

CONSIDERATIONS & TIPS

Was The Statement Made To Law Enforcement?

- Motion to Suppress usually only made when statement made to law enforcement.
- However, can argue that a person standing in law enforcement's place (educator, school administrator, social worker) is subject to Miranda/statutory scrutiny.

If youth under age 16 was a parent/guardian/custodian present?:

- They must have some kind of parental authority, such as provided shelter, had custody, acted on the youth's behalf.
- A parent/guardian/custodian may not waive any right on behalf of the youth.

Motion to Suppress (MTS): G.S. 7B-2408.5

- A MTS made before the adjudicatory hearing must be in writing and served on the State.
- MTS must state grounds and include an affidavit with facts supporting the MTS. The affidavit may be based upon personal knowledge or information and belief, if the source of information and basis are stated.
- If the MTS is not determined summarily, the judge must make the determination after a hearing and finding of facts.
- A MTS made during the adjudicatory hearing may be made in writing or orally and be determined in the same manner as when made before the adjudicatory hearing.
- The judge must set forth in the record findings of facts and conclusions of law.
- Obtain an adolescent psychology or psychiatry expert to evaluate client for mental health, intellectual or developmental disabilities and/or to testify about research regarding juvenile confessions, all of which may impact voluntariness.
- An order denying a MTS evidence may be reviewed upon an appeal of a final order of the court in the juvenile matter.
- Renew the MTS and object at all stages of the hearing.
- If a plea is made, preserve the objection on the transcript of admission.

QUESTIONS

For more information, contact the North Carolina Office of the Juvenile Defender at 919-890-1650.

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This project was supported by Grant No. 2018-ZE-FX-0003 awarded by the Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice. The opinions, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the United States Department of Justice or grant-making component.

500 copies of this public document were printed at a cost of \$135 total, or about 50.27 per copy.

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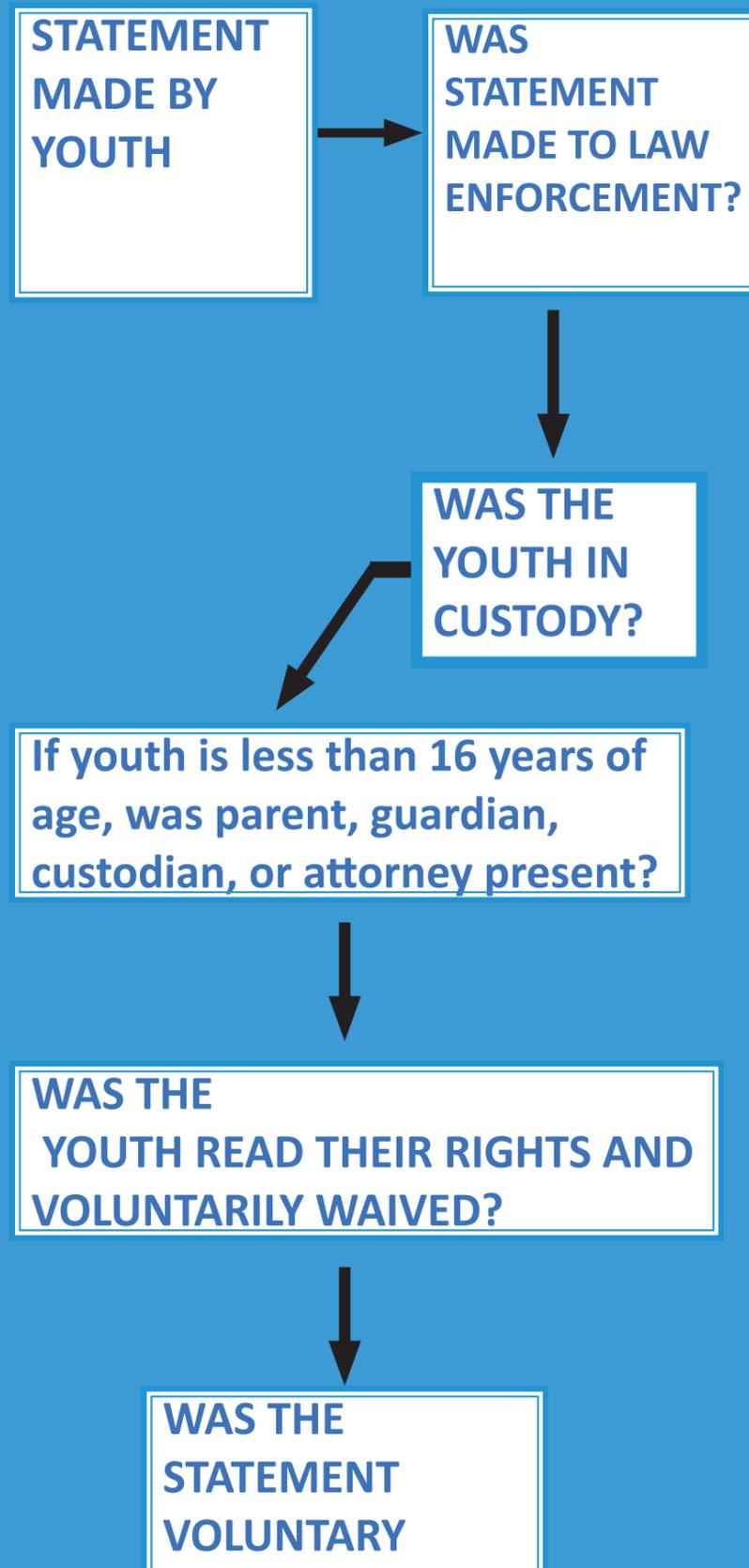
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SUPPRESSION QUICK GUIDE

THIS GUIDE IS INTENDED AS A REFERENCE.
DEFENDERS ARE ENCOURAGED TO READ FULL STATUTES, CASE LAW AND NOTE LEGISLATIVE CHANGES

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SUPPRESSION



STATEMENT MADE BY YOUTH

For a statement to be admissible, under the totality of the circumstances:

- youth was in custody,
- youth gave a valid waiver of their Miranda rights, and
- youth's confession was voluntary.

WAS THE YOUTH IN CUSTODY?

- Whether a reasonable person in the suspect's position would have believed s/he was "taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) ; "a reasonable person in his situation would have believed he was functionally under arrest," *In re K.D.L.*, 207 N.C. App. 453 (2010).
- A child's age informs the custody analysis and is an objective factor that affects how a reasonable person would perceive his or her freedom to leave. *J.D.B. v. North Carolina*, 564 U.S. 261 (2011)
- Factors: objective circumstances of the interrogation. *Stansbury v. California*, 511 U.S. 318, 323 (1994)
 - o Who arranged the interview?
 - o Who transported the youth?
 - o What was the location of the interview?
 - o How was the nature of the interview explained to the youth?
 - o What was the length of the interview?
 - o What was the youth told about the ability to leave or stop the interview?

Thank you to Kellie Mannette and David Andrews for their contributions to this Quick Guide.

WAS THE YOUTH READ HIS/HER RIGHTS?

DID S/HE WAIVE RIGHTS?

- Were the rights clear, in writing, and included the NC statutory protections?
- G.S. 7B-2101. Interrogation procedures - Any youth in custody must be advised prior to questioning:
 - o That the youth has a right to remain silent;
 - o That any statement the youth does make can be and may be used against the youth;
 - o That the youth has a right to have a parent, guardian, or custodian present during questioning; and
 - o That the youth has a right to consult with an attorney and that one will be appointed for the youth if the youth is not represented and wants representation.
- **Per G.S. 7B-2101, if the youth 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 youth's parent, guardian, custodian, or attorney.**
- If an attorney is not present, the parent, guardian, or custodian as well as the youth must be advised of the youth'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 youth.
- Was the written form age appropriate, in the language of the youth, and included juvenile-specific rights?
- Waiver must be knowingly, willingly and understandingly given.

WAS THE STATEMENT VOLUNTARY?

- The "greatest care" must be taken to ensure that a juvenile's confession is voluntary. *In re Gault*, 387 U.S. 1, 55 (1967).
- Was there duress, promises or threats, or deliberate confusion that would compromise a child or adolescent?
- What was the role of the parent, guardian or custodian?
- Clarity of the waiver: "[W]ithout an unambiguous, unequivocal invocation of [the 16-year old] defendant's right under N.C.G.S. § 7B-2101(a)(3), law enforcement officers had no duty to ask clarifying questions or to cease questioning." *State v. Saldierna*, 369 N.C. 401 (2016).