individuals, not only will police comply with the ADA's non-discrimination mandate, but they also will be less likely to arrest innocent individuals and permit those who perpetrate the crimes to go free.

II. BACKGROUND

The ADA was enacted to ensure that people with disabilities enjoy the same rights and opportunities as their non-disabled counterparts.⁵

⁵. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213

Therefore, a disabled person accused of a crime should benefit from the same constitutional protections as a non-disabled person accused of a crime. In part, equality in the carceral system means providing the same safeguards universally. But in other respects, disabled people, depending on their disability, may require and are entitled to reasonable modification to ensure that they are receiving the full benefits of those safeguards. This Section lays that foundation.

Part A will identify Title II of the ADA's purpose, its reasonable modification requirement, and current functional status. Part B identifies the universal rights to which people are entitled in interrogative settings. Specifically, accused people must be able to understand their rights to exercise or waive them.⁶ Part C discusses the ways in which disabled people are more susceptible to coercive police tactics and are more likely to confess to something they did not do than any other population. It will examine the categories of disabilities most susceptible, as well as provide examples of the way this problem manifests.

(1990).

⁶ See *Moran v. Burbine*, 475 U.S. 412, 421 (1986); see also *Oregon v. Elstad*, 470 U.S. 298, 318 (1985); *Colorado v. Spring*, 479 U.S. 564, 572 (1987) (although the Constitution does not require that an accused person understand every possible consequence of waiving his constitutional rights, a waiver of the Miranda warnings must be made knowingly and intelligently).

A. Title II of the ADA

Title II of the ADA (“Title II”) prohibits discrimination on the basis of disability by public entities, regardless of whether they receive federal financial assistance or not.⁷ A public entity under the ADA includes any state or local government itself, or any department, agency, or other instrumentality of a state or local government.⁸ Notably, then, Title II does not apply to the federal government. Instead, the federal government is covered by Section 504 of the Rehabilitation Act of 1973 (“Section 504”).⁹ Because courts interpreting Section 504 apply the same standards and analyses as Title II claims,¹⁰ and indeed Title II’s codification and analysis were greatly influenced by Section 504’s text and interpretation,¹¹ this Comment only addresses Title II’s applicability to state and local law enforcement, though Section 504 is the relevant statute for the federal government equivalent.

Under Title II, a public entity must “[m]ake reasonable modifications to policies, practices, and procedures where needed to make sure that a person with a disability can access the state/local government’s

⁷ 42 U.S.C. § 12132.

⁸ 42 U.S.C. § 12131.

⁹ Rehabilitation Act of 1973 § 504, 29 U.S.C § 794.

¹⁰ *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 735 (9th Cir. 2021).

¹¹ DEPT. OF JUSTICE, CIVIL RIGHTS DIV., OFF. ON THE AMERICANS WITH DISABILITIES ACT, *THE AMERICANS WITH DISABILITIES ACT. Title II technical assistance manual* (1992).

programs, services, or activities.”¹² However, public entities do not have to provide a reasonable accommodation if it would fundamentally alter the nature of the government’s scheme.¹³ For instance, though a governmental assistance program should provide a qualified interpreter for d/Deaf people who need to understand the terms of the program,¹⁴ that same governmental assistance program likely would not have to remove or modify certain provisions to include different services specifically for disabled people.¹⁵

Like Section 504, Title II contains a qualification standard that disabled people must meet to be protected by its provisions.¹⁶

Specifically,

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential

¹². State and Local Governments, ADA.GOV, <https://www.ada.gov/topics/title-ii/> (last visited May 3, 2023).

¹³. Id.

¹⁴. Id.

¹⁵. Cf. *Alexander v. Choate*, 442 U.S. 287, 309 (1986) (identifying the limits of reasonable accommodations in a Section 504 context before codification of the ADA).

¹⁶. 42 U.S.C. § 12131(a)(2).

eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.¹⁷

Notably, Title II prohibits discrimination “by reason of” disability.¹⁸ Accordingly, some circuit courts hold that Title II (and Section 504) only focuses on intentional discrimination, and not a “disparate impact” felt by disabled populations.¹⁹ On the other hand, other courts hold that disparate impact is a viable claim under both Title II and Section 504.²⁰ Therefore, in some states, qualified disabled people can challenge “facially neutral” practices “which ultimately negatively impact” them because of their disability status.²¹ As explained below, custodial interrogation may in fact meet the intentional discrimination standard.²²

¹⁷. Id.

¹⁸. 42 U.S.C. § 12132.

¹⁹. See Doe v. BlueCross BlueShield of Tennessee, Inc., 926 F.3d 235, 241 (6th Cir. 2019).

²⁰. See Payan, 11 F.4th at 740 (9th Cir. 2021); see also Doe 1 v. Perkiomen Valley Sch. Dist., 585 F. Supp. 3d 668, 701 (E.D. Pa. 2022).

²¹. Margot Tierney, Disparate Times Call for Disparate Measures: Can Disabled Individuals Bring Disparate Impact Claims Under ADA and Rehabilitation Act?, U. CINCINNATI L. REV. BLOG (Apr. 22, 2022), <https://uclawreview.org/2022/04/22/disparate-times-call-for-disparate-measures-can-disabled-individuals-bring-disparate-impact-claims-under-ada-and-rehabilitation-act/>.

²². See infra § III.B.

This next Part will discuss custodial interrogation, a practice which in some situations has both a direct and disproportionate discriminatory impact on disabled populations, as more thoroughly articulated in Section III of this Comment.²³

B. Universal Rights in an Interrogation

The Fifth Amendment of the United States Constitution protects people accused of crimes from self-incrimination.²⁴ In addition to its substantive provisions, the Fifth Amendment also contains a procedural aspect which states that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.”²⁵ By virtue of the Fourteenth Amendment’s Due Process Clause, the Fifth Amendment’s command applies to the states.²⁶

In Miranda v. Arizona, the Supreme Court of the United States applied the Fifth Amendment’s spirit to custodial interrogations.²⁷ Specifically, it held that a defendant’s statements made in custodial settings are inadmissible at a criminal trial unless the government provides, and proves it provided, “. . . procedural safeguards effective to

²³. See *infra* § III.B.

²⁴. U.S. CONST. AMEND. V (“[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”).

²⁵. Id.

²⁶. *See* *Malloy v. Hogan*, 378 U.S. 1, 3 (1964); *see also* *Dickerson v. United States*, 530 U.S. 428, 434 (2000).

²⁷. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

secure the [Fifth Amendment's] privilege against self-incrimination."²⁸ As part of these safeguards, the Court held that an accused person must know of their right to remain silent, that if they waive that right, anything they say can and will be used against them in a court of law, and that they have the right to an attorney, including an appointed one if the accused person is indigent.²⁹ These rights are more formally known as the Miranda "warnings" or "rights."³⁰

A citizen being pulled over by the police and questioned is not a situation which triggers the Miranda rights.³¹ Instead, custody involves a suspect being within police control and reasonably believing she is not free to leave, or her movements being restricted in ways typically associated with a formal arrest.³² Along with custody, the interrogation prong of the analysis occurs when a person is subject to either express questioning, or its functional equivalent.³³ Taken together, custodial interrogation is a police-dominated atmosphere

^{28.} Id.

^{29.} Id.

^{30.} What Are Your Miranda Rights?, MIRANDAWARNING.ORG, <http://www.mirandawarning.org/whatareyourmirandarights.html> (last visited April 1, 2025).

^{31.} Id.

^{32.} Miranda, 384 U.S. at 444 (1966).

^{33.} See Rhode Island v. Innis, 446 U.S. 291, 301 (1980) (interrogation occurs when police know or should know that their words or actions are likely to elicit an incriminating response).

that is compulsory in nature but has not yet risen to a severe level of coercion.³⁴ Notably, however, Miranda and its progeny does not protect against strategic deception by the police, but instead safeguards against the overwhelmingly coercive aspect of custodial interrogation.³⁵ Finding a balance between the two is objective in nature and requires an examination of all surrounding circumstances of the custodial interrogation, including how a reasonable person of like age, experience, and intelligence would perceive his or her freedom to leave and/or not answer questions without invoking such rights.³⁶

Relatedly, part of Miranda's safeguards is the inherent necessity that accused people actually understand those rights.³⁷ This next Part examines why this requirement is complicated when a disabled person is accused and subsequently interrogated.

C. Disabled People are More Likely to Falsely Confess

“False confessions [are] the leading cause of wrongful convictions in homicide cases.”³⁸ Of the 317 post-conviction exonerations based

^{34.} See Miranda, 384 U.S. at 461, 467.

^{35.} See id.; see also Frazier v. Cupp, 394 U.S. 731 (1969) (deceptive interrogation tactics by the police are legal).

^{36.} See id.; see also JDB v. North Carolina, 564 U.S. 261 (2011) (the age of a disabled minor is a relevant inquiry for the Miranda custody analysis).

^{37.} Miranda, 384 U.S. at 471.

^{38.} Facts and Figures, FALSECONFESSIONS.ORG, <https://falseconfessions.org/fact-sheet/#:~:text=More%20than%20two%2Dthirds%20of,there%20have%20been%20250%20exonerations> (last visited May 3, 2023).

on exclusionary DNA evidence in the United States, 30% are due to false confessions or otherwise falsely admitting guilt, like with a plea deal.³⁹ The police can trick just about anybody into confessing. They can lie, intimidate, fabricate evidence, persuade people that if they “do the right thing” and tell the police what they want to hear, they can go home, etc.⁴⁰ These high pressure environments and coercive tactics can make anyone confess to something they did not do, even if they think they would never confess to a crime they did not commit.⁴¹ Subpart 1 of this Part explores those interrogation tactics; Subpart 2 examines why they are especially heightened and disproportionately felt by disabled populations.

1. Interrogation Tactics

Law enforcement officers are trained to pull incriminating statements out of accused people in custodial interrogation settings. They are experts at it, even if the accused is completely innocent. First, police can lie. They can make up evidence, tell people they want to help them, insincerely sympathize with and relate to them, and tell them that they can get the accused some type of deal if they talk.⁴²

^{39.} Id.

^{40.} See Frazier, 394 U.S. at 739; see also Howard W. Long, II, Tactics the Police Could Use to Get You to Confess to Committing a Crime, BROWNING & LONG: LIBRARY, <https://www.browninglonglaw.com/library/how-the-police-could-trick-you-into-confessing.cfm> (last visited May 3, 2023).

^{41.} Long, supra note 40.

^{42.} Id.

Police can also lead into the answer they want to hear.⁴³ Often, leading questions are longer, detailed questions with an obvious yes or no answer.⁴⁴ For example, a regular interrogation question without trying to elicit a clear response looks like, “where were you last night?”⁴⁵ In contrast, a leading question ends with phrases like, “weren’t you?”, “did you?”, “right?”, or start with “isn’t it true?”⁴⁶ For example, “isn’t it true that you were in Cincinnati last night?” Here, the obvious answer police are looking for is “yes”, or they would not be asking it.⁴⁷ Leading questions are a tricky interrogation tactic because, often, nervous people or individuals who are trying to cooperate may “inadvertently answer this type of question in the way police want and make incriminating statements that they will use against you.”⁴⁸ Though an individual has not confessed with her own words or recollection, the police can spin the

^{43.} Id.

^{44.} Sydney A. Beckham, Hiding the Elephant: How the Psychological Techniques of Magicians Can Be Used To Manipulate Witnesses at Trial, 15 NEV. L.J. 632, 643-44 (2015) (citing BLACK’S LAW DICTIONARY 1029 (10th ed. 2014) (a leading question is one that “suggests the answer to the person being interrogated; esp., a question that may be answered by a mere ‘yes’ or ‘no.’”).

^{45.} See Id.

^{46.} See Id.

^{47.} See Id.

^{48.} Long, supra note 40.

responses to show that she adopted their statements, or admitted guilt, with the answers the police clearly elicited from her.⁴⁹

2. What Makes Disabled People More Susceptible

Disabled people are even more likely to confess to something they did not do.⁵⁰ This Subpart will discuss two common categories of disabilities in which we see disproportionate false confessions, though the categories are neither exclusive nor exhaustive. Subsection (a) discusses intellectually/developmentally disabled people who are accused; Subsection (b) discusses accused d/Deaf people.

a. Intellectual/Developmental Disabilities

For purposes of this Comment, the author will not discuss the levels and ranges of “severity” for intellectual/developmental disabilities (“I/DD”). Like non-disabled people, people with I/DD range in abilities, function, and characteristics. This Subsection is intended to be broad not to generalize, but for breadth and to offer a more holistic approach to the problems disabled people could and do face in custodial interrogation settings, regardless of ability.

People with I/DD can be easily persuaded. It is sometimes more difficult to fully understand the consequences of a false confession in a high-pressure, coercive environment because the main goal at the time is to get out of the interrogation. Additionally, heightened sensitivity to stress may inaccurately manifest as displays of guilt rather

⁴⁹. Id.

⁵⁰. Samson J. Schatz, Interrogated with Intellectual Disabilities: The Risks of False Confession, *STANFORD L. REV.* 643, 645 (2018).

than realities of stress. In the United States, adults with disabilities are almost five times more likely to report mental distress than adults without disabilities.⁵¹ Simply put, people with I/DD are categorically more vulnerable in traumatic situations than their non-disabled counterparts.⁵² “Because of limited knowledge, social skills, and verbal skills,”⁵³ a result of both their disabilities and the social, political, and educational discrimination and exclusion that people with I/DD experience, “they are more vulnerable to being exposed to abuse.”⁵⁴ As more thoroughly illustrated below, a shift in the way police interrogate disabled people which parallels the protections that the U.S. affords to accused-children may be illustrative to protect against this type of discrimination.⁵⁵

Similarly, I/DD people may not be able to fully understand their rights.⁵⁶ Per Miranda, criminal suspects must be afforded the opportunity

^{51.} Robyn A. Cree, PhD et al., Frequent Mental Distress Amount Adults, by Disability Status, Disability Type, and Selected Characteristics – United States, CDC MORBIDITY AND MORTALITY WEEKLY REPORT (2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6936a2.htm?s_cid=mm6936a2_w.

^{52.} Pat Wilcox, Trauma and Developmental Disabilities, TRAUMATIC STRESS INSTITUTE, <https://www.traumaticstressinstitute.org> (search “Trauma and Developmental Disabilities” in the search bar; then choose the first option) (last visited May 3, 2023).

^{53.} Id.

^{54.} Id.

^{55.} See infra § III.C.

^{56.} Sheri Lynn Johnson; John H. Blume; Amelia Courtney Hritz,

to understand the rights presented to them in order to validly waive those rights, i.e., talk to police without an attorney present.⁵⁷ In order for a waiver of one's Miranda rights to be valid, it must be knowing, voluntary, and intelligent.⁵⁸ More specifically, the accused person must have the "capacity" to understand the warnings in order to waive the right or reap the benefits of the safeguards in custodial interrogation.⁵⁹ As a 2020 study featured in Law and Human Behavior acknowledged, "IQ" and other related ways to quantify "working memory" or intelligence bear little results on the effectiveness of Miranda warnings or the ability to understand and waive them for people with I/DD.⁶⁰ Instead,

[t]he current results indicated that verbal ability is the strongest predictor of Miranda recall and vocabulary knowledge of individuals with intellectual disability . . . Perhaps the most important finding from the current study is that individuals with intellectual disability display remarkably low abilities relevant to comprehending Miranda rights. This suggests that this population is at significant risk to execute Miranda waivers

Convictions of Innocent People with Intellectual Disability, 82 ALB. L. REV. 1031, 1031 (2018).

⁵⁷. Miranda v. Arizona, 384 U.S. 436, 437 (1966).

⁵⁸. Id.

⁵⁹. Id.

⁶⁰. Sydnee Erickson et al., The Predictive Power of Intelligence: Miranda Abilities of Individuals with Intellectual Disability, 44(1) LAW AND HUMAN BEHAVIOR 60, 66-67 (2020).

without the prerequisite proficiency to do so in knowing, voluntary, and intelligent manner.⁶¹

Interestingly, this study's emphasis on vocabulary knowledge and verbal ability bearing direct consequence on a valid understanding of Miranda and waiver of its rights is illuminating and directly applicable to the next Subsection exploring custodial interrogation issues, which d/Deaf people face.

b. d/Deaf and Hard of Hearing People

Like people with I/DD, d/Deaf people may not be able to understand their constitutional rights during interrogation. This is especially true if their only communication mechanism consists of sign language, and a qualified interpreter is not provided at the outset of interrogation. The issue with verbal and non-verbal communication is two-fold: exclusive verbal communicators cannot understand nonverbal communication, and exclusive nonverbal communicators cannot understand verbal communication. For example, Rob Hoopes in Language and the Law in Deaf Communities wrote a particularly effective analysis of the ways in which body language and facial expressions directly supplement, and are inextricably part of, American Sign Language (ASL) communication.⁶² For instance, head nodding and shaking, lowering and raising eyebrows, leaning your person to the left or right, and using certain "eye gazes" to emphasize words and propositions are essential to effective ASL.⁶³ Even

⁶¹. Id. at 66.

⁶². Hoopes, supra note 4.

⁶³. Id.

with someone who can make out some ASL at an elementary level, and hence is not a true “qualified” interpreter,⁶⁴ the communication is not intelligently relayed or understood. As such, the Miranda warnings are sometimes not even effectively communicated due to the lack of such understanding or are invalidly waived due to the same.⁶⁵

Second, d/Deaf people are more likely to agree to statements inadvertently and provide innocent responses that imply culpability, whether they use ASL or not.⁶⁶ For instance, “[w]hen a detective asks a D[/d]eaf person suspected of committing a serious crime if they want to answer questions, a “yes” response may or may not be from a place of misunderstanding. The person with a hearing disability may not realize

⁶⁴. ADA Quick Tips – Sign Language Interpreters, ADA NATIONAL NETWORK, <https://adata.org/factsheet/sign-language-interpreters#:~:text=needs%20the%20interpreter.,QUALIFIED%20INTERPRETERS,order%20to%20meet%20this%20standard> (last updated Apr. 3, 2023) (“A qualified interpreter is one ‘who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.’ An individual does not have to be certified in order to meet this standard.”). Id.

⁶⁵. See infra § II.C.3.ii; see also State v. Mason, 53 Or. App. 811, 814, 633 P.2d 820, 823 (Or. Ct. App. 1981).

⁶⁶. Jean F. Andrews, Individuals with Disabilities and the Issue of False Confessions, DEAFINPRISON (Sept. 27, 2012), <https://deafinprison.com/2012/09/27/individuals-with-disabilities-and-the-issue-of-false-confessions/>.

a self-incriminating statement has ensued.”⁶⁷ Relatedly, although head nodding for verbal communicators can be reasonably interpreted as an affirming gesture, “[w]hen a D[/d]eaf person is nodding, it means she or he is listening and sees what you are saying. It does not necessarily mean that person is in agreement with what you are saying.”⁶⁸

Third and finally, sometimes even when a d/Deaf person is provided with a qualified interpreter, that qualified interpreter can do no more than communicate the rights.⁶⁹ Though this is certainly better than non-communication of the rights to begin with, it does not solve the requirement of ensuring the accused person understands the implication of those rights. For instance,

The interpreter may not have been allowed to interrupt the interrogation process and advocate or explain their role. The interpreter sometimes needs to repeat their interpretation one or two more times in different ways with emphasis on important points. Some areas of emphasis may be, “Do you know what this means? If you allow yourself to tell the police what happened,

⁶⁷. Benro Ogunyipe, What Can We Do?, DISCOVER INTERPRETING (Jan. 15, 2020), <https://discoverinterpreting.org/2020/01/15/what-can-we-do/>.

⁶⁸. Working with the Deaf and Hard of Hearing, NEW MEXICO CENTER FOR LANGUAGE ACCESS, <https://nmcenterforlanguageaccess.org/cms/en/courts-agencies/judges-portal/working-with-the-deaf-and-hard-of-hearing> (last visited May 3, 2023).

⁶⁹. Ogunyipe, supra note 67.

then they might use your statement as evidence to share with the court (admissible evidence) and you may be guilty of it?”⁷⁰

3. Real Examples

The following tragic stories evidence these truths. Beginning with Subsection (a), the story of Jessie Misskelley, just one individual part of the infamous “West Memphis Three,” illuminates the multifaceted problems with interrogating I/DD people. Subsection (b) concludes this Section with the story of Stephen Brodie, a deaf man who was interrogated without a qualified interpreter for a crime he did not commit.

a. West Memphis Three

On May 5, 1993, in West Memphis, Arkansas, three eight-year-old boys, Christopher Byers, Michael Moore, and Stevie Branch, were abducted and brutally murdered in the woods near their neighborhood.⁷¹ After a series of corrupt witch-hunts by lead Detective Bill Durham,⁷²

^{70.} Id.

^{71.} Douglas O. Linder, The Memphis Three Trials: A Chronology, FAMOUS TRIALS, <https://famous-trials.com/westmemphis/2236-chronology> (last visited May 3, 2023).

^{72.} Id. West Memphis was a “southern town of God-fearing Baptists.” Sean Flynn, Three at Last!: The Story of the West Memphis Three, GQ (Dec. 7, 2011), <https://www.gq.com/story/west-memphis-three-trial-story-sean-flynn-gq-december-2011>. Given Damien’s penchant for wearing black, his musical tastes (his beloved Metallica tunes provide an eerie soundtrack in Paradise lost), and his interest in the pagan religion of

West Memphis police brought Jessie Misskelley, a seventeen-year-old individual with known I/DD, in for questioning.⁷³ After initially denying any involvement, several hours into the interrogation, Jessie eventually fell victim to the police's manipulative tactics, and told them what they obviously wanted to hear: he committed the murders of the three little boys at the behest of Damien Echols and his friend Jason Baldwin.⁷⁴

After the initial twelve hours of interrogation, with plenty of time to smooth out the obvious contradictions with Jessie's "confession," West Memphis police recorded his interrogation.⁷⁵ In the tape, officers basically told the story the way they wanted to hear it, and Jessie

Wicca (though his sister said he had considered the priesthood at one point), all served to make him an especially appealing person of interest for the local authorities. The simple explanation: Echols stood out. He was a weirdo. "Just look at 'em. They look like punks," Pam Hobbs, Stevie Branch's mother, says in *Paradise Lost*. He and Baldwin, 16, were best friends. Misskelley, 17, knew them, but they weren't as close with him. Natalie Finn, *Inside the Unknown Story of the Forgotten West Memphis Three*, E! NEWS (Mar. 27, 2020), <https://www.eonline.com/news/1135012/inside-the-unknown-story-of-the-forgotten-west-memphis-three>.

⁷³. Id.

⁷⁴. Id.

⁷⁵. Misskelley's Many Confessions, Jivejuppi.com, https://www.jivepuppi.com/misskelleys_many_confessions.html last visited May 3, 2023).

provided simple yet contradictory responses.⁷⁶ Jessie recounted his experience years later in the 2013 documentary “Devil’s Knot”⁷⁷:

I kept telling Gary Gitchell I wanted to go home. He said I could go home in a minute, then he kept asking me the same questions, over and over again. From that point it just got rougher on down. They asked me, how did I know so much about the murder if I didn’t do it? I kept telling him I didn’t know who did it - I just knew of it- what my friend told me. But they kept hollering at me. [] I had to go through the story again until I got it right. They hollered at me until I got it right. So whatever he was telling me, I started telling him back. But I figured something was wrong, ‘cause if I’d a killed ‘em, I’d a known how I done it.⁷⁸

Jessie feared displeasing people and especially loved his father.⁷⁹ Instead of taking Jessie’s age and intelligence into account and modifying their interrogation tactics, the detectives turned the pressure up and

⁷⁶. Linder, supra note 71.

⁷⁷. DEVIL’S KNOT (Worldview Entertainment 2013).

⁷⁸. Misskelley’s Many Confessions, supra note 75.

⁷⁹. False Confessions and the West Memphis Three, INNOCENCE PROJECT (Aug. 23, 2011), <https://innocenceproject.org/false-confessions-and-the-west-memphis-three/>; Alaina Urquhart and Ash Kelley, Episode 123: West Memphis 3 Part 2, WONDERY: MORBID NETWORK (March 7, 2020), <https://wonderly.com/shows/morbid-a-true-crime-podcast/episode/10863-west-memphis-3-part-2>.

capitalized on his lack of understanding.⁸⁰ They reminded Jessie of the \$35,000 award being offered for any information on the murders.⁸¹ He thought he was going to buy his dad a new truck if he cooperated.⁸² He “figured they knew [he] was lying because they was lying too.”⁸³ They told him he could go home after.⁸⁴ “But [his] dad never did show up,”⁸⁵ and Jessie, Damien, and Jason were convicted for the murders of those three little boys despite the lack of any other evidence.⁸⁶ They were all informally exonerated 18 years later.⁸⁷

b. Stephen Brodie

In 1991 Stephen Brodie, a thin, white, deaf man was arrested for stealing quarters from a vending machine.⁸⁸ During his interrogation,

^{80.} Urquhart and Kelley, supra note 79.

^{81.} Id.

^{82.} Id.

^{83.} Id.

^{84.} False Confessions and the West Memphis Three, supra note 79; Id.

^{85.} Urquhart and Kelley, supra note 79.

^{86.} Id.

^{87.} Id. The three took an “Alford plea” in exchange for a sentence of time-served. Id. An Alford plea recognizes the evidence against the defendant while maintaining his factual innocence. Alford plea, CORNELL, https://www.law.cornell.edu/wex/alford_plea (last visited May 4, 2023).

^{88.} Maurice Possley, Stephen Brodie, THE NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3056> (last updated Sept. 9, 2019).

police questioned Stephen about the 1990 abduction and rape of a five-year-old girl, just one of many abductions and assaults in Richardson, Texas around that time.⁸⁹ Police interrogated Stephen for eighteen hours without an interpreter, and he eventually “confessed.”⁹⁰ Yet, the details Stephen recounted were materially incorrect—44 of the 46 details Stephen provided were either inaccurate, or not mentioned at all.⁹¹ After a series of failed attempts by police to pin Stephen for other crimes, he eventually pleaded guilty to the rape of the five-year-old little girl in exchange for a five-year sentence.⁹² If he stood trial, he faced a possible 99-year sentence.⁹³

Evidence exonerated Stephen and pointed to a new suspect twenty years later.⁹⁴ “[P]olice failed to tell Brodie’s attorney that Brodie, the victim, and the victim’s family were excluded as the source of the hair found on the victim’s blanket.”⁹⁵ The fingerprint found at the crime scene did not match Stephen, but instead belonged to a convicted sex offender

^{89.} Id.

^{90.} Id.

^{91.} Id.

^{92.} Id.

^{93.} Id.

^{94.} Carlin Miller, Stephen Brodie: Deaf Man Convicted of Child Rape, Cleared 20 Years After Crime, CBS NEWS (Sept. 28, 2010, 7:35 PM), <https://www.cbsnews.com/news/stephen-brodie-deaf-man-convicted-of-child-rape-cleared-20-years-after-crime/>.

^{95.} Possley, supra note 88.

who was the suspect in several other assault cases in Richardson at the time.⁹⁶

Having identified the harsh realities of interrogating disabled people without reasonable modification, what can we do about it? This next Section addresses that question.

III. DISCUSSION

Title II of the ADA applies to state and local law enforcement because they are programs of state and local governments.⁹⁷ Hence, any activity by state and local law enforcement is governed by Title II,⁹⁸ including interrogations.⁹⁹ In turn, this should mean that interrogative settings and tactics are reasonably modified to ensure that accused disabled

^{96.} Id.

^{97.} See supra § II.A; see also Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement, U.S. DEPARTMENT OF JUSTICE, https://archive.ada.gov/q&a_law.htm#:~:text=A%3A%20Title%20II%20of%20the,grants%20or%20other%20Federal%20funds (last visited Feb. 5, 2022).

^{98.} 42 U.S.C. § 12132; see also Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement, supra note 97.

^{99.} *Seremeth v. Bd. of Cmty. Comm'rs Frederick Cty.*, 673 F.3d 333, 338 (4th Cir. 2012) (the ADA applies to police interrogation) (citing *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998)); *Williams v. City of N.Y.*, 121 F. Supp. 3d 354, 368 (S.D.N.Y. 2015) (law enforcement in performing an investigative and/or custodial manner are covered by Title II).

people receive the same universal rights all people are entitled to in interrogation.

This Section offers a framework and command for accommodating disabled people in custodial interrogation settings. Specifically, Part A reiterates that Title II of the ADA applies to custodial interrogation and argues that providing reasonable modification does not frustrate the purpose of such interrogations. Next, Part B asserts that because high-pressure police tactics disproportionately impact disabled people, not modifying such practices is categorical discrimination and thus ADA-violative. Following, Part C offers several reasonable modification strategies that can either and both be internally enforced, and legislatively commanded.

A. Title II Applies to Interrogations

This Comment specifically discusses the custodial interrogation setting as proscribed by the Fifth Amendment, Miranda's protections, and case law clarifying what custody and interrogation mean when taken together.¹⁰⁰ While the author believes that disabled people are entitled to reasonable modification of any interaction with law enforcement, like a standard automobile stop, the limitations within criminal procedure and constitutional law make this analysis and argument difficult, nuanced, and exceeding the scope of this Comment.¹⁰¹

^{100.} See supra § II.B; see also Miranda v. Arizona 384 U.S. 436 (1966); see also Rhode Island v. Innis, 446 U.S. 291 (1980); see also JDB v. North Carolina, 564 U.S. 261 (2011).

^{101.} Id.; see also Miranda, 384 U.S. 436.

As entities subject to Title II's provisions, law enforcement agencies must reasonably modify the way they interrogate an accused, qualified disabled person in custody so that she can enjoy the same rights and protections as a non-disabled person, unless that modification would "fundamentally alter" the nature of the custodial interrogation.¹⁰² As an initial matter, because all individuals are entitled to the Constitution's protections,¹⁰³ including the Miranda rights as directly sourced from the Fifth Amendment's right against self-incrimination,¹⁰⁴ accused disabled people unquestionably meet the essential eligibility requirements "for receipt of services or participation in" custodial interrogation.¹⁰⁵ In some respects, the qualified individual analysis for police interrogation seems redundant given the Constitution's clear demand that all persons are entitled to its protections, anyway.¹⁰⁶

Next, the purpose of an interrogation is to obtain information, with particular emphasis on "formally questioning a person with information

^{102.} See State and Local Governments, supra note 12.

^{103.} U.S. CONST. amend. XIV, § 1 (" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; not deny to any person within its jurisdiction the equal protection of the laws.") (emphasis added).

^{104.} Miranda v. Arizona, 384 U.S. 436 (1966).

^{105.} Your Rights Under the Americans With Disabilities Act, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/ada.pdf> (last updated June 2006).

^{106.} See supra note 103.

about a suspected crime.”¹⁰⁷ Because the goal is “to come to the objective truth, or [obtain] other critical information about the crime,”¹⁰⁸ modification of the way police interrogate disabled people will not frustrate this purpose, but rather directly serves it. For instance, as seen in the case of Jessie Misskelley, because police did not reasonably modify the way they interrogated him, three innocent men served 18 years in prison.¹⁰⁹ In short, the police officers did not come to the objective truth or obtain correct, critical information about the crime. Instead, they were permitted to and did take advantage of Jessie’s known and acknowledged I/DD. This failure to reasonably modify procedures is precisely what the ADA prohibits.¹¹⁰ Further, the problem is additionally evident in Stephen Brodie’s case: because the police did not interrogate Stephen with a qualified interpreter for most of his interview, they took

^{107.} C.P. Romero, et al., Basics of Interviewing and Interrogation, U.S. DEP’T OF JUST. (1982), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/basics-interviewing-and-interrogation#:~:text=Although%20the%20purpose%20of%20both,information%20about%20a%20suspected%20crime.>

^{108.} Kire Babanoski and Ice Ilijevski, Techniques of Conducting Interrogation During Police Investigation of Crimes, 28(6) KNOWLEDGE INTERNATIONAL JOURNAL (2018), https://www.researchgate.net/publication/335027568_TECHNIQUES_OF_CONDUCTING_INTERROGATION_DURING_POLICE_INVESTIGATION_OF_CRIMES.

^{109.} See supra § II.C.3.i.

^{110.} 42 U.S.C. § 12132.

Stephen's confused, inaccurate responses as culpability, allowing an innocent man to go to prison while the real, serial offender remained in the public.¹¹¹

As explained in the next two Parts of this Section, reasonable modification of custodial interrogation does not categorically mean going beyond what Miranda requires. Instead, reasonable modification works to ensure that the spirit of Miranda is actually enjoyed by disabled citizens. Because disabled people are less likely to understand the Miranda warnings as read to them,¹¹² and fully appreciate their implications,¹¹³ modifying the delivery and certainty of such rights merely means that disabled people receive the same rights and treatment as non-disabled people. Notably, however, Miranda and the ADA are both floors and can be supplemented by internal practices and state law.

B. Coercive Police Strategies Violate Title II of the ADA and the Command of Miranda When Applied to Disabled People

As discussed above, federal circuits are divided over whether Title II's provisions allow qualified disabled people to pursue disparate impact claims instead of claims based purely on intentional discrimination.¹¹⁴ Many scholars state that an appropriate analysis of Title II permits disparate impact claims.¹¹⁵ Namely, the legislative intent of the ADA

^{111.} See supra § II.C.3.iii.

^{112.} See supra § II.C.3.

^{113.} Id.; see Sheri Lynn Johnson et al., supra note 56.

^{114.} See supra § II.A.

^{115.} See Tierney, supra note 21; see also Elizabeth

logically concludes that disparate impact claims are included in its provisions.¹¹⁶ Without reaching the merits of those arguments, the author agrees with the conclusion that, due to Congress' statutory command to construe the text of the ADA broadly,¹¹⁷ disparate impact claims are pursuable under Title II of the ADA in addition to claims of intentional discrimination. As such, this Part will assume that in addition to directly violating the spirit and text of the ADA, failing to reasonably modify custodial interrogation techniques also has a disproportionate impact on disabled people.¹¹⁸

1. Coercive Interrogation Tactics Intentionally Discriminate Against Disabled People

The question of whether some police tactics are facially neutral remains in question. In the case of Jessie Misskelley, police seemingly used his disability against him. For instance, despite denying ever knowing Jessie had an I/DD when the validity of his guilt was questioned years later,¹¹⁹ the police's actions during the interrogation directly

Schwartz, Disparate Impact Claims and Federal Disability Discrimination Law, N.Y.U. PROCEEDINGS (Nov. 17, 2022), <https://proceedings.nyumootcourt.org/2022/11/disparate-impact-claims-and-federal-disability-discrimination-law>.

¹¹⁶. Id.; see also Schwartz, supra note 115.

¹¹⁷. Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. § 12101 et seq. (2008).

¹¹⁸. See supra § II.C.2.

¹¹⁹. Urquhart and Kelley, supra note 79.

contradict this. Specifically, detectives asked him if he knew what a penis was after Jessie described one of the little boy's cuts to his "bottom."¹²⁰ They insinuated that he did not know how to tell time, corrected many parts of his supposed "recollection,"¹²¹ and informed him that the polygraph test could read his mind.¹²² These questions and methods would not be used by police when interrogating non-disabled individuals.¹²³ They did not apply these same methods with Damien Echols or Jason Baldwin, the two other boys accused of the murders and who did not have disabilities, for instance.¹²⁴

Or, think of Stephen Brodie and the many other d/Deaf and hard of hearing individuals who are forced to sit through interrogation without a qualified interpreter, or the functional equivalent.¹²⁵ Is requiring a d/Deaf

^{120.} Madison Gregory, Jessie Misskelley Jr Confession in West Memphis Three Case, DPD LAW (Feb. 3, 2022), <https://www.dpdlaw.com/jessie-misskelley-jr-confession/>.

^{121.} Id.

^{122.} See Urquhart and Kelley, supra note 79.

^{123.} Id.

^{124.} Id.

^{125.} See Talila A. Lewis, In Georgia, Imprisoned Deaf and Disabled People Don't Stand a Chance, ACLU (June 20, 2018), <https://www.aclu.org/news/disability-rights/georgia-imprisoned-deaf-and-disabled#:~:text=The%20criminal%20legal%20system%20is%20stacked%20against%20many,longer%2C%20suffering%20more%2C%20and%20returning%20to%20prison%20faster> for a brief yet

accused person to answer questions without, first, understanding his rights, and second, understanding the questions being asked to him, a facially neutral tactic? Would we allow hearing suspects to not have the chance to understand their rights or the very questions that will determine their culpability or not? The author hardly believes so.

2. Coercive Interrogation Tactics Disproportionately Impact Disabled People

Assuming high-pressure interrogation tactics are facially neutral, such as leading questions, making up evidence, and insincerely promising aid, etc.,¹²⁶ they can be and are disproportionately experienced by disabled people.¹²⁷ Again, as shown in the case of Jessie Misskelley, he was unable to understand the consequences of his false confession because he reasonably believed that, because he had not done anything wrong and he believed that the police knew he was lying when he recounted the story of murdering those little boys, he was going to go home and receive the \$35,000 award because of it.¹²⁸ These false beliefs were a direct result of the compulsory nature of the interrogation, coupled with the fact that “[c]ompared to the general population, persons with [I/DD] display greater suggestibility, tendency towards acquiescence, and inattentiveness to long-term consequences, which makes them especially

holistic view of the ways in which d/Deaf people are discriminated against in the American carceral system.

¹²⁶. See supra § II.C.1.

¹²⁷. See supra § II.C.2; see also supra § II.C.3.

¹²⁸. See supra § II.C.3.i.

vulnerable to deceptive tactics.”¹²⁹ Reiterating, Miranda does not forbid mere deception, but rather forbids coercion.¹³⁰ Some facially neutral interrogation tactics used on disabled people, however, uneven the balance and blur the lines between the two. As such, law enforcement must have tools to modify their practices to avoid the overwhelming compulsory nature that disabled people feel, even and especially if a nondisabled person would not feel it.¹³¹

The Ninth Circuit Court of Appeals addressed disparate impact due to custodial interrogation techniques in Folkerts v. City of Waverly.¹³² There, the Court acknowledged that disparate impact claims under Title II were at least tenable.¹³³ The plaintiffs in Folkerts alleged that the City defendant both intentionally discriminated against their I/DD

^{129.} Lauren Rogal, Protecting Persons with Mental Disabilities from Making False Confessions: The Americans with Disabilities Act as a Safeguard, 47 N.M. L. Rev. 64 (2017) (citing Saul M. Kassin et al., Police-Induced Confessions: Risk Factors and Recommendations, 34 L. & Human Behav. 3, 12 (2010)).

^{130.} See Miranda v. Arizona, 384 U.S. 436, 535 (1966); see also supra § II.B.

^{131.} See infra § III.C.

^{132.} Folkerts v. City of Waverly, 707 F.3d 975, 984 (8th Cir. 2013).

^{133.} Id. (considering a Title II disparate impact claim based on custodial interrogation, but ultimately affirming summary judgment for defendant city on the basis that it did provide a reasonable modification for the disabled accused person).

son when it did not reasonably modify its interrogation tactics, and that such interrogation tactics had a disparate impact on him because of his disability.¹³⁴ Namely, their son “was denied the benefit of the ability to communicate, a benefit afforded [to] others without Travis’s disability.”¹³⁵ The court acknowledged the interconnection between disparate impact and intentional discrimination claims under Title II: “their disparate treatment claim is [] analytically similar to their failure-to-accommodate claim.”¹³⁶ Yet, because the officer

altered his questioning style, more fully explained the Miranda rights, interviewed [the son] in a less intimidating room, drove [him] to his parents’ home and explained the situation to them, and arranged alternative and friendlier booking procedures . . . the defendants’ accommodations were reasonable even if they were not necessarily “best practices—practices that in other circumstances could be evidence of a failure to accommodate.”¹³⁷

The modifications practiced by the officer in Folkerts are just a few of the accommodation techniques law enforcement should practice when accommodating disabled people. This next and final Part will elaborate on those methods and explore others.

^{134.} Id. at 982.

^{135.} Id. at 983. Interestingly, the plaintiffs pointed to the city’s practice of providing interpreters for ASL users.

^{136.} Id. at 984.

^{137.} Id. (quoting Seremeth v. Bd. Of Cnty. Comm’rs Frederick Cnty., 673 F.3d 333, 340 (4th Cir. 2012)).

C. A Reasonable Modification Approach to Interrogations

When disabled people are accused and subsequently interrogated in police custody, not reasonably modifying the tactics which create an overwhelming compulsory environment is an ADA violation—either directly or disparately. Like all accommodations, reasonable modification of custodial interrogation should be determined ad hoc and on a case-by-case basis. In other words, reasonable modification should be situation-, person-, and disability-specific. Other times, however, a more universal approach to accommodating disabilities in general can be a useful practice.

As an initial matter, the disability community at large generally rejects its comparison and like treatment to children—and for good reason.¹³⁸

Infantilization is often a form of ableism. Some people use condescending and patronizing language when talking to people with disabilities. They may raise their voices and speak slowly and deliberately, or ignore the person altogether by talking to their companion, sign language interpreter, or another adult instead. This behavior is offensive because it underestimates a person's cognitive abilities and implies that people with disabilities are

¹³⁸. Gary Drevitch, The Infantilization of Elders and People With Disabilities, DISABILITY ADVOCACY RESOURCE UNIT (Aug. 17, 2022), <https://www.daru.org.au/resource/the-infantilization-of-elders-and-people-with-disabilities#:~:text=Infantilization%20is%20often%20a%20form,interpreter%2C%20or%20another%20adult%20instead>.

invisible, don't matter, or don't have anything meaningful to communicate.¹³⁹

The author recognizes this danger and deeply condemns the infantilization and offensive treatment of disabled people.

However, techniques used by law enforcement to recognize and accommodate the special vulnerability children face in the carceral system can be useful tools to offering parallel protections for disabled people, given their unique yet similar vulnerability. For instance, in Illinois, children 15 years or younger who are accused of serious crimes such as homicide or sexual assault require automatic representation by counsel at the outset of and during the entirety of their interrogation.¹⁴⁰ As an initial matter, the right to counsel before interrogation goes beyond

¹³⁹. Id.

¹⁴⁰. See Youth Interrogation: Key Principles and Policy Recommendations, FAIR AND JUST PROSECUTION (Jan. 27, 2022), <https://fairandjustprosecution.org/wp-content/uploads/2022/01/FJP-Juvenile-Interrogation-Issue-Brief.pdf>; Illinois State Legislature (2016), Public Act 099–0882: An Act Concerning Criminal Law, <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099–0882>. California offers a similar requirement. \ Cal. Welfare and Insts. Code, WIC § 625.6, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=625.6&lawCode=WIC. “Kansas and North Carolina have adopted legislation that requires the presence of a parent/guardian or an attorney.” Youth and Interrogation: Key Principles.

Miranda's command.¹⁴¹ However, as a blanket protection, counsel's presence during interrogation of a disabled person can help ensure that the rest of Miranda is complied with. For instance, in the case of I/DD, counsel can explain the consequences of speaking to the police, such as false confessions or other statements which mistakenly imply their own guilt. Or in the case of a d/Deaf accused person, counsel can demand and ensure effective communication of their rights, as well as the questions being asked to them (likely via a qualified interpreter). Finally, and overarchingly, the presence of counsel simply decreases the chances of coercion and unreasonably deceptive law enforcement interrogation tactics that are likely to overwhelm the disabled person into statements which are untrue or otherwise inaccurately stated.¹⁴²

Similarly, Illinois and Oregon have "passed bills establishing a presumption that confessions by children are inadmissible if made as a result of a custodial interrogation in which a law enforcement officer knowingly used deception."¹⁴³ The reasonable modification for disabled

^{141.} See *Miranda v. Arizona*, 384 U.S. 436 (1966) (Miranda warnings are only required when a suspect is in custody and subject to interrogation).

^{142.} Id. at 470. ("With a lawyer present the likelihood that the police will practice coercion is reduced, and if coercion is nevertheless exercised the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the accused gives a fully accurate statement to the police and that the statement is rightly reported by the prosecution at trial.").

^{143.} See Youth Interrogation: Key Principles and Policy Recommendations,

people, then, would be to simply alter the deceptive tactics to decrease the chances of the custodial interrogation reaching the level of coercion that Miranda forbids. Namely, law enforcement should not lie, fabricate evidence, or use leading questions to guide or otherwise inappropriately pressure disabled people into confessing, including giving details to a crime which are not objectively true.

Finally, d/Deaf accused people at the bare minimum require a qualified interpreter to communicate the Miranda rights and subsequent questions during the entirety of interrogation. Congress codified this basic requirement for “judicial proceedings instituted by the United States” in 1978 with the Federal Court Interpreters Act.¹⁴⁴

Many states have since passed similar legislation. Nevertheless, regardless of whether or not a state passes such legislation, the right to an interpreter in federal and state criminal cases is a fundamental right of Deaf and other non[-]English-speaking defendants, which arises from the Fifth, Sixth, and Fourteenth Amendments.¹⁴⁵

supra note 140; Ill. Gen. Assembly, SB2122 (2021): An Act concerning courts, <https://www.ilga.gov/legislation/fulltext.asp?DocName=&Session-Id=110&GA=102&DocTypeId=SB&DocNum=2122&GAID=16&LegID=134773&SpecSess=&Session=>; Or. State Legis., SB418 (2021): An Act Relating to law enforcement interviews of persons under 18 years of age, <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB418>.

¹⁴⁴. The Court Interpreters Act, 28 U.S.C. § 1827.

¹⁴⁵. Hoopes, supra note 4.

Yet, as explained above, the right to a qualified interpreter hardly solves the problem of the inadequate delivery and appreciation of Miranda.¹⁴⁶ Because of the linguistic difference between ASL and verbal communication, coupled with the especially disorienting environment in which custodial interrogation places d/Deaf people,¹⁴⁷ qualified interpreters should be able to modify the conveyance of the communication in custodial interrogation to ensure adequate and meaningful understanding for the d/Deaf person.¹⁴⁸ For instance, modifying the interrogation by offering explanations of the rights afforded to the accused, as well as clarifying the questions being asked greatly decreases the risk of compulsion.¹⁴⁹

Above all else, law enforcement officers should take additional steps to ensure adequate understanding of the custodial interrogation process, including, of course, the Miranda rights, but also the information police are seeking from the accused person. The certainty and delivery of both often requires an understanding of the individual's disability and what strategies can be used to accommodate them. As such, law enforcement needs adequate training on disabled people, their range of disabilities, and how to identify and administer techniques to accommodate them.

^{146.} See Ogunyipe, supra note 67.

^{147.} See e.g., Andrews, supra note 66.

^{148.} See Ogunyipe, supra note 67.

^{149.} Id.

IV. CONCLUSION

Mistakes and oversight happen due to ignorance. It is law enforcement's deliberate and sometimes inadvertent indifference to disabled, accused people's rights that both Title II of the ADA and Miranda, when taken together, seek to forbid. Law enforcement should be adequately trained on the various modification strategies to implement when interrogating disabled people. These considerations should include, but are not limited to, taking the individual's disability, experience, and ability to communicate, including the type of communication, into account. Ultimately, the accommodation provided must result in meaningful access to the intended protections of Miranda. Why? Because the United States carceral system, and in particular policing, has a lengthy history of targeting vulnerable populations. Disabled people have long been over-policed and over-incarcerated. And abusive policing and incarceration themselves are disabling. When we discuss the reform of our carceral system and the way we police, it is vitally important that we do not leave people with disabilities behind and continue to allow innocent disabled people to be convicted of crimes they did not commit.

