



# ADMISSIBILITY OF CHILD STATEMENTS

## TFC 51.095

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# DISCLAIMER

- ▶ This project is supported by Grant #2019-MU-MU-K002 awarded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, U.S. Department of Justice.
- ▶ The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect those of the Department of Justice.

# PRIORITIES

Office of Juvenile Justice and Delinquency Prevention (OJJDP),  
Office of Justice Programs, U.S. Department of Justice

- ▶ Treating Children as Children
- ▶ Serve Children at Home, with their Families, In their Communities
- ▶ Open up Opportunities for Young People Involved in the Justice System

# Applicability (TFC 51.02)

**“Child” at the time of questioning is:**

- ▶ **Age 10-16**, or
- ▶ **Age 17**, but offense committed when 10-16 years old, or
- ▶ **Age 18 or older**, then CCP Article 38.22 applies
- ▶ **Age UNDETERMINED**, safer course is TFC 51.095

# ADMISSIBLE TYPES OF CHILD STATEMENTS

**Pursuant to Sec. TFC 51.095(a):**

- ◉ **(a)(1) Written – custodial w/ magistration**
- ◉ **(a)(2) Oral plus physical evidence**
- ◉ **(a)(3) Res Gestae**

# ADMISSIBLE TYPES OF CHILD STATEMENTS

- ◉ **(a)(4) In Court Proceedings**
  - **In open court at adjudication hearing**
  - **Before a Grand Jury**
  - **At a preliminary hearing regarding the child, but not @ a DH**
- ◉ **(a)(5) Oral (custodial w/ magistration & recorded)**

# STATEMENT MUST BE VOLUNTARY

- ⦿ **Applies whether the child is in custody or not.**
- ⦿ **Must show child was not coerced, threatened or promised anything in exchange for statement.**
- ⦿ **Must show child capable of understanding his rights.**
- ⦿ **Court will look to the totality of the circumstances, including age, intelligence, maturity level & experience in system.**
- ⦿ **Reasonable juvenile standard.**

# IS IT INTERROGATION?

- ▶ **There must be interrogation for 51.095 protections to kick in:**
  - ▶ **Must be questioning or statements used to elicit an incriminating response**
  - ▶ **It is not routine questions for booking and processing or routine custodial matters**

# CUSTODY REQUIREMENT

TFC 51.095(d) defines “custody” for 51.095 purposes:

- ✓ While the child is in a detention facility or other place of confinement;
- ✓ While the child is *in the custody of an officer*;
- ✓ During or after the interrogation of the child by an officer if the child is in possession of DFPS and is suspected to have engaged in a penal law violation

# CUSTODIAL VS NON-CUSTODIAL INTERROGATION

- ▶ Important to determine if child in custody
- ▶ If NOT in custody, then TFC 51.095 does NOT apply per 51.095(b)(1)
  - ▶ No magistrate warnings needed
  - ▶ No parental notification needed
  - ▶ No requirement to go to a Juvenile Processing Office

# CUSTODIAL INTERROGATION?

- ◉ If child is in custody then 51.095 rules apply.
- ◉ Whether child is in custody will be evaluated on its own facts & the courts will look to totality of the circumstances.
- ◉ Factors considered in determining if there is custody:
  - > Probable cause to arrest
  - > Subjective intent of the police
  - > Focus of the investigation
  - > Subjective belief of the child (age is a factor)

# CUSTODIAL INTERROGATION?

- ▶ **Being the focus of the investigation does not automatically mean custody.**
- ▶ **It is OK to interview a child at the police station and it to be NON custodial.**
- ▶ **Usually child is not in custody when the officer informs the child he is not in custody, is free to leave at any time and is allowed to leave.**

# LOCATION

- ▶ **For custodial statements, 51.095(a)(1) & (5):**
  - ▶ **The child has to be taken before a *Magistrate\** (as defined by CCP 2.09 – any judge, including a JP & municipal court judge)**
  - ▶ **MUST be in an approved Juvenile Processing Office (JPO) or the detention facility**

# TIME (TFC 52.025(d))

**Time is of the essence, because the law limits the time frame from the time a child is detained until he/she has to be referred (booked) in at the detention center.**

**6 HOURS!!**

# PROCEDURE FOR LEO

- ▶ Child is detained (arrested) at scene/location – Tell LEO to document time *to the minute*.
- ▶ Contact Justice of the Peace/Magistrate for *(closest)* location of interview/interrogation.
- ▶ Transport child to that location (only approved JPO locations).
- ▶ Send child in with the Judge/Magistrate to complete Part 1.

# PROCEDURE FOR LEO

- ▶ The Judge/Magistrate will inform LEO if child is willing to provide a statement.
- ▶ If child declines, then take child directly to JDC for immediate processing, *“without unnecessary delay”* (TFC 52.02(a)). **REQUIRES STRICT COMPLIANCE!**
- ▶ If child waives rights and agrees to provide a statement, then proceed to Part 2.
- ▶ LEO *may* read the form to the child and write OR record the statement. **[RECORDED STATEMENT is preferred.]**

# PROCEDURAL SAFEGUARDS

- ▶ Must be @ JPO or JDC
- ▶ **NO** LEO or prosecutor allowed to be present during warnings
  - ▶ *Safety exception, but **NO WEAPON***
- ▶ Magistrate **MUST** be fully convinced that child understands the nature and content of the statement
  - ▶ *Voluntariness*
  - ▶ *Totality of circumstances*
- ▶ Brought before the magistrate **TWO TIMES** (written statement)
  - ▶ **BEFORE – PART I**
  - ▶ **AFTER – PART III (Verification), (optional for oral statement)**

# WRITTEN STATEMENT

Waiver must be “**knowingly,  
intelligently, and voluntarily**” done

Rights read and explained

Not required to inform of  
punishment

PART I  
MAGISTRATE'S JUVENILE WARNING

STATE OF TEXAS  
FORT BEND COUNTY

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ o'clock a.m./p.m.  
personally appeared before me, \_\_\_\_\_, a male/female child at  
\_\_\_\_\_ (location), in Fort Bend County, Texas. The  
following rights and warnings were read and explained to the child prior to making a statement:  
You are in custody and charged by law enforcement with the offense of  
\_\_\_\_\_ which is a \_\_\_\_\_ (specify degree of misdemeanor  
or felony, or other offense).

**[Juvenile initials each]**

1. You may remain silent and not make any statement at all and any statement that you make  
may be used in evidence against you;

2. You have the right to have an attorney present to advise you either prior to any questioning or  
during any questioning;

3. If you are unable to employ an attorney, you have the right to have an attorney appointed to  
counsel with you before or during any interviews with peace officers or attorneys representing  
the state;

4. You have the right to terminate the interview at any time;

5. Any statement either written or oral given prior to these warning may be inadmissible in a  
court of law;

I have listened carefully to and understood each of the above rights as they were read and explained to  
me. I have asked the Magistrate any questions that I may have regarding these rights. I fully understand all my  
rights as they have been explained to me, and I voluntarily wish to waive them.

Answer "yes" or "no" \_\_\_\_\_ Signature of Juvenile \_\_\_\_\_

Date Signed \_\_\_\_\_ Time Signed \_\_\_\_\_

# WRITTEN STATEMENT

Certification **MUST** be in writing

Statement **MUST** be signed in the **presence** of the magistrate alone

## JUVENILE STATEMENT (CONTINUED)

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## END OF STATEMENT

I fully understand the nature and contents of this statement and I do hereby sign it knowingly and voluntarily in the presence of the Magistrate, \_\_\_\_\_.

My statement contains \_\_\_\_\_ page(s), or \_\_\_\_\_ electronic recording(s).

|                       |      |                            |
|-----------------------|------|----------------------------|
| Signature of Juvenile | Date | Signature of Magistrate    |
|                       |      | Printed Name of Magistrate |
|                       |      | Date                       |
|                       |      | Time                       |

# ORAL STATEMENTS

- ▶ If **NON-CUSTODIAL**, Magistrate NOT required
- ▶ **CUSTODIAL** - TEXAS FAMILY CODE 51.095(a)(5), (c) and (f)
- ▶ PROCEDURE
  - ▶ Warnings **REQUIRED** to be on the recording. *[Send recording device in w/ the Judge/Magistrate.]*
  - ▶ Admissibility predicate
  - ▶ **RETURN CHILD & RECORDING TO MAGISTRATE FOR EXAMINATION** to determine voluntariness, if requested by magistrate.

# PROCEDURAL INVOCATIONS

## ▶ REQUEST FOR ATTORNEY

- ▶ *STOP QUESTIONING*

- ▶ *Err in favor of the child's attempted request*

## ▶ REQUEST FOR PARENT

- ▶ *No requirement of parental presence, but NOTE (TFC 52.02(b)) & 52.025(c)*

- ▶ *DETERMINE if request is an invocation*

# PARENTAL PRESENCE

- ▶ LEO must make *reasonable* attempts to promptly notify parents or guardian of the custody and the reason for the custody. TFC 52.02(b)
- ▶ Failure to comply may result in exclusion of any statement obtained during custodial interrogation
- ▶ BUT if no notification made and child confesses, child must show a causal connection between the failure to notify and the giving of the statement

# PARENTAL PRESENCE

- ▶ No requirement of parental presence when taking statement under 51.095
- ▶ But if child being questioned in a JPO under 51.095 (as required when detained), see 52.025(c)
- ▶ Child may not be left unattended in a JPO & is entitled to be accompanied by a parent/guardian/custodian/attorney. 52.025(c)
- ▶ BUT, child must show same causal connection

# ORAL STATEMENTS

## 51.095(a)(2)

- ▶ Statute does not state must be recorded
- ▶ They are admissible if voluntary and the following exist:
  - ▶ Child makes statement of facts or circumstances that are found to be true and which tend to establish the guilt of the child (such as finding the stolen property or the murder weapon)

# Voluntary Statement of Juvenile **Not in Custody**

- Preferred parental/guardian/custodian presence
- Preferred non LE agency location
- If at the PD, preferred non-LE transport
- Preferred recorded statement, but may be written
- School is not inherently “custodial”
- Consider: Age, grade level, previous contacts with LE, seriousness of the offense
- Consider using a JNIC form

# STATEMENT TAKEN BY FEDERAL LEO

- ▶ **51.095(b)(2)(B)(ii) – Recorded statement of child IS admissible if obtained by a federal LEO in TX or another state in compliance w/ the laws of the United States**
  - ▶ **This is WITHOUT regard to whether the statement stems from interrogation**

# STATEMENT TAKEN IN ANOTHER STATE

- ▶ **51.095(b)(2)(B)(i) - Recorded statement of child IS admissible if obtained in another state in compliance with the laws of that state or Texas**
  - ▶ This is WITHOUT regard to whether the statement stems from interrogation
  - ▶ Tip for LEO: not required to take the laws of TX w/ them when they investigate child offenders who have fled to another state, but they should consult w/ local LE regarding that state law & the proper method to take a voluntary statement of a child in that jurisdiction

# TEXAS VS. OTHER STATES

- ▶ States where legislatures have banned use of deception during child interrogations since 2021 (according to ABA):
  - ▶ California, Delaware, Illinois, Oregon, Utah
  - ▶ Indiana enacted statute eff. 7/1/23 for statements made where materially false info provided, but not to evidence discovered as result of statement
- ▶ States where legislatures recently considered or are considering same:
  - ▶ Colorado, Massachusetts, Nebraska, Rhode Island

# TEXAS VS. OTHER STATES

- ▶ States where legislatures require parental or attorney presence or consultation during custodial interrogation (CI):
  - ▶ California – youth 17 & under must consult w/ legal counsel prior to
  - ▶ Connecticut – any statement made by youth <16 to LEO or Juvenile Court official not admissible unless made in presence of parent/guardian & after both have been advised of rights
  - ▶ Washington – requires legal counsel for 17 & under prior to
  - ▶ Colorado – not admissible unless parent/guardian present & advised of rights or attorney is present

# TEXAS VS. OTHER STATES

- ▶ States where legislatures require parental or attorney presence or consultation during custodial interrogation (CI) cont'd:
  - ▶ Indiana – juvenile's rights may be waived only by counsel or custodial parent & only if juvenile joins in waiver
  - ▶ Iowa - <16 can't waive right to counsel w/o written consent of parent, 16-17 requires good faith effort to notify
  - ▶ Oklahoma – requires warnings be given both to child and parent/custodian

# TEXAS VS. OTHER STATES

- ▶ States where legislatures require parental or attorney presence or consultation during custodial interrogation (CI) cont'd:
  - ▶ Montana – child <16 & parent may waive child's rights, but if can't agree, child may waive only w/ advice from attorney
  - ▶ North Carolina – <16, statement not admissible unless made in presence of a parent/legal custodian/attorney
  - ▶ New Mexico – NO statement by child <13 is admissible, 13-14 presumed to be inadmissible but presumption may be rebutted

# TEXAS VS. OTHER STATES

- ▶ States where the courts have held that parental or attorney presence or consultation is required during custodial interrogation (CI):
  - ▶ Vermont (*In re E.T.C.* (1982)) – for child to voluntarily & intelligently waive his right to have atty present, must be given opportunity to consult w/ an adult. The adult must be one who is genuinely interested in child's welfare & completely independent from the prosecution & must be informed of the rights.
  - ▶ Kansas (*Matter of B.M.B.* (1998)); Massachusetts (*Com. v. Smith* (2015));
  - ▶ Missouri – must be allowed to confer w/ a friendly adult

# CONTACT INFORMATION

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