

2014

State of Utah, Appellee, vs. d.g., Appellant a Person Under 18 Years of Age.

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Brief of Appellant, *State of Utah v DG*, No. 20141047 (Utah Supreme Court, 2014).
https://digitalcommons.law.byu.edu/byu_sc2/3309

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (2000–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE
SUPREME COURT OF UTAH

STATE OF UTAH,
Appellee,

vs.

D.G.,

Appellant,
a person under 18 years of age.

APPEAL NO. 20141047—SC

SUPPLEMENTAL BRIEF OF APPELLANT

Appeal from an adjudication for aggravated sexual assault, a first degree felony punishable by fifteen-years-to-life if committed by an adult, in violation of Utah Code section 76-5-405, see Utah Code § 76-5-405 (2013), entered in the Third District Juvenile Court, in and for Salt Lake County, State of Utah, the Honorable Kimberly K. Hornak presiding. On certification to the Supreme Court of Utah from the Utah Court of Appeals.

SEAN D. REYES

Utah Attorney General
Appellate Division
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114
Telephone: (801) 366-0180
Attorneys for Appellee

MONICA MAIO [11277]

ROBERT DONOHOE [6526]

MONICA DIAZ [12104]

Utah Juvenile Defender Attorneys
8 East Broadway, Suite 500
Salt Lake City, Utah 84111
Telephone: (801) 521-5225
Attorneys for Juvenile/Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF JURISDICTION	3
QUESTIONS PRESENTED FOR REVIEW	4, 5
DETERMINATIVE LAW	5
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. <u>RULE 27A OF THE UTAH RULES OF JUVENILE PROCEDURE IMPERMISSIBLY SHIFTS TO THE JUVENILE THE STATE'S HEAVY BURDEN OF DEMONSTRATING A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF THE RIGHT TO COUNSEL AND THE RIGHT TO REMAIN SILENT</u>	7
A. The Presumption of Voluntariness in Rule 27A(a)(2),(b) is Unconstiutional on its Face Because it is Contrary to the Holding of <u>Tague v. Louisiana</u> , 444 U.S. 469 (1980).	8
B. Although the Constitutionality of rule 27A(a)(2),(b) was not Raised Below, D.G. Respectfully asks this Court to Review the Merits Under the Exceptional Circumstances Exception to the Preservation Doctrine.	13
II. <u>EVEN IF THIS COURT DECLINES TO RULE ON THE CONSTITUTIONALITY OF RULE 27A(a)(2),(b), THIS COURT SHOULD NONETHELESS CONCLUDE THAT THE STATE DID NOT MEET ITS HEAVY BURDEN BECAUSE IT PUT FORTH NO EVIDENCE THAT D.G. KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS <i>MIRANDA</i> RIGHTS</u>	16
CONCLUSION	18
CERTIFICATE OF SERVICE	19

CERTIFICATE OF COMPLIANCE	20
---------------------------------	----

TABLE OF AUTHORITIES

Cases

<u>Colorado v. Connelly</u> , 479 U.S. 157 (1986)	8
<u>Escobedo v. Illinois</u> , 378 U.S. 478 (1964)	8
<u>J.D.B. v. North Carolina</u> , 564 U.S. 261 (2011)	12
<u>Lego v. Twomey</u> , 404 U.S. 477 (1972)	11
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	7, 9
<u>State v. Barker</u> , Slip Opinion No. 2016-Ohio-2708.....	9, 10
<u>State v. Bybee</u> , 2000 UT 43, ¶16, 1 P.3d 1087.....	5
<u>State v. Greenwood</u> , 2012 UT 48, ¶ 48, 297 P.3d 556	4
<u>State v. Irwin</u> , 924 P.2d 5 (Utah Ct. App. 1996)	5
<u>Tague v. Louisiana</u> , 444 U.S. 469 (1980).....	5, 7, 8, 10, 16
<u>United States v. Amos</u> , 984 F.2d 1067 (10th Cir.1993).....	8

Statutes

Col. Rev. Stat. Ann. § 19-2-511	12
Ind. Code § 31-32-5-4.....	12
Mont. Code Ann. § 41-5-331.....	12
N.C. Gen. Stat.	12

Rules

Utah R. Juv. P. 26(e)	12, 13, 14
Utah R. Juv. P. 27A.....	4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16

Other Sources

Jodi Viljoen & Ronald Roesch, <u>Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms</u> , 29 Law & Hum. Behav. 723 (2005)	6, 7
---	------

STATEMENT OF JURISDICTION

This appeal is taken from a final order of the juvenile court of the Third Judicial District, the Honorable Kimberly K. Hornak presiding. The court of appeals had jurisdiction pursuant to Utah Code section 78A-6-1109 and Utah Code section 78A-4-103(2). See Utah Code § 78A-6-1109 (“An appeal to the Court of Appeals may be taken from any order, decree, or judgment of the juvenile court”). See also id. § 78A-4-103(2)(c) (“The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over . . . appeals from juvenile courts”). After oral argument, the Utah Court of Appeals certified the case to the Utah Supreme Court. This Court now has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(3) and rule 43 of the Utah Rules of Appellate Procedure. See id. § 78A-4-103(3). See also Utah R. App. P. 43.

QUESTIONS PRESENTED FOR REVIEW

ISSUE I: Rule 27A of the Utah Rules of Juvenile Procedure impermissibly shifts to the juvenile the State’s heavy burden of demonstrating a knowing, intelligent, and voluntary waiver of the right to counsel and the right to remain silent.

STANDARD OF REVIEW: “The interpretation of a rule of procedure is a question of law that [appellate courts] review for correctness.” State v. Greenwood, 2012 UT 48, ¶ 48, 297 P.3d 556 (internal quotation marks and citation omitted). “Ultimately, an appellate court decides [questions of law] for itself and does not defer in any degree to the [lower] court’s determination because it is the primary role of the

appellate courts to say what the law is and ensure that it is uniform throughout the jurisdiction.” Id.

PRESERVATION: D.G. concedes that the constitutionality of rule 27A was not raised below and therefore that analysis is not preserved for appellate review. However, D.G. contends that the issue falls within the exceptional circumstances exception to the preservation requirement. The “concept of exceptional circumstances which is not so much a precise doctrine, which may be analyzed in terms of fixed elements, as it is a descriptive term used to memorialize an appellate court’s judgment that even though an issue was not raised below and even though the plain error doctrine does not apply, unique procedural circumstances nonetheless permit consideration of the merits of the issue on appeal.” State v. Irwin, 924 P.2d 5, 7-8 (Utah Ct. App. 1996) (internal quotation marks and citation omitted).

ISSUE II: Even if this Court declines to rule on the constitutionality of rule 27A(a)(2),(b), this Court should conclude that the State did not meet its heavy burden of establishing that D.G. knowingly, intelligently, and voluntarily waived his Miranda rights.

STANDARD OF REVIEW: An appellate court “review[s] for correctness a trial court’s ultimate ruling regarding the validity of a Miranda waiver, while granting some degree of discretion to the trial court because of the wide variety of factual settings possible.” State v. Bybee, 2000 UT 43, ¶16, 1 P.3d 1087.

PRESERVATION: This issue was preserved when trial counsel filed a written motion to suppress. [R. 64]

DETERMINATIVE LAW

The following rule is determinative to the appeal and has been attached to this brief as Addendum A:

- Utah Rule of Juvenile Procedure 27A

SUMMARY OF ARGUMENT

As currently written, rule 27A(a)(2),(b) of the Utah Rules of Juvenile Procedure is unconstitutional on its face in violation of the Fifth Amendment as announced by Tague v. Louisiana 444 U.S. 469 (1980), because it shifts the burden from the State to the juvenile to “overcome” the presumption by a preponderance of the evidence showing that the child is unable to waive his or her rights. This is precisely inverse of the constitutionally mandated standard, requiring the juvenile to put forth evidence that he or she lacks the capacity to waive under the totality of the circumstances—the approach the Tague Court explicitly rejected. And while states are free to adopt a higher standard, they may not promulgate rules or statutes that provide less protection than what is required by the federal constitution. Cf. Lego v. Twomey, 404 U.S. 477, 489 (1972).

Although the constitutionality of the rule was not specifically raised below, the juvenile court cited to the rule as a factor in its analysis, and the Court of Appeals certified the case to this Court to decide what impact the rule has on the question of

voluntariness of Miranda waivers. Given these unique procedural circumstances, D.G. respectfully requests that this Court consider the merits under the exceptional circumstances doctrine to the preservation rule. Finally, even if this Court declines to rule on the constitutionality of rule 27A(a)(2),(b) this Court should nonetheless conclude that the State did not meet its heavy burden of establishing the D.G. knowingly, intelligently, and voluntarily waived his Miranda rights under the totality of the circumstances. Accordingly, this Court should reverse and remand for a new trial without the improperly admitted statements.

ARGUMENT

I. RULE 27A OF THE UTAH RULES OF JUVENILE PROCEDURE IMPERMISSIBLY SHIFTS TO THE JUVENILE THE STATE'S HEAVY BURDEN OF DEMONSTRATING A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF THE RIGHT TO COUNSEL AND THE RIGHT TO REMAIN SILENT.

Research now demonstrates that children have a more limited capacity to understand and appreciate the meaning of Miranda warnings. In fact, studies show that, on average, younger youth (15 and under) are more likely to have impairments related to Miranda comprehension. See Jodi Viljoen & Ronald Roesch, Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms, 29 Law & Hum. Behav. 723 (2005). These impairments exist because of the nature of the adolescent brain—juveniles, especially those ages 11-15, are still developing the capacity to think, reason, and process information. See id. (studying

152 detained youth ages 11-17 and finding that general intellectual ability for youth who are 11 to 15 years old is significantly lower than for youth who are aged 16 and 17; that cognitive abilities were strongly related to participants' performance on the study tests given related to Miranda comprehension and reasoning; and that due to still-developing cognitive capacities, youth ages 11-15 are at significantly higher risk of not giving a "knowing and intelligent" Miranda waiver). Because juveniles are at higher risk for lacking the developmental capacity to truly comprehend their rights as well as the consequences of waiving those rights, it is critical that courts ensure that the State—not the juvenile—meets its heavy burden of proving that a waiver of Miranda rights by a juvenile is knowingly, intelligently, and voluntarily made.

A. The Presumption of Voluntariness in Rule 27A(a)(2),(b) is Unconstitutional on its Face Because it is Contrary to the holding of *Tague v. Louisiana*, 444 U.S. 469 (1980).

It is well-settled that a suspect who has been informed of his rights to counsel and to remain silent "may waive effectuation of [those] rights, provided the waiver is made voluntarily, knowingly, and intelligently." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). However, "[i]f the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Escobedo v. Illinois*, 378 U.S. 478, 490 n.14 (1964). The State must meet its heavy burden by a

preponderance of the evidence. See Colorado v. Connelly, 479 U.S. 157, 168–69 (1986); United States v. Amos, 984 F.2d 1067, 1074 (10th Cir.1993).

In Tague v. Louisiana, 444 U.S. 469 (1980), the United States Supreme Court explicitly rejected the notion that the State’s burden may be shifted to the accused to prove an inability to waive their rights. In Tague, the defendant was convicted of armed robbery and the conviction was upheld by the Louisiana Supreme Court. On rehearing, a divided court again affirmed the conviction, rejecting Tague’s contention that his statements to the arresting officer were taken in violation of his Fifth Amendment rights under Miranda v. Arizona. The majority held that “an arresting officer is not compelled to give an intelligence test to determine if [a defendant] understands [the rights]. . . absent a clear and readily apparent lack thereof, it can be presumed that a person has capacity to understand, and the burden is on the one claiming a lack of capacity to show that lack.” Id. at 469-70 (emphasis added).

The Tague Court reversed his conviction, noting that the State had presented no evidence that Tague’s waiver was valid and reaffirming that it is the government who bears the burden of demonstrating whether a waiver was knowing, intelligent, and voluntary. Rejecting the burden-shifting presumption as “contrary to the explicit requirements of the United States Supreme Court in Miranda v. Arizona,” the Court stated:

“This Court has always set high standards of proof for the waiver of constitutional rights, and we re-assert these standards as applied to

in-custody interrogation. Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders.’ Just last Term, in holding that a waiver of Miranda rights need not be explicit but may be inferred from the actions and words of a person interrogated, we firmly reiterated that ‘[t]he courts must presume that a defendant did not waive his rights; the prosecution’s burden is great[.]’

Id. (quoting Miranda v. Arizona, 384 U.S. at 475; North Carolina v. Butler, 441 U.S. 369, 373 (1979)) (additional internal citations omitted)).

While Utah appellate courts have not yet addressed the constitutionality of the burden-shifting presumption in rule 27A(a)(2),(b), the Supreme Court of Ohio has considered a similar issue. In State v. Barker, Slip Opinion No. 2016-Ohio-2708, the court considered a statute that created a presumption that electronically recorded statements made during custodial interrogation were voluntary. The Court concluded that the statute was unconstitutional as applied to juveniles because it “impermissibly eliminates the state’s burden of proving the voluntariness of a custodial statement . . . and, instead, places the burden on the defendant to prove that the statement was involuntary.” Id. ¶ 43. Cf. id. ¶ 40 (“Application of the statutory presumption . . . removes all consideration of the juvenile’s unique characteristics from the due-process analysis unless the juvenile introduced evidence to disprove voluntariness[.]”); id. ¶ 28 (“A legislature may not supersede the constitutional rule announced in Miranda.

Therefore, [the statute] cannot lessen the protections . . . by removing the state's burden of proving a suspect's knowing, intelligent, and voluntary waiver of rights[.]”).

In this case, rule 27A(a) provides that a minor's custodial statements are not admissible unless the police officer informs him of his Miranda rights before questioning. The rule then creates a burden-shifting scheme based on chronological age:

(a)(1) If the child is under 14 years of age, the child is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a child's rights unless a parent, guardian, or legal custodian is present during waiver.¹

(a)(2) If the minor is 14 years of age or older, the minor is presumed capable of knowingly and voluntarily waiving the minor's rights without the benefit of having a parent, guardian, or legal custodian present during questioning.

(b) The presumption[] outlined in paragraph[] . . . (a)(2) may be overcome by a preponderance of the evidence showing the . . . inability of a minor to comprehend and waive the minor's rights.

Utah R. Juv. P. 27A. As currently written, rule 27A(a)(2),(b) is unconstitutional on its face in violation of the Fifth Amendment as announced by Miranda v. Arizona and Tague v. Louisiana because it shifts the burden from the State to the juvenile to “overcome” the presumption by a preponderance of the evidence showing that the child is unable to waive his or her rights.

¹ D.G. does not raise any claims with respect to 27A(a)(1). Rather, that children under 14 years of age are presumed incapable of waiving their rights unless an interested adult is present is consistent with adolescent brain development science.

In practical terms, the State could meet its burden by asking the juvenile court to take judicial notice of the juvenile's age and then playing the audio recording of the police officer giving the Miranda admonitions with the juvenile providing an affirmative utterance of understanding the rights as read by the officer. Under rule 27A, if the juvenile is over 14, the burden then shifts to him to prove that he is not capable of knowingly and voluntarily waiving his rights. This is precisely inverse of the constitutionally mandated standard, requiring the juvenile to put forth evidence that he or she lacks the capacity to waive under the totality of the circumstances—the approach the Tague Court explicitly rejected. And while states are free to adopt a higher standard, they may not promulgate rules or statutes that provide less protection than what is required by the federal constitution.² Cf. Lego v. Twomey, 404 U.S. 477, 489 (1972).

² In light of recent United States Supreme Court precedent and an overwhelming body of adolescent brain development scientific research, many states are amending statutes and rules similar to 27A and eliminating burden shifting schemes, raising the age at which a child may waive those rights, or requiring that counsel be present during the interrogation. For example, Illinois recently enacted a law that goes into effect January 1, 2017 that requires that any child age 15 or younger who is charged with a homicide or sexual offense be provided with a lawyer when questioned in police custody—no waiver of counsel is permitted. The law also contains required language for juvenile Miranda warnings. New Mexico has a statute that prohibits admission into evidence any statement by a child under 13; creates a rebuttable presumption against admission of a statement for a child between 13-14 years old; and outlines the factors that courts must consider before any statement of a child over 14 may be admitted. In California, both houses of the legislature passed a bill which required actual access to counsel for any youth under 18 who is interrogated by police. That bill was vetoed by the governor but the Senate is trying to override the veto. See https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_is=201520160SB1052,

Furthermore, any presumption that a juvenile is capable of waiver based on an arbitrary chronological age isolates and places undue emphasis on one factor from the totality of the circumstances test, when age may or may not even be relevant depending on the facts of the case.³ Instead, the proper inquiry for determining the validity of a waiver is the totality of the all of the circumstances, which, for children, necessarily

includes consideration of adolescent brain development science adopted by the United States Supreme Court in J.D.B. v. North Carolina, 564 U.S. 261 (2011).

Based on the foregoing, D.G. respectfully urges this Court to find rule 27A(a)(2)(b) unconstitutional in violation of the Fifth Amendment and the dictates of Tague and Miranda.

B. Although the Constitutionality of rule 27A(a)(2)(b) was Not Raised Below, D.G. Respectfully asks This Court to Review the Merits Under the Exceptional Circumstance Exception to the Preservation Doctrine.

(last visited Nov. 14, 2016). See also e.g., Col. Rev. Stat. Ann. § 19-2-511 (providing that statements may be admissible notwithstanding the absence of a parent or guardian only if the juvenile is 18 or older at time of interrogation or emancipated); Ind. Code § 31-32-5-4 (no child under 18 may waive their right unless parent, guardian, or attorney present after they have had private meaningful consultation); Mont. Code Ann. § 41-5-331 (youth under age 16 may waive only if parent or guardian agrees; if parent and child do not agree, may only waive with advice of counsel); N.C. Gen. Stat. § (children 16 and under may not be interrogated without parent, guardian, or attorney present). All statutes and legislative bills referenced in this footnote are attached as Addendum.

³ For example, consider the case of a developmentally delayed 17-year-old juvenile. Under the totality of the circumstances factors discussed at length in the opening brief, the juvenile court might not give her age any weight at all, instead focusing more on her developmental maturity in determining whether or not she knowingly and voluntarily waived her Miranda rights.

In assessing whether D.G. had knowingly, intelligently, and voluntarily waived his Miranda rights, the juvenile court briefly referenced two distinct rules of juvenile procedure: rule 26(e) and rule 27A. As noted in D.G.'s opening brief, it was unclear whether the juvenile court was actually referring to rule 27A, and the court's order only made explicit reference to rule 26(e). [Br. Aplt at 28 fn 10] More specifically, in ruling on the motion to suppress, the juvenile court's second conclusion of law stated that rule 26(e) "provides that a minor 14 or older is presumed to be able to intelligently comprehend and waive the right to counsel." [R. at 138] The juvenile court's fourth conclusion of law addressed the factors from the totality of the circumstances test outlined in State v. Bybee, 2000 UT 43, ¶ 17, 1 P.3d 1087. Analyzing whether D.G.'s age weighed in favor of or against a valid waiver, the juvenile court noted that "the law clearly provides that a juvenile 14 or older can be interviewed without a parent." [R. 139] However, the juvenile court did not provide a citation, so it wasn't entirely clear to which law the court was referring. [Br. Aplt. at 28 n. 10]

In his opening brief, D.G. analyzed whether the juvenile court had correctly applied the totality of the circumstances test in concluding that he had knowingly, voluntarily, and intelligently waived his Miranda. Given that the juvenile court made

only passing reference to rule 26(e);⁴ that it was unclear whether the juvenile court was actually referring to rule 27A; and that the constitutionally mandated test for determining waiver is the totality of the circumstances, D.G.’s focused his brief accordingly. D.G. did, however, note that 26(e) contained a rebuttable presumption but pointed out that the Utah legislature appeared to be moving away from allowing juveniles to waive important rights, such as the right to counsel in felony cases. [Br. Aplt. at 29]

In the Court of Appeals’ order certifying this case, the Court stated, pertinent part, that “[r]esolution of [the voluntariness] issue may turn on an additional important, unsettled question regarding to what extent courts may rely on Utah Rules of Juvenile Procedure 26(e) and/or 27A, which provide that 14-year-old children are presumed capable of waiving Miranda rights and rights to counsel without a parent, guardian, or custodian present.” (emphasis added)

D.G. concedes that the constitutionality of rule 27A issue was not properly preserved below. However, due to the “unique procedural circumstances” of this

⁴ Upon closer review of rule 26(e), it appears that this rule governs the rights that apply during proceedings, i.e., at arraignment. Indeed, the rule is titled “Rights of Minors in Delinquency Proceedings,” see Utah R. Juv. P. 26(e), and provides a list of a juvenile’s rights when he or she is in court facing a delinquency petition. While the presumption found in 26(e) may also be problematic, it does not govern a juvenile’s waiver of rights when he is being interrogated by law enforcement. Rather, 27A covers “Admissibility of Statements Given by Minors” during police questioning. See id. 27A. Accordingly, D.G. focuses his efforts on clarifying the application of rule 27A to the facts of this case.

case, see State v. Irwin, 924 P.2d 5, 7-8 (Utah Ct. App. 1996), D.G. respectfully requests that this Court exercise its discretion to reach the merits under the exceptional circumstances exception to the preservation doctrine. First, while the juvenile court's order was unclear, the court appeared to cite to rule 27A as a factor in its decision. Second, the Court of Appeals' queried counsel about the rule at oral argument and then requested that this Court clarify what, if any, impact the rules of juvenile procedure have on the voluntariness analysis under the totality of the circumstances test. Third, this is an issue of first impression that has not been addressed since the rule was adopted in 2000. Finally, in the intervening timeframe, juvenile justice jurisprudence has evolved dramatically in light of the adolescent brain development scientific research. In light of the foregoing, D.G. contends that exceptional circumstances exist in this case. Therefore, D.G. respectfully asks this court to exercise its discretion and reach the merits of his rule 27A argument.

II. EVEN IF THIS COURT DECLINES TO RULE ON THE CONSTITUTIONALITY OF RULE 27A(a)(2),(b) THIS COURT SHOULD NONETHELESS CONCLUDE THE STATE DID NOT MEET ITS HEAVY BURDEN OF ESTABLISHING THAT D.G. KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS *MIRANDA* RIGHTS.

Even if this Court declines to review D.G.'s claim that rule 27A(a)(2)(b) is unconstitutional, this Court should nonetheless reverse and remand for a new trial without the improperly obtained statements because the State did not meet its heavy burden of establishing by a preponderance of the evidence that D.G.'s waiver was

valid. Indeed, the State put forth no evidence that D.G.'s waiver was knowing and voluntary. At the evidentiary hearing, the State called one witness: Detective Horner. The State asked Horner about D.G.'s demeanor, and Horner described D.G. as "attentive," not "nervous," and speaking in a "normal tone of voice." [R. 217, 10:19-23] The State also asked Horner if D.G. "appeared to understand what [he was] saying[]" or if he "observe[d] any signs or indications that D.G. didn't understand what [he was] talking about" to which Horner replied "yes" and "no," respectively. [R. 217, 10:24-25; R. 217, 14:16-19]

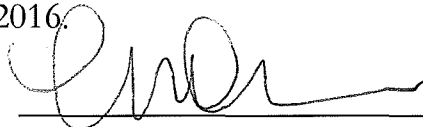
First, while D.G.'s demeanor may or may not be helpful in determining whether his waiver was voluntary, it sheds little light on whether he understood the rights he was waiving and the consequences of abandoning those rights. Second, even if Horner was qualified to testify as to whether D.G. had the developmental maturity and capacity to understand the Miranda rights as they were administered in this case—which he is not—neither of these inquiries establishes that D.G. knowingly, intelligently, and voluntarily waived his rights under the totality of the circumstances. Moreover, the questions simply query Horner regarding whether D.G. understood "what [he was] saying" and "what [he was] talking about," without clarifying what was being "said" or "talked about" that D.G. purportedly understood. On these facts, it simply cannot be said that the State put forth a preponderance of evidence to meet its burden that, under the totality of the circumstances, D.G. knowingly, intelligently, and voluntarily waived his rights.

Finally, the outcome of this case does not turn on the merits of the rule 27A issue because whether D.G. is capable of knowingly, intelligently, and voluntarily waiving his Miranda rights is not the correct inquiry. Rather, the question is whether, under the totality of all of the circumstances, the State proved that D.G. actually did waive those rights knowingly, intelligently, and voluntarily in this case. As discussed at length in his opening brief, the State simply did not meet its burden in this regard. [Br. Aplt. at 20-39] Accordingly, this Court should conclude that the State failed to meet its constitutionally mandated burden of proof under the Fifth Amendment as established in Miranda v. Arizona and Tague v. Louisiana and that the juvenile court erred in denying his motion to suppress.

CONCLUSION

Based on the foregoing, as well as the arguments set forth in the opening and reply briefs, D.G. respectfully requests that this Court reverse and remand for a new trial without the improperly admitted statements.

DATED this 14th day of November, 2016.

A handwritten signature in black ink, appearing to read 'Monica Maio', written over a horizontal line.

Monica Maio
Attorney for Juvenile/Appellant D.G.

CERTIFICATE OF COMPLIANCE WITH RULE 24(J)

1. This brief complies with the page limitation of the Supplemental Briefing order because it is 15 pages, excluding parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).
2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because it has been prepared in proportionally spaced typeface using Microsoft Word, Garamond, 14.



UTAH JUVENILE DEFENDER ATTORNEYS

Attorneys for Juvenile/ Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused to be hand-delivered an original and seven (9) copies, plus one digital courtesy copy per Utah Supreme Court Standing Oder No. 8, of the foregoing instrument to the Utah Supreme Court, 450 South State Street, 5th Floor, Salt Lake City, Utah, 84111; and that I have caused two (2) true and correct copies, plus one digital courtesy copy, of the foregoing instrument to be mailed, on this 14th day of November, 2016, to the following:

Clerk of Court, Utah Supreme Court
450 South State Street, 5th Floor
Salt Lake City, Utah 84111

John Nielsen
Utah Attorney General's Office
Criminal Appeals
Heber M. Wells Building
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114

Salt Lake Legal

ADDENDUM



Illinois General Assembly

[Home](#) [Legislation & Laws](#) [Senate](#) [House](#) [My Legislation](#) [Site Map](#)

Bills & Resolutions

[Compiled Statutes](#)

[Public Acts](#)

[Legislative Reports](#)

[IL Constitution](#)

[Legislative Guide](#)

[Legislative Glossary](#)

Bill Status of SB2370 99th General Assembly

[Full Text](#) [Votes](#) [View All Actions](#) [Printer-Friendly Version](#)

Short Description: JUV-COUNSEL REPRESENTATION

Senate Sponsors

Sen. [Patricia Van Pelt](#) - [Mattie Hunter](#) - [Jacqueline Y. Collins](#) - [Kimberly A. Lightford](#) - [Napoleon Harris, III](#), [Michael Noland](#), [Donne E. Trotter](#), [Heather A. Steans](#), [Emil Jones, III](#), [Iris Y. Martinez](#), [Daniel Biss](#), [Toi W. Hutchinson](#), [William Delgado](#) and [Christine Radogno](#)

House Sponsors

(Rep. [Barbara Flynn Currie](#) - [Ron Sandack](#) - [Elaine Nekritz](#) - [Barbara Wheeler](#) - [Elgie R. Sims, Jr.](#), [Christian L. Mitchell](#), [La Shawn K. Ford](#), [Marcus C. Evans, Jr.](#), [Arthur Turner](#), [Mary E. Flowers](#), [Michael W. Tryon](#), [Pamela Reaves-Harris](#), [Kelly M. Cassidy](#), [Scott Drury](#), [Thaddeus Jones](#), [Emanuel Chris Welch](#), [Rita Mayfield](#), [Will Guzzardi](#), [Robyn Gabel](#), [Elizabeth Hernandez](#), [Daniel J. Burke](#), [Edward J. Acevedo](#), [Camille Y. Lilly](#), [Jeanne M. Ives](#), [Robert W. Pritchard](#), [Eddie Lee Jackson, Sr.](#), [Ann M. Williams](#), [Frances Ann Hurley](#) and [Silvana Tabares](#))

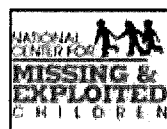
Search By Number (example: HB0001)

[Search Tips](#)

Search By Keyword

[Search Tips](#)

[Advanced Search](#)



Last Action

Date	Chamber	Action
8/22/2016	Senate	Public Act 99-0882

Statutes Amended In Order of Appearance

[705 ILCS 405/5-170](#)

[705 ILCS 405/5-401.5](#)

[725 ILCS 5/103-2.1](#)

Synopsis As Introduced

Amends the Juvenile Court of 1987 and the Code of Criminal Procedure of 1963. Provides that a minor who was under 18 at the time of the commission of any offense must be represented by counsel throughout the entire custodial interrogation. An oral, written, or sign language statement of a minor made without counsel present throughout the entire custodial interrogation of the minor shall be inadmissible as evidence in any juvenile court proceeding or criminal proceeding against the minor. Provides that in a proceeding under the Criminal Code of 2012, a minor who was under 18 at the time of the commission of the offense must be represented by counsel throughout the entire custodial interrogation of the minor and an oral, written, or sign language statement made without counsel present shall be inadmissible in any criminal proceeding against the minor.

Senate Committee Amendment No. 2

Adds reference to:

[55 ILCS 5/3-4006](#)

from Ch. 34, par. 3-4006

Replaces everything after the enacting clause. Reinserts the language of the introduced bill with the following changes. Amends the Juvenile Court Act of 1987. Restores language providing that a minor under 13 years of age at the time of the commission of various criminal offenses must be represented by counsel throughout the entire custodial interrogation. Provides that in a proceeding under the Act that a minor who was at least 13 years of age but not older than 17 years of age at the time of the commission of an act that if committed by an adult would be a violation of various homicide offenses of the Criminal Code of 2012 (rather than a minor who was under 18 at the time of the commission of any offense) must be represented by counsel throughout the entire custodial interrogation of the minor. Provides that an oral, written, or sign language statement of a minor made without counsel present throughout the entire custodial interrogation of the minor in violation of the Act shall be inadmissible as evidence against the minor in any juvenile court proceeding or criminal proceeding. Makes a conforming change in the Criminal Code of 2012. Amends the Counties Code. Provides that in a homicide case involving a minor at least 13 years of age but not older than 17 years of age at the time of the commission of the offense, that occurs in a county with a full-time public defender office, a public defender, without fee or appointment, may represent and have access to a minor during a custodial interrogation. Provides that in a homicide case involving a minor at least 13 years of age but not older than and 17 years of age, that occurs in a county that does not have a full-time public defender, the law enforcement agency conducting the custodial interrogation shall ensure that the minor is able to consult with an attorney who is under contract with the county to provide public defender services. Provides that representation by the public defender shall terminate at the first court appearance if the court determines that the minor is not indigent.

Senate Floor Amendment No. 3

Replaces everything after the enacting clause. Amends the Juvenile Court Act of 1987. Provides that in a proceeding under the Juvenile Court Act of 1987, a minor who was under 15 (rather than 13) years of age at the time of the commission of an act that if committed by an adult would be a violation of various offenses of the Criminal Code of 1961 or the Criminal Code of 2012 must be represented by counsel throughout the entire custodial interrogation of the minor. Provides that an oral, written, or sign language statement of a minor, who at the time of the commission of the offense was under 18 years of age, is presumed to be involuntarily made when the statement is obtained from the minor while the minor is subject to custodial interrogation by a law enforcement officer, State's Attorney, juvenile officer, or other public official or employee prior to the officer, State's Attorney, public official, or employee reading Miranda rights in its entirety to the minor. Amends the Code of Criminal Procedure. Provides that an oral, written, or sign language statement of a minor who at the time of the commission of the offense was under 18 years of age, made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence in a criminal proceeding or a juvenile court proceeding for an act that if committed by an adult would be a misdemeanor sex offense or a felony offense unless (1) an electronic recording is made of the custodial interrogation; and (2) the recording is substantially accurate and not intentionally altered. Amends the Counties Code. Provides that a case involving a minor who was under 15 years of age at the time of the commission of the offense who is required to have representation throughout the entire custodial interrogation that occurs in a county with a full-time public defender office, a public defender, without fee or appointment, may represent and have access to a minor during a custodial interrogation. Provides that a case involving a minor who was under 15 years of age at the time of the commission of the offense who is required to have representation throughout the entire custodial interrogation that occurs in a county without a full-time public defender, the law enforcement agency conducting the custodial interrogation shall ensure that the minor is able to consult with an attorney who is under contract with the county to provide public defender services. Provides that representation by the public defender shall terminate at the first court appearance if the court determines that the minor is not indigent.

Senate Floor Amendment No. 4

Makes technical corrections, replacing "involuntarily made" with "inadmissible".

Actions

Date	Chamber	Action
1/28/2016	Senate	Filed with Secretary by <u>Sen. Patricia Van Pelt</u>
1/28/2016	Senate	First Reading

West's New Mexico Statutes Annotated
Chapter 32A. Children's Code (Refs & Annos)
Article 2. Delinquency (Refs & Annos)

N. M. S. A. 1978, § 32A-2-14

§ 32A-2-14. Basic rights

Effective: July 1, 2009
Currentness

A. A child subject to the provisions of the Delinquency Act is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code, including rights provided by the Delinquency Act, except as otherwise provided in the Children's Code.

B. If after due notice to the parent, guardian or custodian and after a hearing determining indigency, the parent, guardian or custodian is declared indigent by the court, the public defender shall represent the child. If the court finds that the parent, guardian or custodian is financially able to pay for an attorney but is unwilling to do so, the court shall order the parent, guardian or custodian to reimburse the state for public defender representation.

C. No person subject to the provisions of the Delinquency Act who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver.

D. Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained.

E. In determining whether the child knowingly, intelligently and voluntarily waived the child's rights, the court shall consider the following factors:

- (1) the age and education of the respondent;
- (2) whether the respondent is in custody;
- (3) the manner in which the respondent was advised of the respondent's rights;
- (4) the length of questioning and circumstances under which the respondent was questioned;
- (5) the condition of the quarters where the respondent was being kept at the time of being questioned;

(6) the time of day and the treatment of the respondent at the time of being questioned;

(7) the mental and physical condition of the respondent at the time of being questioned; and

(8) whether the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

F. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition. There is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible.

G. An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the delinquent acts alleged in the petition unless it is corroborated by other evidence.

H. The child and the parent, guardian or custodian of the child shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition, including all post-dispositional court proceedings. If counsel is not retained for the child or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

I. A child under the age of thirteen alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order.

J. The court, at any stage of the proceeding on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if the parent's, guardian's or custodian's interests conflict with those of the child. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

K. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

L. A person afforded rights under the Delinquency Act shall be advised of those rights at that person's first appearance before the court on a petition under that act.

M. A serious youthful offender who is detained prior to trial in an adult facility has a right to bail as provided under SCRA 1986, Rule 5-401. A child held in a juvenile facility designated as a place of detention prior to adjudication does not have a right to bail but may be released pursuant to the provisions of the Delinquency Act.

N. The provisions of the Delinquency Act shall not be interpreted to limit the right of a child to petition a court for a writ of habeas corpus.

Credits

L. 1993, Ch. 77, § 43; L. 2003, Ch. 225, § 9, eff. July 1, 2003; L. 2009, Ch. 239, § 17, eff. July 1, 2009.

Notes of Decisions (96)

NMSA 1978, § 32A-2-14, NM ST § 32A-2-14

Current with legislation effective on or before May 18, 2016 passed at the Second Regular Session of the 52nd Legislature (2016)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.



California
LEGISLATIVE INFORMATION

SB-1052 Custodial interrogation: juveniles. (2015-2016)

ENROLLED SEPTEMBER 02, 2016
PASSED IN SENATE AUGUST 30, 2016
PASSED IN ASSEMBLY AUGUST 23, 2016
AMENDED IN ASSEMBLY AUGUST 18, 2016
AMENDED IN ASSEMBLY AUGUST 01, 2016
AMENDED IN ASSEMBLY JUNE 16, 2016
AMENDED IN SENATE MAY 31, 2016
AMENDED IN SENATE MARCH 28, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

No. 1052

**Introduced by Senators Lara and Mitchell
(Principal coauthor: Senator Leno)**

February 16, 2016

An act to add Section 625.6 to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1052, Lara. Custodial interrogation: juveniles.

Existing law authorizes a peace officer to take a minor into temporary custody when that officer has reasonable cause to believe that the minor has committed a crime or violated an order of the juvenile court. In these circumstances, existing law requires the peace officer to advise the minor that anything he or she says can be used against him or her, that he or she has the right to remain silent, that he or she has a right to have counsel present during any interrogation, and that he or she has a right to have counsel appointed if he or she is unable to afford counsel.

This bill would require that a youth under 18 years of age consult with legal counsel in person, by telephone, or by video conference prior to a custodial interrogation and before waiving any of the above-specified

rights. The bill would provide that consultation with legal counsel cannot be waived. The bill would require the court to consider the effect of the failure to comply with the above-specified requirement in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation. The bill also clarifies that these provisions do not apply to the admissibility of statements of a youth under 18 years of age if certain criteria are met.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Developmental and neurological science concludes that the process of cognitive brain development continues into adulthood, and that the human brain undergoes "dynamic changes throughout adolescence and well into young adulthood." (See Richard J. Bonnie, et al., *Reforming Juvenile Justice: A Developmental Approach*, National Academies of Science (2012), page 96, and Chapter 4.) As recognized by the United States Supreme Court, children and youth "generally are less mature and responsible than adults," (J.D.B. v. North Carolina (2011) 131 S.Ct. 2394, 2397, quoting *Eddings v. Oklahoma* (1982) 455 U.S. 104, 115); "they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,'" (J.D.B., 131 S.Ct. at 2397, quoting *Bellotti v. Baird* (1979) 443 U.S. 622, 635); "they 'are more vulnerable or susceptible to... outside pressures' than adults" (J.D.B., 131 S.Ct. at 2397, quoting *Roper v. Simmons* (2005) 543 U.S. 551, 569); they "have limited understandings of the criminal justice system and the roles of the institutional actors within it" (*Graham v. Florida* (2010) 560 U.S. 48, 78); and "children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them" (J.D.B., 131 S.Ct. at 2397).

(b) Custodial interrogation of an individual by the state requires that the individual be advised of his or her rights and make a knowing, intelligent, and voluntarily waiver of those rights before the interrogation proceeds. People under 18 years of age have a lesser ability as compared to adults to comprehend the meaning of their rights and the consequences of waiver. Additionally, a large body of research has established that adolescent thinking tends to either ignore or discount future outcomes and implications, and disregard long-term consequences of important decisions. (See, e.g., Steinberg et al., "Age Differences in Future Orientation and Delay Discounting"; William Gardner and Janna Herman, "Adolescent's AIDS Risk Taking: A Rational Choice Perspective," in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al. (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer, "Recognizing the Child in the Delinquent," *Kentucky Child Rights Journal*, vol. 7 (Summer 1999), pp. 16-17; National Juvenile Justice Network, "Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates," September 2012, pp. 1-2; Catherine C. Lewis, "How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications," *Child Development*, vol. 52 (1981), pp. 538, 541-42). Addressing the specific context of police interrogation, the United States Supreme Court observed that events that "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens" (*Haley v. Ohio*, (1948) 332 U.S. 596 (plurality opinion)), and noted that "'no matter how sophisticated,' a juvenile subject of police interrogation 'cannot be compared' to an adult subject" (J.D.B., 131 S.Ct. at 2394, quoting *Gallegos v. Colorado* (1962) 370 U.S. 49, 54). The law enforcement community now widely accepts what science and the courts have recognized: Children and adolescents are much more vulnerable to psychologically coercive interrogations and in other dealings with the police than resilient adults experienced with the criminal justice system.

(c) For these reasons, in situations of custodial interrogation and prior to making a waiver of rights under *Miranda v. Arizona* (1966) 384 U.S. 436, youth under 18 years of age should consult with legal counsel to assist in their understanding of their rights and the consequences of waiving those rights.

SEC. 2. Section 625.6 is added to the Welfare and Institutions Code, to read:

625.6. (a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth under 18

years of age shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

(b) The court shall, in adjudicating the admissibility of statements of a youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a).

(c) This section does not apply to the admissibility of statements of a youth under 18 years of age if both of the following criteria are met:

(1) The officer who questioned the suspect reasonably believed the information he or she sought was necessary to protect life or property from a substantial threat.

(2) The officer's questions were limited to those questions that were reasonably necessary to obtain this information.

(d) This section does not require a probation officer to comply with subdivision (a) in the normal performance of his or her duties under Sections 625, 627.5, or 628.

WESTLAW

West's Colorado Revised Statutes Annotated
Title 19, Children's Code (Refs & Annos)

§ 19-2-511. Statements

West's Colorado Revised Statutes Annotated Title 19, Children's Code (Approx. 2 pages)

C.R.S.A. § 19-2-511

§ 19-2-511. Statements

Currentness

(1) No statements or admissions of a juvenile made as a result of the custodial interrogation of such juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile shall be admissible in evidence against such juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and the juvenile and his or her parent, guardian, or legal or physical custodian were advised of the juvenile's right to remain silent and that any statements made may be used against him or her in a court of law, of his or her right to the presence of an attorney during such interrogation, and of his or her right to have counsel appointed if he or she so requests at the time of the interrogation; except that, if a public defender or counsel representing the juvenile is present at such interrogation, such statements or admissions may be admissible in evidence even though the juvenile's parent, guardian, or legal or physical custodian was not present.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile may be admissible in evidence, notwithstanding the absence of a parent, guardian, or legal or physical custodian, if the court finds that, under the totality of the circumstances, the juvenile made a knowing, intelligent, and voluntary waiver of rights and:

(I) The juvenile is eighteen years of age or older at the time of the interrogation or the juvenile misrepresents his or her age as being eighteen years of age or older and the law enforcement official acts in good faith reliance on such misrepresentation in conducting the interrogation;

(II) The juvenile is emancipated from the parent, guardian, or legal or physical custodian; or

(III) The juvenile is a runaway from a state other than Colorado and is of sufficient age and understanding.

(b) For the purposes of this subsection (2), "emancipated juvenile" is defined in section 19-1-103(45).

(3) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the juvenile was accompanied by a responsible adult who was a custodian of the juvenile or assuming the role of a parent at the time.

(4) For the purposes of this section, "physical custodian" is defined in section 19-1-103(84).

NOTES OF DECISIONS (136)

Constitutional rights
Construction and application
Purpose
Age
Lies
Interrogation
Plea hearing
Custody
Totality of circumstances test
Questioning by school officials
Presence of adult
Custodians, presence of adult
Position of parent, presence of adult
Emancipation, presence of adult
Social workers, presence of adult
Out-of-state runaways, presence of adult
Adverse interest, presence of adult
Transfer to adult court, presence of adult
Advisement of rights
Voluntariness
Traffic offenses
Probation revocation
Paternity admissions
Runaway
Waiver
Standing
Burden of proof
Tainted evidence
Findings
Review

(5) Notwithstanding the provisions of subsection (1) of this section, the juvenile and his or her parent, guardian, or legal or physical custodian may expressly waive the requirement that the parent, guardian, or legal or physical custodian be present during interrogation of the juvenile. This express waiver shall be in writing and shall be obtained only after full advisement of the juvenile and his or her parent, guardian, or legal or physical custodian of the juvenile's rights prior to the taking of the custodial statement by a law enforcement official. If said requirement is expressly waived, statements or admissions of the juvenile shall not be inadmissible in evidence by reason of the absence of the juvenile's parent, guardian, or legal or physical custodian during interrogation. Notwithstanding the provisions of this subsection (5), a county social services department and the department of human services, as legal or physical custodian, may not waive said requirement.

(6) Notwithstanding the provisions of subsection (1) of this section, statements or admissions of a juvenile shall not be inadmissible into evidence by reason of the absence of a parent, guardian, or legal or physical custodian, if the juvenile makes any deliberate misrepresentations affecting the applicability or requirements of this section and a law enforcement official, acting in good faith and in reasonable reliance on such deliberate misrepresentation, conducts a custodial interrogation of the juvenile that does not comply with the requirements of subsection (1) of this section.

Credits

Added by Laws 1996, H.B.96-1005, § 1, eff. Jan. 1, 1997. Amended by Laws 1999, Ch. 258, § 1, eff. Aug. 4, 1999; Laws 1999, Ch. 332, § 10, eff. July 1, 1999.

Notes of Decisions (136)

C. R. S. A. § 19-2-511, CO ST § 19-2-511

Current through the Second Regular Session of the 70th General Assembly (2016).

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.



WESTLAW

NOTES OF DECISIONS (36)

In general
 Understanding of consequences
 Necessity of warning
 Coercion
 Spontaneity
 Review

West's Annotated Indiana Code
 Title 31. Family Law and Juvenile Law (Refs & Annos)

31-32-5-4 Waiver of rights during custodial interrogation
 West's Annotated Indiana Code Title 31. Family Law and Juvenile Law (Approx. 2 pages)

Proposed Legislation

IC 31-32-5-4

31-32-5-4 Waiver of rights during custodial interrogation

Currentness

Sec. 4. In determining whether any waiver of rights during custodial interrogation was made knowingly and voluntarily, the juvenile court shall consider all the circumstances of the waiver, including the following:

- (1) The child's physical, mental, and emotional maturity.
- (2) Whether the child or the child's parent, guardian, custodian, or attorney understood the consequences of the child's statements.
- (3) Whether the child and the child's parent, guardian, or custodian had been informed of the delinquent act with which the child was charged or of which the child was suspected.
- (4) The length of time the child was held in custody before consulting with the child's parent, guardian, or custodian.
- (5) Whether there was any coercion, force, or inducement.
- (6) Whether the child and the child's parent, guardian, or custodian had been advised of the child's right to remain silent and to the appointment of counsel.

Credits

As added by P.L.1-1997, SEC.15.

Notes of Decisions (36)

I.C. 31-32-5-4, IN ST 31-32-5-4

The statutes and Constitution are current with all legislation of the 2016 Second Regular Session of the 119th General Assembly.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works

WESTLAW

West's Montana Code Annotated
Title 41, Minors

41-5-331. Rights of youth taken into custody--questioning--waiver of rights
West's Montana Code Annotated Title 41, Minors (Approx. 2 pages)

NOTES OF DECISIONS (14)

Self-incrimination
Advice of rights
Waiver of rights
Confessions
Parental notification
Admissibility of evidence
Review

MCA 41-5-331

41-5-331. Rights of youth taken into custody--questioning--waiver of rights

Currentness

(1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, juvenile probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver subject to the provisions of 41-5-333(2);

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver subject to the provisions of 41-5-333(2); or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

Credits

Enacted 10-1218 by Laws 1974, ch. 329, § 18. Amended by Laws 1977, ch. 100, § 6; amended by Laws 1977, ch. 571, § 9; Revised Code of Montana 1947, 10-1218(1)(a), (1)(b); amended by Laws 1979, ch. 385, § 1; amended by Laws 1987, ch. 475, § 7; amended by Laws 1987, ch. 515, § 5. (2) thru (6) Enacted by Laws 1987, ch. 475, § 1; amended by Laws 1989, ch. 271, § 2; amended by Laws 1991, ch. 547, § 3; amended by Laws 1997, ch. 286, § 11; amended by Laws 1997, ch. 550, § 76; MCA 1995, § 41-5-303; redesignated 41-5-331 by Laws 1997, ch. 286, § 47; amended by Laws 2009, ch. 2, § 63, eff. Oct. 1, 2009; amended by Laws 2009, ch. 37, § 1, eff. Oct. 1, 2009.

Notes of Decisions (14)

MCA 41-5-331, MT ST 41-5-331

Current through the 2015 session. Statutory changes are subject to classification and revision by the Code Commissioner. Court Rules in the Code are current with amendments received through October 1, 2015.

[End of Document](#)

Westlaw, © 2016 Thomson Reuters

[Privacy Statement](#)

[Accessibility](#)

[Supplier Terms](#)

[Contact Us](#)

[1-800-REF-ATTY \(1-800-733-2889\)](#)

[Improve Westlaw](#)



THOMSON REUTERS

WESTLAW

West's North Carolina General Statutes Annotated
Chapter 7B. Juvenile Code (Refs & Annos)

§ 7B-2101. Interrogation procedures

West's North Carolina General Statutes Annotated Chapter 7B. Juvenile Code (Approx. 2 pages)

Proposed Legislation

N.C.G.S.A. § 7B-2101

§ 7B-2101. Interrogation procedures

Currentness

(a) Any juvenile in custody must be advised prior to questioning:

- (1) That the juvenile has a right to remain silent;
- (2) That any statement the juvenile does make can be and may be used against the juvenile;
- (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(b) When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

(c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.

(d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

Credits

Added by S.L. 1998-202, § 6, eff. July 1, 1999. Amended by S.L. 2015-58, § 1.1, eff. Dec. 1, 2015.

Notes of Decisions (84)

N.C.G.S.A. § 7B-2101, NC ST § 7B-2101

NOTES OF DECISIONS (84)

Construction and application
Sufficiency of warnings
Custody
Admissibility of evidence
Voluntary confession
Waiver of rights
Parental waiver, waiver of rights
New hearing or trial
Right to parent or guardian
Interrogation

The statutes and Constitution are current through Chapters 93, 95 to 101 of the 2016 Regular Session of the General Assembly, pending changes received from the Revisor of Statutes.

End of Document 2/2 (Page 2 of 2) 11/14/2016 3:26 PM 11/14/2016 3:26 PM