

Applicable Law



§51.095 Texas Family Code -Admissibility of a Statement of a Child

- **§51.095** is the Texas Juvenile Confession Statute.
- Covers written, oral and tape-recorded statements.
- Requires that legal warnings be given to a child by a magistrate, unlike in adult criminal cases.
- Since 1999, referees and masters can magistrate juveniles without juvenile court ratification.

Requirement of Custody

§51.095(d) Texas Family Code

 Rules apply only if a child is In Custody!



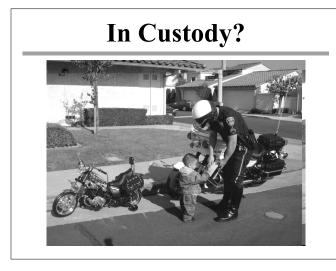
A child is *in custody*:

- ► While in a detention facility or other place of confinement;
- While in the custody of an officer; or
- During or after interrogation by an officer while in the possession of DPFS and suspected of committing a crime.

Lawfully in Custody

§52.01 Texas Family Code

- Pursuant to a court order
- Directive to apprehend
- Probable cause arrest
- On-sight arrest
- On-sight violation of probation
- A probation officer may take a child into custody upon probable cause of a violation of probation or a condition of release (HB 1575)



What does "In Custody" mean?

Totality of Circumstances

- <u>S.A.R.</u>, 931 S.W. 3d 585 (San Antonio-1996): child was transported to police station by 4 uniformed officers in a marked unit, fingerprinted & told she was suspect.
- *Kaupp v. Tex*, 123 S. Ct. 1843 (2003): child picked up from home at 3 am, cuffed & transported by 6 officers to station.
- <u>*L.M.*</u>, 993 S.W. 2d 276 (Austin-1999): child was taken into the possession of DPRS and placed in a children's shelter where police questioned her re: the death of a child in her care.



What is "not in custody"?

Totality of Circumstances

- <u>*V.M.D.*</u>, 974 S.W.2d 332 (S.A.-1998): voluntarily went to station as "key witness", never cuffed & left with her mother after confessing.
- <u>*M.R.R.*</u>, 2 S.W. 3d 319 (S.A.-1999): child & mother go to station, told he did not have to cooperate and would not be arrested TODAY for anything he said.
- <u>Martinez</u>, 131 S.W. 3d 22 (S.A.-2003): child volunteered to go to station, mom agreed & went along, never cuffed, told he would not be arrested that day & provided ride home.

Duties Upon Placing a Child in Custody



§52.02(a), F.C.

• "Without unnecessary delay and without first taking the child to any place other than a juvenile processing office," police must:

- Release child to a parent or adult who promises to bring child to juvenile to court;
- ► Bring child to the office or designated official if there is probable cause of delinquent conduct, CINS or VOP;
- Bring child to a designated detention facility or a secure detention facility;
- ► Bring child to a medical facility, if necessary; or
- ► Dispose of case without a referral to juvenile court.

Juvenile Processing Office

§52.025(a) Texas Family Code

- A room or office designated by local juvenile board (can have more than one)
- Where a juvenile can be temporarily detained while an officer:
 - ► Releases a child to a parent/guardian
 - Completes paperwork
 - Photographs or fingerprints the child
 - ► Has a magistrate issue warnings or
 - ► Takes a written statement from a child
- A child may not be left unattended
- A child may not stay longer than six hours

Law Enforcement Duties

§52.02(a) Texas Family Code

- Go directly to juvenile processing office without unnecessary delay.
- <u>Roquemore</u>, 60 S.W. 3d 862 (Tex Crim App 2001): 25 min stop to recover stolen property ruled unneccessary.
- <u>DMGH</u>, 553 S.W. 2d 827 (Tex. App. El Paso 1977): Juvy at p.d. for 7 hours before taken to magistrate "to complete paperwork" ruled unnecessary delay.
- <u>*G.A.T.*</u>, 16 S.W. 3d 818 (Tex. App -Houston[14th] 2000): juvys taken to the scene for identification ruled unnecessary delay.

Necessary Delay

§52.02(a) Texas Family Code

- <u>Contreras</u>, 67 S.W. 3d 181, (Tex Crim App 2001): 50 min delay to tend to victim ruled necessary.
- <u>J.D.</u>, 68 S.W. 3d 775 (S.A.-2001): 2-1/2 hours delay while securing the scene & talking to child's parents ruled necessary.
- <u>Dang</u>, 99 S.W. 3d 172 (Houston-2002): 2-1/2 hours delay while SWAT secured scene & talking to witnesses ruled necessary.

Law Enforcement Duties

§52.02(b) Texas Family Code

- Promptly notify parents with a reason for arrest
 <u>Gonzales</u>, 67 S.W. 3d 910 (TCA-2002): 5-6 hour delay resulted in remand for causal connection review.
 - <u>Pham</u>, 72 S.W. 3d 346 (TCA-2002): no causal connection on remand of 6 hour delay issue.
 - Simpson, 105 S.W. 3d 238 (Tyler-2003): 48 hrs delay voids confession.
 - Vann, 93 S.W. 3d 182 (Houston-2002): notice to cousin as a custodian ruled sufficient compliance.
 - ► <u>J.B.J.</u>, 86 S.W. 3d 810 (Beaumont-2002): 1-1/2 hrs o.k. where 6 attempts documented.
 - ▶ <u>*Ray*</u>, 2004 WL 2613613 (Houston-2004): 8-1/2 hrs delay justified under <u>*Vann*</u> analysis.

The Legal Tests



What is promptly or was the delay justified?

- *Vann*, 93 S.W. 3d 182 (14th 2002): establishes the analysis for determining whether the delay of parental notification was justified:
- 1. The length of time in custody before notification
- ► 2. Whether notification occurred after a statement
- ► 3. The ease of notification, once attempted
- ► 4. What the police did during the delay

The Legal Tests

When does statutory violation lead to the exclusion of evidence?

Pham/Gonzales, __S.W. 3d __, 2005 Tex. Crim. App. Lexis 832 (6-8-05): the burden is on the defendant to show a causal connection between the violated statute & the seized evidence; if a causal connection is established, then the burden is on the State to prove attenuation of taint between the evidence and the violated statute.

"The Reason for Taking a Child into Custody..."

Hampton v. State, 86 S.W.3d 603 (Tex.Crim.App. 2002)

- A detective informed mom that he was taking Hampton into custody on a juvenile absconder warrant, but did not inform her of police suspicions that he was involved in a murder.
- <u>Issue</u>: Did §52.02(b) require police to notify a parent prior to questioning Hampton about the murder?
- <u>Held</u>: No. The police properly notified mom "of the reason for taking the child into custody" and were not required to tell her of their suspicions re: the murder.

Magistrate Duties

§51.095 Texas Family Code

- Once alone with the child, explain the charges.
- Provide *Miranda* warnings before child gives statement.
- If child chooses to waive rights, leave the room and let police interview.
- After police interview, review statement alone w/ child:
 - ► Does child understand nature & contents of statement?
 - ► Is it a voluntary statement?
 - Did the child intelligently, knowingly & voluntaily waive rights?
- Have child sign the statement.
- Magistrate signs certification.

§ 51.095 Errors



■ <u>J.M.S.</u>, unpub'd, No. 06-04-00008-CV (6th-2004): officer had child sign statement before final review w/ Mag.

- <u>Diaz</u>, 61 S.W.3d 525 (SA-2001): Mag included wrong penalty range in explanation of charges.
- <u>*Hill*</u>, 78 S.W.3d 374 (Tyler-2001): child invoked right to counsel, but Mag focused on whether child wanted to give a statement rather that whether child wanted to waive right to counsel (4 hr delay also).

Is Parental Presence Needed?

<u>Glover v. State</u>, UNPUB'D No. 14-95-00021-CR (Tex.App.-Houston [14th Dist.] 1996)

- There is **NO** requirement that a magistrate notify the parent of a juvenile's interrogation when the juvenile does not request the parent's presence.
- The law does not require that a child be allowed to speak with a parent prior to making a statement.
- Courts have held that a child's request for a parent is not an invocation of the right to counsel.

■ BUT...

Other Rules Involving Parents

Remember...

- §52.025(c) Child can have a parent, guardian or attorney present in a juvenile processing office.
- <u>*C.R.*</u>, 995 S.W. 2d 778 (Austin 1999) child has the right to have parent in the JPO where police did not attempt to notify mom until after a statement was taken, mom testified that she had called the PD looking for her son & when police did call they discouraged mom from coming to JPO.

Is Request for Parent an Invocation?

<u>In re: H.V.,</u> No. 2-04-029-CV, 2005 Tex. App. Lexis 2088 (Tex.App.-Ft. Worth 3/17/05)

- 16 yr old arrested for Tampering and waited in patrol car for 90 minutes before being transported to JPO.
- During Magistrate's reading of Miranda, student said, "I want to call my mother. I want her to ask for an attorney."
- HELD:Request for mom was unambiguous request for attorney.

Other Rules Involving Parents

Remember...

- §61.103 Parent now has the right to communicate privately with a child taken into custody while in:
- A juvenile processing office;
- ► A secure detention facility;
- ► A secure correctional facility;
- ► A court-ordered placement facility; or
- ► The custody of TYC.
- The time, place and conditions of the private, in-person communication may be regulated to prevent disruption of activities and to maintain safety and security of the facility.

Recorded Statements

§51.095(a)(5) Texas Family Code

- Device must be capable of accurate recording.
- Operator must be competent to operate device.
- Each voice (if not a video) must be identified.
- Both the Warnings and the child's waiver of rights must be on the recording.
- The recording must be accurate & not altered.
- A copy of the recording must be provided to child's counsel at least 20 days before trial.

New Legislation

Videotaped Juvenile Confessions

- §51.095(f) A warning magistrate may at the time the warnings are provided request by speaking on the tape recording that the officer return the child and the videotape to the magistrate at the conclusion of the process of questioning to review the videotape with the child to determine whether the child's statements were given voluntarily.
- If a magistrate uses this procedure, a child's statement is not admissible unless the magistrate determines that the statement was given voluntarily.
- Effective September 1, 2005.

The Six Hour Rule

§52.025(d), F.C.

- <u>In the Matter of C.L.C.</u>, unpub'd No. 14-96-105-CV (14th 1997)
 - ► C.L.C. was detained in a J.P.O. for 9 hours, giving a statement after only 4 hours.
 - Held: The six hour rule is to ensure that no coercion or coercive atmosphere is used in obtaining a confession.
- <u>Vega v. State</u>, UNPUB'D No. 13-99-435-CR (CC 2001)
- The record was unclear how long Vega was detained, but clearly showed that he gave his statement within 6 hours.
- <u>Held</u>:No violation of the 6 hour rule.



Out-of-State Confessions



Vega v. State, 84 S.W.3d 613 (Tex.Crim.App. 2002)

- Chicago police obtained a written confession from Vega under Illinois law regarding a Texas murder.
- Vega argued her statement was inadmissible because it didn't follow the requirements of §51.095.
- Held: Reversed and remanded to the court of appeals to examine the effect of the absence of a magistrate on the admissibility of the challenged statement in a context of **fairness** to both parties.

Appellate Issues

Waived or Preserved

- <u>*Hill*</u>, 78 S.W. 3d 374 (Tyler 2001): JPO error not raised at trial level, thus is waived.
- *Vega*, 2001Tex App Lexis 7364 (CC 2001): lack of parental notification, waived.
- <u>Childs</u>, 21 S.W. 3d 631 (14th 2000): lied about age & processed as adult, waived juvenile rights.
- <u>*D.M.*</u>, 611 S.W. 2d 880 (Amarillo 1980): lied about age, thus waived.

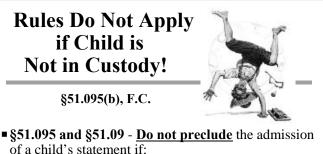
Appellate Issues

Waived or Preserved

- <u>C.O.S.</u>,988 S.W.2d 760 (Tex 1999): 3 categories of rights:
- ▶ 1. Fundamental rights cannot be waived or forfeited.
- ► 2. Forfeitable rights may be affirmatively waived.
- ► 3. Waiveable rights may be waived by inaction.
- <u>*G.A.T.*</u>,16 S.W.3d 818 (14th 2000): JPO is a waiveable right that requires objection or complaint to the trial court.

Non-Custodial Statements





- The statement does not stem from custodial interrogation; or
- Regardless of whether the statement stems from custodial interrogation, the statement is voluntary and has a bearing on the credibility of the child as a witness.

What Will the Courts Consider?



§51.095, F.C.

- "Child" must be older than 10 and younger than 17.
- All statements must be **voluntary**: No threats, coercion, or promises in exchange for a confession.
- Child must be able to understand rights & warnings.
- "Totality of the Circumstances Test:" Courts will look into all the circumstances re: the interrogation.

Totality of the Circumstances

Factors to Consider

- Child's age, intelligence, maturity, and experience with the juvenile justice system.
- Length of time left alone with police.
- Failure to advise child of statutory rights.
- Failure to give warnings in Spanish.
- Isolation from family and friendly adult advice.
- Length of time before child is taken to a magistrate and properly warned.

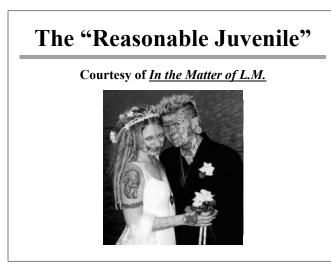
How Not to Take a Non-Custodial Statement!



Parental Notice only if "in Custody"

E.M.R., 55 S.W.3d 712 (Corpus Christi 2001)

- E.M.R. was a suspect in a murder case and agreed to go with police to talk at the police station.
- Mom agreed but did not ask to go along.
- No duty to notify parent until after E.M.R. incriminated himself and was placed in custody.
- Held: "The purpose of Ch. 52 is to prevent a juvenile from being wrongfully taken into custody and to prevent the juvenile from being wrongfully held in custody for long periods of time."



The "Reasonable Juvenile" Standard

- <u>L.M.</u>, 993 S.W.2d 276 (Austin-1999): 11-year-old in possession of DPRS and questioned at shelter by police.
 HELD: Child's age was a factor to consider, thus the "reasonable juvenile" standard is born.
- <u>D.A.R.</u>, 73 S.W.3d 505 (El Paso-2002):13-year-old charged w/ UCW on campus; child agreed to show SRO where it was located. <u>HELD</u>: reasonable juvenile would believe he was in custody since pc to arrest; not told he was free to leave; and unaccompanied by an friendly adult.
- <u>*E.A.W.*</u>, 547 S.W.2d 63 (Waco 1977): 22 yrs before *LM*, courts put great emphasis on child's age finding that an 11 year old c/n "voluntarily" waive 5th Amd rights w/o adult.

The U.S. Supreme Court Says...

Yarborough v. Alvarado, 124 S.Ct. 2140 (2004)

• <u>Held</u>: 17-year-old's statement was non-custodial under reasonable person std.

Factors favoring custodial:

- Interview lasted two hours at the police station;
- ▶ Police didn't tell youth he was free to leave;
- Parents asked to be present but were denied.

Factors favoring non-custodial:

- ▶ Parents brought youth to the station and waited there;
- Police focused on co-defendant's crimes;
- Police twice asked if youth needed a break;
- ▶ Police allowed youth to go home after the interview.

Oral Statements



Oral Statements

§51.095(a)(2)-(5), F.C.

- Statement of facts/circumstances found to be true <u>and</u> tend to establish guilt, such as:
- Finding secreted or stolen property; or
- The instrument the child says was used in the offense.
- Statements **res gestae** of the arrest or of the offense.
- Statements made in court, before a grand jury, or at a preliminary hearing, <u>other than a detention hearing</u>.
- Custodial, oral statements must be be recorded/videotaped with same procedures as a written statment.

Oral Statements

The Unwritten Rule

- Meza, 577 S.W.2d 705 (Tex Crim App 1979): although statute does not say Miranda warnings are required for a non-custodial oral statement
- HELD: §51.09(b)(2) [now 51.095(a)(2)] does not dispense with *Miranda* warnings, thus *Miranda* warnings are necessary before the admission of even non-custodial statements.

Oral Statement in Custody

§51.095(a)(5) Texas Family Code

- Must be recorded with warnings by a Magistrate
 - <u>Jeffley</u>, 38 S.W. 3d 847 (Houston-2001): noncustodial station-house interview escalated into "custodial" setting.
 - <u>C.R.</u>, unpub'd No. 03-01-534-CV(Austin-2003): custodial oral statement held harmless because sufficient evidence without it.
 - <u>*R.E.A.*</u>, unpub'd No. 03-04-028-CV, (Austin-2004): custodial oral statement suppressed for lack of mag warnings: "do you have any illegal on you?" during arrest on warrant.

Causal Connection Review

Can an improperly warned statement be saved?

- Horton, 78 S.W. 3d 701 (Austin-2002): applied causal connection test to determine admissibility of properly warned written statement following improperly warned oral statement
- Marsh, 140 S.W. 3d 901 (14th 2004): applied causal connection test to determine admissibility of properly warned recorded statement following improperly warned oral statement

Non-Custodial Oral Correction of Unlawful Confession Admissible

<u>R.J.H.</u>, 79 S.W.3d 1 (Tex. 2002)

- R.J.H. gave a written statement w/o magistrate warnings in the presence of his dad about a burglary and some stolen property (later ruled "in custody").
- R.J.H. called back several days later and told the police that he'd committed the burglary by himself.
- Issue: Was non-custodial, oral statement admissible?
- <u>Held</u>: Yes! R.J.H. initiated contact and wasn't in custody when he made the oral statements.

Res Gestae Statement at Scene

<u>R.G.</u>, UNPUB'D No. 04-01-317-CV (S.A. 2002)

- Police acted on an anonymous tip that 2 boys were smoking marijuana in a shed behind a vacant house.
- Without being questioned, R.G. said he knew why the police were there, admitted smoking marijuana, and offered to show the police where it was located.
- <u>Held</u>: R.G.'s statements weren't the result of custodial interrogation. He wasn't cuffed or restrained, the exchange took place on a residential street, and the police never asked him any questions.

Res Gestae in Patrol Car

<u>Roquemore v. State</u>, 95 S.W. 3d 315 (Tex. App.-Houston [1st Dist.] 2002)

- Child confessed to robbery from backseat of patrol car.
- Clearly "in custody," but
- Was not subjected to interrogation
- Offered to recover stolen property on the way to station
- Which was an improper detour, but res gestae confession was sufficient evidence.

Oral Statement to Probation Officer OK

Rushing v. State, 50 S.W.3d 715 (Tex.App.-Waco 2001)

- While awaiting his certification hearing, Rushing had numerous conversations with his juvenile PO.
- The JPO never questioned Rushing about his offense, but Rushing insisted on talking about it.
- The JPO testified at the adult criminal trial about several damaging admissions Rushing had made.
- Held: The JPO's questions were about routine custodial matters and were not "interrogation."

Oral Statements to Vice Principal OK



- <u>V.P.</u>, 55 S.W.3d 25 (Tex.App.-Austin 2001)
- An SRO was told that V.P. had brought a gun to school.
- The officer and a hall monitor took V.P. to the Assistant Principal's office to be "questioned."
- The school official interviewed V.P. without any prompting by law enforcement and V.P. confessed.
- <u>Held</u>: V.P. was never "in custody" and had no right to counsel or to remain silent.

When is Consent Valid?

Consent Must be Knowing and Voluntary

- No duress or coersion, either express or implied.
- Avoid a "coersive atmosphere."
- Consensual search is limited by the consent.
- Courts use **"totality of the circumstances"** test.
- Waiver of a 4th Am. right may have to be in writing or in open court with lawyer's consent. §51.09, F.C.

Consent to Search

D.G., 96 S.W.3d 465 (Austin 2002)

Consent to Search

L.C., UNPUB'D No. 03-02-070-CV(Austin 2003)

- 15 year old who said "ok" or "all right" as he held out his arms to be searched by police gave valid consent.
- Re-affirms <u>In re:D.G.</u>

Valid consent must be:

- Voluntary;
- ► Freely given;
- Positive and unequivocal;
- Not coerced by implied threat or covert force; and
- Not a mere acquiescence to a claim of lawful authority.

Voluntary Consent

<u>In re R.J.</u>, UNPUBLISHED, No. 12-03-00380-CV (TYLER 2004)

- Routine traffic stop, juvenile signs citation, Officer asks for consent to search, juvenile refuses, so Officer explains about canine sniffs & now juvenile consents
- HELD: not a voluntary consent; voluntary consent must not be due to either physical or psychological pressure
- Factors reviewed: age, no prior experience w/ law enf, unfamiliar with 4th Amd rights, canine sniff & subsequent search appeared inevitable

Coersive Atmosphere

Jones v. Latexo ISD, 499 F.Supp. 223(E.D. Tex 1980)

- H/S students were incapable of exercising unconstrained free will when asked to empty pockets or open cars for search because accustomed to receiving orders & obeying orders from school officials.
- Students were repeatedly "threatened" with calls to mom and getting a warrant if they d/n cooperate.

School Searches



New Jersey v. TLO

"...search of a student does not require a warrant or probable cause, legality demands upon reasonableness of search."

- Student caught smoking in the bathroom by administrator; claimed not to be smoking, but was the only girl in bathroom, holding a purse, administrator searched her purse...cigs, lighter, marijuana, rolling papers & list of customers.
- Schools enforce rules "against conduct that would be perfectly permissible if undertaken by an adult."

The Balancing Test

New Jersey v. T.L.O., 469 U.S. 325 (1985)

- U.S. Supreme Court established that the 4th Amendment applies to students in public schools in a diminished capacity.
- School officials must answer <u>two questions</u>:
 - Was the search reasonable at its inception? and
 Was the search reasonable in its scope, duration, and intensity?
- <u>Held</u>: Although the student enjoyed an expectation of privacy, the search of her purse was reasonable under the circumstances.

What Are Reasonable Grounds to Search?

- **1.** That a law or a school rule has been broken;
- 2. That a particular student (or a group of identifiable students) has committed the violation;
- 3. That the violation is the kind for which there may be physical evidence; and
- 4. That the evidence will be found in a particular place associated with the suspected student(s).

Off-Duty Police Officer Acting as School Security Guard

Salazar v. Luty, 761 F.Supp. 45 (S.D.Tx. 1999)

- Off-duty policeman working for a public school discovered that a student was selling drugs at school.
- The case was handled as a school disciplinary matter and not as a criminal case.
- <u>Held</u>: The officer's status was the same as any district employee and the extent to which he was allowed to be involved was contingent upon the general rule that the school act reasonably.

<u>Coronado v. State</u>, 835 S.W.2d 636 (Tex.Crim.App. 1992)

- V.P. was told a student was leaving school to attend his grandfather's funeral, but grandfather had not died.
- Student denied driving to school, but pat down revealed car keys.
- Search of car revealed drugs and a weighing scale commonly used in the drug trade.
- VP had **reasonable grounds** to believe student violating rules, thus "pat-down" for keys was justified.
- However, vehicle search was not reasonably related in scope to the circumstances which initially justified the student's detention, namely his attempt to skip school.

Probable Cause on Campus

<u>Sloboda v. State</u>, 747 S.W.2d 20 (S.A. 1988)

- Student was seen tossing an empty beer can to the side of his car at a high school football game.
- He was detained and unopened beers were seen in plain view in the back seat of his locked car.
- Inside the car, the officer smelled marijuana, which justified a search of the entire vehicle for drugs.
- <u>Held</u>: The marijuana was admissible. Officer had probable cause to detain/arrest student, and probable cause to search student's car for marijuana.

Tip & Reasonable Suspicion

In re:A.T.H., 106 S.W.3d 338 (Tex.App.-Austin 2003)

- Anonymous caller told SRO that 4 juveniles were smoking marijuana near an Austin H.S.
- One was ID'd as a B/M wearing a Dion Sanders football jersey. SRO found the student, did a patdown for weapons as student removed a plastic baggie from his pocket.
- Held: The SRO had no reasonable suspicion to conduct a weapons frisk. The tip was not corroborated by independent observations giving rise to reasonable suspicion that any criminal activity was afoot.

School Officials & Anonymous Tips

<u>K.C.B.</u>, 141 S.W.3d 303 (Austin 2004)

- Middle school hall monitor rec'd anonymous tip from student that K.C.B. had marijuana in his underwear.
- Vice Principal asked K.C.B. to lift his shirt, extended the elastic on his shorts and observed a plastic bag containing marijuana in his waistline.
- <u>Held</u>: "The presence of drugs... does not tip the balance far enough for the search in this case to be deemed justified at its inception. Immediacy of action is not as necessary as could be found with a tip regarding a weapon."

Pocket Search

Wilcher v. State, 876 S.W.2d 466 (El Paso 1994)

- School official asked an SRO to bring a student to the office on a report he was carrying a gun at school.
- Student was brought in the next day and the SRO asked him to empty his pockets, producing a pager, lighter, over \$1,000 cash and 2 bags of marijuana.
- <u>Student</u>: SRO only had authority to do a "pat down."
- <u>Held</u>: (1) Search was reasonable from its inception; and (2) Reasonable in scope due to the circumstances.

Reasonable Search of Book Bag

Coffman, 782 S.W.2d 249 (Hous. [14th Dist.] 1989)

- Asst. Principal saw Coffman in the hall during class.
- Coffman ignored the request for a hall permit.
- When confronted, he clutched his book bag, kept walking, and became "excited and aggressive."
- Student opened the bag only after the threat to call law enforcement. A gun was inside the bag.
- <u>Held</u>: There was a **reasonable suspicion** that he was doing something illegal and was trying to hide it.

Reasonable Locker Search

<u>Shoemaker</u>, 971 S.W.2d 178 (Beaumont 1998)

- Teacher's wallet stolen from closet in her office.
- Student was only person in the office before theft.
- Teacher searched locker and found 3 credit cards.
- <u>Test</u>:
 - (1) Search was justified at its inception.
 - (2) Search was reasonably related in scope to the circumstances justifying the search to begin with.
- <u>Held</u>: Student w/o reasonable expectation of privacy in locker under school's locker policy.

Valid Search of Journal at School

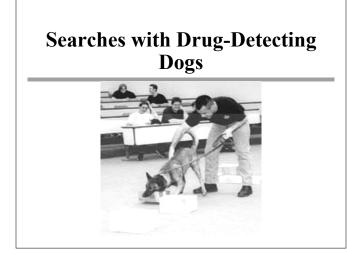
<u>Goldberg v. State</u>, 95 S.W.3d 345 (Houston [1st Dist.] 2002)

- Goldberg committed a brutal murder by slicing and stabbing a woman to death, asking: "Do you like it?"
- 3 years earlier a Houston ISD officer had searched Goldberg at school, along with a notebook containing violent drawings and writings.
- Was reading the notebook an illegal search?
- <u>Held</u>: No. The officer conducted a legal search of the notebook for drugs and had the right to read the passages to determine if they constituted a threat.

Search of Probationer at School

<u>In re: D.D.B.</u>, UNPUBLISHED, No. 03-99-00030-CV(Austin 2000)

- DDB was on probation & attended public school.
- Two residential treatment officers (not JPOs) rec'd a tip that he was selling marijuana at school.
- They went to DDB's school, conducted a search and found cash and a powdery substance = cocaine.
- <u>Held</u>: Probationer with diminished expectation of privacy. "School checks are a reasonable intrusion into student probationers' privacy because they are attending a public school, and the need to protect the other students justifies this intrusion."



Reasonable Sniff Search

Dow v. Renfrow, 475 F.Supp. 1012 (N.D.In. 1979)

- Dogs have a long history in police work and better sense of hearing and smell than humans.
- Sniff of locker or car is not a search, but rather a "public smell" not subject to privacy interest.
- <u>Held</u>: School-wide drug inspection with dogs sniffing the classroom aisles was reasonable, as well as search of students' pockets when dogs alerted.
- Strip search, however, was unreasonable without articulable facts to show that student possessed contraband.

Unreasonable Sniff Search

<u>Horton v. Goose Creek ISD</u>, 690 F.2d 470 (5th Cir. 1982)

- Classroom sniff by trained dogs walking aisles.
- Dogs "alerted" by scratching & barking at students.
- The sniffing of individual students was a search.
- Held: "The intrusion on dignity and personal security that goes with the type of canine inspection of the student's person involved in this case cannot be justified by the need to prevent abuse of drugs and alcohol when there is no individualized suspicion..."

Random (Suspicionless) Drug Testing



Reasonable Drug Testing

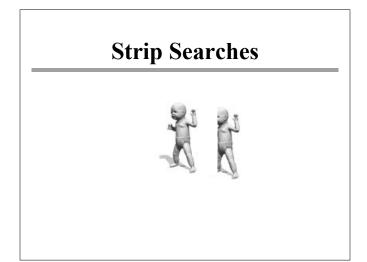
<u>Vernonia SD v. Acton</u>, 515 U.S. 646 (1995)

- School district adopted a policy of random urinalysis to test all student-athletes.
- Supreme Court balanced students' privacy interest and gov't interest in deterring student drug use.
- Supreme Court noted that student-athletes enjoy a reduced expectation of privacy.
- <u>Held</u>: School district's policy was reasonable under these limited and specific circumstances.

Reasonable Drug Testing

Bd Education v. Earls, 122 S.Ct. 2559 (2002)

- Okla. ISD required all middle & high school students to consent to drug testing to participate in any extracurricular activities like choir, band, FHA.
- Held: The policy is a reasonable means of furthering the school's interest in preventing and deterring drug use among students and does not violate the 4th Am.
 - These students have a limited expectation of privacy.
 - ► The invasion on students' privacy is not significant.



Strip Searches

Is the suspected infraction related to health or safety?

- HELD: Reasonable
 - ► <u>Widener v. Frye</u>, 809 F.Supp. 35 (S.D.Ohio 1992): student appeared under influence of MJ
 - Cornfield v. CHSD, 991 F.2d 1316 (7th Cir. 1993): believed student was hiding drugs
- HELD:Unreasonable
 - <u>Oliver v. McClung</u>, 919 F.Supp. 1206 (N.D.In. 1995): \$4.50 missing from gym locker
 - <u>Konop v. NWSD</u>, 26 F.Supp.2d 1189 (N.D.S.D. 1998): \$200 missing from locker
 - ► <u>Beard v. Whitmore</u>, 402 F.3d 598 (6th Cir. 2005):

Search for \$\$ w/o ind'l suspicion is unconstitutional

Reasonable Strip Search

<u>Widener v. Frye</u>, 809 F.Supp. 35 (S.D.Ohio 1992)

- Teacher smelled strong odor on Widener's person and referred him to the administration.
- A high school security guard also noticed that student acted "sluggish" and "lethargic."
- Pat-down and search of pockets revealed nothing.
- Limited strip search was conducted by the guards.
- <u>Held</u>: Officials had reasonable grounds to suspect a violation and search was reasonable in scope given the nature of the infraction.

Reasonable Strip Search

<u>Cornfield v. CHSD</u>, 991 F.2d 1316 (7th Cir. 1993)

- Teacher observed unusual bulge in student's crotch area and thought he was carrying drugs.
- Student and mother refused consent to search.
- Strip search conducted in boys' locker room by 2 male teachers standing 15' away from student.
- No drugs or contraband found.
- <u>Held</u>: Both *T.L.O.* prongs satisfied: (1) search was justified at inception and (2) permissible in scope.

Unreasonable Strip Search

<u>Oliver v. McClung</u>, 919 F.Supp. 1206 (N.D.In. 1995)

- 2 female students reported \$4.50 missing from the gym locker room.
- Principal decided to search all students & lockers.
- Students were strip searched because money could be hidden in bras.
- <u>Held</u>: Strip search possibly justified for weapons or drugs, but not for the "grand sum of \$4.50."

Unreasonable Strip Search

<u>Konop v. NWSD</u>, 26 F.Supp.2d 1189 (N.D.S.D. 1998)

- \$200 from cheerleading candy sales was missing from locker in the girls' locker room.
- Principal ordered strip searches of all 8th grade girls in gym class to check their shoes and bras.
- Underwear was pulled away from the girl's bodies.
- <u>Held</u>: The search was too intrusive given the nature of the alleged infraction., i.e., the theft of \$200.

"Schools to Pay for Search"

Poplar Bluff, Missouri

• "A southeast Missouri school district has agreed to pay \$7,500 each to the families of eight junior high girls who were strip-searched over missing money, the district superintendent said. The seventh-and eighth-graders, ages 12 to 15, were searched Jan. 6 after \$55 disappeared from a teacher's desk."

What about JJAEPs?

Texas Administrative Code, Title 37, §348.110(g)

- "Searches shall be conducted according to written policies limited to certain conditions. All students entering the JJAEP shall, at a minimum, be subjected to a pat-down search or a metal detector screening on a daily basis. JJAEP staff shall not conduct strip searches."
- Statute authorizes administrative searches to enter JJAEP's.

What about an Alternative Learning Center (ALC)?

<u>O.E.</u>, UNPUB'D No. 03-02-516-CV (Austin 2003)

- O.E. was adjudicated on a drug charge and ordered to attend Austin's ALC as a condition of probation.
- The ALC's security policy: all students must pass thru a metal detector, submit to a pat down, empty their pockets, and remove their shoes for inspection.
- An AISD officer found marijuana in O.E.'s shoe.
- Held: "Administrative search" and part of ALC's daily screening process. Less privacy at the ALC.

Nuts & Bolts of Juvenile Law

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