# Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

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## Violations of the Juvenile Code can be permitted, where the Family Code's underlying purposes and the child's constitutional rights are upheld.[Vega v. State](07-4-1)

**On August 9, 2007, the Corpus Christi Court of Appeals held that a statement taken in Illinois, in violation of the Texas Family Code, was admissible because both parties were assured a fair hearing and while not precise, the process was impartial, honest, and free from prejudice, undue favoritism, and self-interest.**

¶ 07-4-1. **Vega v. State**, ___S.W.3d.___, No. 13-98-044-CR, 2007 Tex.App.Lexis 6315 (Tex.App— Corpus Christi, 8/9/07).

**History:** On June 26, 2002, the Court of Criminal Appeals considered the question of the admissibility of a statement given by respondent to the Chicago Police Department that complied with Illinois law but not with Texas law. In finding Texas law applied, the court remanded the case to the Court of Appeals to decide the question (under Texas law) as to the admissibility of such a statement. Vega v. State, 84 S.W.3d 613, 2002 WL 1379247, 2002 Tex.Crim.App.Lexis 139 (Tex.Crim.App. 6/26/02), Tex. Juv. Rep. ¶ 02-3-15. [Texas Juvenile Law (5th Edition 2000).

**Facts:** In late December 1994, Vega, who was sixteen at the time, and her boyfriend, nineteen-year-old Jaime Nonn, were implicated in a capital murder in Starr County, Texas. They had fled to Chicago, Illinois. On December 28, 1994, Vega and Nonn were arrested by the Chicago police after Starr County deputies advised the Chicago Police Department that Texas warrants had been issued for the two suspects. Both Nonn [2] and Vega gave statements in Illinois. The trial court overruled Vega's motion to suppress the written statement she made to the Illinois authorities.

> 2 Nonn was later convicted, and his conviction was upheld by this Court and the court of criminal appeals. *See Nonn v. State, 117 S.W.3d 874, 875, 883 (Tex. Crim. App. 2003)* (setting out history of case and affirming).

On direct appeal following the convictions, Vega raised eighteen issues, thirteen of which complained of the trial court's admission of her written statement obtained in Illinois by Illinois law enforcement officers. Vega also complained that the trial court erred by admitting evidence of extraneous offenses and giving an inappropriate limiting instruction regarding the extraneous offenses. Relying on *Davidson v. State, 25 S.W.3d 183 (Tex. Crim. App. 2000)* (en banc), a panel of this Court held that the trial court abused its discretion when it admitted Vega's Illinois statement into evidence. *See Vega v. State, 32 S.W.3d 897, 906 (Tex. App.--Corpus*

*Christi 2000)*, *reversed and remanded*, *84 S.W.3d 613 (Tex. Crim. App. 2002)* (en banc). We reversed all three judgments of the trial court and remanded for a new trial. *Id*.

On the State's petition for discretionary review, the Texas Court of Criminal Appeals held that this case is not a *Davidson* case by statute, circumstances, or command to "strictly construe," and that *Davidson* is inapplicable here. [3] *Vega v. State, 84 S.W.3d 613, 616 (Tex. Crim. App. 2002)* (en banc). The court also concluded that "[b]ecause appellant was a juvenile at the time she gave her statement, its admissibility must be determined under Title 3 of the Family Code." *Id*. And we are not to "strictly" construe Title 3 because the legislature did not so mandate. *Id*. Additionally, although Vega and the State take the position that the issue on remand is the review of the fairness factor in a conflict-of-laws analysis, we believe that the court of criminal appeals has decided that issue. In its opinion, the court determined that procedural issues in this case were governed by the law of Texas, the forum state, and that substantive issues were also governed by Texas law because the conflict-of-law schemes of both Illinois and Texas militate for such application. [4] *See id. at 617*; *see also id. at 621* (Keller, J., dissenting).

3 The *Vega* Court summarized its holding in *Davidson* as follows:

[B]ecause *art. 38.22 § 3(a) of the Texas Code of Criminal Procedure* was procedural in nature, a trial judge is required to apply Texas law to determine the admissibility of an oral confession obtained in another state. [The *Davidson* Court] also held that because the mandatory requirement of *art. 38.22 § 3(a)*, that an oral custodial statement must be recorded before it can be used against a defendant, was not followed by the authorities in Montana, appellant's oral confession was inadmissible at his Texas trial. *Vega v. State, 84 S.W.3d 613, 616 (Tex. Crim. App. 2002)* ( en banc) (citing *Davidson v. State, 25 S.W.3d 183, 185-86 n.2 (Tex. Crim. App. 2000))*. In *Vega*, the court of criminal appeals concluded *Davidson* did not apply because (1) the challenged statement was written and, thus, did not violate the provisions of *article 38.22*, and (2) "pursuant to the Code Construction Act, the sections of the Family Code relevant to confessions prevail over *art[icle] 38.22*." *Id*.

4 The court of criminal appeals reasoned that the question of which directives in Title 3 are substantive and which are procedural is not relevant because, if procedural in nature, the issues are governed by the laws of the forum state, or Texas in this instance, and, if substantive in nature, the conflict-of-law schemes of both Illinois and Texas militate for the application of Texas substantive law. *See Vega, 84 S.W.3d at 617*. The court arrived at its Texas substantive law conclusion by considering five factors Texas courts review in determining which forum has the most significant relationship to the case and by deciding that four of the five factors, including (1) where the injury or unlawful conduct occurred, (2) the place where the relationship between the parties is the strongest, (3) the number and nature of contacts that the non-forum state has with the parties and with the transaction involved, and (4) the relative materiality of the evidence that is sought to be excluded, favor Texas law, and that only resolution of the issue of fairness, the fifth factor, was not obvious. *See id.* (citing *RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6*, *145* (1971); *Gonzalez, 45 S.W.3d 101, 104 n.4 (Tex. Crim. App. 2001)* (citing *RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 139* (1971)). Because Illinois has a similar method of determining which state has the most significant relationship to the case, the court of criminal appeals determined that all of the Illinois factors also favored application of Texas law to the substantive issues. *See id*.

The court of criminal appeals remanded this case for an analysis, but not for our analysis of how fairness should be factored into a conflict-of-laws analysis. Rather, we have been charged to analyze how the absence of a magistrate impacts the fairness to the parties, with our focus being on the purpose expressed in *section 51.01 of the family code*: "to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other

legal rights recognized and enforced."[5] *Id. at 619*; *see* Acts 1973, 63rd Leg., p. 1460, ch. 554, § 1, eff. Sept. 1, 1973 (current version at *TEX. FAM. CODE ANN. § 51.01(6)* (Vernon 2002)).

> 5 In 1994, *section 51.01* read as follows:
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> This title shall be construed to effectuate the following public purposes:
>
> (1) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions;
>
> (2) to protect the welfare of the community and to control the commission of unlawful acts by children;
>
> (3) consistent with the protection of the public interest, to remove the children committing unlawful acts the taint of criminality and the consequences of criminal behavior and to substitute a program of treatment, training, and rehabilitation;
>
> (4) to achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interest of public safety and when a child is removed from his family, to give him the care that should be provided by parents; and
>
> (5) to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.
>
> Acts 1973, 63rd Leg., p. 1460, ch. 554, § 1, eff. Sept. 1, 1973 (current version at *TEX. FAM. CODE ANN. § 51.01* (Vernon 2002)).

The court of criminal appeals asks only that we focus on subsection (5). *Id*. Therefore, we will limit our review to the purpose expressed in that subsection. As stated in our original opinion, [t]his appears to be a case of first impression in the state of Texas. This case presents the issue of whether a sister state's law enforcement officers must adhere to Texas's scheme of processing juvenile offenders for a statement taken by those officers to be admissible against the juvenile in a Texas court. *Vega, 32 S.W.3d at 900*.

On remand, however, as directed by the court of criminal appeals, we will not apply *Davidson*; we will apply Texas law--specifically, Title 3 of the Texas Family Code--but we will not apply it strictly; and we will analyze fairness to the parties focusing on the purpose of *section 51.01*.

**Held:** Affirmed

**Opinion:** In her first thirteen issues, Vega argues that, because her written statement was not procured in conformance with the Texas Family Code, it should have been excluded. The trial court denied Vega's motion to suppress her statement.

A. Standard of Review

When reviewing a trial court's ruling on a motion to suppress, we give almost total deference to a trial court's determination of facts supported by the record and its rulings on application of law to fact, or "mixed"

questions of law, when those fact findings involve an evaluation of the credibility and demeanor of witnesses. *Maestras v. State, 987 S.W.2d 59, 62 (Tex. Crim. App. 1999)*; *Guzman v. State, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)* (en banc). However, we review *de novo* mixed questions of law and fact that do not turn on an evaluation of credibility and demeanor. *Maestras, 987 S.W.2d at 62*; *Guzman, 955 S.W.2d at 89*. In this case, because there is no disagreement about the facts surrounding Vega's statement given to the Chicago police or the credibility of the witnesses in this case, the trial court's ruling on these matters did not involve an assessment of the credibility and demeanor of the witnesses. *See Ramirez v. State, 44 S.W.3d 107, 109 (Tex. App.--Austin 2001, no pet.)*. Therefore, we will conduct a *de novo* review of the denial of Vega's motion to suppress.

B. Analysis

1. Issues Determined by the Court of Criminal Appeals

Before remanding to this Court, the court of criminal appeals examined issues one, two, three, four, eight, and twelve--Vega's complaints regarding the facility in which she was detained, unauthorized officers making detention decisions, and warnings allegedly not given. *See Vega, 84 S.W. at 615-18*. Generally, as to these issues, the court determined that "[i]t is undisputed that, while correct under Illinois law, the procedures followed in obtaining [Vega's] statement, as well as the format of the statement itself, were not in compliance with Title 3 of the Texas Family Code." *Id. at 615*. However, "Illinois authorities, by following Illinois law, also complied with Texas law to the extent necessary to carry out Texas's intended purpose and public policy." *Id. at 618*. Finding compliance, the court of criminal appeals decided in the State's favor on issues one, two, three, four, eight, and twelve.

More specifically, by issues one, two, and eight, Vega complained of the Illinois facility where she was detained, urging violations of *sections 52.02*, *52.025*, and *51.12*. [6] Vega contended that she was not taken without unnecessary delay to a place designated in this code section, that the Chicago police failed to interview her in an approved juvenile processing office, and that she was not detained in a facility approved by Texas authorities. Addressing these issues, the court of criminal appeals noted that Vega was taken to an equivalent Illinois facility and concluded that "[t]o hold that such actions were not sufficient to satisfy Texas's concerns would make impossible any apprehension of a Texas juvenile offender any place outside of Texas and would not advance Texas public policy as expressed in *§ 51.01*." *See id. at 617-18*.

> 6 Now *TEX. FAM. CODE ANN. § 52.02(a)* (Vernon Supp. 2006), *§§ 52.025* & *51.12* (Vernon 2002).

By her third issue, Vega urged that the Chicago police failed to have an authorized officer of the Texas juvenile court decide whether Vega should be further detained. *See id. at 618*. The court of criminal appeals found, however, that there is no such requirement in the Texas Family Code. *See id.* It concluded the "Chicago police arrested [Vega] under a Texas warrant that included a no-bond condition," and, thus, "Illinois authorities had no discretion to release her." *Id*. (citing 705 ILL. COMP. STAT. 405/5-8 (1994)).

In issue four, Vega contended that her written statement did not contain all of the warnings required by section *51.09*. [7] However, the court of criminal appeals found that Vega did receive the warnings, essentially the *Miranda* warnings, at least three times. *Id*. Additionally, she "was informed of Illinois law, which while technically incorrect, accurately conveyed the possibility of being treated as an adult when accused of murder." *Id*.

> 7 Now *TEX. FAM. CODE ANN. § 51.095* (Vernon Supp. 2006).

Finally, in issue twelve, Vega complained that she was detained in an area where adults arrested for, or charged with, a crime are detained, in violation of *section 51.12*. [8] From the language of the statute, the court of criminal appeals determined that "[a] reasonable inference is that the legislature intended to prohibit putting a juvenile into circumstances in which the juvenile might be victimized by adult offenders." *Id*. "Vega was held in an interrogation room. She was at all times kept separate from adult offenders." *Id*.

8 Now *TEX. FAM. CODE ANN. § 51.12(a)* (Vernon 2002).

Having been resolved by the court of criminal appeals, these issues are not now before this Court.

2. Issues Remanded by the Court of Criminal Appeals

The court of criminal appeals has remanded the following issues for our review:

Issue five: Vega's written statement does not contain a certificate by a magistrate that Vega knowingly, intelligently and voluntarily waived her rights before making the statement as required by *section 51.09*; [9]

Issue six: Vega was never advised of her rights by a magistrate before being interrogated as set out in *section 51.09*; [10]

Issue seven: Vega was never presented before a magistrate at any time before giving her statement as provided for in *section 51.09*; [11]

Issue nine: Vega was detained for more than six hours before the conclusion of her statement in violation of *section 52.025*; [12]

Issue ten: Vega's statement was not signed in the presence of a magistrate with no law enforcement officer present as required by *section 51.09*; [13]

Issue eleven: Vega's statement was signed in the presence of at least one law enforcement official who was armed in violation of *section 51.09*; [14] and

Issue thirteen: Vega was improperly left unattended in the interview in violation of *section 52.025*. [15]

9 Now *TEX. FAM. CODE ANN. § 51.095(a)(1)(D)* (Vernon Supp. 2006).

10 Now *TEX. FAM. CODE ANN. § 51.095(a)(1)(A)* (Vernon Supp. 2006).

11 Now *TEX. FAM. CODE ANN. § 51.095(a)(1)(A)-(C)* (Vernon Supp. 2006).

12 Now *TEX. FAM. CODE ANN. § 52.025(d)* (Vernon 2002).

13 Now *TEX. FAM. CODE ANN. § 51.095(a)(1)(B)(i)* (Vernon Supp. 2006).

14 Now *TEX. FAM. CODE ANN. § 51.095(a)(1)(B)(i)* (Vernon Supp. 2006).

15 Now *TEX. FAM. CODE ANN. § 52.025(c)* (Vernon 2002).

In remanding these issues, the court of criminal appeals determined that the following circumstances violated provisions of Title 3:

> Vega arrived at the police station at about 10:45 a.m. Her written statement was signed at about 9:40 p.m. As permitted by Illinois law, the youth officer who presided at the signing was an armed police officer. Vega was left alone in the interrogation room for several periods before she was taken to the juvenile holding facility. From the record at hand, it appears that Vega was not taken before a magistrate.
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> *Vega, 84 S.W.3d at 618*.

The court further concluded, however, that a violation of the family code, in this particular case, did not necessarily dispose of the issue of admissibility. *Id*.

a. Absence of a Magistrate

We first address the five issues that complain of the absence of a magistrate--issues five, six, seven, ten, and eleven. [16] The version of *section 51.09* in effect at the relevant time provided in part:

> (a) Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:
>
> (1) the waiver is made by the child and the attorney for the child;
>
> (2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;
>
> (3) the waiver is voluntary; and
>
> (4) the waiver is made in writing or in court proceedings that are recorded.
>
> (b) Notwithstanding any of the provisions of Subsection (a) of this section, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:
>
> (1) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and *the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning* that:
>
> (A) the child may remain silent and not make any statement at all and that any statement the child makes may be used in evidence against the child;
>
> (B) the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;
>
> (C) if the child is unable to employ an attorney, the child has the right to have an attorney to counsel with the child prior to or during any interviews with peace officers or attorneys representing the state;

(D) the child has the right to terminate the interview at any time;

(E) if the child is 15 years of age or older at the time of the violation of a penal law of the grade of felony the juvenile court may waive its jurisdiction and the child may be tried as an adult;

(F) the child may be sentenced to commitment in the Texas Youth Commission with a transfer to the institutional division of the Texas Department of Criminal Justice for a term not to exceed 30 years if the child is found to have engaged in delinquent conduct, alleged in a petition approved by a grand jury, that included:

(1) murder;

(2) capital murder;

(3) aggravated kidnaping;

(4) aggravated sexual assault;

(5) deadly assault on a law enforcement officer, corrections officer, court participant or probation personnel; or

(6) attempted capital murder; and

(G) *the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present*, *except that a magistrate may require a bailiff or a law enforcement officer* if a bailiff is not available to be present if the magistrate determines that the presence of the bailiff or law enforcement officer is necessary for the personal safety of the magistrate or other court personnel, provided that *the bailiff or law enforcement officer may not carry a weapon in the presence of the child*. *The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily. If such a statement is taken, the magistrate shall sign a written statement verifying the foregoing requisites have been met*.

*The child must knowingly, intelligently and voluntarily waive these rights prior to and during the making of the statement and sign the statement in the presence of a magistrate who must certify that he has examined the child independent of any law enforcement officer or prosecuting attorney*, except as required to ensure the personal safety of the magistrate or other court personnel, *and has determined that the child understands the nature and contents of the statement and has knowingly, intelligently and voluntarily waived these rights*.

Act of May 22, 1991, 72nd Leg., ch. 429, § 1, eff. Sept. 1, 1991; Act of May 24, 1991, 72nd Leg., ch. 557, § 1, eff. Sept. 1, 1991; Act of May 27, 1991, 72nd Leg., ch. 593, § 1, eff. Aug. 26, 1991 (emphasis added) (current version at *TEX. CODE CRIM. PROC. ANN. § 51.09* (Vernon 2002), *§ 51.095* (Vernon Supp. 2006)).

16 Issues nine and thirteen involve violations of *section 52.025 of the family code* and will be addressed separately.

On remand, the court of criminal appeals has directed this Court to analyze the effect of the absence of a magistrate on the admissibility of the challenged statement in a context of fairness to the parties, focusing on the purpose expressed in *section 51.01 of the family code*, which is "to provide a simple judicial procedure through which the provisions of this title are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced." *Vega, 84 S.W.3d at 619* (quoting Acts 1973, 63rd Leg., p. 1460, ch. 554, § 1, eff. Sept. 1, 1973).

Our analysis begins with the word, "fair." It is not defined by statute; therefore, we must give the language its plain and ordinary meaning. *See TEX. GOV'T CODE ANN. § 312.002(a)* (Vernon 2005); *In re Kasschau, 11 S.W.3d 305, 311 (Tex. App.--Houston [14th Dist.] 1999, no pet.)*; *Nevarez v. State, 767 S.W.2d 766, 768 (Tex. Crim. App. 1989)* (en banc). Black's Law Dictionary defines "fair" as "1. Impartial; just; equitable; disinterested," and "2. Free of bias or prejudice." BLACK'S LAW DICTIONARY 505 (8th ed. 2004). The Supreme Court of Wyoming clarifies the definition by comparing "fair" with the following similar terms:

> FAIR, the most general of the terms, implies a disposition in a person or group *to achieve a fitting and right balance of* claims or *considerations* that is free from undue favoritism even to oneself, or implies a quality or result in an action befitting such a disposition.
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> * * * * * *
>
> JUST stresses, more than FAIR, a disposition to conform with or conformity with the standard of what is right, true, or lawful, despite strong, esp. personal, influences tending to subvert that conformity . . . (a just statement of the facts) . . . .
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> * * * * *
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> IMPARTIAL stresses an absence of favor or prejudice in judgment.
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> *Casteel v. News-Record, Inc., 875 P.2d 21, 24 (Wyo. 1994)* (emphasis added) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1971)).

The ordinary and obvious meaning of fair does not require that the process, which in this case is the process utilized to obtain Vega's statement, be precise or accurate. *See id*. (concluding that the meaning of fair does not require the report to be true or accurate). What is required is that the process have the qualities of impartiality and honesty. *See id*. It is a process that is free from prejudice, favoritism, and self-interest. *See id*. These parameters help define what is a fitting and right balance of considerations. Therefore, determining fairness to Vega and the State, we ask whether the process of taking Vega's statement in Illinois in the absence of a magistrate was exercised and enforced in a manner that achieved a fitting and right balance of considerations such that both parties were assured a fair hearing where the parties' legal rights were recognized and enforced.

In order to identify Vega's considerations, we must review the responsibilities of the magistrate as set out in *section 51.09 of the family code*. [17] Under *section 51.09*, the magistrate is to ascertain whether the accused juvenile wishes to waive her constitutional rights. *Hill v. State, 78 S.W.3d 374, 386 (Tex. App.--Tyler 2001, pet. ref'd)*. *Section 51.09* provides that the magistrate must provide appropriate warnings to the juvenile before the making of the statement. [18] *See* Act of May 22, 1991, 72nd Leg., ch. 429, § 1, eff. Sept. 1, 1991; Act of May 24, 1991, 72nd Leg., ch. 557, § 1, eff. Sept. 1, 1991; Act of May 27, 1991, 72nd Leg., ch. 593, § 1, eff. Aug. 26, 1991. The statement must be signed in the presence of the magistrate with no law enforcement officer or prosecuting attorney present except for a bailiff or law enforcement officer who is unarmed, if the magistrate determines it necessary. *Id*.; *see Berkemer v. McCarty, 468 U.S. 420, 438, 104 S. Ct. 3138, 82 L. Ed. 2d 317*

*(1984)* ("The authority of an armed, uniformed officer exerts some pressure to respond to questions."); *Ancira v. State, 516 S.W.2d 924, 926 (Tex. Crim. App. 1974)* (holding that potential for compulsion existed when an armed officer interviewed a suspect who was detained inside a police vehicle). Additionally, the magistrate must certify that she has determined "that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights." *See* Act of May 22, 1991, 72nd Leg., ch. 429, § 1, eff. Sept. 1, 1991; Act of May 24, 1991, 72nd Leg., ch. 557, § 1, eff. Sept. 1, 1991; Act of May 27, 1991, 72nd Leg., ch. 593, § 1, eff. Aug. 26, 1991.

17 For convenience, we will refer only to *section 51.09* as it was written at the time Vega gave her statement.

18 In reviewing Vega's fourth issue, the court of criminal appeals determined that the warnings Vega received were sufficient to comply with Texas law to the extent necessary to carry out Texas's intended purpose and public policy. Therefore, we do not address the sufficiency of the *Miranda* warnings; rather, we address the absence of a magistrate during the warnings.

Therefore, under *section 51.09*, Vega's considerations involve her legal right to have her constitutional rights thoroughly explained so that any waiver of those rights is made voluntarily and uncoerced, and knowingly and intelligently. [19] *See id*. An additional consideration under *section 51.09* is to reduce the impact of armed law enforcement personnel on Vega. *See id*. Also, under *section 51.01*, Vega's considerations include being assured that a fair hearing will result from the simple judicial procedure through which this statutory right is recognized, executed, and enforced. *See* Acts 1973, 63rd Leg., p. 1460, ch. 554, § 1, eff. Sept. 1, 1973.

19 While arguing that provisions of the family code were violated, Vega does not contend that her constitutional rights were violated.

(1) Voluntary and Uncoerced

A voluntary statement is the product of a free and deliberate choice rather than intimidation, coercion, or deception. *See Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986)*. A court must examine the totality of the circumstances surrounding the interrogation to determine if a confession was voluntary and uncoerced. *See id.*; *Ashcraft v. State, 934 S.W.2d 727, 738 (Tex. App.--Corpus Christi 1996, pet. ref'd)*.

At the motion to suppress hearing, Detective Gregory Biochi testified that he issued *Miranda* warnings to Vega during her first interview with law enforcement officers at 12:45 p.m. Vega did not ask for an attorney or seek to remain silent; instead, she agreed to talk. Assistant State's Attorney Michael Falagario interviewed Vega at 3:30 p.m. ASA Falagario testified that he advised Vega of her rights and explained that he was a prosecutor, an attorney assisting the police, and not Vega's attorney. Vega said that she understood who he was. ASA Falagario testified that he spoke to Vega alone to make sure she was being treated "okay," that she did not need anything, and that she had no complaints. He explained to Vega the possibilities concerning giving a statement. Vega said that she had been treated well, and agreed to give a handwritten statement. After Vega agreed to make a statement, ASA Falagario left the interview room in order to take a statement from Nonn and did not return until 7:30 p.m. when he took Vega's statement.

Chicago Police Youth Officer Linda Paraday introduced herself to Vega at approximately 4:00 p.m. and read Vega her rights. Youth Officer Paraday also informed Vega that she would be tried as an adult. Vega replied that she had heard those warnings before. Youth Officer Paraday talked with Vega while they waited for ASA

Falagario, and she explained to Vega that she was there for her if she needed anything. Youth Officer Paraday testified that she wore a weapon under her blazer, but it was not visible to Vega.

When ASA Falagario returned to the interview room at 7:30 p.m., he again asked Vega if she wanted to give a statement. Vega indicated that she wanted to give a handwritten statement. ASA Falagario read the written warnings on the statement form to Vega, and he also included the warning that she would be tried as an adult. Vega never said that she wanted to remain silent or asked for an attorney and, instead, agreed to talk to the prosecutor. ASA Falagario explained that he was going to write down what Vega was saying as she told him what had happened. He also told Vega he would make any changes, corrections, or additions she wanted. The following written warnings were given:

> I understand that I have the right to remain silent and that anything I say can be used against me in a court of law. I understand that I have the right to talk to a lawyer and have him present with me during questioning, and if I cannot afford to hire a lawyer one will be appointed by the court to represent me before any questioning. I understand that although I am 16 years [sic] I will be tried as an adult.
>
> Understanding these rights, I wish to give a statement.

After saying that she understood the above warnings and wanted to make a statement, Vega signed on the line below the warnings. ASA Falagario wrote out Vega's statement as Vega told him what happened. Youth Officer Paraday, who was present when Vega made her statement, noted that a detective interrupted the taking of the statement to inform them that Vega's mother had called. The State's attorney asked Vega if she wanted to talk to her mother, and, after Vega said that she wanted to do so, Youth Officer Paraday took Vega to a phone. Vega did not ask to stop or to be given an attorney after talking with her mother. She, instead, continued with the statement.

When ASA Falagario finished writing the statement, Vega read the warnings and the first paragraph of the statement aloud. ASA Falagario read the rest of the statement as Vega followed along. Vega requested changes and corrections to the statement, which ASA Falagario made. After Vega was satisfied with the changes and corrections, she signed each page of the statement. Youth Officer Paraday testified that no one used any tricks, coercion, or promises to get Vega to sign the statement.

Considering all of the testimony in the record, the totality of the circumstances surrounding Vega's interrogation suggests that her statement was the product of a free and deliberate choice rather than intimidation, coercion, or deception. *See Moran, 475 U.S. at 421.* Vega's rights were explained to her. In addition, before making her statement, Vega was read the written warnings on the statement, stated that she understood the warnings, and signed on the line below the warnings. Vega never invoked her right to remain silent or to seek counsel. ASA Falagario and Youth Officer Paraday testified that they each spoke with Vega privately and asked if she was being treated okay and if she needed anything. During these discussions, Vega did not make any indication that she was treated unfairly or was coerced in any way. Vega was also allowed to speak with her mother before signing the statement. Furthermore, because Youth Officer Paraday's weapon was not visible to Vega, its presence during the making of the statement does not suggest coercion. Accordingly, we conclude that Vega's statement was voluntary and uncoerced.

(2) Knowingly and Intelligently

To knowingly and intelligently abandon a constitutional right, the accused must be aware of both the nature of the right being abandoned and the consequences of the decision to abandon it. *See id*. A court must examine the totality of the circumstances surrounding the interrogation to determine if the accused had the requisite

level of comprehension to knowingly and intelligently abandon a constitutional right. *See id.*; *Ashcraft, 934 S.W.2d at 738*.

In addition to the facts set out above, Youth Officer Paraday testified that Vega appeared very bright and rather calm and matter-of-fact. Vega indicated that she understood the warnings. She also had the opportunity to read warnings aloud before she signed the statement.

Considering all of the testimony in the record, the totality of the circumstances surrounding the interrogation suggests that Vega was aware of both the nature of the rights that she abandoned and the consequences of the decision to abandon those rights. *See Moran, 475 U.S. at 421*. We therefore conclude that Vega made her statement knowingly and intelligently.

Accordingly, Vega's legal rights were explained to her so that her statement was made voluntarily, uncoerced, knowingly, and intelligently. We cannot conclude that Vega's considerations were affected by the absence of a magistrate. The procedures utilized were sufficient to carry out the underlying purpose of the Texas requirements. We therefore conclude that Vega's constitutional and other legal rights were recognized and enforced, and she was assured a fair hearing as directed by *section 51.01 of the family code*.

Vega contends that Texas law enforcement officers should have explained the provisions of the Texas Family Code to the Illinois authorities so that they would employ the correct procedures. However, this would have placed an extreme burden on the Texas and Illinois authorities. Out-of-state law enforcement personnel are not expected to learn and apply the intricacies of Texas statutory law or vice versa. It would be nearly impossible for Texas authorities to fully explain the necessary procedures to be followed when questioning a juvenile to authorities in every state that may apprehend a juvenile for a crime committed in Texas. Also, Texas law enforcement officers have no control over the actions of authorities in other states. Finally, as noted by the court of criminal appeals, since the identified violations of the Texas Family Code were committed by Illinois law enforcement officers, excluding Vega's statement would not deter Illinois law enforcement officers from future violations because the Illinois police will continue to comply with their own laws and procedures. *See Vega, 84 S.W. at 619* (citing *State v. Mayorga, 901 S.W.2d 943, 946 (Tex. Crim. App. 1995))*. A ruling that the statement was properly admitted is most consistent with principles of "fairness" to all involved. The circumstances surrounding the taking of Vega's statement, although in violation of Texas statutes, upheld the constitutional rights the Texas procedures were designed to protect.

Vega argues that the Texas officials should have advised the Illinois authorities of Texas's procedures for taking juvenile statements. This ignores a number of practical concerns at the time, including the lack of any clear precedent concerning which state's procedures should apply. She asserts that said officers should have so analyzed a complex legal issue that this Court is still reviewing. This argument also ignores significant practical concerns, such as the need to not only decide that Texas law applies, but rather to also convince the Illinois authorities, including a magistrate, to follow Texas law rather than Illinois law. It also does not recognize that an Illinois magistrate would have had to educate himself concerning the role a magistrate plays under Texas juvenile law and also that the magistrate and everyone else involved would have had to then properly carry out their unfamiliar role under said law.

Vega contends that a plain reading of *section 51.09* evinces a desire by the legislature to protect juveniles' rights and elevate those rights above those accorded an adult. She contends that the legislature intended to protect children from coercion, and that the presence of a magistrate is a safeguard against the waiver of a juvenile's rights by those minors who lack the experience or judgment to waive them. We believe, however, that Vega's statutory rights were protected when, in the absence of a magistrate, Illinois authorities spoke with Vega and determined that she not only understood the nature and contents of her statement, but that she

was also signing it knowingly, intelligently, and voluntarily. Vega was afforded the procedural safeguards of the family code.

The Texas provisions are not constitutionally mandated; they were added to provide a mechanism to make sure that a juvenile's right against self-incrimination was protected when an attorney was not present during questioning. The underlying purposes of the Texas requirements were accomplished and Vega's constitutional rights upheld. The process of taking Vega's statement in Illinois in the absence of a magistrate was exercised and enforced in a manner that achieved a fitting and right balance of considerations such that both parties were assured a fair hearing where the parties' legal rights were recognized and enforced. While the process was not precise and violations of the Texas Family Code occurred, based on the record before us, the process was fair to both Vega and the State. It was impartial, honest, and free from prejudice, undue favoritism, and self-interest. *See Casteel, 875 P.2d at 24.* It achieved a fitting and right balance of considerations. *Id*.

Our evaluation of the "fairness" issue compels a conclusion that Vega's statement was properly admitted under Texas law. Accordingly, we conclude the trial court correctly determined that those actions adequately protected Vega, notwithstanding the absence of the magistrate, making the statement admissible. Thus, the trial court did not err in denying her motion to suppress. We overrule issues five, six, seven, ten, and eleven.

b. *Section 52.025* Violations

In issues nine and thirteen, Vega contends that her statement should be suppressed because the Illinois authorities violated *section 52.025 of the family code*. Specifically, she contends that she was detained more than six hours before the conclusion of her statement, [20] and that she was improperly left unattended in the interview room. [21] *See* Acts 1991, 72nd Leg., ch. 495, § 2, eff. Sept. 1, 1991 (current version at *TEX. FAM. CODE ANN. § 52.025* (Vernon 2002)). The court of criminal appeals agreed that these circumstances violated provisions [*33] of Title 3, specifically those found in *section 52.025*. *See Vega, 84 S.W.3d at 619*.

20 Now *TEX. FAM. CODE ANN. § 52.025(d)* (Vernon 2002).

21 Now *TEX. FAM. CODE ANN. § 52.025(c)* (Vernon 2002).

However, unlike *section 51.095(a)* discussed above, *section 52.025* is not an independent exclusionary statute. *Gonzales v. State, 67 S.W.3d 910, 912 (Tex. Crim. App. 2002)*. Therefore, as the court of criminal appeals explained in *Gonzales,* in order for a juvenile's written statement to be suppressed because of a *section 52.025* violation, there must be some exclusionary mechanism. *Id*. That mechanism is *section 51.17 of the family code* which provides that "Chapter 38, Code of Criminal Procedure, applies in a judicial proceeding under this title." *Id*. Thus, at the direction of the *Gonzales* Court, "if evidence is to be excluded because of a *section 52.025* violation, it must be excluded through the operation of *article 38.23(a)*." *Id*.

*Article 38.23(a)* provides that "[n]o evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas . . . shall be admitted in evidence." Our decisions have established that evidence is not "obtained . . . in violation" of a provision of law if there is no causal connection between the illegal conduct and the acquisition of the evidence. *Id.* The defendant has the burden to show a causal connection between that violation and her ensuing confession. *Gonzales v. State, 125 S.W.3d 616, 619 (Tex. App.--Houston [1st Dist.] 2003)* (en banc), *aff'd sub nom. Pham v. State, 175 S.W.3d 767 (Tex. Crim. App. 2005)*.

Here, Vega had the burden to prove that the violations of *section 52.025* caused her to make her statement. Although Vega acknowledges the causal connection requirement, she has not claimed that these violations caused her to give her statement. Further, even had she raised this contention, Vega points to no evidence in

the record demonstrating a causal connection between the violations and her decision to give a statement to the police, and we have found none. Accordingly, we overrule issues nine and thirteen.

**Conclusion:** Accordingly, we affirm the judgment of the trial court.