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Juvenile Confessions and Waivers of Rights

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A. DEVELOPMENT OF SECTION 51.09

1. Prior to Family Code, case law governed juvenile waiver of rights, decided case-by-case depending on all circumstances.

2. Title 3, Family Code enacted 1973

    a. Juvenile could waive legal rights with concurrence of child's attorney – TFC 51.09
    b. No provision for juvenile confessions
        1) general provision for waivers in 51.09 applied to confessions and other waivers
        2) juvenile's confession not valid unless attorney concurred in decision to make statement to police – adjudications were reversed in cases in which confessions made without waivers by counsel were admitted into evidence

3. 51.09(b)-(d) enacted in 1975 re: confessions
    a. allowed juvenile to waive rights and make statement to police without attorney's concurrence
    b. based on CCP 38.22 which deals with taking statements from adults in custody

4. 51.09(b)-(d) replaced with 51.095 in 1997

    a. 51.095 = custodial interrogation
    b. 51.09 = waivers of rights outside context of custodial interrogation

B. WAIVERS UNDER 51.09

1. Section 51.09 provides:

    Unless contrary intent appears elsewhere, any right granted to child by Title 3, Constitution or laws of Texas or U.S. may be waived in Title 3 proceedings if:
    (1) waiver is made by child and child's attorney
    (2) child and child's attorney waiving right are informed of and understand the right and possible consequences of waiving it
    (3) waiver is voluntary, and
    (4) waiver is made in writing or in recorded court proceedings.

2. Rights That Cannot be Waived

    a. Right to representation by attorney – 51.10(b):
        1) discretionary transfer
        2) adjudication
        3) disposition
        4) probation revocation
        5) chapter 55 hearings.

b. Right to adjudication hearing – 54.03(a)
c. Right to hearing for modification of disposition in which TYC is sought – 54.05(h)

3. Waivers Without Counsel

a. Child and parent, guardian, or custodian may agree to waive right to hearing and accept DPP – TFC 53.03(a)
b. Child may request shelter in detention pending return home without attorney or any adult – TFC 54.01(i)-(k)
c. Any modification hearing other than one requesting TYC may be waived by child and parent, guardian, GAL, or attorney – TFC 54.05(h)
d. Under certain circumstances, child can consent to or refuse intoxilyzer testing without attorney concurrence if request and response are videotaped – 52.02(d)

4. Waivers of Rights by Attorney

a. In judicial proceedings, attorney has power to assert or waive certain procedural rights of client without express client agreement, such as cross-examination and objection to evidence (waiver of client's right to complain on appeal)

b. Section 51.09 limits extent to which attorney may waive client's rights in proceeding or by silence/inaction

1) Matter of KWS (Beaumont 1975): Child and attorney appeared, attorney waived defect in summons on record. Reversed transfer b/c of defective summons, refusing to recognize waiver by attorney only. Court should have determined if child also waived.

2) VCH v. State (Houston 1982): waiver of jury trial by attorney without showing of child's assent held invalid.

3) MEW v. State (Houston 1985 unpub.): Witnesses had testified without being sworn. DA and defense agreed to allow them to be sworn, then accept prior testimony as sworn. Held: violation of 51.09 for court to accept unsworn testimony without waiver of child and attorney.

5. Waiver of Defects in Petition

a. Matter of WHC (Amarillo 1979): Owner of building in arson case not named in petition. State argued defect was waived b/c no special exception under TRCP 90 was made. Rejected b/c none of 51.09 requirements were met. Was only a failure to object, not an affirmative waiver.

b. If petition is substantially amended, court must give respondent time to prepare to meet allegations, which can be waived under 51.09.

6. Waiver of Diagnostic Report

a. REM v. State (San Antonio 1975): Child's attorney told client to remain silent during diagnostic study, which is required by 54.02(d) prior to transfer to criminal court. Trial court said child had waived right to have study conducted and proceeded to transfer without report. Held that 51.09 precluded the waiver. Child asserted right to remain silent, did not waive right to diagnostic study.

b. Later cases hold that failure to cooperate does not waive right to study, but does prevent child from complaining on appeal that study was incomplete. Report, even if incomplete, must be filed.

7. Waiver by Inaction Prohibited

a. DAW v. State (Houston 1976): State argued that child waived defect in notice requirement of transfer summons b/c no objection to it was made. Rejected. 51.09 requires affirmative waiver by child, not merely participation in proceeding or lack of proper objection to it.

b. RAM v. State (San Antonio 1980): Mistakes were made in jury charge which were not brought to court's attention or argued on appeal. State argued child had waived right to complain by failing to object. Reversed.

8. Statutory Exceptions to Prohibition on Waiver by Inaction

a. TFC 51.042 requires objection to jurisdiction of juvenile court b/c of respondent's age be made before end of adjudication or certification hearing, or jurisdictional claim is waived.
b. TFC 54.03(i) requires objection to deficiency in juvenile court's admonitions be made before testimony begins or plea is entered in adjudication hearing, or defect is waived.

9. Implicit Waivers by Action

RFX v. State (Waco 1996): Held that juvenile implicitly waived right against self-incrimination when he took stand upon being called by his attorney. Was a waiver in court proceedings by child and attorney under 51.09(4), although not explicit.

10. Scope of 51.09 in judicial proceedings is unknown. Requiring compliance with 51.09 each time attorney is free to waive client's rights without contemporaneous, informed consent of client in judicial proceedings seems unworkable, but may be required by appellate courts.

C. CONFESSIONS UNDER 51.095

1. Applicability of TFC 51.095

a. Only applies to statement of person who is a child under Title 3

1) "Child" means a person who is
   a) 10 years or older and under 17 years of age, or
   b) 17 years or older and under 18 who is alleged or found to have engaged in delinquent conduct or CINS as result of acts committed before becoming 17. TFC 51.02(2)

2) This definition determines whether 51.095 or CCP 38.22 applies to custodial interrogation and statements.
   a) When 51.095 applies:
      1. If person is under 17 while being questioned
      2. If person is 17, but is being investigated for offense committed before turning 17

   b) When 38.22 applies:
      1. If person was 17 years old when questioned, but is being questioned about offense committed while 17
      2. If person is 18 or older, whether offense was committed before or after turning 17
         - 51.02(2) excludes person who is 18 or older in all circumstances from definition of "child"

3) If age cannot be determined before questioning and there is any possibility suspect is a child, safest to conduct interrogation under 51.095 b/c compliance with it will also comply with 38.22, but not vice versa.

b. Class C Misdemeanors

1) 51.095 does not apply to criminal proceedings in justice or municipal court even if defendant in under 17

2) If justice/municipal court transfers non-traffic Class C case to juvenile court = CINS and statement taken without compliance with 51.095 is probably not admissible in juvenile court in CINS trial transferred from justice/municipal court

3) May not be clear what offense is (FMV of item stolen - Class C or B theft?)

   a) Statement taken without compliance with 51.095 may be inadmissible in juvenile court if value turns out to be greater than $50
   b) Safest to question child person under 17 about Class C misdemeanor pursuant to 51.095 b/c statement will be admissible in justice/municipal court and juvenile court

c. Out-of-State Interrogations

1) Matter of DM (Dallas 1999 unpub.): juvenile found in Oklahoma for a Texas murder. While in Oklahoma, in custody of Texas peace officers in route back to Texas, he orally confessed after officers gave Miranda warnings
   a) Oklahoma law requires statement of one under 16 be given in presence of parent
   b) Held: Oklahoma law governs admissibility of statement, so inadmissible in Texas court.
   c) Under 51.095, such a statement would've been inadmissible if Texas law governed b/c was oral statement in response to custodial interrogation, if no showing that it led to corroborating physical evidence.

2) Holding in DM questionable: If Oklahoma officers had been investigating, they wouldn't know Texas law, but since Texas officers were questioning concerning Texas offense, why should they have to Oklahoma law govern just because they were there?

3) Matter of TRS (Waco 1996): Texas juvenile escapee was caught in Oklahoma. Texas law enforcement officer, on learning that parental presence was required under OK. law, did interrogation by long-distance phone call from Texas while juvenile was in custody in OK. Held: Texas law governing interrogations applied.

d. Requirement of Custody – 51.095 only applies if child is in custody

1) "Custody" – TFC 51.095(d)
   a) while child is in detention facility or other place of confinement
   b) while child is in custody of an officer, or
   c) during or after child's interrogation by an officer if child is in DPRS possession and is suspected of having violated penal law

2) 51.095 applies to written, tape recorded, and oral statements

   a) If child is not in custody, admissibility of oral statement depends on voluntariness, not additional restrictions of 51.095(a)(2), (3), or (4)

   b) Hernandez v. State (San Antonio 1996 unpub.): juvenile went to police station, told he was not under arrest, gave oral confession. Then he was taken for 51.095 warnings by magistrate. Then he signed written statement and was released. Held: juvenile was not in custody when he made his oral statement, so it was admissible and written confession was not made inadmissible b/c of previous oral confession.

c) Matter of JMO (San Antonio 1997 unpub.): admissibility of juvenile's oral statement upheld b/c he was not in custody when given.

d) Melendez v. State (San Antonio 1994): juvenile voluntarily went to station and gave confession. He had not been given Miranda warnings before making statement. Then taken to magistrate and refused to give further statement. Released to father. Held: statement admissible.

"A statement is not elicited as a result of 'custodial interrogation' if the statement is not taken while the defendant is in custody. Thus, an unwarned oral statement will be admissible if made by a person who voluntarily comes to the police station."

e) Matter of VMD (San Antonio 1998): 12 year old was questioned as witness to deaths, was not given Miranda warnings b/c she was not considered to be in custody. She was questioned twice, went home in between, and then orally confessed to killings. She then signed written version of statement. Taken into custody weeks later. She testified she believed she was not free to leave. Court held she was not in custody.

"Person is considered in custody only if, based upon the objective circumstances, a reasonable person would believe she was restrained to the degree associated with a formal arrest."

Factors considered:
1. police questioned her as witness, not suspect
2. she came to station voluntarily
3. she was never handcuffed or restrained
4. each time, she left with her mother after questioning

No requirement that she be warned before signing statement b/c she was not in custody when she signed it, and no requirement that oral statement be corroborated with physical evidence b/c not in custody.

f) Matter of SAR (San Antonio 1996): Juvenile was in custody at time she gave written statement:
1. she was taken by 4 officers in police car to small office in station
2. 3 officers present during interrogation
3. she was advised she was suspect in murder
4. she was photographed and fingerprinted at station
5. Viewed objectively, reasonable person would believe freedom of movement had been significantly curtailed.

3) Fact that police have identified person as suspect and have probable cause to take person into custody does not make the interrogation custodial.

a) Matter of MAT (San Antonio 1998 unpub.): juvenile questioned at his home, oral confession given, police told family they were taking him to station where he signed written statement, and then brought him home. Held: Not in custody.

b) Matter of LM (Austin 1999): 11 year old in DPRS conservatorship made statement after police questioning in shelter where she was placed, without taking her before magistrate. Held: In custody. Written statement inadmissible b/c not taken per 51.095

- Court provided for consideration of age in reasonable person standard: whether based on objective circumstances a reasonable child of same age would believe freedom of movement to be significantly restricted = reasonable juvenile standard

c) 51.095(d)(3) enacted in 1999 = interrogation is per se custodial if child is in DPRS possession and is suspected of penal code violation

d) Matter of MRR (San Antonio 1999): Child confessed to teacher, he went with mother to station for questioning, then made written statement. Held: Not in custody at time of statement.

1. he agreed to go with police to station at their request, no express or implied threats that he'd be forcibly taken
2. told several times he was not under arrest, that he would not be arrested that day for any statement he made, that he was free to leave and did not have to talk to police

4) In all cases where juvenile held not to be in custody:
   a) police told child he was free to leave and not in custody and
   b) child was allowed to go home after confession was given, and was arrested later.

5) If child is not in custody:
   a) No need to take child to magistrate for statutory warnings
   b) No requirement for police to give Miranda warnings
   c) 51.095 restrictions do not apply

2. Written Statements Under TFC 51.095

a. Prior to questioning a child in custody, a magistrate must give certain warnings to child
   1) Magistrate = any judge, including justice of peace and municipal judge. CCP 2.09
   2) Matter of SDW (Houston 1991): Magistrate had bad eyesight, so his secretary read the warnings to child with magistrate present. OK per appellate court.

b. Referee or Master as Magistrate

   1) TFC 51.095(d): Juvenile law referee or master may perform duties of magistrate without juvenile court approval if juvenile board in county in which statement is made has authorized referee/master to do so
   2) Upon authorization, court does not need to review and approve each act of magistration
   3) Defense counsel could get juvenile court review by:
      a) Not agreeing to master hearing case and
      b) Filing motion to suppress written statement.

c. Required Warnings

   1) TFC 51.095(a)(1)(A): Child before making statement receives from magistrate a warning that:
      a) child may remain silent and not make any statement at all and that any statement made may be used in evidence against the child
      b) child has right to have attorney present to advise child either before or during questioning
      c) if child cannot employ attorney, child has right to appointed counsel with child before or during any interviews with peace officers or attorneys representing state
      d) child has right to terminate interview at any time.

2) Same as Miranda warnings required to be given to any adult questioned in custody, but those may be given by a judge or peace officer.
3) 51.095 requires judge to administer warnings
   a) greater protection for child
   b) neutral buffer between child and law enforcement

4) Pre-1997, judge had to warn on circumstances child could be certified or prosecuted under determinate sentence act

d. Non-Statutory Warnings

1) Matter of JTH (Austin 1989): determinate sentence warning is not required by constitution
2) Dismuke v. State (Dallas 1994 unpub.): warning of possible punishment if child were certified if not required
3) Hicks v. State (San Antonio 1997 unpub.): after certification, defendant got life. He claimed his written statement was involuntary b/c he thought determinate sentence warnings said longest he could get was 40 years. "Misunderstanding of potential exposure under the law won't render confession involuntary."

e. Procedural Requirements

1) Once warned by magistrate, child may not be questioned unless he has knowingly, intelligently, and voluntarily waived the rights he was informed of

2) Waiver must be made before and during the making of the statement – 51.095(a)(1)(C)

3) Magistrate must certify in writing that child has knowingly, intelligently, and voluntarily waived these rights – 51.0-95(a)(1)(D)

4) Then if child agrees to interview without attorney, police may do so, and obtain statement
   a) Officer may write out statement
   b) Someone else can write it
   c) Child can write it, but not sign until in presence of magistrate

f. Signing Written Statement

1) Written statement is signed by child in presence of magistrate and no one else
   a) Exception: Magistrate may require bailiff, or law enforcement officer if bailiff is not available, if magistrate determines his presence to be necessary for magistrate's or other court personnel's personal safety, but no weapon may be carried in child's presence

   b) Spears v. State (Fort Worth 1990): momentary presence of law enforcement officer in room during signing of statement did not invalidate it.

2) Magistrate must be fully convinced that child understands nature and contents of statement and that child is signing it voluntarily, and must certify to such

   a. Magistrate certifies that he has examined child independent of any law enforcement or prosecutor (except for safety) and has determined that child understands nature and contents of statement and has knowingly, intelligently, and voluntarily waived rights.
   b. Magistrate signs certification after child signs statement in his presence.

g. Magistrate's Role

1) Sees child twice
   a) before questioning for warnings and determination that if child waives rights, it is voluntary
   b) after written statement is prepared to see if child understands contents of statement and wants to sign it voluntarily

2) If child tells magistrate he wants to remain silent, there must be no questioning
3) If child tells magistrate he wants an attorney prior to questioning, there must be none until juvenile has consulted with attorney
4) If magistrate cannot provide attorney for child who can't afford one, no questioning at all.

h. Request to speak with person other than attorney is not same as asking for attorney or invoking right to remain silent.

1) Fare v. Michael (US 1979): juvenile asked to talk to probation officer before questioning. Request denied, then confessed. Supreme Court held that request for probation officer is not equivalent of request for attorney

2) Interest of RD (Tyler 1982): child asked to see his mother. Tried to find her, couldn't, warned by magistrate, confession signed. Held: Request for parent is not legal equivalent of request for attorney and did not invoke 5th amendment right to remain silent

i. Parental Presence Not Required

1) Hardy v. State (Dallas 1995 unpub.): Magistrate not required to notify parent of interrogation even though juvenile did not request parent
2) Glover v. State (Houston 1996): Family Code does not require police to give child a chance to speak with parent before interrogation
3) Leonard v. State (Houston 1997 unpub.): No requirement that parents be present when police are questioning child

4) TFC 52.02(b): Person who takes child into custody must promptly give notice and reason to parent, guardian, or custodian

   a) Failure to do so may result in exclusion of any statement gotten from custodial interrogation
   b) If child is questioned in juvenile processing office, 52.025(c) provides that child may not be left alone there and is entitled to have parent, guardian, custodian, or attorney present
      1. If police prevented parents presence in juvenile processing office, court should suppress any statement gotten from interrogation
      2. Law silent on police's duty, if any, to facilitate parents presence

j. Request for Counsel

Castillo v. State (Tex Crim App 1987): During questioning, juvenile put attorney's business card on table, after warned by magistrate, said he'd been in trouble before and this was his lawyer's card. Held: Not invocation of right to counsel, looking at totality of circumstances:
1) warned 5 times before signing confession
2) after pulling out card, he went back to magistrate
3) appeared calm, like he knew what he was doing

k. Totality of Circumstances Review

1) Determination of whether juvenile has voluntarily waived rights or voluntarily signed statement is based on totality of circumstances:
   a) Juvenile's age
   b) Experience
   c) Education
   d) Background
   e) Intelligence
   f) Whether he has capacity to understand warnings given him, the nature of this 5th amendment rights, and consequences of waiving those rights
   g) Whether any improper interrogation tactics were used
   h) Any other relevant factor

2) EAW v. State (Waco 1977): 11 year old spent night in detention, did not speak with parent, and although confession statute fully followed, court found invalid waiver. Not knowing, intelligent, and voluntary waiver of 5th amendment rights in those circumstances.

3) Matter of BJS (Austin 1992 unpub.): 13 year old signed confession at 4 a.m., after 7 hours in custody, nothing to eat or drink, driving around looking for magistrate. Upheld. No evidence that he was denied food or drink, or that he was threatened or abused, or unlawfully questioned before admonitions, or promised anything for confession.

4) Williams v. State (Dallas 1997 unpub.): Recorded oral statement of child with IQ 77 upheld as voluntary under all the circumstances.

5) Reyes v. State (Houston 1999 unpub.): Statement upheld as voluntary, voluntary waiver of rights found by child with IQ 75.
   a) learning disability with reading level of 5 – 7 year old
   b) special education all school years
   c) special education teacher said he would not have understood many phrases used in warning form he signed
   d) judge testified he appeared to understand warnings
   e) other judge who witnessed statement said he went over it line by line and in his opinion understood what he had signed

6) Promises
   a) If law enforcement officer makes promise of a specific, substantial benefit that induces a statement, may be inadmissible
   b) Vague promise that juvenile would "get less time if he gave a statement" is not sufficiently specific to make statement involuntary.

7) Transfer Hearings

   a) General Rule: For juvenile's confession given while in custody to be admissible:
      1. must be compliance with 51.095 and
      2. both waiver of rights and confession must be voluntary under totality of circumstances

   b) General rule does not apply to transfer hearings seeking transfer to criminal court.
      1. Many courts have held that confession is admissible even if not taken in compliance with 51.095
      2. One San Antonio case holds otherwise

3. Oral Statements Under 51.095

a. Oral Custodial Statements

1) TFC 51.095(a): Notwithstanding provisions of 51.09, child's statement is admissible in evidence in any future proceeding concerning matter about which statement was given if:

a) statement is made orally and child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish child's guilt, such as finding secreted or stolen property, or instrument with which child states offense was committed,

b) statement was res gestae of delinquent conduct or CINS,

c) statement is made:
1. in open court at adjudication hearing,
2. before grand jury considering a determinate sentence petition, or
3. at a preliminary hearing concerning child, other than detention hearing.

b. Statute does not require Miranda warnings to have been given, but Texas Court of Criminal Appeals has held that constitutional law requires warnings and waiver of rights before oral statement by juvenile in custody is admissible. Meza v. State (1979).

c. Oral confession leading to inculpatory, physical evidence is more trustworthy than uncorroborated written confession, so greater procedural protections for written statements.

d. Physical Evidence Requirement

1) Oral statement is admissible if:
a) Miranda warnings and waiver requirements are met (can be given by police), and
b) Must lead to inculpatory, physical evidence.

1. Matter of RLS (El Paso 1978): Held inadmissible an otherwise valid oral confession b/c no showing that it led police to physical evidence which they didn't already know about

2. Littlefield v. State (Beaumont 1986): Oral statement admissible that led to recovery of stolen property and murder weapon.

3. Salazar v. State (Austin 1983): Oral statement admissible that led to recovery of stolen property

4. Williams v. State (Dallas 1997 unpub.): recorded oral statement admissible b/c it led to order laboratory tests that produced results consistent with mode child used to dispose of body

2) Beck v. State (Tex. Crim. App. 1986): Officer gave Miranda warnings, child asked if he needed attorney before he gave written statement. Officer said he didn't want a written statement. Child orally confessed which led to victim's wallet.

Statement was obtained in violation of Miranda b/c officer continued questioning despite request for attorney. Oral statement and wallet were inadmissible.

3) Certified juveniles' oral statements are admissible in post-certification criminal proceedings if they lead to murder weapons, stolen property …

e. Interrogation

1) 1975 – 1991:
   a) CCP Art. 38.22 (from which juvenile confession statute was taken) excluded any oral confession by one in custody which did not lead to inculpatory physical evidence even if confession was not in response to interrogation (Ex: confession to jail cellmate)
   b) Juvenile confession statute excluded any uncorroborated oral statement made by one in custody, whether or not it resulted from interrogation and whether or not it was made to law enforcement (Ex: oral statement made by juvenile to nurse while in custody inadmissible b/c it did not lead to inculpatory physical evidence, although not result of interrogation)

2) 1991 amendment expanded circumstances in which oral statement is admissible in juvenile proceedings
   a) TFC 51.095(b)(1): confession statute does not preclude admissibility of statement given by juvenile while in custody that is not result of interrogation.
   b) Matter of KMC (San Antonio 1999 unpub.): juvenile suspect read Miranda rights in interrogation room and said she'd talk. Looked for magistrate, couldn't find one. Returned to interrogation room where she made unsolicited oral confession. Held: officer's actions upon return from search for magistrate where not acts likely to elicit incriminating response: removing handcuffs, giving her cigarettes, letting her go to bathroom, asking her if she needed a drink.

f. Impeaching Credibility – TFC 51.095(b)(2)

1) Oral statement is admissible if:
   a) voluntary and
   b) has bearing on credibility of child as a witness

2) Applicable only if:
   a) child testifies in juvenile proceedings and
   b) in that testimony makes statement inconsistent with prior statement.

3) Prior statement is admissible only to impeach child's testimony.

g. Tape Recorded Custodial Statement – TFC 51.095(a)(5) and (c)

1) Authorized by CCP 38.22 in criminal cases, and in 1997, in juvenile cases
   a) Criminal: peace officer or magistrate may give warnings on tape
   b) Juvenile: Only magistrate may give warnings on tape

2) TFC 51.095(a)(5) – Oral statement admissible if:

   a) Child is in custody and statement is made
      1. in detention facility or other place of confinement,
      2. in custody of officer, or
      3. during or after interrogation by officer if child is in possession of DPRS and is suspected of violating penal law

   b) Statement is recorded by electronic recording device, including device that records images, and
      1. before making statement:
         a. child is warned by magistrate
         b. warning is part of recording
         c. child knowingly, intelligently, and voluntarily waives each right

      2. recording device is capable of making accurate recording

3. operator is competent to use the device
4. recording is accurate
5. recording has not been altered
6. each voice on recording is identified
7. not later than 20th day before proceeding, child's attorney is given complete, accurate copy of each recording of child made

3) TFC 51.095(c) – recording made shall be preserved until all juvenile/criminal matters relating to conduct referred to in statement are final, including appeals, or barred from prosecution.

h. Res Gestae Statements – TFC 51.095(a)(3)

1) Child's oral statement is admissible if statement was res gestae of delinquent conduct or CINS, or of the arrest
2) Must be made spontaneously during or very near in time to commission of offense or the arrest
3) Like an excited utterance – reliable b/c made in excitement of moment without thought or reflection
4) Event speaks through person without mental censoring of statement
5) Cannot be result of interrogation

4. Fruit of the Poisonous Tree Doctrine (= Derivative Evidence Rule)

a. Rule: If evidence has been illegally obtained, that evidence is inadmissible, as is any evidence obtained as result of the illegally obtained evidence.

b. Cat-out-of-the-bag Theory

1) RCS v. State (San Antonio 1977) – juvenile arrested for arson, Miranda warnings given by officer, written confession signed. Officer discovered warnings had to be given by magistrate, took child to magistrate, warned, rights waived, 2nd written statement given, returned to magistrate where child signed statement. Only 2nd statement admitted at trial.

Held: Proper procedure followed in getting 2nd statement, but inadmissible b/c it was fruit of illegally obtained 1st statement. Child's "secret is already out of the bag." Magistrate did not know of 1st statement and could not warn child that despite it, he could still refuse to give 2nd statement. Court implied that had magistrate known of 1st statement, and had told child that despite it, he did not have to make 2ns statement, it might have made 2nd statement admissible.

2) Matter of LRS (1st Dist. 1978) – Oral statement held inadmissible b/c child was not taken to designated place after arrest and later written statement was inadmissible as fruit of initial illegal oral statement.

3) BAG v. State (Dallas 1986) – Child arrested, given Miranda warnings, questioned, orally confessed to murder. Taken to magistrate, warned, gave written statement, signed before magistrate.

Held: Oral statement was inadmissible b/c it did not lead to inculpatory, physical evidence and, on appeal for conviction of murder, held that written statement was involuntary b/c of prior, inadmissible oral statement.

"When magistrate is unaware of earlier inadmissible statement, warnings have little value in restoring juvenile's ability of resist questioning. If magistrate knows about prior oral

statement and explains to child that it cannot be used against him, that can be considered in determining if later written confession is voluntary."

c. Modified Cat-out-of-the-Bag Theory

1) Griffin v. State (Tex.Crim.App. 1989) – BAG v. State was reversed. Lovell v. State was reaffirmed: even after juvenile is transferred to criminal court, admissibility of confession there is governed by juvenile law.

Court then rejected theory of court in BAG. More specific showing necessary. "Without more definite evidence that appellant's prior statement played an actual role in her volitional processes, was cannot fault trial court for finding state proved her written confession was voluntary."

Due process voluntariness is determined under totality of circumstances test.

d. Summary

1) Fact that juvenile has given inadmissible oral statement will not, by itself, made later written statement inadmissible – juvenile must show written confession was involuntary.

a) Evidence might be youth, age, inexperience or Miranda warnings in fact told child prior statement would be used against them
b) Matter of JTH (Austin 1989) – upheld admissibility of written confession after inadmissible oral statement given b/c under Griffin, juvenile offered no evidence that written confession was involuntarily given.

2) Police should not question juvenile before getting magistrate's warnings b/c it could taint later written statement.

3) If inadmissible oral statement is obtained, magistrate should be informed and asked to warn juvenile that oral statement is not admissible. Not doing so won't make written statement inadmissible per se, but it is possible.

e. Initialing Draft of Statement

Rodriguez v. State (14th Dist. 1998) – appellant argued that statement he signed in front of magistrate was inadmissible b/c he initialed each page of draft of statement at officer's request. He argued that he thought signing was a mere formality in light of his initials, but rejected b/c magistrate had told him he was not required to sign written statement.

f. Oral Amendment of Inadmissible Written Statement

Matter of RJH (Austin 1999) – Written statement was inadmissible b/c child had not been taken before a magistrate. After release from custody, child called interrogating officer to change written statement to take all the blame. Trial court allowed oral statements in b/c he was not in custody when given.

Appellate court held oral statements would not have been made but for earlier statement, and connection shows that prior statement played actual role in his volitional processes. "Reviewing totality of circumstances, appellant felt he had nothing to lose, having already confessed, by taking all the blame himself."

5. Failure to Comply with Section 52.02

a. Pre-1991

1) 52.02(a) required officer taking juvenile into custody "without unnecessary delay and without first taking child elsewhere" to "bring child before officer or official designated by juvenile court" or " to bring child to detention center designated by juvenile court."

2) Several cases hold that if this requirement is violated and police get confession during that course of violation, confession is inadmissible, even if 51.095 procedure followed.

    a) Unnecessary Delay

        1. Matter of DMGH (El Paso 1977) – Adjudication reversed b/c child arrested at 12:30 and held at police station until 7:25 when taken to magistrate. Brought to detention at 10:20 after giving written statement. Argued inadmissible b/c unnecessary delay in bringing her to detention. Held: Was Unnecessary delay not justified to finish paperwork

        2. Glover v. State (14th Dist. 1996 unpub.) – police did not violate 52.02 by taking child 2 blocks for on-scene identification in a fresh aggravated sexual assault case before taking him to designated place.

        3. Contreras v. State (Tex. App. 1999) – 50 minute delay held unnecessary while child sat in patrol car at scene before taken to juvenile processing office. Court did not accept excuse that police were attending to victim and interviewing witnesses.

        4. Taint Attenuation Analysis

            a. In Comer, before reversing for failing to transport child "forthwith" to custody of juvenile custody facility, Court of Criminal Appeals did taint attenuation analysis, using 4 factors from Bell v. State (Tex.Crim.App.1986):
                1) giving of Miranda warnings
                2) temporal proximity of the arrest and the confession
                3) the presence of intervening circumstances, and
                4) purpose and flagrancy of official misconduct.

            b. Pham v. State (1st Dist.2000): same analysis done, concluding that the taint of juvenile's unlawful detention had not dissipated by time he gave confession: Miranda warnings given, confession came 2 hours after violation, intervening circumstance was taking to magistrate, officers did not wilfully violate violate law to get confession

    b) Designation of Appropriate Place

        1. Juvenile court designates office or official to which police take arrested juveniles
            a. Can be police station
            b. Juvenile board certifies detention facilities for longer term detention of children under TFC 51.12

        2. Admissibility of statements may be determined by whether a designation has been made and, if so, whether police followed the bounds of such a designation.

            a. Meza v. State (Tex.Crim.App. 1979) – Confession was obtained at police station which had been designated by juvenile court as appropriate place to take arrested juvenile, so 52.02 requirements were met.

b. Matter of LRS (1st Dist. 1978) – arrested juvenile taken to city police station where he confessed. County jail was designated place, so 52.02 violated and adjudication reversed.

c. Salas v. State (Corpus Christi 1988) – arrested juvenile taken to police station and confessed. Juvenile court had not designated it under 52.02, so confession was illegally obtained. Was error to admit it, but not reversible b/c juvenile testified as to same matters in statement, so error did not contribute to conviction and punishment.

3. Taking Juvenile to Detention Facility

a. Matthews v. State (Fort Worth 1984) – juvenile arrested, taken to detention facility, then taken to police station for questioning. Juvenile division was locked, so taken to homicide division offices. Respondent claimed confession should've been excluded b/c homicide not designated. Rejected. Police first took him to detention, so 52.02 followed. After that, juvenile confession statute governed further detention and questioning.

b. Blackmon v. State (Waco 1996) – 52.02 followed when juvenile taken to detention and several days later was questioned at police station.

4. Comer v. State (Tex.Crim.App. 1989) – Issue was what effect to give violation of 52.02. Juvenile arrested, taken to magistrate for warnings, confessed at police station, returned to magistrate for signing written statement. Neither magistrate's office or police station had been designated. Held: No 51.095 exception to requirement of 52.02.

Once officer takes child into custody and decides to refer him to intake officer or other designated authority, officer loses control over investigation. Officer designated by juvenile court can take statement at detention, pursuant to 51.095, or refer child to law enforcement officers to take statement, pursuant to 52.04(b)

a) Beaver v. State (14th Dist. 1992) – Juvenile taken to detention, intake worker did paperwork on him, released him to law enforcement for questioning. Held: was a referral to law enforcement under 52.04(b). No requirement that referral be in writing or that other formalities be observed.

b) State v. Langley (Corpus Christi 1993) – arresting officer phoned juvenile court intake officer for permission to interrogate child. Held: Not compliance with 52.02. Must physically bring child to office or official.

5. Juvenile Processing Office

a. 1991 amendments

1) TFC 52.02: police to take arrested juvenile to juvenile processing office designated under TFC 52.025

2) TFC 52.025: each juvenile court to designate juvenile processing offices for warning, interrogating, and handling juveniles

a) office may be at police/sheriff's offices for temporary detention of children taken into custody under 52.01
b) may not be cell or holding facility for other kinds of detentions

c) juvenile court may set conditions of designation and limit activities that may occur in office during temporary detention
d) child may only be detained in juvenile processing officer for:
    1. return of child to person under 52.02(a)(1)
    2. completion of required forms and records
    3. photographing/fingerprinting of child if authorized at time of detention
    4. issuance of required warnings
    5. receipt of child's statement under 51.095(a)(1), (2), (3), or (5)
e) child may not be left unattended in office
f) child is entitled to be accompanied by parent/guardian/custodian/attorney
g) child may not be detained in office longer than 6 hours

3) Police must take juveniles to designated juvenile processing offices if they intend to interrogate them while in custody.
    a) Interest of DZ (Corpus Christi 1993): failure to do so results in exclusion of confession
    b) Smith v. State (1st Dist. 1994): statement admissible b/c child taken to designated processing office in police station
    c) Laird v. State (14th Dist. 1996): If juvenile is lawfully detained under Pennsylvania law where detained, detention not illegal b/c not in compliance with our processing office statute.

b. Designation of Offices

1) Juvenile court may designate multiple processing offices in county – AG Op. LO 93-38 (1993)
2) Proof: Conclusory testimony of officer that space was designated as juvenile processing office, if challenged, is sufficient to prove such. Acosta v. State (1st Dist. 1998 unpub.)

3) Matter of RR (Corpus Christi 1996): juvenile was taken to police department, but no evidence that he was taken to place in building that had been designated as processing office, statement must be excluded b/c 52.025 not complied with.

4) Anthony v. State (San Antonio 1997): juvenile court designation predated 52.025 and designated entire station. Held: statute speaks to "office or room" so general designation was insufficient and statement was unlawfully obtained and inadmissible.

c. Probation Officer Permission

1) Statute apparently changes Comer to allow law-enforcement facilities to be designated as places where children in custody may be brought to be questioned.

2) Is juvenile court/staff permission needed? Probably not, but court has power under 52.025 to set conditions of designation and limit activities that may occur in office during temporary detention.

    a) So court may require its or staff's consent, case-by-case, for interrogation
    b) If not so limited, police don't need specific consent

3) Wilson v. State (Eastland 1997 unpub.): when police take child in custody to juvenile processing officer, not necessary to get probation officer's permission to interrogate.

d. Six-Hour Rule – TFC 52.025(d): child may not be detained in juvenile processing office longer than 6 hours.

1) Purpose is temporary detention for limited objectives

2) 6 hours b/c federal law says detention of juvenile in adult detention facility for less than 6 hours doesn't need to be reported to federal monitoring agencies.

3) Matter of CLC (14th Dist. 1997 unpub.): Juvenile detained for 9 hours, but he'd signed a statement after 4 hours' detention and rest of time was taking officers to where weapon hidden and seeing parents before taken to detention.

   Held: Admissible b/c 6 hours had not expired when statement was signed. Rule is so coercion is not used in getting confession b/c juveniles kept longer might confess just to be able to leave.

e. Relationship between Juvenile Processing Office and Permanent Dispositions

1) TFC 52.02(a): requires person taking child into custody to "without unnecessary delay and without first taking the child to any place other than a juvenile processing office" do one of the following things (permanent dispositions):

   a) release child to parent or other adult
   b) bring child before the office/official designated by juvenile court
   c) bring child to juvenile detention facility
   d) bring child to secure adult facility under very limited circumstances
   e) bring child to medical facility, or
   f) place child in first offender program.

2) Le v. State (Tex.Crim.App.1999): concluded juvenile processing office was only temporary stopping place, leading to one of the other 6 dispositions

   a) Le was taken before magistrate in designated juvenile processing officer, then taken to homicide division where he gave statement.
   b) Homicide had not been designated as juvenile processing office
   c) Held: Once Le was removed from magistrate's office, he should've been taken to one of the 6 places authorized by 52.02(a) and b/c he was not, statement was illegally obtained.

3) Can a juvenile be moved from one processing office to another as part of interrogation process?

   a) Not answered, but as long as the time doesn't exceed 6 hours, police should be able to move child for magistration, fingerprinting, and photographing.
   b) 6 hours should include all time in juvenile processing offices and in transporting child between them.

f. Requirement of Notice to Parents and Juvenile Court

1) TFC 52.02(b): person taking child into custody shall promptly give notice and statement of reasons to child's parent.

   a) SRL (Waco 1976): Father notified when son arrested, officer told father he'd release him when he was finished with him. Child confessed. Argued that officer should have told father he was going to interrogate child under 52.02(b). Rejected. "Reason for taking child into custody" = offense for which he was arrested, not purpose of making arrest.

   b) Matter of CR (Austin 1999): Police failed to notify mother that son had been arrested or for what. One hour elapsed b/t arrest and contact with mom, police discouraged her from coming to station, and notified her when he was taken to detention.

Held: requirement of parental notice had been violated and written statement should've been excluded. State argued against exclusion b/c TFC doesn't require parental presence during interrogation. Rejected. 52.02 gives parents choice whether to be present; although presence not mandated, police must comply with notification requirement.

c) Pham v. State (Houston 1st 2000): reversed b/c police arrested child at school, went to magistrate, without notifying parents. Duty belongs to "person taking child into custody" to notify parents and give reasons for doing so. Cannot be delegated.

d) Gonzales v. State (1st Dist. 1999) : Police acknowledged they did not attempt to notify parents; violation of requirement made statement inadmissible

2) TFC 52.025(c): child is entitled to be accompanied by parent, GAL, custodian, attorney while in juvenile processing office – parental notification facilitates child's right to parental presence in processing office
   a) right belongs to child, not parent
   b) no Texas case entitles parent to be present during taking of statement
   c) best practice for magistrate or officer to inform child of right to have parent present in the processing office

3) Statute merely requires police to make a reasonable attempt to notify parent or other adult that juvenile has been taken into custody – an effort must be made.

4) TFC 52.02(b) also requires notice to office/official designated by juvenile court, but that person is not entitled to be present with juvenile in processing office

6. TFC 51.095 and Juvenile Probation Officers

a. 51.095 is not limited to interrogation by police, but can apply to probation officers

1) Matter of SEB (El Paso 1974) and Matter of FG (Amarillo 1974): statements were inadmissible b/c they were made without waiver of rights by attorney under pre-1975 version of 51.09
2) No reason why 51.095 should not apply to probation officers too
   a) written statement by child in custody must be magistrated to be admissible
   b) oral statement – Miranda warnings must be given first and confession must lead to inculpatory, physical evidence of offense, or it must be admissible under another exception to prohibition on oral confessions

D. RESTRICTIONS ON POLYGRAPHING JUVENILES

1. Polygraph exam results are never admissible in criminal trial in Texas. Romero v. State (Tex.Crim.App. 1973)

   a. Presumably, same rule applies in juvenile cases
   b. Results are still used:
      1) Officers may challenge suspect to take one and admissions may be made during exam which may be admissible
      2) Defense attorneys may have client take polygraph exam by private, retained examiner and if he "passes" disclose results to prosecutor to try to get charges dismissed, and if not, results are undisclosed work product of attorney
      3) Prosecutors may test crucial witnesses' truthfulness with polygraph

c. TFC 51.151 (1987): If child is taken into custody under 52.01, person may not give polygraph to child without consent of child's attorney or juvenile court unless child is certified as adult.

1) violation of this law is grounds for revoking or suspending license of examiner

2) TFC 54.03(e): Extrajudicial statement obtained without following TFC requirements or Texas or US constitutions may not be used in adjudication hearing, so polygraph exam taken in violation of 51.151 would be inadmissible.

3) AG Opinion JM-1141 (1990): 51.151 does not apply to taking the polygraph of a child complainant or witness for state in criminal prosecution, b/c child is not in custody under Title 3.