

Juvenile Statements and Confessions

Nuts and Bolts of Juvenile Law 2010

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The law does not tolerate coerced confessions.

- **“The interrogation process is ‘inherently coercive’ and...there is substantial risk that the police will inadvertently traverse the fine line between legitimate efforts to elicit admissions and constitutionally impermissible compulsion.” *Moran v. Burbine*, 475 U.S. 412, 426 (1986).**

Constitutional Issues

- **Self Incrimination (5th Amendment)**
- **Right to Counsel (6th Amendment)**
- **Due Process (14th Amendment)**

Self-Incrimination

- The right against compulsory self-incrimination attaches at the commencement of custodial interrogation.
 - See, generally, *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

Due Process

- **The Due Process clause of the 14th Amendment and its Texas Constitution counterpart (Art. 1, Sec. 10) provide the minimum process required for obtaining a lawful confession.**

CONFESSION LAW IS ALL ABOUT *VOLUNTARINESS*

- **The principal purpose of confession law is to ensure that if a person's statement is to be used as evidence against him, there are sufficient reliable indications that the statement is the result of the speaker's free will.**

The Difference

- A confession (through custodial interrogation) requires compliance with Texas and federal laws
- An admission (through no custody and/or no interrogation) requires compliance with a single rule of evidence – it must be **VOLUNTARY**

Voluntary?

Factors examined in determining whether the statement is voluntary include the Child's:

- age, maturity, and experience
- background, intelligence, and education
- ability to understand the warnings, their rights, and the consequences of waiver of those rights (BUT ONLY IF THEY ARE IN CUSTODY – otherwise the RIGHT against compulsory incrimination has NOT attached).
- and all of the circumstances surrounding the giving of the statement in question.

* See, generally, *Fare v. Michael C.*, 442 U.S. 707 (1979); and *In the Interest of R.D.*, 627 S.W.2d 803 (Tex.App.-Tyler 1982, no writ).

Adult Confessions

- The admissibility of Adult statements and confessions is governed by the Texas and U.S. Constitutions and by Article 38.22 of the Texas Code of Criminal Procedure.

JUVENILE STATEMENTS

- The Rules are different when it comes to the admissibility of a statement by a Juvenile. In addition to the protections afforded by the U. S. and Texas Constitutions, Juvenile statements are also governed or affected, not by 38.22 CCP, but rather by the following Texas Family Code Sections:
 - 51.02 (Definition of “Child”),
 - 51.09 (Waiver of Rights),
 - 51.095 (Admissibility of Statement by Child),
 - 52.02 (Release or Delivery of Child), and
 - 52.025 (Juvenile Processing Office).

JUVENILE STATEMENTS

- Section 51.095 incorporates the guarantees of *Miranda v. Arizona*, and is basically CCP 38.22 with extra protections.
- Before the *Miranda* requirements are triggered the child must be “in custody” and the officer must “interrogate”.
- This “custodial interrogation” is key to *Miranda*.

What is a Child?

- A “Child” is defined in TFC 51.02 as:
 - a person ages 10 through 16
 - AND a person who is 17, but only IF that 17 year old is accused of a crime (either delinquent conduct or CINS offense) that occurred before turning 17.

When is a Child not a Child?

- Once the person turns 18, the adult rules apply.
- If it is a 17 year old regarding an offense committed while 17, then the adult rules apply (CCP Art. 38.22).
 - See *Ramos v. State*, 961 S.W.2d 637, 639 (Tex.App.-San Antonio 1998, no pet.)

In-Custody vs. Out-of-Custody

- If a Child is “in custody” as defined by the Texas Family Code AND is being interrogated, then the special rules for children apply.
- If the Child is out-of-custody OR is not being interrogated, then the only test for admissibility is voluntariness.

In-Custody vs. Out-of-Custody

- Custody is defined in TFC 51.095 as:
 - When the Child is in a detention facility or other place of confinement;
 - While the Child is in the custody of an officer; and
 - During or after interrogation of the Child by an officer IF the Child is in possession of DPRS and is suspected to have engaged in conduct that violates a penal law.

In-Custody vs. Out-of-Custody

- A person is considered “in custody” only if, based upon the objective circumstances, a reasonable person (a reasonable “child”) would believe he or she was restrained to the degree associated with a formal arrest (ie. that their freedom of movement was significantly restricted).

In-Custody vs. Out-of-Custody

- Each case is reviewed on its own merits under the totality of the circumstances test.
- Factors considered by the Courts include: the Child's age, maturity, experience, background, intelligence, education, ability to understand, and all of the circumstances surrounding the giving of the statement in question.

In-Custody vs. Out-of-Custody

- Out-of-Custody – although it's on a case-by-case basis, there is one situation in which the Courts have consistently held that the child is NOT in custody – that is when:
 - 1) the child is notified that the child is NOT in custody,
 - 2) is notified that he/she is free to leave at any time, and
 - 3) at the end of the statement, the child is actually let go.

Custody

- If there's no custody, the special rules found in TFC 51.095, et al., do not apply and the Court only looks to voluntariness.

Interrogation

- Actual questioning of a suspect by an officer or an agent of law enforcement.
- Any speech or conduct reasonably likely to elicit an incriminating response from suspect (*Rhode Island v. Innis*, 446 U.S. 291 (1980)).
- However, questions normally attendant to arrest or custody (e.g., booking questions) are not considered interrogation.

Interrogation

- If there's no interrogation, the special rules found in TFC 51.095, et al., do not apply and the Court only looks to voluntariness.

Written Statements

- Are governed by TFC 51.095, but before the written statement is obtained, TFC 52.02 regarding Release or Delivery of the Child must be complied with.

Written Statements

- Why? Because TFC 54.03 says that “an extrajudicial statement which was obtained without fulfilling the requirements of this title [or the Texas or U.S. constitutions] may not be used in an adjudication hearing.”

Taking a Child into Custody

- TFC 52.02 says that a person taking a child into custody shall do one of the following seven things:
 - 1. Release the child to parent/guardian, etc., or
 - 2. Bring the child before the office or official designated by the Juvenile Board, or
 - 3. Bring the child to a designated detention facility, or
 - 4. Bring the child to a secure detention facility (in another county if one is not available in county of custody), or
 - 5. Bring the child to a medical facility,
 - 6. Dispose of the case, or
 - 7. Take the child to school.

Taking a Child into Custody

- And they must do so:
 - 1) Without unnecessary delay; and
 - 2) Without first taking the Child to any place other than a Juvenile Processing Office
- ...there's more....

Taking Child into Custody

- AND the person taking the child into custody must promptly give notice of (1) the person's action and (2) a statement of the reason for taking the child into custody to:
 - 1. The child's parent/guardian/custodian AND
 - 2. To the office or official designated by the Juvenile Board (Tarrant County Juvenile Services).

Taking Child into Custody

- The only two exceptions to the seven enumerated actions are that a child can, *without unnecessary delay*:
 - 1. Be taken to a Juvenile Processing Office (for certain limited purposes and for a limited period of time), and
 - 2. In DWI and DUI-Minor cases, to a place to obtain a breath or a blood* sample and to perform intoxilyzer processing and videotaping of the child in an adult processing office of a law enforcement agency.

Taking Child into Custody

- What is an unnecessary delay? It's determined on a case-by case basis. The following have been found unacceptable (unnecessary) by the Courts:
 - Before taking the child to a JPO, taking him, at his own suggestion, to the location of the stolen property;
 - Taking the child to the homicide office rather than the Juvenile Processing Office for his statement.

Taking Child into Custody

- What is a necessary delay? Also determined on a case-by case basis, but the following have been found acceptable (necessary) by the Courts:
 - Holding the child in a patrol car at the scene of an offense for 50 minutes while the police were attending to the victim of the offense and interviewing witnesses = OK.

Acceptable Delays

- Holding child for a brief period of time until crime scene is secured = OK.
- Holding child at the scene for a brief period of time for identification purposes = OK.
- Holding child while attempting to notify parent = OK.

Juvenile Processing Office

- What is it?
 - It is a room or office designated by the Juvenile Board for the temporary detention of a child taken into custody. It can be within a police facility or sheriff's office or a school, courthouse, etc. [See TFC Section 52.025].
 - There are many JPOs in Tarrant County.

Juvenile Processing Office

- Limited Purpose: a child may be detained in a JPO only for:
 - 1. Return of the child to custody of parent, etc.;
 - 2. Completion of essential forms and records required by the Juvenile Court or the Family Code;
 - 3. Photographing and fingerprinting, if there is PC;
 - 4. Issuance of warnings to the child (Miranda/51.095); or
 - 5. Receipt of a statement by the child.

Juvenile Processing Office

- Further conditions that **MUST** be satisfied per TFC 52.025:
 - The child may **NOT** be left unattended in the JPO;
 - The child is **ENTITLED** to be accompanied by the child's parent/guardian/custodian or by the child's attorney (but see also TFC 61.103, .106); and
 - The child may **NOT** be detained in a JPO for **LONGER** than **SIX(6) HOURS**.

Written Statements

- OK – the Child is in custody, has been taken to a JPO without unnecessary delay, has not been left unattended, has been allowed to talk to parent/attorney if requested, and it's been less than 6 hours. Now it's time to get a written confession – what has to be done?

Written Statements

- In order to be admissible, all of the foregoing requirements must be satisfied AND
 - 1. BEFORE interviewing the Child, the child must be taken to a Magistrate (in a JPO), outside the presence of law enforcement (this means officer needs to leave the room – note safety exception), for the appropriate statutory warnings; then
 - 2. The written statement is taken in a JPO, but is NOT signed.

Written Statements

- 3. The child is then returned to the Magistrate (in a JPO), outside the presence of law enforcement, where the Magistrate makes a determination regarding voluntariness and waiver of rights; the child then SIGNS the statement in the presence of the Magistrate and the Magistrate makes the required certifications; and
- 4. Six hours haven't elapsed.

Special Rule re: Invocation of Right to Counsel

- *In the Matter of HV*, 179 S.W.3d 746 (Tex.App.-Fort Worth 2005, aff'd in part, rev'd in part); and UNPUBLISHED, No. 06-0005, 2008 Tex.App.Lexis 316 (Tex. 2008) – request for parent to get child a lawyer considered invocation of right to counsel in Juvenile proceedings – causes suppression of statement, but not suppression of physical evidence found as a result of the statement. Totality of the circumstances test applied.

Pulling it all Together

Here is a summary of all the steps for taking a written statement while the Child is in custody:

- 1. Once the child is in custody, the officer must promptly give notice to the child's parent or guardian (and to Juvenile Board designee) of the arrest and the reason for the arrest (use reasonable attempts).

Summary of Written Statement made while in Custody

- 2. If the arrest is for suspicion of DWI, the officer may take the child to a place to obtain a specimen of the child's breath or blood, and perform intoxilyzer processing and videotaping in an adult processing office. The child may refuse or consent to a breath specimen (without an attorney), but the request and the child's response must be videotaped.

Summary of Written Statement made while in Custody

- 3. In DWI and non-DWI cases, the officer may temporarily take the child to an approved Juvenile Processing Office (JPO).

While at the JPO, the officer may complete essential forms and records and may also photograph and fingerprint the child (if there's PC for an offense).

The child must NOT be left alone and is ENTITLED to have his parent present (if requested).

The child may NOT remain in the JPO for longer than 6 hours.

Summary of Written Statement made while in Custody

- 4. Before interviewing the child concerning an offense, the Magistrate (in a JPO) must warn the child of his rights outside the presence of any officer or prosecutor. The Magistrate must be sure that the child's waiver is voluntary.
- 5. After the Magistrate determines that the child wants to give a statement, the officer (in a JPO) may interview the child and reduce the statement to writing – but does NOT have the child sign the statement.

Summary of Written Statement made while in Custody

- 6. The officer must then return the child to the Magistrate (in a JPO). Once again, outside the presence of any officer or prosecutor, the Magistrate must determine that the child understands the contents of the statement and that he still wishes to give the statement. The child must sign the statement in the presence of the Magistrate and the Magistrate must certify that the child is doing so voluntarily.

Summary of Written Statement made while in Custody

- 7. The officer must then do one of the following:
 - 1. Release the child to parent/guardian, etc., or
 - 2. Bring the child before the office or official designated by the Juvenile Board, or
 - 3. Bring the child to a designated detention facility, or
 - 4. Bring the child to a secure detention facility (in another county if one is not available in county of custody), or
 - 5. Bring the child to a medical facility,
 - 6. Dispose of the case, or
 - 7. Take the child to school.

Oral Statements

- Oral statements can be admissible under the following circumstances (if they are found to be voluntary):
 - 1. If the child makes a statement of facts or circumstances that are found to be true and which tend to establish the child's guilt, such as the finding of secreted or stolen property, or the instrument with which the child states the offense was committed; or

Oral Statements

- 2. If the child makes a Res Gestae statement; or
- 3. If the child makes a statement in open court, or before the grand jury, or during a preliminary hearing (other than a detention hearing); or

Oral Statements

- 4. If the child is IN CUSTODY - the child makes an Audio (or Audio/Video) recorded statement where the Magistrate warning and child's waiver (of each right) are on the recording prior to the statement (all voices must be identified, device capable of accurate recording, competent operator, not altered, given to defense counsel 20 days prior to trial).

Oral Statements

- Also – for in-custody Audio/Video statements, if the Magistrate requests **ON THE RECORDING** that the officer return the child and the videotape to the Magistrate at the conclusion of the questioning
- Failure to comply with such request will make the statement **INADMISSIBLE**.

Regardless

- Statements that are not the result of interrogation are admissible (51.095(b)(1)); and
- Statements that are custodial and the result of interrogation will still be admissible IF voluntary and have a bearing on the credibility of the witness (51.095(b)(2)).

Can The Attorney Invoke a Child's Rights?

- **YES, but only if:**
- **The attorney-client relationship exists, and**
- **The attorney invokes the right to counsel either in the presence of the accused or after conferring with the accused; and**
- **The accused does nothing to contradict his/her attorney.**

Other Important Issues Related to Juvenile Statements

- TFC 54.03(e) states: *A statement made by the child out of court is insufficient to support a finding of delinquent conduct ... UNLESS it is corroborated in whole or in part by other evidence.*

Other Important Issues Related to Juvenile Statements

- TFC 54.03(e) also states that: An adjudication of delinquent conduct ... CANNOT be had upon the testimony of an accomplice UNLESS corroborated by OTHER evidence tending to connect the child with the alleged delinquent conduct ... and the corroboration is NOT sufficient if it merely shows the commission of the alleged conduct.

Questions?

- Contact me by email at:

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or by phone at:

817-838-4613.

Additional Caselaw Cites

Re: Juvenile Statements and Confessions

Nuts and Bolts of Juvenile Law 2010

Riley Shaw, July 28, 2010

Custody, etc.:

Yarborough v. Alvarado, 541 U.S. 652 (2004).

Stansbury v. California, 511 U.S. 318 (1994).

In the Matter of R.A., UNPUBLISHED, 2005 Tex.App.Lexis 4663 (Tex.App.-Austin 2005, no pet.).

In the Matter of D.J.C., UNPUBLISHED, 2009 WL 3050870 (Tex.App.-Houston [1st Dist.] 2009).

Spencer v. State, MEMORANDUM, 2009 WL 2343212 (Tex.App.-Houston [1st Dist.] 2009).

Hernandez v. State, UNPUBLISHED, 1996 WL 195414 (Tex.App.-San Antonio 1996, pet.ref'd).

In the Matter of J.M.O., UNPUBLISHED, 1997 WL 404270 (Tex.App.-San Antonio 1997, no writ).

Melendez v. State, 873 S.W.2d 723 (Tex.App.-San Antonio 1994, no writ).

In the Matter of V.M.D., 974 S.W.2d 332 (Tex.App.-San Antonio 1998, pet. denied).

In the Matter of M.A.T., UNPUBLISHED, 1998 WL 784334 (Tex.App.-San Antonio 1998, no pet.).

Avila v. State, UNPUBLISHED, 2004 WL 2803223 (Tex.App.-San Antonio 2004, pet. ref'd).

In the Matter of L.M., 993 S.W.2d 276 (Tex.App.-Austin 1999, pet. denied).

In the Matter of M.R.R., Jr., 2 S.W.3d 319 (Tex.App.-San Antonio 1999, no pet.).

In the Matter of R.G., UNPUBLISHED, 2002 WL 872293 (Tex.App.-San Antonio 2002, no pet.).

In the Matter of R.M.F., UNPUBLISHED, 2002 WL 184336 (Tex.App.-San Antonio 2002, no pet.).

Martinez v. State, 131 S.W.3d 22 (Tex.App.-San Antonio 2003, no pet.).

Mata v. State, UNPUBLISHED, 2000 WL 816767 (Tex.App.-San Antonio 2000, no pet.).

School-specific cases:

New Jersey v. TLO, 469 U.S. 325 (1985).

In the Matter of V.P., 55 S.W.3d 25 (Tex.App.-Austin 2001, pet. denied).

In the Matter of F.C.W., UNPUBLISHED, 2006 Tex.App.Lexis 8364 (Tex.App.-Houston [14th Dist.] 2006, no pet.).

In the Matter of D.A.R., 73 S.W.3d 505 (Tex.App.-El Paso 2002, no pet.).

Voluntariness:

Fare v. Michael C., 442 U.S. 707 (1979).

In the Interest of R.D., 627 S.W.2d 803 (Tex.App.-Tyler 1982, no writ).

52.02 cases:

Comer v. State, 776 S.W.2d 191 (Tex.Crim.App 1989).

Roquemore v. State, 60 S.W.3d 862 (Tex.Crim.App. 2001).

Spencer v. State, MEMORANDUM, 2009 WL 2343212 (Tex.App.-Houston [1st Dist.] 2009).

Le v. State, 993 S.W.2d 650 (Tex.Crim.App. 1999).

Pham and Gonzales v. State, 175 S.W.3d 707 (Tex.Crim.App. 2005), cert. denied, 126 S.Ct. 490 (2005).

Causal Connection/Attenuation of the Taint analysis:

Pham and Gonzales v. State, 175 S.W.3d 707 (Tex.Crim.App. 2005), cert. denied, 126 S.Ct. 490 (2005).

Longer than six (6) hours:

In re C.L.C., UNPUBLISHED, 1997 WL 576409 (Tex.App.-Houston [14th Dist.] 1997).

Signing in front of Magistrate:

In the Matter of J.M.S., UNPUBLISHED, 2004 WL 1968644 (Tex.App.-Texarkana 2004, no pet.).

Bad first confession, Good second confession:

Griffin v. State, 765 S.W.2d 422 (Tex.Crim.App. 1989).

In the Matter of J.T.H., 779 S.W.2d 954 (Tex.App.-Austin 1989, no writ).

In the Matter of R.J.H., 79 S.W.3d 1 (Tex. 2002).