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March 12, 2007

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Re: Juvenile Confessions

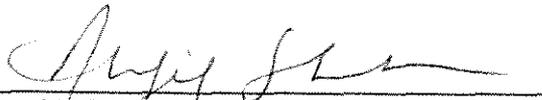
Dear Gentlemen:

Several officers have asked for information regarding juvenile interviews and confessions. I am hoping the attached is helpful. Please feel free to distribute as you see fit.

As always, please feel free to call if you have any questions or comments.

Sincerely,

ST. LOUIS COUNTY ATTORNEY

By: 

ANGELA K. SHAMBOUR
Assistant County Attorney

AKS/kf
enclosure

cc: Sharon Chadwick, Assistant County Attorney
Gayle Goff, Assistant County Attorney

**JUVENILE CONFESSIONS,
INTERVIEWS, AND INTERROGATIONS**

March 2007

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INTRODUCTION

We can prosecute kids as young as 10 years of age.

"Children under the age of 14 years are incapable of committing crime." Minn. Stat. §609.055. This means that a juvenile must be at least 14 years of age in order to be certified into adult court and prosecuted as an adult.¹ Children as young as 10 years of age may be ticketed for, and charged with, offenses that are prosecuted in juvenile court. Rather than being "convicted of a crime," they are "adjudicated delinquent" for committing the offense.

Miranda rights apply to juvenile offenders.

Miranda rights apply to juvenile offenders - they are entitled to have an attorney present during custodial interrogations, just as adults are. If a person does choose to give a confession, it must be voluntarily and freely given. "Juveniles as well as adults are entitled to be apprised of their constitutional rights according to the dictates of Miranda." *State v. Loyd*, 212 N.W.2d 671 (Minn.1973).

CUSTODIAL INTERROGATIONS REQUIRE MIRANDA WARNINGS

Determining whether a juvenile was in custody must be done from the perspective of the juvenile.

"The test for determining whether a person is in custody is objective whether the circumstances of the interrogation would make a reasonable person believe that he was under formal arrest or physical restraining akin to formal arrest." *State v. Rosse*, 478 N.W.2d 482 (Minn.1991). The determination of whether a juvenile would reasonably believe he or she was in custody must be made from the "perspective of the juvenile." *In re Welfare of G.S.P.*, 610 N.W.2d 651 (Minn.App.2000).

Questioning done at the police station can be considered non-custodial.

The fact that an interrogation occurs at a police station does not always lead to the conclusion that it was custodial. *State v. Wiernasz*, 584 N.W.2d 1 (Minn.1998).

¹The legislature is currently considering lowering the minimum age for adult prosecution to 13 for certification into adult court.

Recording the interview suggests custodial status. (This doesn't mean the interviews should not be recorded - the case is addressing the fact that the officer told the suspect the interview would be recorded. It is always most helpful when there is a recording of the interview.)

The fact that a police officer tells the juvenile at the outset that the interview will be recorded is "strongly suggestive" of a custodial interrogation. *In re Welfare of G.S.P.*, 610 N.W.2d 651 (Minn.App.2000). A 12-year-old with no prior criminal justice experience was summoned to the principal's office where the principal and a police officer questioned him without telling him he was free to leave, recorded the conversation, and told the juvenile he must answer questions. The conviction was reversed because the officer did not give a Miranda warning. *Id.*

For non-custodial interviews, officers should allow the juvenile to close the door of the interview room and sit near the door, and tell the juvenile that the door is not locked.

The Court of Appeals found that a police liaison interview of a juvenile in a principal's office which was not tape-recorded was custodial, despite the fact that the officer told the juvenile that after the interview he would be free to leave and go home on the school bus. The court relied on the fact that the door was closed, the interview was tape-recorded, and no attempt was made to contact the child's parents. The court determined that these factors made the interview "strongly suggestive of the coercive influence associated with formal arrest." *In the Matter of the Welfare of T.J.C.*, 662 N.W.2d 175 (Minn.App.2003) *rev'd other grounds*, 670 N.W.2d (Minn.App.2003).

Denial of a request to leave the interview changes it to custodial status.

13-year-old escorted by police liaison officer to the officer's office, met by detective who transported the defendant to the social services building in an unmarked police car, and told repeatedly that he was not under arrest. Defendant's statements were allowed up until the defendant asked to leave and the detective denied his request. Portion of statement after that were excluded from evidence. *In re Welfare of J.A.S.*, 2005 WL 44455 (Minn.App.2005).

YOU ARE FREE TO LEAVE

When doing a non-custodial interrogation, it is always best to tell the subject that he is free to leave at any time, and can choose not to answer the questions.

"A 14-year-old juvenile who (1) is subjected to coercive questioning by police; (2) is not allowed to have a parent present at the interrogation, although a parent accompanies him to the station; (3) is held in a private room inside a police station; and (4) is not told he is free to terminate the interrogation at any time, was subjected to custodial interrogation and was entitled to receive a Miranda warning." *In the Matter of the Welfare of D.S.M.*, 710 N.W.2d 795 (Minn.App.2006).

D.S.M.'s mother drove him to the police station at the request of the officer. The mother was not allowed to be present in the interview room. The officer "intensely questioned" him for 55 minutes, shouting at him, suggesting that he couldn't leave until he confessed and that the interview could last all day, and causing him to break down and cry several times. The court determined that almost all questions were accusatory, and many of the questions and hypothetical scenarios used by the officer were coercive. The court also found that it was clear from the questions and tone of the interview that he was not free to leave.

A student who is removed from class by two uniformed school security guards, escorted to the security office, searched, and subjected to a closed door, tape-recorded interrogation by a uniformed liaison officer, in the presence of the security guards and a school social worker, is in custody and entitled to a Miranda warning prior to interrogation. *In re R.J.E.*, 630 N.W.2d 457 (Minn.App.2001), *rev'd other grounds*, 642 N.W.2d (Minn.App.2001).

Confession made by a high school student who was interrogated in a school office by a uniformed school liaison officer was suppressed, where the officer did not give a Miranda warning and did not inform the juvenile that he could decline to answer questions, could ask for his parents, and was free to leave. *In re Welfare of R.J.E.*, 642 N.W.2d 708 (Minn.2002).

13-year-old called out of class, interviewed in detention room by uniformed officer with a sidearm; officer closed the door, and told the juvenile he was not under arrest and did not have to speak with him. He did not, however, give Miranda warnings or tell him that he was free to leave. *In re D.R.M.S.*, 2006 WL 3361948 (Minn.App.).

Don't have to tell them they're free to leave when they're interviewed at home.

No reason to tell a person they are free to leave when the interview is conducted at their home. Officer told 15-year-old with prior experience with law enforcement, whom he interviewed on her deck outside her residence, that she was not under arrest, did not have to talk with him, and that she could tell him to leave. *In re Welfare of C.M.A.*, 2006 WL 1460662 (Minn.App.).

STATEMENTS AND CONFESSIONS MUST BE VOLUNTARY

The voluntariness of a confession is an issue separate from the Miranda issue. *State v. Pilcher*, 472 N.W.2d 327 (Minn.1991). The rule that a confession must be voluntary is designed to deter improper police interrogation. *State v. Merrill*, 274 N.W.2d 107, *State v. Williams*, 535 N.W.2d 277 (Minn.1995).

A totality of the circumstances is used to determine voluntariness.

To determine the voluntariness of a confession, the courts must examine the totality of the circumstances. A juvenile's confession is regarded as voluntary "if the totality of the circumstances show that the statement was the product of a free-will decision." *In re Matter of Welfare of G.M.*, 560 N.W.2d 687, 696 (Minn.1997).

Factors used to determine voluntariness:

Factors to be considered in the totality of the circumstances test include the following: the juvenile's age, maturity, intelligence, education, prior criminal experience, language barriers, the presence or absence of parents and access to an attorney and friends, the length and legality of the detention, lack or adequacy of warnings, the nature of the interrogation, and any physical deprivations during the interrogation. *State v. Jones*, 566 N.W.2d 317 (Minn.1997); *State v. Dominguez-Ramirez*, 563 N.W.2d 254 (Minn.1997).

The test of voluntariness is whether the actions of the police, together with other circumstances surrounding the interrogation "were so coercive, so manipulative, so overpowering that [the defendant] was deprived of his ability to make an unconstrained and wholly autonomous decision to speak as he did." *In the Matter of the Welfare of D.B.X.*, 638 N.W.2d 449 (Minn.App.2002).

Confessions need not be in a custodial setting to be involuntary. *State v. Jensen*, 349 N.W.2d 317 (Minn.App.1984).

JUVENILES MUST UNDERSTAND THEIR MIRANDA RIGHTS

There may be special considerations regarding whether the juvenile had the capacity to understand the meaning of the words that are read. I.e., are they too young to know what those words mean?

When interviewing very young juveniles, it is best to have them articulate the meaning of the Miranda rights to ensure they understand it.

Police arrested and booked a juvenile into the detention center. He was given his Miranda warning, and the officer had the juvenile articulate to him the meaning of each clause of the Miranda warning to ensure his understanding of it. The juvenile waived his rights and confessed to the crime, but later claimed the waiver was involuntary because his parent was not present. The juvenile had given the officer his mother's cell phone number, but did not request that his mother be contacted. Because there is no per se rule requiring parental presence before a juvenile can waive his Miranda rights, the court properly admitted the confession. *In re B.U.P.*, 2006 WL 3593040 (Minn.App.).

COERCION

Whether police promises have been made is to be considered among the factors in determining whether the resulting confession was voluntary. *State v. Anderson*, 396 N.W.2d 564 (Minn.1986). In considering the voluntariness of a juvenile confession, the court must also consider the same totality of the circumstances factors that it considers in evaluating the voluntariness of a Miranda waiver. *D.B.X.*, 638 N.W.2d 449 (Minn.App.2002).

A confession is not voluntary if the actions of the police, combined with the circumstances, are so coercive and intimidating that the defendant is unable to make a free-will decision. *State v. Jones*, 566 N.W.2d 317 (Minn.1997). The actions of police need not be threats or deliberate intimidation to be coercive. *State v. Riley*, 568 N.W.2d 518 (Minn.1997).

When doing a non-custodial interview at the school, it is best to let the subject know he will be permitted to return to class.

14-year-old boy with no prior experience with the police was brought to the police liaison office and questioned. He was told that he was not under arrest and that his step-father had given permission for the interview, but he was not told that he could refuse to answer questions and leave if he wanted to. He was not told he could contact his parents, and was not given a pass back to class until the statement was complete. During the interview, he never asked for his parents to be present and did not ask for permission to leave. The court concluded that he should have received a Miranda warning, and that his statements were not voluntary, holding that "his will was almost certainly overcome." He didn't understand he was free to leave, didn't know he could ask for his parents, and faced school discipline if he left the office without a hall pass. *In re M.A.K.*, 667 N.W.2d 467 (Minn.App.2003).

PRESENCE OR ABSENCE OF PARENTS

The best practice is to allow a parent to sit in on the interview, but there is no rule requiring the presence of a parent.

There is no per se rule requiring parental presence during a juvenile's interrogation. Rather, the test is the totality of the circumstances. *State v. Hogan*, 212 N.W.2d 664 (Minn.1973). The presence of a juvenile's parent is one of the circumstances that may affect the validity of a Miranda waiver, but "we reiterate that there is no per se rule requiring a parent's presence before a juvenile waives his Miranda rights." *State v. Burrell*, 697 N.W.2d 579 (Minn.2005).

16-year-old boy who asked for his mother 3 times before receiving a Miranda warning, and 10 times afterward did not make a knowing, intelligent, and voluntary Miranda waiver. *Id.*

A 16-year-old's Miranda waiver was knowing, intelligent, and voluntary "even though he was not advised that he could have a parent or guardian present during questioning." *State v. Williams*, 535 N.W.2d 277 (Minn.1995).

Just because a parent is present doesn't guarantee the confession will be admissible.

16-year-old questioned at the police station with his mother present, and the conversation was recorded. The police promised him he could go home that evening if he confessed to the crime. They told him he would be shipped away to a secure detention facility for a couple days if he did not confess. The presence of a parent during questioning is a factor that may weigh in favor of admissibility. But in this case, the presence of the mother was of little impact in light of the fact that she had a passive role, was compliant with police, and seemed confused herself about the consequences of a confession. The police used her presence to aid in obtaining the confession. *In re D.S.N.*, 611 N.W.2d 811 (Minn.App.2000).

A juvenile's request to speak with a parent, after the interrogation had ceased, does not trigger the right to counsel or the right to remain silent in subsequent interrogations. *State v. Jones*, 566 N.W.2d 317 (Minn.1997).

Police arrested and booked a juvenile into the detention center. He was given his Miranda warning, and the officer had the juvenile articulate to him the meaning of each clause of the Miranda warning to ensure his understanding of it. The juvenile waived his rights and confessed to the crime, but later claimed the waiver was involuntary because his parent was not present. The juvenile had given the officer his mother's cell phone number, but did not request that his mother be contacted. Because there is no per se rule requiring parental presence before a juvenile can waive his Miranda rights, the court properly admitted the confession. *In re B.U.P.*, 2006 WL 3593040 (Minn.App.).

PROMISES AND DECEPTION

Police "proceed on thin ice and at their own risk" when they use deception or trickery to obtain a confession. *State v. Thaggard*, 527 N.W.2d 804 (Minn.1995). The police "invite suppression" when they use express or implied promises. But the use of deceit or promises does not automatically render a confession involuntary.

Promises of favorable treatment have led to suppression where, given the total circumstances, hope is implanted for escaping punishment. *State v. Anderson*, 404 N.W.2d 856 (Minn.App.1987). The police implied that a 20-year-old would receive treatment, rather than prosecution, if he confessed to the crime, and the confession was suppressed. See also *State v. Gard*, 358 N.W.2d 463 (Minn.App.1984) confession involuntary where police implied on charges would be brought, and defendant would

instead receive counseling if he confessed; *State v. Biron*, 123 N.W.2d 392 (Minn.1963) confession involuntary where police statements and representations to teenager were persuasive and “could only have had the effect of implanting” the hope that he would be treated as a juvenile or be charged with a lesser crime.

Police suggested that it was in defendant’s “best interest” to admit his involvement in the crime, and they implied that the interview would be his only chance to tell his side of the story. But they made no promises or misrepresentations. The fact that the police used a sympathetic approach, allowing him to minimize his involvement in the crime, and encouraging him to see that his best interest lay in confessing, does not render the confession involuntary. *State v. Hough*, 571 N.W.2d 581 (Minn.App.1997), rev’d on other grounds, 585 N.W.2d. 393 (Minn.1998).

WARNING ABOUT POSSIBILITY OF ADULT COURT

When interviewing a juvenile who could be charged as an adult, best practice is to let them know that before questioning.

When a juvenile is interrogated in connection with a crime that might be prosecuted outside of juvenile court, there is heightened concern that the juvenile understands that any inculpatory statements he makes after waiving his Miranda rights can be used against him in adult court.” *State v. Loyd*, 212 N.W.2d 671 (1973). “We have stated that the best course is to specifically warn the minor that his statement can be used in adult court, particularly when the juvenile might be misled by the “protective, nonadversary” environment that juvenile court fosters.” *Id* at 449-50.

“When a juvenile is interrogated in connection with a crime that might be prosecuted outside of juvenile court, there is heightened concern that the juvenile understands that any inculpatory statements he makes after waiving his Miranda rights can be used against him in adult court.” The best course is to specifically warn the juvenile that the statement may be used in adult court. *State v. Burrell*, 697 N.W.2d 579 (Minn.2005).

Best practice is a specific warning about the possibility of being charged in adult court, but such warning is not mandatory if it’s obvious.

Investigators do not have to specifically warn about the possibility of prosecution in adult court. Awareness of this possibility often may be imputed, depending on the circumstances of the arrest and interrogation. For example, knowledge was imputed when a 15-year-old’s home had been surrounded by two dozen armed police officers and was told during two hours of negotiations that he was a suspect in a shooting and robbery. *State v. Ouk*, 516 N.W.2d 185 (Minn.1994). Adult prosecution could reasonably be anticipated by a juvenile who’s car was surrounded by several police squads using highly adversarial felony arrest maneuvers, and the juvenile was told the police were investigating a double homicide. *State v. Williams*, 535 N.W.2d 277 (Minn.1995). The use of physical

restraints and conversations indicating the juvenile knew that the police officers had apprehended him in connection with a killing is enough so that knowledge of possible adult court prosecution can be imputed. *State v. Burrell*, 697 N.W.2d 579 (Minn.2005).

THRESHOLD QUESTIONING DOES NOT REQUIRE MIRANDA

Preliminary questioning does not require a Miranda warning.

On-scene questioning, where officers are trying to get a preliminary explanation of a confusing situation, does not require Miranda. *State v. Walsh*, 495 N.W.2d 602 (Minn.1993). In the Walsh case, police arrived at the scene of what was subsequently determined to be a murder. They found the defendant present, handcuffed him and questioned him. The court held that the officers needed to ask questions to sort out the situation and determine who would be arrested. Relatively general questions concerning name, time suspect arrived, reason the suspect was present at the scene, reason for not calling for help, and questions regarding contradictory statements about the scene were acceptable without a Miranda warning, even though the suspect was handcuffed.

Statements that are the product of threshold questioning do not require a warning. *State v. England*, 409 N.W.2d 262 (Minn.App.1987).

The police must be allowed to encourage suspects to talk when the suspect has not clearly refused. *State v. Merrill*, 274 N.W.2d 99 (Minn.1978).