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The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

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D'AURIA, J., dissenting. To navigate our system of justice, citizens are required to not only understand their rights but, also, the consequences of exercising or waiving those rights. This is difficult enough for many citizens. That difficulty can be exacerbated when there are obstacles interfering with citizens' understanding of their rights. The protections mandated by *Miranda* v. *Arizona*, 384 U.S. 436, 467, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), are intended to guard against "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." These safeguards must be "effective to secure the privilege against self-incrimination." Id., 444.

In this case, the defendant, William Castillo, claims, among other things, that his status as a juvenile, along with the inaccurate or incomplete information provided by the police to him and his mother, who spoke "[v]ery little" English, led him to believe that the statement he gave to officers could be used against him only in a juvenile proceeding, and the police should have informed him his statement could be used against him if his case were transferred to the regular criminal docket. *State* v. *Castillo*, 165 Conn. App. 703, 705–706, 140 A.3d 301 (2016). The Appellate Court declined to reach the issue of whether the warning given to the defendant and his mother was adequate on the ground that he was not in custody for purposes of *Miranda* when questioned and, therefore, not entitled to warnings in the first place. Id., 722. On appeal to this court, the majority follows suit and, consistent with how this court granted the petition for certification, addresses only the custody question and agrees with the Appellate Court.

Although I admit it is a close question, I would conclude that the defendant was in custody for several reasons, the chief reason among them being that the defendant was a juvenile at the time. Although that factor is not dispositive, it must be considered under *J. D. B.* v. *North Carolina*, 564 U.S. 261, 277, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011). I reach the conclusion that the defendant was in custody due to the totality of the circumstances, including because he was a juvenile and because the officers in this case actually issued him warnings before taking his statement—warnings the defendant claims are deficient—and, therefore, I disagree with the majority's conclusion to the contrary.

I also believe that, irrespective of whether he was in custody while interrogated, the defendant's state constitutional claim can be adjudicated, namely, that the police provide juvenile suspects with a warning, regardless of whether they are in custody, that their statements can also be used against them in a case tried on the

regular criminal docket. When, pursuant to state law, police officers have actually informed the defendant of his rights and obtained a waiver, and the defendant's claim on appeal includes that those warnings misinformed him about the scope of his rights under our state constitution, I believe a court can entertain that claim. I would therefore reverse and remand this case to the Appellate Court to decide the defendant's constitutional challenges to the warnings he received.

I

A

Whether a suspect is "in custody" for purposes of *Miranda* requires examination of "all of the circumstances surrounding [any] interrogation" to determine "how a reasonable person *in the suspect's position* would perceive his or her freedom to leave . . . ." (Emphasis added; internal quotation marks omitted.) *J. D. B.* v. *North Carolina*, supra, 564 U.S. 270–71. This "ultimate inquiry . . . calls for application of the controlling legal standard to the historical facts [and] . . . therefore, presents a . . . question of law . . . over which our review is de novo." (Internal quotation marks omitted.) *State* v. *Mangual*, 311 Conn. 182, 197, 85 A.3d 627 (2014). To assist in this inquiry, this court has developed a "nonexclusive list" of ten factors for courts to consider (*Mangual* factors). Id., 196–97.

Appellate review of a claim that a statement was obtained in violation of *Miranda* requires "a scrupulous examination of the record . . . in order to ascertain whether, in light of the totality of the circumstances, the trial court's finding [as to custody] is supported by substantial evidence." (Internal quotation marks omitted.) Id., 197. This examination is not limited to the facts the trial court actually found in its decision on the defendant's motion to suppress. Rather, we may also consider undisputed facts established in the record, including the evidence presented at trial. See *State* v. *Edmonds*, 323 Conn. 34, 39, 145 A.3d 861 (2016) ("in reviewing the record, we are bound to consider not only the trial court's factual findings, but also the full testimony of the arresting officers; in particular, we must take account of any undisputed evidence that does not support the trial court's ruling in favor of the state but that the trial court did not expressly discredit"); *State* v. *Edwards*, 299 Conn. 419, 439 n.16, 11 A.3d 116 (2011) ("to determine whether the defendant's constitutional rights have been infringed, [w]e review the record in its entirety and are not limited to the evidence before the trial court at the time the ruling was made on the motion to suppress" [internal quotation marks omitted]).

Admittedly, as my introductory paragraphs indicate, my own scrupulous examination of the record leads me to emphasize certain facts or factors not emphasized

by the state, the trial court, the Appellate Court or the majority. That courts and litigants will seek to highlight or explain away certain factors, or compare and contrast the relevant factors in one case to those considered in another case, is a predictable result of court developed multifactor tests, including the *Mangual* factors for measuring custody. Although tests of this nature can often be useful, determining whether a suspect is in custody is a " 'slippery' " task; *State* v. *Mangual*, supra, 311 Conn. 193; and "not always self-evident." *State* v. *Januszewski*, 182 Conn. 142, 158, 438 A.2d 679 (1980), cert. denied, 453 U.S. 922, 101 S. Ct. 3159, 69 L. Ed. 2d 1005 (1981). "No definitive list of factors governs a determination of whether a reasonable person in the defendant's position would have believed that he or she was in custody." *State* v. *DesLaurier*, 230 Conn. 572, 577, 646 A.2d 108 (1994). Indeed, a heavy focus on enumerated factors, or comparisons to other precedents, may eclipse the "ultimate inquiry" before the court, which is case specific: "whether a reasonable person in the defendant's position would believe that there was a restraint on [his] freedom of movement of the degree associated with a formal arrest." (Internal quotation marks omitted.) *State* v. *Mangual*, supra, 194.

B

In my view, any analysis of the question of custody in the present case must *begin* with the fact that the defendant was a juvenile at the time. We have not had occasion to consider the question of the custody of a juvenile by the police since the United States Supreme Court's relatively recent decision in *J. D. B.*, a case neither the trial court nor the Appellate Court cited. In fact, age or juvenile status is not among the ten, nonexclusive *Mangual* factors. After *J. D. B.*, it must be. Compare *J. D. B.* v. *North Carolina*, supra, 564 U.S. 277 ("[age] is . . . a reality that courts cannot simply ignore") with id., 288 (Alito, J., dissenting) ("there is no denying that, by incorporating age into its analysis, the [c]ourt is embarking on a new expansion of the established custody standard").

In particular, the United States Supreme Court in *J. D. B.* rejected the state of North Carolina's argument that age "has no place" in an analysis of whether a "reasonable person in the suspect's position would understand his freedom to terminate questioning and leave . . . ." Id., 271 (majority opinion). *J. D. B.* made clear that "courts cannot simply ignore" a juvenile suspect's age. Id., 277. Instead, the court recognized that a juvenile "subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." Id., 272. The court went on to note that age is "more than a chronological fact," as juveniles "generally are less mature and responsible than adults . . often lack the experience, perspective, and judgment to recognize and avoid choices that could

be detrimental to them [and] are more vulnerable or susceptible to . . . outside pressures than adults . . . .'' (Citations omitted; internal quotation marks omitted.) Id.; see also *State* v. *Riley*, 315 Conn. 637, 658, 110 A.3d 1205 (2015) (noting attributes of juveniles, including ''immaturity, impetuosity, and failure to appreciate risks and consequences'' [internal quotation marks omitted]), cert. denied, U.S. , 136 S. Ct. 1361, 194 L. Ed. 2d 376 (2016). Any statements given during an encounter that a juvenile would reasonably regard as custodial are less likely to be the product of the person's free choice. See *J. D. B.* v. *North Carolina*, supra, 272–73 (''[n]o matter how sophisticated, a juvenile subject of police interrogation cannot be compared to an adult subject'' [internal quotation marks omitted]). If a reasonable juvenile in the suspect's position would feel a restraint on his freedom to the degree of a formal arrest, then the suspect must knowingly and voluntarily waive his rights to remain silent and to have counsel present before any statement he makes may be used against him in court. Id., 268–70; see *Miranda* v. *Arizona*, supra, 384 U.S. 444–45.

These observations, which underpin *J. D. B.*'s rationale, are consistent with, and drawn from, decisions from this court and the United States Supreme Court, including recent cases involving the sentencing of juvenile defendants. See, e.g., *Miller* v. *Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (noting that juveniles are ''more vulnerable'' to outside influences and have ''limited contro[l] over their own environment'' [internal quotation marks omitted]); *Graham* v. *Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (''developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds''); *State* v. *Riley*, supra, 315 Conn. 650, 658 (noting differences in maturity of juveniles versus adults).

C

Therefore, my principal disagreement with the decision of the trial court and the opinion of the Appellate Court is that I find little evidence that those courts examined the defendant's circumstances from the position of a sixteen year old boy. Perhaps because age is not listed among the *Mangual* factors, the trial court did not manifest its consideration of the defendant's age beyond noting that the defendant was nearing his seventeenth birthday. The court did not explain how this fact might be probative of a suspect, under these particular circumstances, feeling that he was *not* dominated by the police. Certainly, a sixteen year old juvenile might be less susceptible to coercion than a younger juvenile, but that comparison says little about how a sixteen year old would feel as compared to an adult in the same situation. In my view, a sixteen year old being questioned in his mother's living room likely would feel

less free to leave or command the officers to leave than an adult questioned in his own house. See *J .D .B.* v. *North Carolina*, supra, 564 U.S. 272–73; see also *Roper* v. *Simmons*, 543 U.S. 551, 569, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) ("[e]ven the normal [sixteen year old] customarily lacks the maturity of an adult" [internal quotation marks omitted]); *State* v. *Riley*, supra, 315 Conn. 660–61 (reversing sentence when trial court did not adequately consider defendant's age and its hallmark features when determining sentence of defendant who was seventeen years old at time of crime). The Appellate Court gave the defendant's age no meaningfully greater attention than the trial court gave, and neither does today's majority.

For example, in concluding that the defendant was not in custody, the Appellate Court, like the majority, compares the facts of the present case to those in *Mangual*. The defendant in *Mangual* was not a juvenile, however. Nor, in my view, was the question of custody in *Mangual* a close case. *Mangual* involved questioning the suspect in a home after seven police officers had entered pursuant to a search warrant and with weapons drawn. *State* v. *Mangual*, supra, 311 Conn. 187 n.3. I do not read *Mangual* to establish a minimum for what actions may be considered custodial interrogation in the home, especially for a juvenile suspect. The fact that there were more officers present in *Mangual*, for a longer period of time and with weapons brandished does little—but only little—to help answer the question of custody in the present case. Although there were only three officers present in this case versus seven in *Mangual*, is a juvenile likely to know that three officers are not that many or to feel free to ask them all to leave? And although the officers did not threaten or physically restrain the defendant in the present case, does that mean a juvenile would not feel restricted by their presence and their intent to question him after confronting him with evidence against him? And even though the interview in the present case ultimately lasted *only* forty five minutes, the juvenile defendant was not told how long it would last when he began giving his incriminating statements, nor was he told whether he would be formally arrested afterward. In short, even though the circumstances in *Mangual* add up to a clearer case for concluding that the adult defendant was in custody—or that things could have been worse for this young man—that conclusion does not mean that, under the circumstances of *this* case, a juvenile in the defendant's position would not feel that he was in a "police-dominated atmosphere." (Internal quotation marks omitted.) Id., 206–207. In this regard, I find precedents that did not involve juvenile defendants—and especially those decided before *J. D. B.*—are not particularly instructive. See, e.g., *State* v. *Kirby*, 280 Conn. 361, 908 A.2d 506 (2006); *State* v. *Johnson*, 241 Conn. 702, 699 A.2d 57 (1997).

In addition to minimizing the significance of the defendant's age, the trial court and the Appellate Court emphasized factors that, in my view, are not properly considered as part of a custody analysis, while ignoring factors that often contribute to establishing a custodial setting. For example, the trial court expressly relied on the fact that "[t]he defendant had prior dealings with police, specifically, an encounter with [the uniformed officer]." But testimony at the suppression hearing established only that the *uniformed officer* remembered *the defendant*; the uniformed officer acknowledged in his testimony at the suppression hearing that he did not know whether the defendant had recognized *him*. In fact, the testimony revealed few details about this prior encounter, surely not enough to know whether it was cordial or hostile, or even how a juvenile in the defendant's position might have perceived the encounter. All we know is that previously the uniformed officer, while assisting a school resource officer during a fight at the defendant's school, had escorted the defendant off a school bus, though it is not clear whether the defendant was involved in the fight or whether the officer touched or restrained the defendant when escorting him away.

The relevance of the trial court's references to this incident is not clear to me. There was certainly no evidence presented to suggest that this prior encounter would have put someone in the defendant's position at ease in the uniformed officer's presence or in the presence of other law enforcement officers not known to the defendant. And a hostile prior encounter would likely have left a person in the defendant's position intimidated by the uniformed officer's later appearance in his mother's home. For this reason, prior contact with law enforcement is generally too speculative of a factor to consider in a custody analysis, and, therefore, any reliance by the trial court on the vague circumstances of this prior incident was misplaced. See *Yarborough* v. *Alvarado*, 541 U.S. 652, 668, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004) (explaining it would be "improper" to consider "prior history with law enforcement" because "the relationship between a suspect's past experiences and the likelihood a reasonable person with that experience would feel free to leave often will be speculative").[1]

The Appellate Court, in explaining why the defendant was not in custody, observed "[t]here is no evidence in the record that the defendant was overly nervous or intimidated during the encounter." *State* v. *Castillo*, supra, 165 Conn. App. 719. But because the question of custody is an objective inquiry, whether *this* defendant was nervous or intimidated is irrelevant when determining how a reasonable juvenile, in the defendant's position, would perceive his freedom of movement. See *J. D. B.* v. *North Carolina*, supra, 564 U.S. 271

("[t]he test, in other words, involves no consideration of the 'actual mindset' of the particular suspect subjected to police questioning").[2] Although the defendant's behavior might bear on whether he voluntarily relinquished his rights under *Miranda*, it should not be part of a custody analysis. Additionally, the Appellate Court observed that the encounter was not coercive because "the police did not enter the house on their own authority . . . but were invited in by [the defendant's mother]." *State* v. *Castillo*, supra, 719. The evidence indicates, however, that the defendant was not present in the living room (where the entry door was located) when the police entered the apartment, so a juvenile in his position would have been unaware of how the police had entered the home or under what authority. And more significantly, the encounter was initiated by the police, not the defendant, which is another factor indicating custody. *State* v. *Mangual*, supra, 311 Conn. 199 ("[w]hen the confrontation between the suspect and the criminal justice system is instigated at the direction of law enforcement authorities, rather than the suspect, custody is more likely to exist" [internal quotation marks omitted]).

Although the trial court and the Appellate Court relied on factors that were irrelevant and unsupported by the record, they did not expressly consider certain factors I consider more relevant, including the fact that, as soon as the defendant had finished signing the forms and before being questioned, he was confronted by one of the detectives with the fact that they already had evidence of his involvement from his companions in the car that night. Immediately after obtaining a waiver, the detective seated near the defendant told him that they had already spoken to the others involved, were aware of his role, and that it was "probably in his best interest not to lie about it . . . ." An officer stating that he believes that the suspect committed a crime and has evidence to prove it may lead a person in the suspect's position and hearing those allegations to conclude that the officer will not permit him to leave. See, e.g., *State* v. *Ross*, 230 Conn. 183, 204–205, 646 A.2d 1318 (1994) (although not dispositive, "[a]n officer's [articulated] . . . beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment [of] whether that individual was in custody" [internal quotation marks omitted]), cert. denied, 516 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995), quoting *Stansbury* v. *California*, 511 U.S. 318, 325, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994); *State* v. *McKenna*, 166 N.H. 671, 683, 103 A.3d 756 (2014) ("accusatory statements made by the officers and directed at the defendant also weigh in favor of custody" [emphasis omitted]), cert. denied, U.S. , 135 S. Ct. 1504, 191 L. Ed. 2d 431 (2015).

I am also persuaded that the fact that both the defendant and his mother were advised of his rights, verbally

and in writing, and asked by the uniformed officer and the detectives who had come to his home to execute waivers, would contribute to a juvenile in the defendant's position feeling a restraint upon his freedom of movement. "Although giving a *Miranda* warning does not, in and of itself, convert an otherwise [noncustodial] interview into a custodial interrogation, it is a factor to be considered by the court." *United States* v. *Bautista*, 145 F.3d 1140, 1148 (10th Cir.), cert. denied, 525 U.S. 911, 119 S. Ct. 255, 142 L. Ed 2d 210 (1998); see also *Slwooko* v. *State*, 139 P.3d 593, 600 (Alaska App. 2006) ("[c]ourts generally agree that the giving of *Miranda* warnings does not convert a [noncustodial] interview into a custodial one . . . although it is a factor that a court may consider when assessing custody"). One commentator has observed, however, that "an overwhelming majority of suspects feel that they are in custody once the [*Miranda*] warnings are read." A. Maoz, "Empty Promises: Miranda Warnings in Noncustodial Interrogations," 110 Mich. L. Rev. 1309, 1328 (2012). It hardly takes an extrajudicial understanding to conclude, once the defendant and his mother had read and been read his legal rights—a familiar incantation that often accompanies arrest—and been asked by three officers to sign forms with police letterhead and containing terms such as "lawyer," "police officer" and "court of law," that a sixteen year old would reasonably feel a restraint upon his freedom of movement. See id., 1324 ("[g]iven the strength of the association between the *Miranda* warnings and formal arrest, a person likely would not feel the increased level of freedom associated with noncustodial interrogation—for example, being able to get up and leave the interrogation or make a phone call to a lawyer—after the warnings have been administered"). Although the trial court noted that the detective told the defendant he could ask them to leave, one detective testified that, apparently, he did not mention this to the defendant until after the defendant had begun narrating his statement.

D

Judging the totality of the circumstances, I find the question of custody to be a much closer call than the majority, the Appellate Court, or the trial court. The defendant was a sixteen year old juvenile who was at home in his mother's apartment when his mother or her boyfriend summoned him to the living room to speak to police officers. There were three police officers waiting for him—two plain clothed detectives with badges displayed, and one officer in uniform. The detectives and the uniformed officer carried firearms. The defendant had seen the two detectives a few days earlier when they originally had come by the home to question him but then left when they learned his mother was not at home. They were back, and this time with a third member of the Torrington Police Department, the uniformed officer, to translate for the defendant's Span-

ish-speaking mother.

The police officers spoke to the defendant in the living room. The defendant and one of the detectives were seated, and the other detective was standing in the living room, closer to the front door of the apartment. The detective seated near the defendant told him about his right to refuse questioning, with the uniformed officer translating the conversation for the defendant's mother. The detective presented the defendant with a form, entitled "Juvenile Waiver," and explained the form to him. The defendant did not ask any questions, indicated that he understood, and initialed and signed the form. Although the form explained that the defendant could refuse to answer questions, it did not explain whether he was, at that time, under arrest. None of the police officers present told him, at that time, that he was not under arrest, that he was free to leave the room or the home, or that he could ask the officers to leave. Nor did they tell the defendant how long the interview would likely last or what would happen to him at its conclusion. The uniformed officer presented the defendant's mother with a parental consent form, which the officer translated into Spanish for her. She initialed and signed it, allowing the officers to interrogate the defendant.

Once the waivers were signed, the detective seated with the defendant then told him that they were there to discuss his involvement in a robbery, that others involved had given statements to police, and it was "probably in his best interest not to lie about it because [they] had . . . evidence that he was there." The defendant then asked, "[w]hat do you want me to do?" The detective replied that he wanted "a statement of his involvement" because the police had other statements "saying what [his] involvement [was] but it's better to come from [the defendant]." The defendant then gave a statement implicating himself in the robbery, with the detective writing down the defendant's statement for him as he narrated it. While the detective was writing the statement, he informed the defendant that he was free to ask the officers to leave.

At the point when he began giving the statement, would a sixteen year old juvenile— surrounded by three armed police officers who initiated contact with him, and having been read his *Miranda* rights and confronted with the evidence against him—know that he was *not* under arrest? Would this juvenile feel free to go—to get up and leave the room after being summoned there at the request of the police officers? Or would he feel free to ask the officers to leave the apartment after his mother let them in to question him? Or would he believe that the police officers were detaining him, given his involvement in a crime? Because I am persuaded that a reasonable sixteen year old in this situation would feel that he was in police custody, I

respectfully dissent from the majority's conclusion to the contrary.

E

The majority makes a somewhat different case—and candidly, in my view, a better case—for custody than the Appellate Court or the trial court, as the majority neither relies on any previous encounter between the defendant and an officer nor relies on the defendant's demeanor or his mother's invitation to the officers to enter her home. Rather, the majority relies principally on the facts that the defendant was questioned at home with his mother present. Although it is not inappropriate for an appellate court undertaking plenary review to reassess and reweigh the totality of the circumstances, such an alternative analysis by a reviewing court does not leave me any more confident that the principal factfinder appropriately sought to view the encounter from the position of a reasonable sixteen year old, as *J. D. B.* demands. See *J. D .B.* v. *North Carolina*, supra, 564 U.S. 281 (not resolving whether juvenile was "in custody when police interrogated him" but remanding case to state court for resolution of that question "this time taking account of all of the relevant circumstances of the interrogation, including *J. D. B.*'s age at the time"). Moreover, the facts of the present case cast doubt on the ability of the defendant's mother to play the role that the majority envisions—and that state law contemplates—in maintaining a noncustodial atmosphere. Specifically, she was not properly informed about the defendant's rights and the consequences of his providing a statement to officers, and, therefore, in my view, her presence was not sufficient to overcome the police dominated atmosphere the defendant experienced.

To be sure, interrogations inside a suspect's home are significantly less likely to present the pressures of a custodial interrogation. See *In re Kevin K.*, 299 Conn. 107, 128, 7 A.3d 898 (2010). But in the present case, even though the defendant was questioned while sitting in the familiar surroundings of the family living room, he was more or less surrounded by three police officers whom he had not invited into the home. He instead had been summoned to the living room to be questioned by them after they were allowed into the home by his mother. He was then questioned after they told him they had evidence he was involved in a crime and after having been given *Miranda* warnings—likely an intimidating experience for anyone, let alone a sixteen year old. And even though the officers eventually told him that he could leave or ask them to leave, they did not tell him so until after he had begun his statement. I doubt a juvenile in those circumstances would feel free to depart or ask the officers to leave his mother's home after she had allowed them inside.

Besides relying on the fact that the home was the

setting for this interrogation, the majority also reasons that the "presence of a parent is generally considered to provide greater protection to a juvenile" who is being interrogated. In support of this proposition, the majority cites General Statutes § 46b-137, which governs the admissibility, in juvenile proceedings, of confessions made outside the presence of a juvenile's parent or guardian. I agree with the majority that § 46b-137 "recognizes the unique role that parents play in protecting their children's rights." Footnote 9 of the majority opinion. The parent's company may help a juvenile feel less dominated by a police presence. In large part, this is because § 46b-137, including its mandatory advisement of rights, is "designed to ensure that the child and the parent or guardian have made a valid decision to make a voluntary admission." *In re Kevin K.*, 109 Conn. App. 206, 220, 951 A.2d 39 (2008), rev'd on other grounds, 299 Conn. 107, 7 A.3d 898 (2010).

In my view, however, any general presumption that the presence of a juvenile suspect's parent has protected him is less relevant in the present case. First, the presence of a parent often can do as much harm in this regard as good, requiring a closer look at the objective circumstances of the parent's involvement. As the majority acknowledges, sometimes a parent's presence enhances the coerciveness of the situation. See, e.g., H. B. Farber, "The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?," 41 Am. Crim. L. Rev. 1277, 1289 (2004). Moreover, when the parent is misinformed or not fully informed of the child's rights, or the consequences of waiving those rights, reliance on the parent's presence to protect the child and keep him from feeling dominated by the police can be misplaced. See id., 1291.

In the present case, the defendant's mother spoke "[v]ery little" English and, therefore, the forms that the police gave her and the defendant to explain the defendant's rights were translated for her line by line. The forms did not mention whether the defendant was in custody at the time or whether the defendant or his mother was free to ask the officers to leave. In addition, as the state conceded during oral argument before this court, the form provided to the mother contained errors that gave flawed advice about whether and how any statements the defendant gave could be used against him. See footnote 12 of the majority opinion. The form initially explained that anything the juvenile said "can and will be used against him/her *during any questioning*," suggesting that anything the defendant said would not be used against him outside of the interrogation. (Emphasis added.) Later in the form it explained that "any statement given can be used *for* or against him/her in a court of law," suggesting that an incriminating statement might actually be used to help the defendant in a court proceeding. (Emphasis added.) The mother's ability to assist the defendant would have been influ-

enced by the information she received from the police, through an interpreter, about the scope of the defendant's rights and the consequences of him giving a statement. As one of the detectives later testified, the parent's and the child's forms "go hand in hand. You give the parental consent [form] prior to doing the juvenile waiver, so it's—it's the parents allowing us to interview the child."

More fundamentally, the defendant has challenged the constitutional adequacy of the warnings provided to him, including those contained in the form captioned "Juvenile Waiver," which was presented to him and read to his mother by the detectives through the uniformed officer as the translator. Specifically, he argued to the Appellate Court, on federal and state constitutional grounds, that the warnings he received "were deficient because they failed to inform [him] that any statement or confession could be used against him in an adult criminal prosecution." If the defendant is right about his claim, specifically, that he and his mother should have been informed that any of his statements could be used not just in a juvenile delinquency proceeding but also in an prosecution on the regular criminal docket—an issue the Appellate Court did not reach and I do not pass upon—then does not the failure to provide this clarity undercut the parent's ability to provide, as described by the majority, "greater protection" to the child and serve the "unique role" that our law, including § 46b-137, contemplates? And does it not also undercut the heavy reliance the state places upon the parent's presence as a factor to maintaining a noncustodial setting?

In light of the defendant's challenge to the adequacy of these forms, and the impact that their alleged inadequacies might have had on the mother's understanding of the defendant's rights or the consequences of him waiving those rights, I have serious reservations about relying on his mother's presence to establish that the defendant would feel free to ask the officers to leave the home, especially when his mother ultimately permitted them to interrogate the defendant after receiving potentially flawed advice.

F

I emphasize that, in reaching my conclusion that the defendant was in custody, I do not mean to suggest that the police officers in the present case did anything untoward. Their conduct in this encounter might well be described as exemplary. Although their forms were flawed, which was likely not of their own doing, they followed state law and the conventions of their department, seeking to interview the defendant only after contacting his mother and permitting her presence. See General Statutes § 46b-137 (b). There is no evidence that they were impolite or used improper force. The presence of the two detectives resulted from depart-

ment protocol that they work in pairs and, in this situation, they required the uniformed officer as an interpreter for the defendant's mother. Their appearance at the house, presumably in their usual work attire and with their usual weaponry, was in no way inappropriate. It is not inconsistent to conclude, however, that the encounter might nevertheless seem custodial from the perspective of a sixteen year old.

A conclusion that the defendant was in custody under these particular circumstances merely requires that the officers—in compliance with state law—ensure that a juvenile suspect understands his rights and the officers seek a waiver of those rights before obtaining a statement from him. That is exactly what the officers set out to do. The defendant's challenge to the warnings contained in the forms may well go nowhere, but if a court were to rule that a juvenile is entitled to a warning that his statements can be used should he be prosecuted on the regular criminal docket, and not just in juvenile court, I have no doubt that the officers would comply.

On the state of this record and the law, the trial court had "no hesitation" in concluding under the circumstances that the defendant's waiver was "knowing, voluntary, and intelligent." I would not rely on the issue of custody to avoid review of the important question of whether the warnings were sufficient and whether the defendant's waiver was therefore valid. Accordingly, I would reverse and remand the case to the Appellate Court to consider this claim.

II

In part I of this opinion, I conclude that, because the defendant was in custody for purposes of *Miranda*, we should remand this case to the Appellate Court to address his claim that the warnings given to him were inadequate under the federal and state constitutions. In this part of the opinion, I suggest that, even if the defendant was not in custody, this should not prevent consideration of at least his state constitutional claim that the police should be required to warn juveniles that their statements can be used against them if they are tried on the regular criminal docket instead of in juvenile court. Rather, largely because of state statute and caselaw, I believe the state constitutional claim the defendant advanced in the Appellate Court arises regardless of his custodial status and should be addressed.

Ordinarily, the need to determine whether the defendant was in custody arises when the defendant was *not* informed of his rights pursuant to *Miranda* because analyzing whether the defendant was in custody dictates whether he was entitled to those warnings in the first place. See *Stansbury* v. *California*, supra, 511 U.S. 322 (*Miranda* warnings required only when suspect is in police custody when interrogated). In the present

case, however, the police *did* provide the defendant with warnings before questioning him, irrespective of whether they believed he was in custody or not. The need for these warnings came about because the defendant was sixteen years old when interviewed. Section 46b-137[3] generally provides that admissions, confessions, or statements by children under the age of sixteen to a police officer or juvenile court official are inadmissible in a delinquency proceeding unless the child's parent, parents or guardian are present and all have been advised (1) of the child's right to counsel, including appointed counsel, (2) the child's right to refuse to make any statements, and (3) "*that any statements the child makes may be introduced into evidence against the child*." (Emphasis added.) General Statutes § 46b-137 (a). A similar protocol applies to sixteen and seventeen year old juveniles, except that the juvenile's parents or guardians do not need to be present during any interview but, rather, the police officer or Juvenile Court official who is questioning the juvenile must make "reasonable efforts to contact a parent or guardian of the child" and advise the child that he "has the right to contact a parent or guardian and to have a parent or guardian present during any interview . . . ." General Statutes § 46b-137 (b).

The advisement of the child's rights is "not simply a pro forma requirement of the statute but an integral component also designed to ensure that the child and the parent or guardian have made a valid decision to make a voluntary admission." *In re Kevin K.*, supra, 109 Conn. App. 220. Thus, decades before the United States Supreme Court modified a good deal of its constitutional jurisprudence related to juveniles in our criminal justice system, our legislature had acted upon its own "concerns for the special vulnerabilities of juveniles . . . ."[4] *In re Kevin K.*, supra, 299 Conn. 115.

In the half century since the statute's enactment, the United States Supreme Court has recognized that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham* v. *Florida*, supra, 560 U.S. 68; see also *Miller* v. *Alabama*, supra, 567 U.S. 471. In particular, and as discussed earlier, on the question of whether a juvenile is in custody for *Miranda* purposes, the United States Supreme Court in *J. D. B.* v. *North Carolina*, supra, 564 U.S. 272, noted that juveniles are generally "less mature and responsible than adults . . . often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them . . . [and] are more vulnerable or susceptible to . . . outside pressures than adults . . . ." (Citations omitted; internal quotation marks omitted.) "[When] subjected to police questioning [juveniles] will sometimes feel pressured to submit when a reasonable adult would feel free to go." Id. Thus, as applied to juveniles, the legislative policy codified in § 46b-137

advances the same laudable goal as *Miranda* warnings generally: to guard against "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda* v. *Arizona*, supra, 384 U.S. 467. For that reason, *Miranda* directed the "use of procedural safeguards effective to secure the privilege against self-incrimination." (Internal quotation marks omitted.) *State* v. *Edwards*, supra, 299 Conn. 426.

A main difference, however, between *Miranda* and § 46b-137 (b) is that, unlike *Miranda*, the statute's mandatory advisement of rights applies irrespective of whether the suspect was "in custody." *In re Kevin K.*, supra, 109 Conn. App. 217–18. It might even be said that under § 46b-137 custody is presumed, or at least irrelevant, when officers are interviewing juveniles and securing statements intended to be used against them.

But what our state law gives, it just as quickly takes away. Paradoxically, it is this progressive state policy—ahead of its time—that in part gives rise to the defendant's state constitutional claim and, at the same time, creates obstacles to its resolution in the present case and, indeed, in many other cases.

Although § 46b-137 (a) and (b) require that officers—regardless of whether the suspect is in custody—advise the juvenile that "any statement the child makes may be introduced into evidence against the child," the statute does not specify in which forum that statement may be introduced as evidence against him.

As a practical matter, even though the statute deals with the admission of confessions in juvenile proceedings, at the time the warnings are administered to a juvenile, three things are not known: (1) what charges the juvenile will face, if any; (2) which forum he will defend himself in, juvenile court or on the regular criminal docket; and (3) whether a court will ultimately conclude he was in custody or not when interrogated. Irrespective of these contingencies, however, the juvenile receives the warnings if officers are following the state statute.

If, however, the juvenile's statement results in a qualifying charge—essentially a serious felony charge—as in the present case, "[t]he court shall automatically transfer" the case to the "regular criminal docket . . . ." General Statutes § 46b-127 (a). When the defendant claims that under § 46b-137 he should have been advised that his statement would be admissible in a case on the regular criminal docket—not just juvenile court as § 46b-137 exclusively governs[5] and the "Juvenile Waiver" form the defendant signed arguably connotes—he will be met with the argument, accepted by the Appellate Court in this case; *State* v. *Castillo*, supra, 165 Conn. App. 728; that the statute does not apply to charges on the regular criminal docket. See *State* v.

Ledbetter, 263 Conn. 1, 11, 818 A.2d 1 (2003) ("the provisions of § 46b-137 [a] do not apply in a case . . . in which the state seeks to use the confession in a proceeding in criminal, rather than juvenile, court"). When the defendant argues alternatively under the state constitution that he had a right to be advised that his statement would be admissible in a case on the regular criminal docket, as the defendant in the present case argued before the Appellate Court, he may be met with the argument that he was not in custody, perhaps largely because of his parent's presence, and, so, he was not entitled to *any* warnings, even the warnings under § 46b-137 (a) the officers were compelled to give and that the defendant challenges as insufficient.

Included among the claims the defendant made in the Appellate Court was that, under article first, § 8, of the state constitution,[6] a juvenile must be informed of the possibility of adult prosecution before he can make a voluntary, knowing, and intelligent waiver of his privilege against self-incrimination. This was separate and apart from his claims that his *Miranda* waiver was invalid and his confession involuntary under due process principles.[7] As the Appellate Court described the defendant's state constitutional claim, the defendant asserted that the officers interrogating him had "failed to advise him that any statements that he made could be used against him not only in any juvenile proceeding but in an adult criminal prosecution . . . ." *State* v. *Castillo*, supra, 165 Conn. App. 705.[8]

Thus, this is not a case in which the defendant argues only that he is entitled to a warning he did not receive—state law directs officers to provide the warnings whether the juvenile suspect is in custody or not should the juvenile's statement be used against him in juvenile court. Rather, the defendant claims that the warning he did receive—which was compelled by state law—was incomplete or misleading under the state constitution. 2 W. LaFave et. al., Criminal Procedure (4th Ed. 2015) § 6.9 (c), p. 925 ("there is an absolute prohibition upon any trickery which misleads the suspect as to the existence or dimensions of any of the applicable rights"). If the defendant is correct that under our state constitution this warning must specifically include an advisement that the statements he makes may be admitted in a case on the regular criminal docket, and not just in juvenile court, it is not clear to me why only juveniles who received a nonspecific warning while in custody would be entitled to that further caution. Statements provided after the giving of this warning may result in charges transferred to the regular criminal docket whether he was in custody or not.

In opposing the defendant's request that we exercise supervisory authority to reach his state constitutional claim, the Appellate Court framed the issue in justiciability terms: "Because we have determined in the pre-

sent case that *Miranda* warnings were not required because the defendant was not subjected to a custodial interrogation, any further discussion about the content of such warnings would be untethered to any actual controversy and, thus, premature." *State* v. *Castillo*, supra, 165 Conn. App. 730. In the Appellate Court's view, the defendant lacked standing because this claim can, apparently, be brought only by those under the age of eighteen who are interrogated under custodial circumstances. As I argue in part I of this opinion, I believe this case qualifies because the defendant was in custody for *Miranda* purposes.

However, even if I am wrong about that, I do not believe we are required to exercise our supervisory authority to reach this issue in the present case. See *State* v. *Lockhart*, 298 Conn. 537, 576, 4 A.3d 1176 (2010). Even a defendant who was *not* in custody when interviewed, but who received a warning that he claims was misleading or incomplete about statements he makes that may be introduced against him, in my view, has a justiciable claim.

I do not know how this challenge would come out. It may well fail because the defendant's argument does not compel a conclusion that our state constitution requires such a warning. Or we may conclude, as we did in *State* v. *Perez*, 218 Conn. 714, 722–28, 591 A.2d 119 (1991), that a due process analysis under the federal constitution[9] that takes into account the lack of such a specific warning among the "totality of the circumstances" suffices to protect the juvenile's rights. But if the Appellate Court agreed with the defendant that the warnings given were inadequate under article first, § 8, of our state constitution, in my view, that court could award him relief.

For these reasons, even if I were to conclude that defendant was not in custody, I would reverse the judgment and remand the case to the Appellate Court to consider that state constitutional question. Accordingly, I respectfully dissent.

[1] In its brief to this court, the state suggests that the defendant's "prior experience with the police," and, particularly, his experience with the uniformed officer in question, "would have lessened the impact of the encounter on him." Even if it were a relevant consideration post-*Yarborough*, given how little is known about the defendant's "prior experience with [law enforcement]" on this record, I cannot draw such an inference. Although *Yarborough* observed that suspects with such experience "may understand police procedures and reasonably feel free to leave unless told otherwise," it also explained that, "[o]n the other hand, they may view [the] past as [a] prologue and expect another in a string of arrests." *Yarborough* v. *Alvarado*, supra, 541 U.S. 668. Thus, because this factor "turns too much on the suspect's subjective state of mind and not enough on the objective circumstances of the interrogation," after *Yarborough* a suspect's prior experience with law enforcement is not a proper factor for determining whether a suspect is in custody. (Internal quotation marks omitted.) Id., 669.

[2] For example, the trial court noted the defendant's " 'mellow' " and "calm" demeanor, based at least in part on the testimony from the uniformed officer and the detectives that he was "mellow," "disengaged," "calm" and had a "like whatever" attitude. These observations about a sixteen year old boy might just as easily be manifestations of false bravado, "immaturity, impetu-

osity, and failure to appreciate risks and consequences," including which court he will end up in. *State* v. *Riley*, supra, 315 Conn. 658.

[3] General Statutes § 46b-137 provides in pertinent part: "(a) Any admission, confession or statement, written or oral, made by a child under the age of sixteen to a police officer or Juvenile Court official shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement unless made by such child in the presence of the child's parent or parents or guardian and after the parent or parents or guardian and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements, and (3) that any statements the child makes may be introduced into evidence against the child.

"(b) Any admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement, unless (1) the police or Juvenile Court official has made reasonable efforts to contact a parent or guardian of the child, and (2) such child has been advised that (A) the child has the right to contact a parent or guardian and to have a parent or guardian present during any interview, (B) the child has the right to retain counsel or, if unable to afford counsel, to have counsel appointed on behalf of the child, (C) the child has the right to refuse to make any statement, and (D) any statement the child makes may be introduced into evidence against the child.

"(c) The admissibility of any admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be determined by considering the totality of the circumstances at the time of the making of such admission, confession or statement. When determining the admissibility of such admission, confession or statement, the court shall consider (1) the age, experience, education, background and intelligence of the child, (2) the capacity of the child to understand the advice concerning rights and warnings required under subdivision (2) of subsection (b) of this section, the nature of the privilege against self-incrimination under the United States and Connecticut Constitutions, and the consequences of waiving such rights and privilege, (3) the opportunity the child had to speak with a parent, guardian or some other suitable individual prior to or while making such admission, confession or statement, and (4) the circumstances surrounding the making of the admission, confession or statement, including, but not limited to, (A) when and where the admission, confession or statement was made, (B) the reasonableness of proceeding, or the need to proceed, without a parent or guardian present, and (C) the reasonableness of efforts by the police or Juvenile Court official to attempt to contact a parent or guardian. . . ."

[4] The legislative history of § 46b-137 and its predecessor, General Statutes (Rev. to 1968) § 17-66d, indicates that it was passed in response to the United States Supreme Court's decision in *In re Gault*, 387 U.S. 1, 55, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), which held that juveniles, like adults, have certain constitutional rights, including the privilege against self-incrimination. See *State* v. *Ledbetter*, 263 Conn. 1, 17 n.24, 818 A.2d 1 (2003).

[5] The Appellate Court determined that, read as a whole, "§ 46b-137 has no bearing on the admissibility of statements offered in adult proceedings." *State* v. *Castillo*, supra, 165 Conn. App. 728.

[6] Article first, § 8, of the Connecticut constitution provides in relevant part: "No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law . . . ."

[7] The defendant, quoting *State* v. *Jackson*, 304 Conn. 383, 419 n.27, 40 A.3d 290 (2012), noted accurately that "[w]hether the defendant was in custody . . . and whether the defendant's statements were voluntary are, although related, analytically separate inquiries." There is, however, "considerable overlap" between the two. Id., 421.

[8] The analysis the defendant advanced in the Appellate Court in support of his state constitutional claim reflects many of the same points about juveniles' vulnerabilities recognized by the United States Supreme Court in *J. D. B.* In particular, the defendant cited authority to establish that juveniles lack maturity to meaningfully waive *Miranda* rights; K. King, "Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children From Unknowing, Unintelligent, and Involuntary Waivers of *Miranda* Rights," 2006 No. 2 Wis. L. Rev. 431, 431–33 (2006); that juveniles waive their rights at higher rates than adults; B. Feld, "Behind Closed Doors: What Really Happens When Cops Question Kids," 23 Cornell J.L. & Pub. Pol'y 395, 429 (2013); that recent neuroscience suggests that juveniles do not reason in the same manner as adults and demonstrate immature decision-making skills; K. King, supra, pp. 434–35; and that even sixteen and seventeen year old juveniles do not fully appreciate the concepts involved with the *Miranda* warnings or the consequences of waiving those rights. See B. Feld, supra, pp. 409–410.

[9] In *State* v. *Perez*, supra, 218 Conn. 714, this court declined to adopt the "rigid rule" the defendant proposed that a "confession is rendered involuntary solely by virtue of the fact that the police did not inform the juvenile that he could be prosecuted as an adult, rather than as a juvenile." Id., 727. This court made clear, however, that because the defendant had failed to provide a cogent state constitutional analysis, it answered this question only as a matter of federal constitutional law. Id., 723. In *Ledbetter* v. *Commissioner of Correction*, 275 Conn. 451, 459, 880 A.2d 160 (2005), cert. denied sub nom. *Ledbetter* v. *Lantz*, 546 U.S. 1187, 126 S. Ct. 1368, 164 L. Ed. 2d 77 (2006), we noted that in *Perez* we "left undecided the issue of whether article first, § 8, requires the police to advise juvenile suspects that they may be prosecuted as adults." *Ledbetter* held that the failure of an attorney to raise the issue left open in *Perez* did not constitute ineffective assistance of counsel. Id., 462.