



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

## Juvenile Confessions

Juvenile Crime Intervention  
Sharon N. Pruitt, Asst. Attorney General



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## 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 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.

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## 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.

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## 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 (2005)



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## In Custody?



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## Routine Traffic Stop

### **R.A., Unpub'd, No. 03-04-00483-CV, (Austin 2005)**

- Stopped for traffic; officer smelled a strong odor of MJ; told R.A. that he smelled MJ, and that "if he had any MJ that I could be lenient and issue a citation."
- R.A. pulled out a container with MJ residue & a pill bottle of Xanax.
- HELD: This (case-by-case) routine traffic stop was "presumptively temporary and brief" & the questions asked were not custodial interrogation.

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## What does “In Custody” mean?

### Totality of Circumstances

- **S.A.R.**, 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.
- **L.M.**, 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.

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## What is “not in custody”?

### Totality of Circumstances

- **V.M.D.**, 974 S.W.2d 332 (S.A.-1998): voluntarily went to station as “key witness”, never cuffed & left with her mother after confessing.
- **M.R.R.**, 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.
- **Martinez**, 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.

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## Restraint of Freedom

### ***Brendlin v. Cal.*, 127 S. Ct. 2400 (2007)**

- Officers stopped a car to check its registration without reason to believe it was being operated unlawfully.
- Officer recognized Brendlin, a passenger in the car as a parole violator; arrested & searched him.
- Argued: No probable cause to stop the vehicle.
- Court Held: A passenger is seized & thus entitled to challenge action when officers, by force or a show of authority, terminate or restrain the person's freedom of movement. A reasonable person as a passenger of a detained vehicle would not feel free to terminate police interaction.

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## Not in Custody

F.C.W., unpub'd , No.14-05-00556-CV (14th 2006)

- 15 yr old susp'd of Arson (wit told CW "boys bragged about setting a girl's red truck on fire");
- 2 Arson investigators (polo shirts) go to DAEP & interview in principal's office; "not under arrest & free to leave"; 20 - 25 mins & returned to class;
- Atty claimed custodial interrogation & if, not custodial, then involuntary;
- HELD: Freedom of movement was not restrained to degree of formal arrest & no official, coercive conduct causing statement to be made w/o "free & unconstrained choice".

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## Handcuffing Not Arrested

In re: J.D.B., unpub'd No. 14-05-00659-CV, (14th 2006)

- Offr stops veh matching description of susp activity
- Evasive answers; 2 occupants to 1 officer
- Handcuffs driver while wit arrives
- Issue: Is juvenile arrested (w/o probable cause) upon handcuffing?
- HELD: Handcuffing a suspect during temporary investigative detention may be reasonable & not amount to an arrest.

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## 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 adult who promises to bring child to court;
  - ▶ Bring child to the office or designated official if PC;
  - ▶ Bring child to a designated or secure detention facility;
  - ▶ Bring child to a medical facility;
  - ▶ Dispose of case without a referral to juvenile court; or
  - ▶ release the student to school officials if school is in session.



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## Juvenile Processing Office

### 52.025(a) Texas Family Code

- A room or office designated by local juvenile board
- 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 & not stay

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## Law Enforcement Duties

### 52.02(a) Texas Family Code

- Go directly to juvenile processing office without unnecessary delay.
- **Roquemore**, 60 S.W. 3d 862 (Tex Crim App 2001): 25 min stop to recover stolen property ruled unnecessary.
- **DMGH**, 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.
- **G.A.T.**, 16 S.W. 3d 818 (Tex. App -Houston[14th] 2000): juvys taken to the scene for identification ruled unnecessary delay.

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## Necessary Delay

### 52.02(a) Texas Family Code

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

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## Law Enforcement Duties

### 52.02(b) Texas Family Code

- Promptly notify parents with a reason for arrest
  - ▶ **Gonzales**, 67 S.W. 3d 910 (TCA-2002): 5-6 hour delay resulted in remand for causal connection review.
  - ▶ **Pham**, 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.
  - ▶ **J.B.J.**, 86 S.W. 3d 810 (Beaumont-2002): 1-1/2 hrs o.k. where 6 attempts documented.
  - ▶ **Ray**, 2004 WL 2613613 (Houston-2004): 8-1/2 hrs delay justified under **Vann** analysis.

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## 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

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## The Legal Tests

### When does statutory violation lead to the exclusion of evidence?

- **Pham/Gonzales**, 175 S.W.3d 767, Tex. Crim. App. (2005): 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.

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## Notification Error not Harmful

*Mavroides*, unpub'd, No. 13-04-00079-CR (13th 2006)

- 15 yr old arrested for Cap M; at JPO, tells police & magistrate: “unsure about parents whereabouts; dad’s in Corpus & mom’s in NY”;
- No attempt by police to notify either parent; w/i 3 hrs admits participation; dad notified 2 days later.
- Applying the Vann test, Court ruled error in admitting certified juvenile’s statement, but harmless (2 and. wits)

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## No Causal Connection

*Hartmangruber*, No. 04-07-00213-CR (S.A. 2008)

- At urging of grandparents, 14 yr old turned himself in for M; at JPO, magistrate gave warnings & police take written statement;
- Approx. 2 hrs into JPO time; dad calls police who notify him that son is in custody for Murder & is providing a statement.
- Applying the Pham-Gonzales test, Court ruled no causal connection between lack of parental notification & statement.

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## “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.
- **Issue:** Did §52.02(b) require police to notify a parent prior to questioning Hampton about the murder?
- **Held: 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.

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## 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 & voluntarily waive rights?
- Have child sign the statement.
- Magistrate signs certification.

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## Magistrate Duties

### *In re: J.L.*, No. 10-06-00246-CV (Waco 2007)

- 15 yr old in custody in juve detention for Agg. Aslt
- Magistrate records finding of PC & warning sheet listing rights w/ one signature line at bottom for waiver; reassures JL he does not have to give statement, then JL waives rights & gives statement.
- Argued *each and every right enumerated must be waived, individually.*
- HELD: Individual waiver is not necessary.

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## Magistrate Duties

### *Weir v. State.* No. 12-06-00408-CR (Tyler 2008)

- 15 yr old in custody in detention for Murder; 45 min. interrogation; mom arrived within 1-1/2 hour of arrest; attacked notification;
- HELD: No causal connection
- Magistrate records finding of PC & warning sheet listing rights w/ one signature line at bottom for waiver; Weir waives rights & gives statement.
- Argued *each and every right enumerated must be initialed and waived, individually.*
- HELD: Individual waiver is not necessary.

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## Totality of Circumstances

**In re: J.A.B.**, 281 S.W.3d 62 (El Paso-2008)

- Oral stmt admitting presence during shooting while being processed followed by warned written stmt admitting to the shooting.
- Magistrate testified juve was calm and neither nervous nor intimidated during both the warnings and the certification of the statement.
- Argued that written statement was involuntary because he would not have been given if he knew the oral statement could not be used against him.
- Court applied totality of circumstances test to determine admissibility of properly warned written statement following unwarned oral statement.

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## 51.095 Errors



- **J.M.S.**, unpub'd,
- No. 06-04-0008-CV (6th-2004): officer had child sign statement before final review w/ Mag.
- **Diaz**, 61 S.W.3d 525 (SA-2001): Mag included wrong penalty range in explanation of charges.
- **Hill**, 78 S.W.3d 374 (Tyler-2001): child invoked right to counsel, but Mag focused on whether child wanted to give a statement rather than whether child wanted to waive right to counsel (4 hr delay also).

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## Magistrate Error

**Reta v. State**, No. 04-07-00564-CR (S.A. 2008)

- 16 yr old in custody for Murder; provides a written statement inculpatng himself. Court denied mtm to suppress & certified juve entered a plea.
- A video of the 2d encounter with the magistrate shows the magistrate did not make any inquiry with regard to the nature and circumstances of his statement.
- HELD: Court erred in not suppressing the written statement where magistrate wholly failed to inquire or examine Reta regarding the nature and circumstances of the statement.

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## Is Parental Presence Needed?

*Glover v. State, 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...

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## Other Rules Involving Parents

### Remember...

- **§52.025(c)** - Child can have a parent, guardian or attorney present in a juvenile processing office.
- **C.R.**, 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.

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## Is Request for Parent an Invocation?

*In re: H.V., 179 S.W.3d 746, (Ft. Worth 2005) on rehearing*

- 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.

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## Is Request for Parent an Invocation?

*In re: H.V., 252 S.W.3d 319 (Tex Sup Ct 2008)*

- 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; however, suppression of physical evidence not related to 5<sup>th</sup> Amd violation & not police coerced.

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## 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.

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## 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.

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## New Legislation

### Recorded Juvenile Confessions

- **§51.095(f)** - A warning magistrate may at the time the warnings are provided request that the officer return the child and the recording to the magistrate at the conclusion of the process of questioning to review the recording 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, 2007.

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## The Six Hour Rule

§52.025(d), F.C.



- ***In the Matter of C.L.C., 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.
- ***Vega v. State, 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.
  - ▶ **Held:** No violation of the 6 hour rule.

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## JPO or Designated Official

*Gamboia*, unpub'd, No. 14-05-00942-CR (14th 2007)

Juve detained at the scene; taken to abandoned veh; questioned, then determined to be juve; taken to JPO, magistrate & confessed.

Argues suppression by failing to take juve to official "designated by board" b/c no evd magistrate was "designated by board".

HELD: §52.02(a) d/n require taking juve to both an office & designated official.

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## No Expectation of Privacy

Cortez, No. 03-06-00359-CR (3<sup>rd</sup> 2007)

- Cortez & 2 cousins went to station to be interviewed re: Murder & Agg Aslt; Cortez waited in lobby while cousins questioned.
- Cortez leaves station; officers pick him up after cousins' statement & placed in JPO.
- Cortez calls mom in JPO & admits to "firing 2 rounds, but that cousin killed CW".
- HELD: Statement admissible b/c no expectation of privacy in JPO, no false reps of privacy by police & not wiretapping b/c no justified subjective expectation of privacy.

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	<b>Out-of-State Confessions</b>	
<p><u>Vega v. State</u>, 84 S.W.3d 613 (Tex.Crim.App. 2002)</p> <ul style="list-style-type: none"><li>▪ Chicago police obtained a written confession from Vega under Illinois law regarding a Texas murder.</li><li>▪ Vega argued her statement was inadmissible because it didn't follow the requirements of §51.095.</li><li>▪ <b>Held:</b> 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 <b>fairness</b> to both parties.</li></ul>		

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	<b>Out-Of-State Confessions</b>	
<p><u>Vega</u>, No. 13-98-044-CR, (13<sup>th</sup> 8/9/07)</p> <p>Chicago police obtained a written confession from Vega under Illinois law regarding a Texas murder.</p> <p>Vega argued her statement was inadmissible because Chicago PD didn't follow Texas §51.095 FC.</p> <p>HELD: Upon remand, court of appeals held while strict reading of FC was violated, the underlying purpose of the FC &amp; constitutional rights were upheld.</p>		

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## Appellate Issues

### Waived or Preserved

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

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## Error Waived

*In re: D.O.*, No. 01-05-00989-CV (1st 2006)

- Trial court determined witness was not competent to testify.
- Attorney's response: "Oh, come on!"
- HELD: "Oh come on!" is not a sufficient objection stating specific grounds of complaint. Because appellant did not make a sufficient objection at trial, no error has been preserved & is waived.

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## Appellate Issues

### Waived or Preserved

- C.O.S., 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.
- G.A.T., 16 S.W.3d 818 (14th 2000): JPO is a waiveable right that requires objection or complaint to the trial court.

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## Locked door and more

***In re: D.J.C., No. 01-07-01092-CV (Hou- 1st 2009)***

- 16 yr old brought to police station by grandmother at the request of officer & questioned regarding sexual assault in an interview room for all criminal suspects; officer was armed & locked the door.
- Grandmother who was legal guardian requested to be with juvenile in interview room & was denied. Officer turned on video, magistrate provided warnings & juve confessed. Officer immediately arrested juvenile.
- HELD: Juvenile was in custody.

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## Locked door and more

***In re: D.J.C., No. 01-07-01092-CV (Hou- 1st 2009)***

- Court lists the FC violations:
  - ▶ Not a JPO
  - ▶ Grandmother was excluded from room
  - ▶ Video not received in JPO
  - ▶ Warnings: “anything you say may be used against you”, not anything you say may be used “in evidence” against you.
- HELD: Multiple violations of Ch 52 and 51.095 rendered statement inadmissible.

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## Non-Custodial Statements



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## Rules Do Not Apply if Child is Not in Custody!

§51.095(b), F.C.



- §51.095 and §51.09 - **Do not preclude** the admission of a child's statement if:
  - ▶ 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.

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## 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.

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## 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.

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## How Not to Take a Non-Custodial Statement!



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## 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.”

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## The “Reasonable Juvenile”

Courtesy of *In the Matter of L.M.*



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## The “Reasonable Juvenile” Standard

- ***L.M.***, 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.
- ***D.A.R.***, 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. **HELD:** reasonable juvenile would believe he was in custody since pc to arrest; not told he was free to leave; and unaccompanied by a friendly adult.
- ***E.A.W.***, 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.

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## The U.S. Supreme Court Says...

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

- **Held:** 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;

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## Oral Statements



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## Oral Statements

### §51.095(a)(2)-(5), F.C.

- Statement of facts/circumstances found to be true and tend to show 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, **other than a detention hearing.**
- Custodial, oral statements must be recorded with same procedures as a written statement.



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## 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.

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## Oral Statement in Custody

### 51.095(a)(5) Texas Family Code

- Must be recorded with warnings by a Magistrate
  - ▶ ***Jeffley***, 38 S.W. 3d 847 (Houston-2001): non-custodial station-house interview escalated into “custodial” setting.
  - ▶ ***C.R.***, unpub’d No. 03-01-534-CV(Austin-2003): custodial oral statement held harmless because sufficient evidence without it.
  - ▶ ***R.E.A.***, 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.

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## Non-custodial Oral Statement

*In re: M.A.O.*, Memo., No. 04-07-00658-CV (SA 2008)

15 yr old & friend walking just after 11 during 10:30 curfew ordinance

Police stop 15 ft away without emergency lights & motion for youths to come to him; asked names & ages & “Do you have anything on you’re not supposed to have?”

M.A.O.: “I have some pills in my pocket I found.”

HELD: The single question did not delay initial proper detention & not in custody therefore magistrate warnings are not required.

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## 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

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## Non-Custodial Oral Correction of Unlawful Confession Admissible

**R.J.H.**, 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?
- **Held:** Yes! R.J.H. initiated contact and wasn’t in custody when he made the oral statements.

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## Res Gestae at Scene

**R.G., 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.
- **Held:** 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.

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## Res Gestae in Patrol Car

**Adams v. State, 180 S.W.3d 386 (Corpus Christi 2005)**

- Adams is "detained" as a runaway. Officer drives juve to "uncle's house" b/c juve says "Gm is visiting a friend"& then to real residence.
- Juve asks to talk to "uncle" alone; whispers "an intruder broke in & strangled gm"; uncle tells officer who puts juve back in patrol car.
- Backup arrives (after body is found), provides *Miranda* & juve says "an intruder strangled gm".
- HELD: Stmt not result of custodial *interrogation*. No right violated by asking uncle what she said. No causal connection b/w stmt & alleged improper police conduct.

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## Oral Statement to SRO OK

**In re: J.W., No. 05-05-00675 (Dallas 2006)**

- Teacher finds 16 yr old in office where he shouldn't be.
- Later, sees JW at football game w/ camera; goes to office & learns camera is missing; reports to SRO at football game.
- SRO approaches JW, questions about the camera, JW turns it over to SRO for investigation & leaves.
- JW complains "oral statement was custodial".
- **Held:** No physical restraint, SRO did not accuse & did not have PC for arrest; a reasonable 16 yr old would not believe he was in custody therefore, the SRO's questions were not "custodial interrogation."

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## 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."

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## Oral Statements to Vice Principal OK

***V.P., 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.
- **Held:** V.P. was never "in custody" and had no right to counsel or to remain silent.

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*Texas Attorney General's Office  
Juvenile Crime Intervention*

The End...

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