

EVALUATING THE CASE FOR CAPACITY/MOTION TO SUPPRESS

QUICK GUIDELINES

We first look at the following:

- 1) the developmental stage of the child-client, including cognitive ability, socialization, and emotional maturity,
- 2) the medical status of the juvenile-mental and physical,
- 3) the personal history of the juvenile, including life experiences, family background and medical history,
- 4) the juvenile's ability to communicate and articulate reason,
- 5) the juvenile's individual decision making process and how he has been influenced, and
- 6) the juvenile's ability to understand consequences

Then we turn to the interrogation itself and dissect what happened:

GUIDING QUESTIONS FOR INTERVIEWS WITH THE CHILD-CLIENT

1. Get the child's full name, age, date of birth, social security number, and contact information.
2. Who lives in the home? Who are the family members and how to contact them?
3. What neighborhood does the family reside and how long have they lived there?
4. What is the family situation? What is the nature of the child's relationship with his biological parents? Are there other family members involved with this child? Have there been family issues that have impacted this child?

5. What school does the child attend? What grade? Has the child attended other schools?
6. Is the child-client placed in any special education classes? If so, is there a current IEP(Individualized Education Plan) in place?
7. Has the child ever been evaluated through the school system? When and by whom? Was there an IQ test?
8. Has the child been diagnosed with a learning disability? Or developmental disability? Has anyone else in the family ever been diagnosed?
9. How are the child-client's grades? Have they been retained in any grades? If so, what was the reason?
10. What is the child's reading level? Comprehension?
11. How extensive is the child's vocabulary?
12. Has the family had any concerns about the child's performance at school?

13. Has the child ever received any mental health services? Where and when?

14. Has there been a mental health diagnosis? Does the child take medication? What medication and when is it taken? Was the child taking the medication when being questioned?
15. How old was the child when she started taking the medication and received a diagnosis?

16. Has the child ever used any substances, such as drugs or alcohol? When and how often? Was the child using a substance around the time that she was questioned?
17. Has there ever been previous involvement with law enforcement? When and where? What happened previously?
18. Is the child-client on probation or have they ever had any involvement with the Department of Juvenile Justice?
19. Has the child had any previous involvement in the court system at all?

20. Has there ever been any Social Services involvement?
21. Has the child ever been a victim of abuse or neglect?
22. Has the child ever witnessed violence?
23. Has this child ever experienced a traumatic event? Has there been anything that would impact the child's development?

24. Where does the child receive medical care? Has the child ever had any medical problems? Has there ever been any type of brain injury or trauma?
25. Has the child received any other services, including any case management or community based services?

26. Who supervises the child-client? Does the child-client follow rules?
27. What are the client's associations? Friends? Involvements? Role Models?
28. Who influences the child-client?
29. What does the child-client do when not in school?
30. What are the child-client's aspirations?
31. What does the child-client enjoy?
32. What are the child-client's responsibilities?
33. Who does the child-client trust?
34. How have life experiences influenced the client?
35. How mature does the child client behave?
36. What independence has the child-client demonstrated?
37. Is the child-client overly compliant or overly-agreeable?
38. Is the child-client naïve?
39. Does the child-client exercise insight?
40. Does the child-client exercise judgment?
41. Has the child-client demonstrated an ability to weigh alternatives and make a decision?
42. Is the child-client slow to digest information?

43. Is the child-client able to stay focused in a conversation for a lengthy period of time?
44. How is the child-client's concentration and attention span?
45. Does the child-client exhibit deficits in memory, attention, or reality testing?
46. What are the child-client's attributes? Strengths? Weaknesses?
47. Can the child-client participate and assist his attorney in this process?
48. Has the child-client demonstrated understanding about the process?
49. Can the client express a reasoned preference?

Questions to have in mind when analyzing capacity to waive Miranda Rights

50. Was the juvenile "in custody"?
51. Would a reasonable person have felt free to stop the questioning and leave?
52. Where did the interrogation take place?
53. What was the child feeling? View from the child's perspective?
54. What was the length of detention and duration of interrogation?
55. Did the police communicate the belief that the juvenile was a suspect and did that belief influence the juvenile's perception of the situation?
56. What was the nature of the interrogation? Was it aggressive? Informal? Mentally or physically intimidating?
57. Was it a coercive environment? If so, what made it coercive?
58. Was the juvenile free to end the questioning by leaving or asking the police to leave?
59. Did the questioning end with the juvenile's arrest?
60. Did the juvenile ask for a parent or other interested person to be present?
61. If the juvenile could not be expected to assert his right to call his mother/father/legal guardian, how could the juvenile assert the right to stop the questioning?
62. Was the location isolated?
63. Was the interview one-sided?
64. Was the juvenile ever told that if he or she did not cooperate, they would be locked up or charged with more serious offenses?
65. Did the police fabricate evidence, lie, or use any other psychological force?
66. Was there discussion of any leniency or release to parent if the juvenile talked?
67. What was the emotional state of the juvenile?
68. What was the emotional state of the officer?
69. Were there raised voices and banging on the table?
70. Did the juvenile cry?
71. Did the juvenile show signs of fear or anxiety?
72. Did the police use the parents to convince the juvenile to make a statement?
73. How did the mother react to seeing the child? Would the juvenile talk so that the mother would not get upset?
74. Were the Miranda warnings explained in developmentally appropriate terms, not just read or recited in rote fashion?
75. Were tactics such as manipulation, rewards, or intimidation used in the interrogation to elicit a confession, like used with adults?

76. Was the interrogation videotaped or audiotape in its entirety? Were any questions asked or statements made that are not taped?
77. Were threats or bribes used to elicit a statement?
78. Was the child physically deprived during interrogation?
79. Does the officer tell the child that they are a friend or that they want to help?
80. Is the officer having the child confirm statements made by the officer?
81. How does the juvenile feel about law enforcement? What are the family's feelings toward law enforcement? How does the community react towards law enforcement?
82. Did the juvenile feel pressured to make a statement?
83. Did the juvenile understand the significance and consequences of the waiver?
84. Did the juvenile make a statement as a result of coercion?
85. Does the statement lead to discovery of evidence unknown to the police?
86. Does the statement include identification of highly unusual elements of the crime not made public?
87. Does the statement include accurate descriptions of mundane details of the crime or crime scene not easily guessed and not publicized?
88. What terms were used by the officers?
89. What were the exact words said by the juvenile?
90. Would the juvenile admit to false allegations to protect someone out of loyalty? Or because of a sense that it is wrong to snitch and the right thing to take the blame?
91. Does the juvenile have difficulty disagreeing with authority figures?
92. Did the juvenile make a statement out of desperation to go home and avoid the uncomfortable situation?

93. Observe video and audio recordings.
94. Make observations of what is said verbally and how both the officer and juvenile behave non verbally.
95. Write out examples from the recording to demonstrate to the Court coercion, leading, lack of understanding, frustration, and reactions, etc...