Juvenile *Miranda* and voluntariness issues.....Revised 12/2009

The Fifth Amendment guarantees, "[n]o person … shall be compelled in any criminal case to be a witness against himself." U.S. Constitution, Amendment V. In *Miranda v. Arizona*, 384 U.S. 436, 465 (1966), the United States Supreme Court held that the Fifth Amendment provided a privilege against compulsory self-incrimination that applies to all custodial interrogations and is binding in all states. The Court held that "the prosecution may not use statements … stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id*. at 444. The Court defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id*. The required "procedural safeguards" are the familiar *Miranda* warnings. Any time an agent of the government conducts a custodial interrogation of a suspect, the defendant must be advised of the *Miranda* warnings. That is, the suspect must be advised that he has the right to remain silent, the right to consult with an attorney, and the right to have an attorney appointed if he cannot afford to hire one, and that anything he says may be used against him in a court of law. *Id*.

A year after *Miranda*, the United States Supreme Court held in *Application of Gault* [commonly called *In re Gault*], 387 U.S. 1, 13 (1967), that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." The Court held that constitutional due process guarantees apply in juvenile proceedings, specifically providing a minor with the Fifth Amendment privilege against self-incrimination, as well as the right to counsel. *See Matter of Maricopa County Juvenile Action No. JV-116553*, 162 Ariz. 209,

210, 782 P.2d 327, 328 (App. 1989). Thus, during custodial interrogation, government agents such as police must advise juveniles as well as adults of their *Miranda* rights.

In Maricopa County, police agencies use a modified variation of the *Miranda* warnings called the "Juvenile Rights Form." This form contains the same listing of constitutional rights as the "adult" *Miranda* warning, but in simplified language geared to a juvenile's understanding and designed to help a juvenile understand the concepts involved. *State v. Jimenez*, 165 Ariz. 444, 448, 799 P.2d 785, 789 (1990); *State v. Scholtz*, 164 Ariz. 187, 188, 791 P.2d 1070, 1071 (App. 1990). *See State v. Doody*, 187 Ariz. 363, 372, 930 P.2d 440, 449 (App. 1996) [by using juvenile rights form, officers explained the juvenile's rights to him "in a manner appropriate for his age and apparent intelligence"]; *In re Andre M.*, 207 Ariz. 482, 486, ¶ 18, 88 P.3d 552, 556 (2004) [noting that the record did not show whether the juvenile "received age-appropriate warnings," which "would have helped the State carry its burden" of showing that the juvenile's statements were voluntary].

"Custody"

The Courts determine custody through an objective test examining "whether under the totality of the circumstances a reasonable person would feel that he was in custody or otherwise deprived of his freedom of action in a significant way." *State v. Carter*, 145 Ariz. 101, 105, 107 P.2d 488, 492 (1985). Specifically, courts have declared, "factors strongly indicative of custody include: 1) the site of the interrogation, 2) whether the investigation has focused on the accused, 3) whether the objective indicia of arrest are present, and 4) the length and form of the investigation." *State v. Perea*, 142 Ariz. 352, 354-355, 690 P.2d 71, 73-74 (1984).

Addressing factors pertinent to juvenile custody, in *In re Jorge D.*, 202 Ariz. 277, 43 P.3d 605 (App. 2002), the Court of Appeals stated that in determining whether a juvenile is in custody, courts will apply the objective test used to determine whether an adult is in custody and also will consider other factors pertinent to the juvenile's status as a juvenile.

> We conclude that the objective test for determining whether an adult was in custody for purposes of *Miranda,* giving attention to such factors as the time and place of the interrogation, police conduct, and the content and style of the questioning, applies also to juvenile interrogations, but with additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult. In applying this standard to the facts before us, we ask whether a ten-year-old in [the juvenile's] position would have reasonably considered his freedom of action to be curtailed in a significant way, i.e., to a degree associated with a formal arrest.

In re Jorge D., 202 Ariz. 277, 280-281, ¶¶ 15-16, 43 P.3d 605, 608-09 (App. 2002), *quoting State v. Doe*, 130 Idaho 811, 818, 948 P.2d 166, 173 (Idaho App. 1997). However, in *Yarborough v. Alvarado*, 541 U.S. 652, 667 (2004), the United States Supreme Court held that whether a suspect is "in custody" for *Miranda* purposes is a purely objective "reasonable person" inquiry, and that in determining whether a person is in custody, courts may not consider the particular circumstances of a suspect, such as his age and experience, or lack of experience, with law enforcement. Although no published Arizona decision has addressed *Yarborough* yet, *Yarborough* places the continuing validity of *Jorge D.* in doubt. In any event, if a juvenile being interrogated by law enforcement has been deprived of freedom of action in a degree similar to that of a formal arrest, the questioning is deemed "custodial" regardless where it occurs.

A *Terry* stop is not "custody" for *Miranda* purposes. An officer need not read a suspect his *Miranda* rights before asking investigative questions of an adult or a juvenile

during a brief stop and frisk authorized under *Terry v. Ohio*, 392 U.S. 1 (1968). In *In re Roy L*., 197 Ariz. 441, 4 P.3d 984 (App. 2000), a school security guard informed a police officer that a student across the street from a school was showing a gun to other students. The officer saw a gun and approached the juvenile. As soon as the juvenile saw the officer, the juvenile began to leave, whereupon the officer drew his gun, ordered the juvenile to stop and put his hands on his head, and asked him if he had a gun. When the juvenile said he did have a gun, the officer frisked him and found a gun. On appeal, the juvenile argued that the gun should be suppressed because the officer had not read him his *Miranda* rights. The Arizona Court of Appeals disagreed, finding that the juvenile was not "in custody" for *Miranda* purposes during the frisk even though the officer was holding him at gunpoint. The Court explained:

> "Custodial interrogation" in Arizona occurs "when police have both reasonable grounds to believe that a crime has been committed and reasonable grounds to believe that the person they are questioning is the one who committed it."

In re Roy L., 197 Ariz. 441, 445, ¶ 13, 4 P.3d 984, 988 (App. 2000), *quoting State v. Pettit,* 194 Ariz. 192, 195, ¶ 15, 979 P.2d 5, 8 (App. 1998). In *Roy L.*, the Court reasoned that the officer had sufficient reasonable suspicion of unlawful conduct to justify a *Terry* stop of the juvenile. The officer's drawing his weapon for his safety did not convert the *Terry* stop into a de facto arrest or "custody" for *Miranda* purposes, and his question about the gun was part of the investigation into whether a crime had been committed at all. *Id*. at 445-446, ¶¶ 12-14, 4 P.3d at 988-89. *In re Roy L*., 197 Ariz. 441, 445-46, 4 P.3d 984, 988-89 (App. 2000).

"Interrogation – Voluntariness"

The issue of the voluntariness of a confession arises regardless of the applicability of *Miranda*. *Maricopa County Juv. No. JV-501010*, 174 Ariz. 599, 601, 852 P.2d 414, 416 (App. 1993). Voluntariness and *Miranda* are two separate inquiries. Preclusion of evidence obtained in violation of *Miranda* is based on the Fifth Amendment privilege against self-incrimination, while preclusion of involuntary confessions is based on the Due Process Clause of the Fourteenth Amendment and applies to confessions that are the product of coercion or other methods offensive to due process. *In re Jorge D*., 202 Ariz. 277, 281, ¶ 19, 43 P.3d 605, 609 (App. 2002). Thus, the *Miranda* rules condition the admissibility of uncounseled statements taken during police interrogation on the State's demonstrating that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel, whereas due process requires only that a defendant's statements be uncoerced. *Miller v. Dugger*, 838 F.2d 1530, 1537 (11th Cir. 1988).

Confessions acquired from custodial interrogation are presumed involuntary. For this reason, the State must rebut that presumption by proving to the contrary, by a preponderance of the evidence, that the suspect made the confession freely and voluntary. The State bears the burden of establishing that a confession is voluntary by a preponderance of the evidence. *In re Andre M.*, 207 Ariz. 482, 484, ¶ 8, 88 P.3d 552, 554 (2004); *State v. Jimenez*, 165 Ariz. 444, 448-49, 799 P.2d 785, 789-90 (1990).

Courts apply a "totality of the circumstances" test in assessing the voluntariness of a confession or of a juvenile's waiver of his Fifth Amendment right against self-incrimination. *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979), State v. Jimenez, 165 Ariz. 444, 450 (1990). When a juvenile confession occurs as a result of police

questioning without counsel present, If counsel was not present, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *Application of Gault*, 387 U.S. 1, 55 (1967).

Accordingly, in determining whether a confession was voluntary, the "totality of the circumstances" approach mandates inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. *Fare v. Michael C*., 442 U.S. at 725.[1] Other coercive factors that are considered in the totality approach included the arguably coercive atmosphere of the police interrogation room; the focus of the investigation on defendant as the prime suspect; and whether police transport the defendant to the police station. *State v. Carrillo,* 156 Ariz. 125, 135, 750 P.2d 883, 893 (1988). In the voluntariness context, attentive to the "totality of the circumstances" and the increased susceptibility and vulnerability of juveniles, Arizona courts have attached particular significance to whether a parent was present when police interviewed the juvenile. In *In re Andre M.*, 88 P.3d 552, 553 (2004), the court reasoned that "a parent can help ensure that a juvenile will not be intimidated, coerced or deceived during an interrogation and that any confession is the product of a free and deliberate choice." In addition, the presence of a parent

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[1] Note, however, that in the *Miranda* context, whether a suspect is "in custody" is a purely objective "reasonable person" inquiry that does not take into account the suspect's age, experience, and so on. *Yarborough v. Alvarado*, 541 U.S. 652, 667 (2004).

makes it more likely that the juvenile will be aware of the nature of the right being abandoned and will understand the consequences of a decision to abandon that right. *In re Andre M.*, 207 Ariz. 482, 485, ¶ 7, 88 P.3d 552, 555 (2004) citing *Moran v. Burbine*, 475 U.S. 412, 421 (1986). Although a parent's absence during questioning does not, in itself, render a juvenile's statement to police inadmissible, in that situation "the State faces a more daunting task of showing that the confession was neither coerced nor the result of 'ignorance of rights or of adolescent fantasy, fright or despair' than if the parent attends the interrogation." *Id*. at ¶ 11.

The question of voluntariness must focus on police conduct, and not solely on the defendant's mental state. *State v. Bravo*, 158 Ariz. 364, 371, 762 P.2d 1318, 1325 (1988). Confessions will only be excluded as involuntary when there is police misconduct causally related to the confession. *State v. Stanley*, 167 Ariz. 519, 524, 809 P.2d 944, 949 (1991). While personal circumstances, such as intelligence and mental or emotional status, may be considered in a voluntariness inquiry, the critical element necessary to such a finding is whether police conduct constituted overreaching. *Id.* **"**Absent police misconduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law.**"** *Colorado v. Connelly*, 479 U.S. 157, 164 (1986).

“Law Enforcement”

The *Miranda* requirement applies only to custodial interrogation by law enforcement agents. “School principals, though responsible for administration and discipline within the school, are not law enforcement agents.” *Navajo County Juvenile Action No. JV-91000058*, 183 Ariz. 204, 206, 901 P.2d 1247, 1249 (App. 1995). However, a school official must give *Miranda* warnings if he or she is acting as an agent or instrument of the police. *Id*. Thus, a school official who interviews a student at the request or direction of a law enforcement agency, acts as an instrument of that agency and must advise the student of his or her *Miranda* rights before proceeding with the interview. *Id*.

In re Timothy C., 194 Ariz. 159, 978 P.2d 644 (App. 1998), held that a Child Protective Services caseworker was a state agent when he questioned a juvenile about a crime. Because the caseworker was required by law to notify the police of the results of his investigation, he was an agent of law enforcement for *Miranda* purposes. *In re Timothy C*., 194 Ariz. 159, 163, ¶ 15, 978 P.2d 644, 648 (App. 1998).