

# **TRAINING WHEELS TO AUTOMOBILES: ANALYZING VOLUNTARY CONSENT FOR JUVENILE DRIVERS AFTER *BUTLER***

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*In a recent decision, the Arizona Supreme Court held that the age and parental presence of juvenile drivers are relevant, but not determinative, of whether they voluntarily consent to a blood draw under the state's implied consent law. Though juveniles retain the adult privilege of driver licenses, they must now satisfy only a juvenile standard for measuring the voluntariness of their consent. While courts analyze all drivers' voluntariness by a totality-of-the-circumstances standard, this Note argues that considering age and parental presence as factors for juvenile drivers is redundant and overly paternalistic. Such a standard blurs the policy line between public safety and children's rights and provides little practical guidance to law enforcement. Notwithstanding this argument, this Note reviews the decision's primary authority and offers suggestions for implementing the Court's Butler opinion into practice.*

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## INTRODUCTION

Juveniles generally receive special treatment under the law. For example, courts consider a minor's age and parental presence when determining whether juveniles voluntarily consent to police interrogations or searches.<sup>1</sup> These considerations protect juveniles from police coercion and mistakenly waiving their rights without fully comprehending them.<sup>2</sup> However, the law also recognizes that when juveniles make adult decisions, they are treated as adults. Married minors receive adult benefits, minor parents pay child support, and minors who commit violent felony offenses are charged as adults.<sup>3</sup>

Likewise, standard driving laws applicable to adult drivers should apply to licensed juvenile drivers. While juveniles accept the adult privilege of driving, the Arizona Supreme Court's decision in *State v. Butler*<sup>4</sup> altered legal expectations for them. In *Butler*, the Supreme Court held that a juvenile driver's age and

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1. See, e.g., *In re Andre M.*, 88 P.3d 552, 555 (Ariz. 2004) (including juvenile's age and parental presence as factors in totality-of-the-circumstances analysis); *In re Victor B.*, No. CA-JV 2008-0073, 2009 WL 104776, at \*2 ¶ 7 (Ariz. Ct. App. Jan. 15, 2009) (recognizing minor defendant's age as one factor in voluntary analysis).

2. See *Andre M.*, 88 P.3d at 555.

3. See ARIZ. REV. STAT. ANN. § 44-131(B) (1998) (stating a contract made by minor married to an adult is not invalid or voidable based on the person's age); ARIZ. REV. STAT. ANN. § 25-320(N) (2012) (referencing one child support exception for noncustodial parents under 18, thereby acknowledging minor-parents responsibility to pay child support); ARIZ. REV. STAT. ANN. § 13-501(A) (2010) (instructing attorneys to prosecute 15- to 17-year-old juveniles for crimes including first- and second-degree murder, forcible sexual assault, and armed robbery).

4. 302 P.3d 609 (Ariz. 2013).

parental presence were relevant considerations in analyzing whether a minor consented to a blood test voluntarily under the state's implied consent law.<sup>5</sup> Although courts apply these factors in other juvenile consent circumstances, considering them as factors in an impaired driving analysis overlooks the marked differences in contexts.<sup>6</sup> For this reason, this Note argues that juvenile drivers' voluntary consent to blood tests should be analyzed under the same standard as adult drivers. Specifically, courts should not consider age and parental presence as factors of voluntariness, because both factors are threshold matters juveniles must overcome before obtaining a license.

Notwithstanding these points, this Note also addresses the practical implications of the decision by looking to consent in juvenile interrogation settings based on *Butler's* cited authority.<sup>7</sup> Part I reviews the *Butler* decision and distinguishes juvenile drivers' consent under the implied consent law from their consent to interrogations and searches in other contexts. Part II examines the significance of age and parental presence in juvenile interrogations. Sections II.A and II.B discuss the authority cited in *Butler* in addition to other related opinions, and Section II.C considers how previous court decisions inform the process of implementing the *Butler* decision into practice.

### I. ADULT PRIVILEGES WARRANT ADULT STANDARDS

In 2011, a fatal drunk driving accident occurred every 53 minutes.<sup>8</sup> When juveniles engage in similarly serious violent and criminal conduct, Arizona recognizes that they should be charged as adults.<sup>9</sup> Accordingly, Arizona law clearly conveys that when juveniles engage in violent crimes, their choices subject them to harsher punishments.<sup>10</sup> In a sense, they impliedly consent to these rules by

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5. *State v. Butler*, 302 P.3d 609, 613 (Ariz. 2013); *see* ARIZ. REV. STAT. ANN. § 28-1321 (2012). Arizona House Bill 2171 amends the implied consent statute, but the provisions relevant to this Note remain unchanged. *See* H.B. 2171, 51st Leg., Reg. Sess. (Ariz. 2013).

6. *See, e.g., Andre M.*, 88 P.2d at 555 (stating age and parental presence are factors in determining whether a juvenile's confession is voluntary).

7. *Butler*, 302 P.3d at 613 (citing *Andre M.*, 88 P.3d at 555); *see also Andre M.*, 88 P.3d at 557 (juvenile's consent held involuntary, in part, after mother requested and was denied opportunity to be present during questioning).

8. U.S. DEP'T OF TRANSP., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS 1, No. 811700 (2012), *available at* <http://www-nrd.nhtsa.dot.gov/Pubs/811700.pdf>.

9. *See* ARIZ. REV. STAT. ANN. § 13-501 (2010). Section 13-501 instructs attorneys to prosecute 15- to 17-year-old juveniles as adults for crimes including first- and second-degree murder, forcible sexual assault, and armed robbery. *Id.* at (A). While there are considerable differences between the felonies listed in section 13-501 and driving under the influence, the *Butler* Court similarly cites to a U.S. Supreme Court case acknowledging that the diminished capacity of a juvenile precludes death penalty eligibility. *See Butler*, 302 P.3d at 613 (citing *Roper v. Simmons*, 543 U.S. 551, 574 (2005) (affirming judgment to set aside juvenile offender's death sentence for murder)).

10. *See* ARIZ. REV. STAT. ANN. § 13-501.

their actions. *Butler*, however, concludes that juveniles are privy to special treatment under traffic laws.<sup>11</sup>

Arizona enacted the implied consent law to protect the public from dangerous drivers. The Legislature intended to combat dangerous driving by removing drunk drivers from the road and increasing “the certainty that an impaired driver is penalized even if he or she refuses to provide evidence of intoxication.”<sup>12</sup> If an officer has probable cause that a person is driving under the influence (DUI), the law gives drivers the power, but not the right, to refuse a blood draw.<sup>13</sup> If a driver declines an officer’s request for the blood draw, the officer must obtain a search warrant before conducting the blood test.<sup>14</sup> Subsequently, the driver’s license will be suspended or denied for the driver’s refusal to consent.<sup>15</sup>

Notably, the implied consent law does not except juvenile drivers, who are given the same privileges as adult drivers.<sup>16</sup> Thus, its language and spirit seems to command equal application to all drivers who choose to drive under the influence.

#### A. Reviewing the *Butler* Decision

In early 2012, 16-year-old Tyler B. was arrested for driving under the influence.<sup>17</sup> Police detained Tyler for questioning after he arrived late to school smelling like marijuana and possessing drug paraphernalia in his car.<sup>18</sup> Before asking any questions, an officer read Tyler his *Miranda* rights in front of school officials.<sup>19</sup> Tyler then admitted to driving his car after smoking marijuana and to owning some of the drug paraphernalia.<sup>20</sup> After the police informed Tyler that he was under arrest for DUI, he became upset and the officer placed him in handcuffs.<sup>21</sup> The officer removed the handcuffs when Tyler calmed down and

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11. See *infra* Part I.A.

12. *Schade v. Dep’t of Transp.*, 857 P.2d 1314, 1316 (Ariz. Ct. App. 1993) (citing *Sherrill v. Dep’t of Transp.* 799 P.2d 836, 839 (Ariz. 1990)).

13. See *Campbell v. Superior Court*, 479 P.2d 685, 693 (Ariz. 1971) (stating drivers have only “physical power” to refuse testing under implied consent law); ARIZ. REV. STAT. ANN. § 28-1321 (2012) (implied consent).

14. ARIZ. REV. STAT. ANN. § 28-1321(D) (2012) (allowing drivers to refuse a warrantless search and requiring law enforcement to get a search warrant).

15. *Id.* at (B).

16. See ARIZ. REV. STAT. ANN. § 28-1321; see also ARIZ. DEP’T OF TRANSP., DRIVER LICENSE/IDENTIFICATION CARD APPLICATION 1, [hereinafter LICENSE APPLICATION], available at <http://mvd.azdot.gov/mvd/formsandpub/viewPDF.asp?lngProductKey=1238&lngFormInfoKey=1238> (stating all applicants must acknowledge their understanding of traffic laws and the driver manual).

17. *State v. Butler*, 302 P.3d 609, 611 (Ariz. 2013).

18. *Id.* at 611.

19. *Id.* at 611; see *Miranda v. Arizona*, 384 U.S. 436 (1966).

20. *Butler*, 302 P.3d at 611.

21. *Id.*

proceeded to explain Arizona's implied consent law "twice, first verbatim and then in 'plain English.'"<sup>22</sup> Tyler ultimately agreed to the blood draw.<sup>23</sup>

After Tyler was charged with DUI, the juvenile court granted his motion to suppress the blood draw evidence and concluded that he did not voluntarily consent to the search.<sup>24</sup> Although the appellate court reversed, the Arizona Supreme Court held that the juvenile court did not abuse its discretion in concluding that Tyler's consent was involuntary.<sup>25</sup> The Supreme Court stated further that Fourth Amendment protections apply to warrantless blood draws under state implied consent law.<sup>26</sup>

The Court also recognized that voluntary consent permits warrantless searches under the Fourth Amendment.<sup>27</sup> Fittingly, the Court then applied a totality-of-the-circumstances analysis to determine whether Tyler's consent was voluntary.<sup>28</sup> Yet unlike the standard used in adult DUI cases, the Court analogized Tyler's circumstances to those of juveniles in interrogation situations.<sup>29</sup> As a result, the Court held that when an officer arrests a juvenile for DUI, courts should consider the juvenile's age and parental presence as factors in its analysis of the arrestee's voluntary consent.<sup>30</sup> And in light of the totality of the circumstances, the Court upheld the juvenile court's ruling that the blood test evidence was inadmissible.<sup>31</sup>

This Note does not disagree with the ultimate outcome of *Butler*. For one, the Supreme Court mentioned Tyler's agitation during his detainment.<sup>32</sup> This reaction to the officer and situation could have demonstrated his vulnerable emotional state. In addition, during the officer's "plain English" recitation of the implied consent law, the officer asserted, "you are, therefore, required to submit to the specified tests."<sup>33</sup> Consequently, the Court could have concluded the juvenile court did not err in holding Tyler's subsequent consent was coerced based on these circumstances.<sup>34</sup> However, such conclusion need not be premised on Tyler's age or

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22. *Id.* at 611.

23. *Id.*

24. *Id.* at 611.

25. *Id.* at 614.

26. *Id.* at 612; *see* Missouri v. McNeely, 133 S. Ct. 1552, 1555–56 (2013).

27. *Butler*, 302 P.3d at 613. Consistently, the statute also requires a driver's voluntary consent. *See* ARIZ. REV. STAT. ANN. § 28-1321(B) (2012) (requiring "actual consent"); *see also* Carrillo v. Houser, 232 P.3d 1245, 1249 (Ariz. 2010).

28. *See* *Butler*, 302 P.3d at 612, 613.

29. *Id.* at 613 (citing *In re Andre M.*, 88 P.3d 552, 555 (Ariz. 2004)).

30. *Id.* at 613.

31. *Id.* at 613–14.

32. *Id.* at 611.

33. *Id.*

34. *See* State v. Acinelli, 952 P.2d 304, 308 (Ariz. Ct. App. 1997) (stating defendant's knowledge of right to refuse search is one factor considered in voluntariness analysis).

the absence of his parents, but rather, because Tyler could have felt intimidated and coerced to consent and received an incorrect explanation of his rights.<sup>35</sup>

***B. Incorporating Driver License Application Procedures in the Totality of the Circumstances***

In holding that courts should consider age and parental presence when analyzing a juvenile's voluntary consent, the Supreme Court relied on *In re Andre M.*, a case involving a juvenile's Fifth Amendment rights.<sup>36</sup> The Court observed the legal contrasts between voluntariness analyses under the Fifth and Fourth Amendments, but stated the concern over police coercion remains the same.<sup>37</sup> Courts recognize juveniles' vulnerability to police intimidation and that their young ages and parental absence can make them more apt to carelessly waiving their rights.<sup>38</sup> While the context of juvenile DUIs warrant these same fears, the circumstances of licensed juvenile drivers can be differentiated from juveniles in interrogations or other search contexts.

First, unlike other contexts, all drivers opt in to the privileges and associated legal responsibilities of driving when they choose to apply for a license, including those under the implied consent law.<sup>39</sup> Second, and perhaps more significantly, driver license application procedures provide safeguards against coerciveness based on age and parental presence, which are absent in juvenile interrogations and searches. Namely, juveniles must reach a certain age before applying for a driver license, and their parent or guardian must sign and approve the application.<sup>40</sup>

***1. Parents Must Acknowledge Minors' Driver License Applications and Associated Terms via Signature.***

In theory, parental presence alleviates the risk of police coercion by ensuring officers do not intimidate the juvenile arrestee and that minors understand

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35. See *id.*; see also *infra* Part II.A (stating a minor's age can make the arrestee more susceptible to coercion).

36. See *Butler*, 302 P.3d at 613; *In re Andre M.*, 88 P.3d 552 (Ariz. 2004).

37. See *Butler*, 302 P.3d at 613.

38. See *Andre M.*, 88 P.3d at 555.

39. See ARIZ. REV. STAT. ANN. § 28-3160(A) (2000) (requiring parent or guardian to sign minor's license application); LICENSE APPLICATION, *supra* note 16, at 1 (applicants' signatures represent their understanding of "the laws, rules and regulations described in the Arizona Driver License Manual"); ARIZ. DEP'T OF TRANSP., ARIZONA DRIVER LICENSE MANUAL AND CUSTOMER SERVICE GUIDE 59, [hereinafter DRIVER LICENSE MANUAL] available at <http://mvd.azdot.gov/mvd/formsandpub/viewPDF.asp?lngProductKey=1420&lngFormInfoKey=1420> (applying for and accepting a driver's license signifies the driver's agreement to the implied consent law). One could argue that juveniles opt in to interrogations and bodily searches by engaging in behavior that amounts to probable cause. To the contrary, juvenile drivers do not merely consent to the implied consent law by driving, they opt in to the laws by signing an application and acknowledging they have read the state driver's manual. See LICENSE APPLICATION, *supra* note 16, at 1.

40. See LICENSE APPLICATION, *supra* note 16, at 1 (signature box).

any rights they choose to abandon.<sup>41</sup> Similarly, the parent or guardian approval required for a juvenile to apply for a driver license should serve these same purposes.<sup>42</sup> Such signature acknowledges the parent's knowledge of the juvenile's application and understanding of relevant traffic laws.<sup>43</sup> Furthermore, the parent agrees to bear the responsibility for a minor applicant's negligence or willful misconduct, thereby encouraging parents to educate their minors about driving responsibly.<sup>44</sup> Thus, requiring such signature should eliminate the need to consider parental presence later when analyzing juvenile drivers' voluntary consent to a blood test under Arizona's implied consent law.<sup>45</sup> Parental signatures alleviate the risk that juveniles will choose to accept the adult privilege of driving without understanding their legal rights and obligations in the same way parental presence lessens such concerns during interrogations and searches.<sup>46</sup> Accordingly, the totality-of-the-circumstances analysis already accounts for parental presence. Considering parental presence again after a juvenile driver voluntarily consents to a blood draw, then, would be redundant.

*2. Arizona's Minimum Age Requirement Indicates Minors are Capable of Understanding and Abiding by Traffic Laws.*

Driver license requirements also account for age as a factor by requiring that applicants meet the minimum age requirement mandated by statute.<sup>47</sup> Minors must be at least 15 years and six months old to apply for an instruction permit and at least 16 years old to apply for a class G license.<sup>48</sup> Such a requirement implies that the Arizona Legislature accredits 15- and 16-year-olds granted the privilege of driving with sufficient maturity to understand and abide by traffic laws.<sup>49</sup> Should

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41. *Andre M.*, 88 P.3d at 555.

42. *See* LICENSE APPLICATION, *supra* note 16, at 1; ARIZ. DEP'T OF TRANSP., DRIVER LICENSE INFORMATION, <http://www.azdot.gov/mvd/DLInfo.asp#Application> ("Parent/Guardian Approval for Applicants Under 18").

43. LICENSE APPLICATION, *supra* note 16, at 1.

44. *See id.* at 2.

45. *See Andre M.*, 88 P.3d at 555 (parental presence helps ensure juveniles are aware of rights and understand consequences of abandoning them).

46. *See id.* at 555.

47. *See* ARIZ. REV. STAT. ANN. § 28-3174(A) (2008) (conditions under which minors may apply for drivers licenses).

48. *Id.*

49. *Cf.* Valley Nat'l Bank of Phoenix v. Glover, 159 P.2d 292, 300-01 (Ariz. 1945). In *Glover*, defendants challenged a law allowing minor veterans, to the exclusion of other minors, to execute valid contracts. *Id.* at 296. The Court concluded that the statute was constitutional and noted that the Legislature has the power to remove the legal disability from some minors to enable them to make valid contracts. *Id.* at 300. Citing American Jurisprudence, the Court stated:

If the statutes of a state or of the United States expressly permit a certain class of agreements to be made by infants, such statute, of course, settles the question and makes the agreement absolutely valid. In such a case, the avoidance of the contract does not exist.

*Id.* at 559 (citing 27 AM. JUR. 757 § 14). Likewise, the Legislature expressly permits minors to apply for and receive the heightened privilege of driving and its associated heightened

the State decide otherwise, the Legislature has the power to raise the age threshold.<sup>50</sup>

Juveniles must accept and should be held accountable for the consequences of their own choice to apply for driver licenses. Upon applying, juveniles opt in to the privilege of driving and its elevated level of responsibilities, including those under the implied consent law.<sup>51</sup> Moreover, combined with the license application requirements, the age-minimum statute demonstrates that juveniles, parents, and the Legislature believe minors are capable of driving and understanding traffic laws. The judiciary's reconsideration of age intrudes on this authority.

In contrast, juveniles do not opt in to police interrogations or searches. They may engage in behavior that subjects them to such police action, but neither juveniles nor their parents are required or expected to consciously review their rights, such as *Miranda* warnings, *before* they act.<sup>52</sup> Rather, juveniles may not be aware of these rights until they encounter police.

Conversely, important traffic laws, such as those prohibiting DUIs, are visible through driver education programs and public signage, and are referenced multiple times in the driver license application materials.<sup>53</sup> Juveniles, therefore, receive repeated exposure. Given these notices and procedural hoops, juvenile drivers' circumstances better align with juvenile delinquents who have had previous exposure to *Miranda* warnings.<sup>54</sup> In such cases, courts focus less on age if minors have had previous experience in the juvenile system and, hence, may have a better understanding of their rights.<sup>55</sup> However, the *Butler* decision does not account for such previous experience in its analysis.<sup>56</sup>

In any event, a totality-of-the-circumstances analysis is incomplete without considering the process of obtaining a driver license. Requiring the

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responsibilities. *See, e.g.*, ARIZ. REV. STAT. ANN. § 28-3174. Accordingly, juveniles who elect to apply for and obtain driver licenses should be held to the same driving standards as adults.

50. *See* ARIZ. CONST. art. IV, pt. I, § 1.

51. *See* LICENSE APPLICATION, *supra* note 16, at 1.

52. *Cf. id.*

53. *See, e.g.*, LICENSE APPLICATION, *supra* note 16, at 1; DRIVER LICENSE MANUAL, *supra* note 39, at 56, 57, 59.

54. *See* State v. Wright, 778 P.2d 1290, 1292–94 (Ariz. Ct. App. 1989) (concluding confession was voluntary despite being questioned by his police-officer father and not receiving *Miranda* warnings, in part because defendant had two previous experiences with *Miranda* rights and was not “in custody”); State v. Dawkins, No. 2 CA-CR 2007-0212, 2009 WL 161873, at \*9–10 ¶¶ 41–46 (Ariz. Ct. App. Jan. 22, 2009) (considering minor-defendant's previous exposure to *Miranda* warnings as relevant and concluding confession was voluntary despite age and parental absence).

55. *See* Dawkins, 2009 WL 161873, at \*10 ¶ 42 (accepting juvenile's acknowledgment of *Miranda* rights stating that he was familiar with them given his history in the system); *cf. In re Andre M.*, 88 P.3d 552, 556 (Ariz. 2004) (finding juvenile's confession involuntary, in part, because State did not meet *Miranda* burden).

56. *See* State v. Butler, 302 P.3d 609 (2013).



consideration of age and parental presence in the DUI context essentially provides an extra layer of protection to juveniles engaging in dangerous behavior absent in other contexts. Thus, to be consistent with other voluntary contexts, the adult privilege of driving should subject juvenile drivers to the implied consent law in the same manner as adults.

## II. IMPLEMENTING POLICY INTO PRACTICE

Analyzing juvenile drivers' consent to blood draws under a modified standard creates practical issues for law enforcement officers who must carefully adjust their procedures. Officers must determine how to account for a juvenile's age and parental presence during a traffic stop, both of which are important to, but not dispositive of, a juvenile's voluntary consent.<sup>57</sup> Because *Butler* relies on a factually distinguishable case to support its analysis, reviewing this authority and similar case law best informs how to ensure juveniles understand their legal rights before consenting to a blood draw.<sup>58</sup>

### A. Understanding the Age Factor

Courts consider a minor's age as one factor when analyzing voluntary consent.<sup>59</sup> In part, age influences whether minors understand their rights under the law.<sup>60</sup> Absent a juvenile record, courts are more critical of a juvenile's voluntary consent because courts consider juveniles vulnerable to coercion.<sup>61</sup> To avoid a finding of involuntariness, Arizona courts consider whether officers read the juvenile an adapted version of *Miranda* rights designed for a minor offender's understanding.<sup>62</sup> Courts have upheld findings of voluntariness where officers read the modified version and juveniles subsequently acknowledge and waive their rights.<sup>63</sup>

While age alone does not determine voluntariness, an officer's failure to read this modified version of rights to a juvenile offender can result in evidence suppression.<sup>64</sup> In *In re Andre M.*, the Arizona Supreme Court held that a 16-year-

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57. *Id.* at 612–13.

58. *See id.*

59. *See, e.g., id.* at 613; *Andre M.*, 88 P.3d at 555; *State v. Jimenez*, 799 P.2d 785, 790 (Ariz. 1990).

60. *See Andre M.*, 88 P.3d at 555 (acknowledging minors may need assistance to fully understand their legal rights).

61. *Id.* at 554–55.

62. *See Jimenez*, 799 P.2d 785, 790–91; *cf. Andre M.*, 88 P.3d at 556. Although consent can be voluntary under the Fourth Amendment and not the Fifth Amendment, the Supreme Court applies consent factors considered under Fifth Amendment circumstances in the Fourth Amendment context. *See Butler*, 302 P.3d at 613.

63. *See, e.g., In re Jeffrey W.*, No. 1 CA-JV 08-0198, 2009 WL 2168689, at \*3 ¶¶ 9–10 (Ariz. Ct. App. Jul. 21, 2009) (concluding confession was voluntary after officer read juvenile's rights from age-appropriate form, juvenile acknowledged understanding, and juvenile signed a waiver); *cf. Andre M.*, 88 P.3d at 556 (noting juvenile was not given age-appropriate *Miranda* rights reading and concluding confession was not voluntary).

64. *See Andre M.*, 88 P.3d at 556–57.

old's confession was not voluntary, based partially on his age.<sup>65</sup> While the Court enumerated several factors in favor of voluntariness, the Court stated the State failed to present evidence that the minor received "age-appropriate" *Miranda* warnings.<sup>66</sup> Specifically, the defendant did not sign an acknowledgment stating he understood his rights, and the absence of a video recording made the situation difficult to assess.<sup>67</sup> Based on this decision, the State can increase the likelihood of meeting its burden of establishing juvenile voluntariness by adapting its explanations of legal rights to an audience's general age.

### ***B. Interpreting the Parental Presence Requirement***

The presence of a juvenile's parent or guardian during police interrogations mitigates the risk that vulnerable minors will be coerced or deceived by law enforcement officers.<sup>68</sup> The State can satisfy its burden of proving voluntariness more easily if the juvenile's parent or guardian is present during an interrogation.<sup>69</sup> Although parental presence can strongly influence a court's finding of voluntariness, parental absence does not necessarily lead to suppression.<sup>70</sup> For example, courts generally accept a juvenile's agreement to talk to officers without a parent present.<sup>71</sup> But a court may be more likely to find a juvenile's consent involuntary when officers deny a juvenile's express request for parental presence.<sup>72</sup>

Unlike age-appropriate *Miranda* rights explanations, Arizona courts have not suggested similarly straightforward guidance regarding parental presence. On one hand, courts have recognized that parental presence should receive less consideration when juveniles do not request it.<sup>73</sup> However, the Supreme Court noted in *Butler* that the absence of Tyler's parents influenced its decision despite

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65. *Id.*

66. *Id.* at 556.

67. *Id.*

68. *See id.* at 555 (stating parents help ensure juveniles understand their rights and the consequences of waiving them).

69. *See id.* (asserting the State can more easily prove voluntariness "if a parent attends a juvenile's interrogation"). Now, this same presumption can be applied in warrantless blood tests under the implied consent law after *Butler*. *See State v. Butler*, 302 P.3d 609, 613 (Ariz. 2013).

70. *See, e.g., State v. Huerstel*, 75 P.3d 698, 710–12 (Ariz. 2003) (trial court did not abuse discretion in finding juvenile's confession voluntary despite parental absence); *State v. Doody*, 930 P.2d 440, 446 (Ariz. Ct. App. 1996) (stating "a parent's absence does not, in itself, render a confession involuntary").

71. *See Doody*, 930 P.2d at 443–44 (finding juvenile understood his rights and indicated he was willing to speak to officers without his parents).

72. *See Andre M.*, 88 P.3d at 555 (finding the confession involuntary and stating the facts disclosed not mere parental absence, but "absence of a parent who attempted to attend . . . but was prevented"); *cf. In re Jeffrey W.*, No. JV547079, 2009 WL 2168689, at \*3 ¶ 9 (Ariz. Ct. App. Jul. 21, 2009) (finding the confession voluntary and noting officer asked juvenile if he wanted parental presence and, upon receiving an affirmative answer, paused the interview until his mother arrived).

73. *Doody*, 930 P.2d at 446.

the fact that Tyler did not request their presence.<sup>74</sup> Consistently, though, courts generally do not allow juveniles to deny an officer's offer to contact their parents during interrogations and later rely on their parents' absence for a claim of involuntariness.<sup>75</sup>

### C. Suggested Reforms

Notwithstanding the distinguishing factual and legal contexts, the confession cases involving *Miranda* rights offer substantive insight for implementing the *Butler* decision into practice. When analyzing issues of Fifth Amendment waiver, courts have generally placed substantial weight on whether the juvenile received a modified explanation of his rights before waiving them.<sup>76</sup> Similar to *Butler*, these cases emphasize the importance that juveniles must understand their rights before they can waive them voluntarily.

Applied here, police could benefit from developing uniform, age-appropriate explanations of the implied consent law. Similar to *Miranda* rights, police could develop a form explaining implied consent in terms modified for a juvenile's understanding. "Plain English" explanations could be especially effective as long as they are accurate.<sup>77</sup> To avoid the pitfalls of *Butler*'s facts, officers should avoid explaining the implied consent law as forcing juvenile drivers to submit to warrantless searches.<sup>78</sup> A more precise interpretation of the law would explain that a driver can refuse to submit to warrantless searches, which will result in the driver's license being suspended.<sup>79</sup> Furthermore, officers should explain that despite refusal, the driver may still be subject to a search after the officer obtains a warrant.<sup>80</sup> A full, plain-language explanation would protect against juveniles' presumed vulnerability and lesser capacity to fully comprehend their legal rights. Taking this suggestion one step further, the State could benefit from having juvenile drivers sign forms to acknowledge their consent to blood draws.<sup>81</sup>

Additionally, it may be good practice to routinely ask juveniles if they would like to consult with their parents. Given the immediate need for drug tests, phone contact could be appropriate if a parent cannot arrive to the scene before any drugs metabolize. Though the case law varies on how much parental presence

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74. *Butler*, 302 P.3d at 613. While the majority notes the absence of Tyler's parents during his interrogation, the concurring opinion points out that neither Tyler nor his father requested to see one another. *Compare id.* at 613 ¶ 20, *with id.* at 616 ¶ 33.

75. *See Doody*, 930 P.2d at 446.

76. *See, e.g., Andre M.*, 88 P.3d at 556.

77. *See Butler*, 302 P.3d at 611, 614 (repeating the implied consent admonition and taking issue with the deputy's statement that Tyler was "required" to consent to a warrantless search).

78. *See id.*

79. ARIZ. REV. STAT. ANN. § 28-1321(B) (2012).

80. *Id.* at (D)(1).

81. The Court did not address how intoxication impacts the ability to consent to searches under the implied consent law, which could also impact minors' abilities to acknowledge their rights via signature. *See Butler*, 302 P.3d 609.

influences a court's analysis, law enforcement should avoid denying requests for parental presence.<sup>82</sup>

In addition to law enforcement practices, other entities can contribute to juvenile drivers' education of the implied consent law. Driver education classes could discuss such law and a juvenile's right to refuse a warrantless search. Additionally, the motor vehicle division could take initiative by modifying its procedures. Instruction permit tests could ask juveniles questions regarding the implied consent law to ensure applicants learn it. License applications could add a new box to which applicants must agree that explains the implied consent law, a driver's right to refuse, and consequences of refusal. This same explanation could be included in the parent/guardian section of the application to obligate the parent or guardian to acknowledge such law as well. At a minimum, these and similar new practices would all provide repeated exposure for juveniles to learn and understand implied consent.

### CONCLUSION

*Butler* recognizes that the law allows warrantless blood draws with a driver's voluntary consent. But based on previous Arizona cases analyzing the voluntariness of a juvenile's consent or disclosure, there are few recommendations or known-effective methods to consistently ensure a juvenile's voluntary consent. And unlike other voluntary contexts, driver license application procedures already attempt to ensure juveniles understand their legal responsibilities as drivers. Despite these circumstances, law enforcement must remain cognizant of the other factors contributing to courts' totality-of-the-circumstances analyses when juvenile drivers are suspected of DUIs. While this Note provides some recommendations, law enforcement would likely benefit most from creating uniform procedures for juvenile drivers' DUI searches and coordinating its efforts with the Department of Transportation to educate juvenile drivers about the implied consent law.

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82. See *In re Andre M.*, 88 P.3d 552, 555 (2004).