Take special precautions when interviewing juveniles or individuals with significant mental or psychological impairments

Every interrogator must exercise extreme caution and care when interviewing or interrogating a juvenile or a person who is mentally or psychologically impaired. Certainly these individuals can and do commit very serious crimes, but since many false confession cases involve juveniles and/or individuals with some significant mental or psychological disabilities, extreme care must be exercised when questioning these individuals and the investigator has to modify their approach with these individuals.

Furthermore, when a juvenile or person who is mentally or psychologically impaired confesses, the investigator should exercise extreme diligence in establishing the accuracy of such a statement through subsequent corroboration. In these situations it is imperative that the interrogator does not reveal details of the crime so that they can use the disclosure of such information by the suspect as verification of the confession’s authenticity.

The following are excerpts from our book, Criminal Interrogation and Confessions, 5th edition, published in 2011, on this topic.

“As earlier suggested in the text, caution must be exercised in evaluating a youthful person’s behavioral responses. Due to immaturity and the corresponding lack of values and sense of responsibility, the behavior symptoms displayed by a youthful suspect may be unreliable.” (CI+C page 250)

“A general distinction can be made between childhood (1–9) and adolescence (10–15). While both groups will be motivated to lie to avoid consequences associated with acts of wrongdoing, psychologically they are operating at quite different levels. It is our general recommendation that a person under the age of 10 should not be subjected to active persuasion techniques during interrogation (themes, alternative questions). At this age the child is susceptible to suggestion and is motivated to please a person in authority. The interaction between the investigator and child should be limited to a question and answer session which is centered on factual information and simple logic. Although children in this age group generally have good memory skills, it is selective and the investigator must be cautious in forming opinions of deception based on inconsistent recall. In this younger age group the primary difficulty with respect to interrogation is the child's undeveloped level of social responsibility and inability to comprehend the concept of future consequences; their lives focus around "here and now" concepts.

On the other hand, most adolescents have developed a sense of social responsibility to the extent that they know if they admit committing a serious crime they will suffer some future consequence. For this reason a confrontational interrogation may be used with this age group involving some active persuasion. The extent of persuasive tactics should not be dictated by the seriousness of the crime, but rather the maturity of the child.
When a child is taken into custody and advised of his or her Miranda rights, the question of whether the child is capable of making a knowing and voluntary waiver of those rights may arise. Certainly a child under the age of 10 is incapable of fully understanding the implications of waiving Miranda rights. Younger adolescents also may fall into this category. When a juvenile younger than 15, who has not had any prior experience with the police, is advised of his Miranda rights, the investigator should carefully discuss and talk about those rights with the subject (not just recite them) to make sure that he understands them. If attempts to explain the rights are unsuccessful, no interrogation should be conducted at that time. The same is true for a person who is mentally or psychologically impaired.

Courts routinely uphold the use of trickery and deceit during interrogations of adult suspects who are not mentally impaired. Within the area of trickery and deceit, clearly the most persuasive of these tactics is introducing fictitious evidence which implicates the suspect in the crime. As we state in Chapter 15, this technique should be avoided when interrogating a youthful suspect with low social maturity or a suspect with diminished mental capacity. These suspects may not have the fortitude or confidence to challenge such evidence and, depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime. Factors such as the adolescent's level of social responsibility and general maturity should be considered before fictitious evidence is introduced.

The ultimate test of the trustworthiness of a confession is its corroboration. The admissions, “I shot and killed Mr. Johnson” or, “I forced Susie Adams to have sex with me” may be elicited from an innocent juvenile (or adult) suspect. These admissions only become useful as evidence if they are corroborated by (1) information about the crime the suspect provides which was purposefully withheld from the suspect, and/or, (2) information not known by the police until after the confession which is subsequently verified.” (CI+C pages 254-255)

With the above discussion in mind, the following represents some factors to consider in the assessment of the credibility of a suspect’s confession. These issues are certainly not all inclusive, and each case must be evaluated on the “totality of circumstances” surrounding the interrogation and confession, but nevertheless, these are elements that should be given careful consideration:

1. The suspect’s condition at the time of the interrogation
   a. Physical condition (including drug and/or alcohol intoxication)
   b. Mental capacity
   c. Psychological condition
2. The suspect’s age
3. The suspect’s prior experience with law enforcement
4. The suspect’s understanding of the language
5. The length of the interrogation
6. The degree of detail provided by the suspect in his confession
7. The extent of corroboration between the confession and the crime
8. The presence of witnesses to the interrogation and confession
9. The suspect’s behavior during the interrogation
10. The effort to address the suspect’s physical needs
11. The presence of any improper interrogation techniques
Basic Law Enforcement training manuals oftentimes point out specific precautions that should be exercised when dealing with mentally impaired persons. For example, the state of North Carolina basic law enforcement training manuals specifically point out the following:

Mentally impaired (retarded) individuals have poor judgment; are easily influenced by authority figures; may be unable to formulate thoughts and answer questions readily; may not always understand their rights; have an impaired ability to reason and understand the consequences of their actions.

Consequently, when an investigator is dealing with a mentally impaired individual, they should “consider whether the person they’re interviewing understood the question being asked”…. “go slowly and that rapid questions during an interview or confrontation may confuse or frighten the person” … “the use of suggestive questions must be avoided because such questions tend to produce erroneous answers”…

It is imperative for all interrogators to exercise extreme caution during the interrogation of a juvenile or a person who is mentally or psychologically impaired, and to keep in mind the safeguards outlined above.