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Juvenile Interrogation

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CONTENTS

The law that governs custodial interrogation of juveniles encompasses the Fifth Amendment privilege against self-incrimination as well as enhanced statutory protections contained in North Carolina's Juvenile Code. This bulletin describes these rights, including their meaning, scope, and application in North Carolina appellate caselaw.

Part I: Juvenile Rights Related to Custodial Interrogation

Miranda Rights

The constitutional privilege against self-incrimination applies to juveniles.[1] Therefore, the legal framework that attaches to the custodial interrogation of adults under *Miranda v. Arizona*[2] also applies to the custodial interrogation of juveniles. In order to assess whether a juvenile

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1. *In re* Gault, 387 U.S. 1, 55 (1967); *see also In re* K.D.L., 207 N.C. App. 453, 458 (2010).
2. 384 U.S. 436 (1966).

was subjected to a custodial interrogation under the *Miranda* framework, one must determine whether the juvenile was (1) in custody and (2) subject to an interrogation. The meaning and application of these terms to juveniles are explored in Part II of this bulletin.

Additional Statutory Right to Parent, Guardian, or Custodian Presence

Section 2101(a) of Chapter 7B of the North Carolina General Statutes (hereinafter G.S.) codifies these constitutional protections and adds the right for a juvenile to have a parent, guardian, or custodian present during questioning. G.S. 7B-2101(a) states that any juvenile in custody must be advised of the following rights prior to questioning:

1. that the juvenile has a right to remain silent;
2. that any statement the juvenile does make 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.

Rights Apply to Everyone under Age 18

The rights afforded to juveniles under G.S. 7B-2101 are part of Subchapter II of Chapter 7B of the General Statutes. Generally, the statutes in that section of the Juvenile Code apply only to undisciplined and delinquency matters. However, the North Carolina Supreme Court held that the rights contained in G.S. 7B-2101 apply to all youth under the age of 18, regardless of whether the matter falls under the original jurisdiction of the juvenile court or the criminal court.[3] This was a significant ruling when it was issued, since at that time all offenses committed at ages 16 and 17 were under the original jurisdiction of the criminal court.

Beginning on December 1, 2019, nearly all offenses alleged to have been committed at ages 16 and 17 were shifted to the original jurisdiction of the juvenile court.[4] However, original criminal jurisdiction remains in place for G.S. Chapter 20 offenses (motor vehicle offenses) committed at ages 16 and 17 and for any juvenile who has a previous qualifying conviction in criminal court and who subsequently commits any new offense after that conviction. All prior criminal convictions are considered qualifying convictions for purposes of preventing original juvenile jurisdiction, except misdemeanors or infractions under G.S. Chapter 20 that do not involve impaired driving.[5] The enhanced interrogation rights for juveniles found in G.S. 7B-2101 continue to apply in these matters even though they are not subject to juvenile jurisdiction.

Obligation to Electronically Record Interrogations in Places of Detention

The North Carolina Criminal Procedure Act contains a provision that mandates electronic recording of all custodial interrogations of juveniles in criminal investigations conducted at any *place of detention*.[6]

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3. State v. Fincher, 309 N.C. 1 (1983).
4. S.L. 2017-57, §§ 16D.4.(a)–(tt).
5. G.S. 7B-1501(7)b., -1604(b).
6. G.S. 15A-211(b); *see also id.* § 15A-211(c)(3) (defining "place of detention" as "a jail, police . . . station, correctional or detention facility, holding facility for prisoners, or other facility where persons are held in custody in connection with criminal charges").

A plain reading of the statute indicates that (1) custodial interrogations of juveniles who are subject to criminal prosecution (2) that take place in criminal detention settings (3) must be electronically recorded.

A question remains regarding whether the mandatory electronic recording requirement in the Criminal Procedure Act applies to interrogations occurring during investigations of all offenses involving juvenile suspects or only those offenses that can result in criminal prosecution. Some have suggested that the statute likely means that custodial interrogation of all juveniles—including those subject to juvenile jurisdiction for allegations of delinquency who are interrogated in places of detention—must be electronically recorded.[7] This question has never been addressed by the North Carolina appellate courts.

Because the statute states that it applies "to all custodial interrogations of juveniles in criminal investigations conducted at any place of detention,"[8] it appears clear that the mandate applies at least to juvenile cases that could result in criminal prosecution. This includes any felony offenses committed by a juvenile at age 13 or older as well as any G.S. Chapter 20 offenses committed by a 16- or 17-year-old youth.[9]

Whether or not the obligation to electronically record all custodial interrogations applies to juveniles when their cases could not result in transfer to criminal court also remains an open question. However, the exact charges in a matter may not be clear to law enforcement prior to the custodial interrogation of a juvenile. A case that appears to involve only lower-level misdemeanor charges may not remain that way following a more complete investigation. Given the evolving nature of charges during the investigatory stage, the most prudent practice would be to electronically record all custodial interrogations of youth under 18 in places of detention.

Part II: What Constitutes a Custodial Interrogation of a Juvenile?

The rights contained in G.S. 7B-2101 apply only when a juvenile is subjected to a custodial interrogation.[10] The analysis of whether a juvenile is being questioned as part of a custodial interrogation requires an assessment of whether the juvenile is in custody and, if so, whether the questioning amounted to an interrogation.

7. *See generally* Janet Mason, *2011 Legislation Enacted: Juvenile Law*, "Abuse, Neglect, Dependency, and Termination of Parental Rights" 5 (UNC School of Government, Oct. 2011), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/Mason%20Juvenile%20Legislation_0.pdf (noting that most other statutes in G.S. Chapter 15A do not use the term "juvenile" but instead refer to a defendant's age range, making it "possible, if not likely, that the intent was to make the recording of custodial interrogations mandatory when an investigation involves an offense committed before a juvenile reaches age 16—that is, to delinquency cases, not criminal cases involving young people").

8. G.S. 15A-211(b).

9. *See* G.S. 7B-1501(7), -2200, -2200.5.

10. State v. Gaines, 345 N.C. 647, 661, *cert. denied*, 522 U.S. 900 (1997).

Custody

The first question to ask is whether the juvenile is in custody.[11] That determination is based on an objective assessment of whether, given the totality of the circumstances, there was a formal arrest or a restraint on the juvenile's freedom of movement to the degree associated with a formal arrest.[12] This is the same standard used for the determination of whether an adult is in custody.

However, the custody analysis for a juvenile differs from the custody analysis for an adult in one significant way. The adult analysis requires an objective assessment of how a reasonable person in the suspect's situation would assess their freedom to terminate the encounter.[13] The juvenile analysis requires the child's age, if it was known or would have been objectively apparent to a reasonable officer, to be included in the objective custody analysis.[14] The analysis is based on how a reasonable child who is the age of the juvenile would feel in the situation and not how a reasonable adult would feel.[15]

North Carolina's appellate courts have held that there are many factors to consider when determining whether a juvenile is in custody during questioning. Those factors include

- whether the juvenile is told they are under arrest or free to leave,
- the location of the questioning,
- the voluntary nature of the juvenile's participation in questioning,
- the length of questioning,
- whether the juvenile is offered breaks, and
- the presence of uniformed officers and their weapons.

The following circumstances were found not to have been custodial:

- Questioning by a detective in the juvenile's home and in the presence of his mother and brother. The detective prefaced the interview by telling the juvenile that he did not have to talk with her and that she was not going to arrest him or take him with her. Proceedings had not been initiated, and the purpose of the visit was solely to investigate allegations.[16]
- Questioning of a 16-year-old by two unarmed, plain-clothes officers in a comfortably furnished office. The juvenile voluntarily went with the investigators for questioning and was told that he was not under arrest, did not have to talk to the investigators, and was free

11. *In re* Butts, 157 N.C. App. 609, 612 (2003).
12. *Gaines*, 345 N.C. at 662.
13. Yarborough v. Alvarado, 541 U.S. 652, 662 (2004).
14. J.D.B. v. North Carolina, 564 U.S. 261 (2011).
15. The court noted in *J.D.B.* that "[t]his is not to say that a child's age will be a determinative, or even a significant factor in every case. . . . It is, however, a reality that courts cannot simply ignore." 564 U.S. at 277 (citations omitted). For more analysis of the *J.D.B.* decision, see LaToya B. Powell, *Applying the Reasonable Child Standard to Juvenile Interrogations After J.D.B. v. North Carolina*, Juv. L. Bull. No. 2016/01 (UNC School of Government, Feb. 2016), https://www.sog.unc.edu/sites/default/files/reports/2016-02-24_20160045_Reasonable%20Child%20Standard.pdf.
16. *In re* Hodge, 153 N.C. App. 102 (2002). This case was decided before *J.D.B.* was decided. Therefore, the objective standard applied was a reasonable person standard and not a reasonable child standard.

to leave at any time. The juvenile was offered bathroom breaks, was left unattended in the office when the interviewing officers took a break, and was not shackled or handcuffed. No threats or promises were made, and no pressure was exerted during the interview.[17]

- Questioning of a 17-year-old who confessed to two plain-clothes detectives in their unmarked car after voluntarily agreeing to ride with them to discuss several breaking and entering cases. The juvenile voluntarily spoke with the detectives, was told that he was free to leave the vehicle at any time, sat in the front seat, and the encounter lasted under two hours. The juvenile was 17 years and 10 months old, and his proximity to age 18 was taken into consideration as part of the custody analysis.[18]
- Questioning of a 13-year-old found walking briskly away from the scene of a car crash. A responding officer questioned the juvenile at the scene. There was no evidence that the juvenile was subjected to even a minimal amount of restraint on his freedom of movement or ability to act as he chose. The court noted that an officer may ask a moderate number of questions during a routine traffic stop to determine identity and obtain information confirming or dispelling the officer's suspicions without requiring *Miranda* warnings.[19]
- Questioning of a 14-year-old, by two armed officers, 10 feet outside of the juvenile's home after the juvenile's parents told him to cooperate with the officers. The juvenile was asked to step outside and was not subjected to formal restraint. All three people stood at arm's length and one of the officers wore plain clothes. The conversation took place in the juvenile's yard during daylight and his parents were nearby. Questioning lasted about five minutes. There was no indication of any coercion, no indicia of formal arrest, and the parents were not acting as agents of law enforcement.[20]

The North Carolina Court of Appeals has tended to find that juveniles are in custody when questioning occurs in an interview room of a law enforcement office and when the juvenile has been formally taken into custody. For example, juveniles were found to have been in custody in the following circumstances:

- Questioning of a 17-year-old in an interview room at a jail when the juvenile was incarcerated at the jail on other charges.[21]
- Questioning of a 15-year-old in an interview room at a sheriff's department after law enforcement called to request that the juvenile's family come to the sheriff's office and the family complied.[22]
- Questioning of a 16-year-old at a sheriff's department after he was taken into custody at his home, handcuffed by an officer, and transported to the sheriff's department by the officer.[23]

17. State v. Jones, 153 N.C. App. 358 (2002). This case was decided before *J.D.B.* was decided. Therefore, the objective standard applied was a reasonable person standard and not a reasonable child standard.

18. State v. Yancey, 221 N.C. App. 397 (2012).

19. *In re* A.N.C., Jr., 225 N.C. App. 315 (2013).

20. *In re* D.A.C., 225 N.C. App. 547 (2013).

21. State v. Williams, 209 N.C. App. 441 (2011). The parties in this case agreed, and the court noted that the evidence supported, that the juvenile was already in custody at the jail when he was brought into the interview room. *But see* Howes v. Fields, 565 U.S. 499 (2012) (holding that there is no categorical rule that a person is in custody when that person is a prisoner who has been removed from the prison's general population and questioned about events that occurred outside of the prison).

22. *In re* M.L.T.H., 200 N.C. App. 476 (2009).

23. State v. Branham, 153 N.C. App. 91 (2002).

- Questioning of a 16-year-old at a police station after he was arrested on a city bus, taken to the station, handcuffed, and shackled to the floor.[24]
- Placing a juvenile in the back seat of a patrol car after putting her in investigative detention and handcuffing her.[25]

Schoolhouse Custody Analysis

The custody analysis regarding questioning that occurs at school can become complicated, especially when questioning occurs in the presence of school administrators as well as law enforcement officers. It is clear that questioning done only in the presence of a school administrator who is not acting as an agent of law enforcement is never custodial.[26] However, when law enforcement and school administrators are both involved in questioning, the circumstances may rise to the level of custody. This is true even when the officer does not participate in asking the questions.[27]

The North Carolina Court of Appeals provided the following seven factors that are most relevant in determining whether a juvenile is in custody during an interview that occurs at school:[28]

1. Traditional indicia of arrest. Use of handcuffs, transport in a police car, search of a student or their belongings, and use of other bodily restraints are strong indications that the student was in custody.
2. Location of the interview. A location that a reasonable child might consider confining tends to show that the student was in custody. The size of the room, whether the door was closed or locked, and the student's familiarity with the location are also relevant considerations.
3. Interview length. Long, drawn-out questioning tends to show that a student was in custody, while very brief questioning does not. Whether the student was offered a place to sit and common courtesies like bathroom breaks, food, and water is also relevant.
4. Age. The younger the student, the more sensitive they will be to circumstances that could be coercive.
5. What a student is told about the interview. Telling the student that they are free to leave and are not required to answer questions or offering them the opportunity to call a parent or guardian tends to reflect that the student is not in custody. Failing to tell the student about the nature of the interview or whether they must stay or are free to leave weighs in favor of the student being in custody. Expressly telling a student that they cannot leave renders the encounter custodial.
6. People present during the interview. Custody tends to be shown when questioning occurs in the presence of multiple law enforcement officers, or even by numerous school officials. The presence of a parent, guardian, or other advocate for a student weighs against custody.
7. Purpose of questioning. Questioning that is the result of and is conducted in the investigation of specific criminal suspicion toward a student tends to show custody. Questioning done with a school disciplinary purpose and that is unlikely to involve the

24. State v. Watson, 250 N.C .App. 173 (2016).
25. *In re* L.I., 205 N.C. App. 155 (2010).
26. *In re* Phillips, 128 N.C. App. 732 (1998), *In re* D.A.H., 277 N.C. App. 16, 28 (2021).
27. *D.A.H.*, 277 N.C. App. at 29.
28. *Id.* at 30.

justice system is not considered custody. Purpose can be revealed by the degree and nature of cooperation between school officials and law enforcement (including school resource officers).

The court used these factors to hold that the juvenile in *In re D.A.H.* was in custody when he was questioned at school. The court emphasized that the juvenile came to school knowing that his peer had been caught with marijuana sold to him by the juvenile, that the juvenile had been so worried about it that he had not attended school for the previous two days, and that he knew he was in trouble.[29] The court also noted that the two authority figures involved in this case (the school principal and a school resource officer) sat next to one another and opposite the juvenile, that the officer was in uniform, and that the interview appeared to be for the purpose of a criminal investigation and not a mere school disciplinary matter.[30] Finally, the court emphasized that the juvenile was not told that he was free to leave, that he did not have to answer questions, or that he could call his guardian.[31]

Interrogation

If a juvenile is in custody, then it is essential to determine if the questioning of that juvenile amounts to interrogation. The law that governs whether questioning of an adult constitutes interrogation applies in the same way to juveniles. Interrogation includes express questioning as well as words or actions by law enforcement that they should have known were reasonably likely to elicit an incriminating response—known as the *functional equivalent* of express questioning.[32]

The Functional Equivalent of Express Questioning

Several factors are relevant to the determination of whether a law enforcement officer should have known that their words or actions were reasonably likely to elicit an incriminating response, including

1. the intent of the officer,
2. whether the practice was designed to elicit an incriminating response, and
3. knowledge that the officer may have had regarding the juvenile's unusual susceptibility to a specific form of persuasion.[33]

The Supreme Court of North Carolina held in *State v. Smith* that a juvenile can be subjected to the functional equivalent of questioning even when few express questions are asked of the juvenile.[34] The 16-year-old juvenile in this case was picked up by law enforcement at his home, brought to the police station, and placed in the police chief's office for questioning. The juvenile was read his *Miranda* rights on the way to the police station and again in the police chief's office. He requested his mother's presence after he was read his rights the second time. Officers then began to look for his mother. After about fifteen or twenty minutes, an officer returned to the room, asked the juvenile not to speak, and told him he wanted to tell him some things about the statement of another suspect. The police chief also entered the room and asked the

29. *Id*. at 36.
30. *Id.*
31. *Id*.
32. *In re* L.I., 205 N.C. App. 155, 160 (2010).
33. *Id.* at 160–61.
34. 317 N.C. 100, 108 (1986), *abrogated on other grounds by* State v. Buchanan, 353 N.C. 332 (2001).

juvenile if he wanted to straighten it out. The officer informed the juvenile that (1) another suspect stated that the juvenile was primarily responsible for the injuries to the victim and that he would testify against the juvenile at trial, (2) the alleged crimes were serious and could result in murder charges if the victim died, and (3) the trial court could consider a confession a mitigating circumstance. The court held that these statements, while not direct questions posed to the juvenile, constituted behavior that the officer should have known was likely to elicit a response from the juvenile. The court emphasized that the conversation focused on the juvenile's participation in, and the serious nature of, the crimes.

The North Carolina Court of Appeals held that a juvenile was subjected to the functional equivalent of questioning when an officer placed a juvenile in his car in investigative detention following a roadside stop, asked her where the marijuana was that he knew she had, and told the juvenile that he was taking her downtown and that if she took drugs into the jail, it would be an additional charge.[35] In holding that these circumstance constituted interrogation, the court relied on the officer's testimony that his objective purpose was to obtain the juvenile's admission that she possessed marijuana. The court concluded that the officer knew or should have known that his statement to the juvenile was reasonably likely to elicit an incriminating response.

Spontaneous Statements

Spontaneous statements made by a juvenile are not protected by the Fifth Amendment and are therefore admissible when *Miranda* warnings are not provided and when the statements are made without a parent, guardian, custodian, or attorney being present. The North Carolina Court of Appeals applied this rule in *In re D.L.D.*[36] There, an officer saw the juvenile put something in his pants in a school bathroom, frisked him, and found individually wrapped bags of a green leafy material in a container on his person. After the officer handcuffed the juvenile and escorted him to a conference room, the school's assistant principal, who had accompanied the officer to the bathroom, spoke with the juvenile. No one informed the juvenile of his rights. The officer did not ask any questions and more fully searched the juvenile, finding $59 in his pocket. The juvenile immediately stated that the money "was not from selling drugs."[37] Although the totality of the circumstances suggested that the juvenile was in custody, the juvenile's statement was not provoked by questioning or the functional equivalent of questioning. The court therefore held that this statement was admissible because it was unsolicited and spontaneous.

Schoolhouse Interrogation Analysis

Much like the custody analysis, the interrogation analysis in the context of the schoolhouse can be complicated. Questioning at school often involves both school personnel and law enforcement (who may or may not be a school resource officer). When law enforcement officers are present and the juvenile is in custody, it is possible that questioning by administrators can rise to the level of interrogation, even when the law enforcement officer does not ask any questions.

35. *L.I.*, 205 N.C. App. 155.
36. 203 N.C. App. 434 (2010).
37. *Id*. at 443.

The North Carolina Court of Appeals highlighted the following factors as most relevant to the analysis of whether questioning at school constitutes an interrogation:[38]

1. The nature of the questions asked. Mostly open-ended questioning is less likely to constitute interrogation than is questioning presented in the context of imperative statements that suggest mandatory compliance. The tone of voice, volume, and body language of the person asking the questions is also relevant. The court cited a case holding that questioning did not constitute custodial interrogation when the conversation was calm and cordial in tone and the detectives involved offered the suspect food or drink.[39]
2. The willingness of the juvenile's responses. As discussed above, a wholly unsolicited or spontaneous statement does not constitute interrogation. Situations in which a juvenile is reluctant or hesitant to answer, claims ignorance, or must be coaxed into answering are more likely to be considered interrogation.
3. The extent of school resource officer involvement. Situations in which both a school resource officer and a school official are present can rise to the level of interrogation, even when the officer does not ask any questions. An officer's absence during parts of the questioning can weigh against the questioning being an interrogation. Law enforcement direction of or heavy participation in the questioning weighs in support of the questioning being an interrogation.

The court applied these factors in *In re D.A.H.* to determine that the questioning of a 13-year-old by a school principal, while the school's resource officer sat beside the principal and observed, constituted an interrogation. The court emphasized that the juvenile was asked multiple questions before his guardian was notified and that the questions were intended to elicit a confession.[40] The court also pointed to the differential treatment that the juvenile received compared to a peer who was found in possession of the marijuana that the questioned juvenile was suspected of providing. The father of this peer was contacted immediately. The peer asked if he could speak freely, and the resource officer told him to wait until his father arrived. In contrast, the juvenile's guardian was not called until after he confessed, and he was never advised not to answer questions. The court found that these facts weighed heavily toward the criminal purpose of the interview.[41] The court also discussed how the resource officer's intimate involvement in the investigation from its outset made him an officer investigating a crime while he was present for the questioning, rather than a mere observer of a school disciplinary conversation.[42]

If, given the totality of the circumstances, questioning rises to the level of a custodial interrogation, then all the rights set out in G.S. 7B-2101 apply to everyone under the age of 18.

38. *In re* D.A.H., 277 N.C. App. 16 (2021).
39. *Id*. at 34 (citing State v. Hammonds, 370 N.C. 158, 164 (2017)).
40. *Id*. at 37.
41. *Id*. at 38.
42. *Id*.

Part III: Who Counts as a Guardian or Custodian?

Because G.S. 7B-2101(a) gives all minors the right to have a parent, guardian, or custodian present during a custodial interrogation, it is essential to understand who qualifies as a guardian or custodian under this statute. Only people who have established a legal relationship with the child are considered guardians and custodians for purposes of this statute.[43] North Carolina's appellate courts have held that adults who have a relationship with the juvenile, and who may even have enrolled the child in school, do not count as a guardian or custodian for purposes of this statute if they have not established a relationship with the child through a legal process. Consider the following examples:

- A 16-year-old asked to call his aunt before making a statement. The juvenile occasionally stayed with the aunt, and she testified that she was a mother figure to him. The court held that the juvenile did not have a right to the aunt's presence during custodial interrogation because she had no legal relationship to the juvenile and therefore did not qualify as a guardian or custodian under the statute.[44]
- An uncle, who had been housing his 13-year-old nephew for a year and a half, was the child's sole support, had enrolled the child in school, and was considered by the Department of Health to be the child's guardian, was found not to be the child's guardian or custodian under the statute because he and the child never had any legal relationship established through a court proceeding.[45] The juvenile in this case had no parent, guardian, or custodian who lived in the United States.

Because a sibling is not a parent, guardian, or custodian, juveniles do not have a right to have a sibling present during interrogation. In addition, the presence of a sibling will not fulfill the statutory requirement of the presence of a parent, guardian, custodian, or attorney.[46]

Part IV: Juvenile Invocation and Waiver of Rights

Juveniles must be advised of their rights under G.S. 7B-2101 prior to any custodial interrogation. In most circumstances, it is then up to the juvenile to determine whether they want to invoke or waive their rights. For instance, juveniles always have the discretion to waive their right to remain silent. However, as described below, the right to the presence of a parent, guardian, custodian, or attorney cannot be waived by juveniles under the age of 16.

Rights That Cannot Be Waived by Youth under Age 16

The Juvenile Code provides that in-custody admissions or confessions made by juveniles who are under the age of 16 are never admissible into evidence unless the juvenile's parent, guardian, or custodian or an attorney is present at the time the admission or confession is made.[47] A juvenile under the age of 16 therefore cannot waive their right to have either (1) a parent, guardian, custodian or (2) an attorney present during a custodial interrogation. Because the relevant

43. State v. Oglesby, 361 N.C. 550 (2007).
44. *Id*.
45. State v. Benitez (*Benitez I*), 258 N.C. App. 491 (2018).
46. *In re* M.L.T.H., 200 N.C. App. 476 (2009).
47. G.S. 7B-2101(b).

statute refers to either a parent, guardian, or custodian or an attorney, otherwise admissible statements made by juveniles under 16 are admissible when their attorney is present and the parent, guardian, or custodian is not and when the parent, guardian, or custodian is present and an attorney is not.

Practical barriers sometimes arise when a parent, guardian, or custodian cannot possibly be present for a custodial interrogation of a juvenile, as occurred in *State v. Benitez*, referenced in the last bulleted item in Part III, above. In that case, the juvenile's parents did not live in the United States and no legal guardian or custodian had been established by court order. There are two potential ways that a custodial interrogation could be lawfully conducted under these circumstances, depending on the age of the juvenile.

1. A juvenile who is age 16 or 17 can execute a valid waiver of the right to have a parent present.
2. A juvenile under the age of 16 can execute a valid waiver of the right to have a parent present and the custodial interrogation can continue only if an attorney is present.

There is no legal path to continue with a custodial interrogation of a juvenile if the juvenile does not waive their right to the presence of a parent, guardian, or custodian and if the parent, guardian, or custodian cannot be present.

Invocation of Rights

Unambiguous Invocation Required

If a juvenile is fully advised of their rights and subsequently answers questions without clearly invoking their rights, that will be deemed a waiver of the juvenile's rights.[48] The issue of the invocation of the right to parental presence during a custodial interrogation of a 16-year-old was central to the ruling in *State v. Saldierna* (*Saldierna I*).[49] The juvenile in this case was interrogated at a police station. A law enforcement officer provided him English and Spanish versions of a juvenile waiver-of-rights form, read the rights on the form to him, and paused after each right was read aloud to ask if he understood. The juvenile initialed each right on the English form. Next to the waiver of the right to have a parent present, the words "I do wish to answer questions now" was circled and the juvenile signed the form. The officer noted the time and date for the audio recording and then the juvenile asked to call his mother. He was allowed to place the call and reached someone other than his mother. Questioning resumed when he returned from placing his call and he confessed.

To answer the question of whether the juvenile in this case invoked his right to have a parent present, the court applied the objective test for a defendant's invocation of the right to counsel—whether a reasonable officer under the circumstances would have understood the defendant's statement to be an invocation of their right to have an attorney present.[50] The court held that the juvenile did not clearly and unambiguously invoke his right to have a parent present because

- he never gave any indication that he wanted his mother present;
- he did not condition his interview on first speaking with his mother;

48. The need for a juvenile to invoke their rights applies only to rights that the juvenile can waive. Because a juvenile under the age of 16 must have a parent, guardian, or custodian or an attorney present during a custodial interrogation, this right does not need to be invoked.

49. 369 N.C. 401 (2016).

50. *Id.* at 407 (citing Davis v. United States, 512 U.S. 452, 459 (1994)).

- his purpose for making the telephone call was never established; and
- he did not articulate his desire to have a parent present sufficiently clearly that a reasonable officer in the circumstances would understand the statement to be a request for a parent, especially given that he had just signed a waiver-of-rights form.[51]

The court also held that law enforcement did not have a duty to ask clarifying questions or to stop questioning, given the ambiguous nature of the youth's request to call his mother.[52]

In addition, mistakenly indicating on a juvenile rights waiver form that a parent is present does not constitute invocation of the right to have a parent present when the juvenile being questioned never made a statement invoking this right.[53]

Questioning Must Stop if Juvenile Invokes Rights After Interrogation Begins

According to G.S. 7B-2101(c), questioning of a juvenile must stop if the juvenile indicates in any manner and at any stage of the interrogation that they do not want to be questioned further. This includes any statement made by a juvenile, after interrogation begins, that they would like to have a parent, guardian, or custodian present. Once the juvenile requests the presence of their parent, questioning must stop and cannot resume until the parent is present or the juvenile initiates further communication.[54]

Waiver of Rights

Only the Juvenile Can Waive Their Rights

G.S. 7B-2101(b) states that "a parent, guardian, or custodian may not waive any right on behalf of the juvenile." Therefore, none of the rights that a juvenile has during a custodial interrogation can be waived by anyone other than the juvenile.

This is true even when the juvenile is very young. The first appellate court decision upholding this statute involved a 10-year-old who was adjudicated delinquent for unlawfully and willfully taking and carrying away toys from a department store.[55] The court held that the juvenile's mother could not waive any of the rights that the juvenile had during the interrogation, including the right against self-incrimination.[56]

A parent's refusal to be present after a juvenile invokes their right to have their parent present during interrogation does not constitute waiver of parental presence on the part of the juvenile. This is true when a parent refuses to enter the interrogation room[57] and when a parent leaves the interrogation room before the interrogation is over.[58] The juvenile is the only person who can waive their right to have a parent present, regardless of the parent's willingness to be part of the interrogation.

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51. *Id*. at 408–09.
52. *Id*. at 409.
53. State v. Watson, 250 N.C. App. 173 (2016).
54. State v. Hunt, 64 N.C. App. 81 (1983), State v. Smith, 317 N.C. 100 (1986). *See also* State v. Branham, 153 N.C. App. 91 (2002) (holding that the juvenile did not initiate further communication after he requested his mother's presence). *But see* State v. Williams, 209 N.C. App. 441 (2011) (holding that the juvenile did initiate the resumption of questioning without any further interrogation by law enforcement).
55. *In re* Ewing, 83 N.C. App. 535 (1986).
56. *Id*.
57. *Branham*, 153 N.C. App. 91.
58. *In re* Butts, 157 N.C. App. 609 (2003).

Waiver Must Be Knowing, Willing, and Understanding

Juveniles can waive any of their rights that attach during an interrogation, with the exception of the requirement that any juvenile age 15 or younger must have a parent, guardian, or custodian or an attorney present during any custodial interrogation.[59] In order for a waiver to be valid, it must be made knowingly, willingly, and understandingly.[60]

The U.S. Supreme Court held that the analysis of whether a juvenile's waiver is knowing and voluntary requires consideration of the totality of the circumstances, including

- the juvenile's age, experience, education, background, and intelligence and
- whether the juvenile has the capacity to understand
  - the warnings given,
  - the nature of the juvenile's Fifth Amendment rights, and
  - the consequences of waiving those rights.[61]

The Court applied those factors to its analysis of the interrogation of a 16-year-old who requested the presence of his probation officer. The Court held that the request for the probation officer was not tantamount to a request for an attorney and that the juvenile executed a knowing and voluntary waiver of his Fifth Amendment rights.[62] The Court emphasized that police took care to ensure that the juvenile understood his rights, that they fully explained to him that he was being questioned in connection with a murder, and that there was no indication that he did not understand what was said to him. The Court also emphasized that the juvenile clearly expressed his willingness to waive his Fifth Amendment rights and continue with the interrogation after he requested the presence of his probation officer and that there were no special factors to indicate that he was unable to understand the nature of his actions. Finally, the Court pointed to the juvenile's considerable experience with the justice system; that there was no indication he was of insufficient intelligence to understand his rights or the consequences of waiver; and that the questioning did not involve improper tactics that wore him down, lengthy questioning, or trickery or deceit.[63]

When the validity of a juvenile waiver is challenged, the State is required to show by a preponderance of the evidence that the waiver was knowingly and intelligently made, given the totality of the circumstances.[64] Expert testimony is not required to establish that the juvenile understood their rights.[65] Instead, the juvenile's understanding is a question of law to be decided by the trial court based on the evidence presented by both sides.[66]

An express written waiver of rights is strong proof that the waiver was valid. However, it is not necessarily sufficient evidence of a valid waiver on its own.[67] It is not possible for a juvenile to execute a valid waiver when the juvenile has not been fully informed of all of their rights, including the right to have a parent, guardian, or custodian present.[68] It is also not possible for

59. *See* discussion *supra* "Rights That Cannot Be Waived by Youth under Age 16."
60. G.S. 7B-2101(d).
61. Fare v. Michael C., 442 U.S. 707, 725 (1979).
62. *Id*. at 727.
63. *Id.* at 726–27.
64. State v. Saldierna (*Saldierna II*), 371 N.C. 407, 422 (2018).
65. State v. Benitez (*Benitez II*), ___ N.C. App. ___, ___, 2022-NCCOA-261, § 15.
66. *Id*.
67. *Saldierna II*, 371 N.C. at 422.
68. State v. Fincher, 309 N.C. 1, 11 (1983).

a juvenile to execute a valid waiver when they have been erroneously informed of their rights. For example, signing a juvenile rights form that erroneously states that the juvenile could have a parent, guardian, custodian, or any other person present during questioning does not constitute a knowing, willing, and understanding waiver.[69]

North Carolina appellate courts have found knowing, willing, and understanding waivers in the following circumstances.

- A 17-year-old signed a form with the adult *Miranda* warnings on it. A law enforcement officer handwrote "do you wish to answer questions without your parents/parent present" on the form. The juvenile stated that he wanted his mother present, and questioning stopped until the mother arrived. After again being advised of his rights, again stating that he wanted his mother there, and acknowledging that she was now present, the juvenile signed the form. During the ensuing questioning, the officer told the juvenile that he knew he was lying because his mother told officers something different about where he had been. The juvenile began to look uncomfortable, and the officer asked him if he wanted his mother to step out of the room. The juvenile said that his mother might as well leave, and she moved to a bench outside the door of the interrogation room. The door remained open, the juvenile could see his mother if he leaned forward, and he heard officers tell his mother that she could come back into the room whenever she wanted. The juvenile then confessed. The court held that this was a knowing and intelligent waiver of the juvenile's right to have his mother present because (1) he understood his rights, (2) he knew what he was doing when he said she could leave, and (3) he knew where she was if he wanted her to return to the room.[70]
- A 16-year-old with a low IQ was interrogated by investigators in an office at the police department. The central holding in this case was that the juvenile was not in custody.[71] However, the court continued to discuss the validity of a waiver of rights by the juvenile, assuming, arguendo, that the juvenile was in custody. The juvenile was read his rights and indicated verbally and by writing his initials on a form that he understood them. The officer read the waiver portion of the form to the juvenile, who then stated that he understood and wanted to talk with officers. He then signed the waiver. After a two-hour interview he confessed. The court found that the circumstances did not result in the juvenile's will being overborne or in critical impairment of his capacity for self-determination. While there was conflicting evidence regarding the juvenile's true mental capacity, the defendant's own expert testified that the juvenile's verbal and performance IQ scores placed him two points above the threshold for mental retardation and that his full-scale IQ was one point below that threshold. The court found that there was ample evidence that the juvenile knowingly and intelligently waived his rights. There was also no evidence that the juvenile was mistreated or coerced by the police in any way.[72]
- A 16-year-old was provided a juvenile rights waiver form in English and in Spanish, was advised of his rights in English, and signed the English waiver form. The transcript from the juvenile's trial on charges related to breaking or entering indicated that, in all but two instances, the juvenile affirmatively responded when asked that he understood each right

69. *In re* M.L.T.H., 200 N.C. App. 476 (2009).
70. State v. Miller, 344 N.C. 658 (1996).
71. See *State v. Jones*, 153 N.C. App. 358 (2002), discussed in Part II of this bulletin, *supra* note 17.
72. *Jones*, 153 N.C. App. 358.

of which he was advised. The remaining two responses were not audible. The detective who explained the rights to the juvenile testified that the juvenile understood English and that he understood his rights. There was no evidence that the juvenile ever expressed a lack of willingness to speak, that he was unable to communicate with officers, or that he sought to invoke his rights. There were also no allegations of coercive police conduct or improper interrogation techniques.[73]

73. *Saldierna II*, 371 N.C. 407.