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Civil Liability for Improper Interrogation of Minors

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Introduction

Prior articles in this publication on interrogation have explored civil liability issues arising from intentional violations of *Miranda* rights, coercive interrogation techniques, and the questioning of minors in abuse investigations in which they are the suspected victims of abuse.

Courts have recognized that the interrogation of minors in the context of criminal investigations or juvenile delinquency investigations raise special concerns about the capacity of the child to understand the consequences of making a statement. Minors may have a special susceptibility to threats, intimidation, unrealistic promises of leniency, or a juvenile desire to please an adult interrogator.

Indeed, a questioned minor may have a tendency to tell interrogators what they seem to want to hear, regardless of its truth or falsity. This is particularly the case in the absence of the guidance of a familiar parent, guardian, attorney or other adult.

Courts are concerned, in all interrogations, with seeing to it that incriminating statements elicited are made voluntarily, and that waivers of the privilege against self-incrimination, or of the right to remain silent or the right to an attorney are also knowing and voluntary. But they become even more concerned about these issues when juveniles are being questioned.

It can be generally stated that juveniles are supposed to be afforded greater protection during questioning than adults because they are thought to be inherently more susceptible to psychological pressure from adults, especially authority figures, including police officers.

This article takes a brief look at a number of cases in which courts have examined civil liability issues arising from the interrogation of minors. At the end of the article, a number of useful or pertinent online resources and references are listed.

Misrepresentations used to obtain consent

Those questioning minors, or seeking to do so, may try to obtain consent for such interrogation from the minor or their parent by making promises or statements so misleading as to arguably make any voluntariness to the consent or statements an illusion.

In [Myers v. Potter](#), #04-6022, 422 F.3d 347 (6th Cir. 2005), the court addressed a police officer's misrepresentations to a teenager's mother that he would be questioned nearby and only for an hour concerning an investigation into a triple murder, allegedly made to obtain consent to his removal from the home.

This allegedly resulted in him being taken to another county, interrogated for four hours, subjected to a polygraph exam, and being denied requests to leave, be with his mother, or see a lawyer. The court found that, if this were true, it would violate the child's clearly established constitutional rights.

In this case, Fire Department personnel found the bodies of a woman, her daughter, and her daughter's female friend inside a house on fire, and investigators subsequently determined that the fire had been deliberately set. Autopsies also revealed that each of the three decedents had suffered blunt-force trauma to the head. The woman's boyfriend and his 14-year-old son had previously lived in the house, but the 14-year-old moved out a few months before the fire to live with his mother elsewhere.

While investigating the fire and deaths, law enforcement personnel began to suspect that the 14-year-old had committed the crimes in the household. They arrived at the home of the 14-year-old and his mother, and began to interrogate him. They asked the mother

for permission to take her son to the local prosecutor's office for further questioning. When she initially objected, she was allegedly told repeatedly that her son would be back in an hour or "right back," and that it was not necessary for her to go with him.

Once the youth was in an unmarked law enforcement vehicle, he was not taken to the local prosecutor's office, as represented to the mother, but instead to a prosecutor's office in another county, where an agent of the Tennessee Bureau of Investigation interrogated him for approximately four hours, he signed a second Miranda waiver (having previously signed one at his home), and he signed a consent for a polygraph examination.

During the questioning, the agent allegedly conducted a polygraph examination, threatened the boy with life imprisonment, repeatedly called him profane names, and showed him pictures of the charred bodies found after the fire. He allegedly made repeated requests to go home, to be with his mother, and to speak with a lawyer, all of which were denied.

Approximately six hours after the son was taken into custody, the mother was informed, via a phone call, that her son would not be returning home, and that to obtain his release, she would have to obtain a court order. She subsequently claimed that the caller refused to tell her either where her son was or the reasons for his detention.

He was placed in a foster home, taken into the custody of a state agency, and held there for more than three weeks, during which he was questioned by law enforcement officers on several occasions, before he was released to his mother pursuant to a court order. His father was subsequently indicted for the triple murder, and was convicted of three counts of first-degree murder and one count of aggravated arson.

The son subsequently sued a number of defendants, including a police officer and the local police chief for violations of his constitutional rights. The complaint alleges that the defendants had conspired to deprive him of his constitutional rights, and that the police chief failed to properly train the defendant officer in the proper method to reasonably seize or obtain custody of a minor for interrogation. The trial court subsequently granted both the officer and police chief summary judgment.

In overturning this ruling, the appeals court noted that neither the defendant officer nor any other law enforcement official had any judicial authorization to take the minor into custody when he was initially seized, and there was not probable cause to arrest him for the crime.

The court also stated that the evidence in the record only indicated that the mother consented to her son being removed from the home after the officer falsely represented that he would be questioned close by and would be returned within an hour. Instead, he was taken for a one-hour drive to another county, interrogated for approximately four hours, and did not return until three weeks later.

Even if there was consent, the court stated, the facts alleged showed that the detention "ceased to be consensual." Because the child was detained in police custody without probable cause, judicial authorization, or valid consent, the court held, his Fourth Amendment right to be free from an unreasonable seizure was violated. If the plaintiff minor was able to prove his allegations at trial, the court ruled, there would be sufficient evidence to impose liability on the officer.

The appeals court also held that the officer was not entitled to qualified immunity, since a reasonable officer would have known that the child's clearly established constitutional rights were being violated.

Coercive interrogation techniques shocking to the conscience

In [Crowe v. County of San Diego](#), #05-55467, 2010 U.S. App. Lexis 894 (9th Cir.), a 14-year-old boy, one of the plaintiffs, allegedly falsely confessed to murdering his younger sister, following a series of "coercive" and "grueling" interrogations. He and his accused 15-year-old accomplice, who also sued, were allegedly isolated and subjected to many hours and days of questioning, during which time they were lied to, threatened, cajoled, and pressured by teams of police officers.

A federal appeals court overturned summary judgment for the defendant police detectives, finding that such tactics, if true, violated the Fifth Amendment, and also "shock the conscience" in violation of substantive due process. 'Psychological torture' is not an inapt description," the court stated.

The defendants were not entitled to qualified immunity on claims relating to the interrogations, which allegedly resulted in coerced statements used in various proceedings. A vagrant who suffers from schizophrenia was later convicted of voluntary manslaughter in connection with the sister's death after the sister's DNA was found on one of his shirts.

Similarly, in [Grendell v. Gillway](#), 974 F. Supp. 46 (D. Me. 1997), the court found that an officer's alleged threats to an eleven-year-old female student in a guidance counselor's office that she would be in a lot of trouble unless she answered his questions about her parents' alleged drug use, combined with the promise that nothing would happen if she did provide the information, was conduct "shocking to the conscience."

Eliciting “questionable” confessions

Interrogation of a minor in the absence of the presence of a parent or parental consent may lead to a questionable confession. In [Harris v. Bornhorst](#), #06-3729, 513 F.3d 503 (6th Cir. 2008), a twelve-year-old child was interrogated away from his mother and a prosecutor then ordered police to arrest him in connection with the death of a toddler.

His conviction was subsequently overturned on the basis of a coerced confession in violation of the Fifth Amendment. He subsequently filed a federal civil rights lawsuit against the prosecutor and her employer for alleged violations of the Fourth and Fourteenth Amendments.

After the lawsuit was filed, the prosecutor allegedly told a Marine recruiter that the plaintiff would "always" be a suspect in the murder, resulting in the rejection of his enlistment. A federal appeals court overturned qualified immunity for the prosecutor, ruling that the prosecutor could not reasonably have believed that there was probable cause for the arrest.

Eliciting an involuntary statement, but not causing the prosecution

In [Murray v. Earle](#), #03-51379, 405 F.3d 278;005 (5th Cir. 2005), the court ruled that, although the detectives' interrogation of an eleven-year-old girl, which produced her confession of involvement in the death of a two-year-old, was custodial and produced an involuntary statement in violation of her Fifth Amendment rights, the questioning detectives could not be held liable for her subsequent prosecution and conviction, later overturned.

The case involved an eleven-year-old girl who was investigated and questioned for her possible involvement in the death of a two-year-old girl. She and her siblings lived with her grandparents who were her adoptive parents. The grandparents also provided daycare in their home for several other children, including the two-year-old.

The two-year-old was ill one day and was put to bed after she vomited on the lunch table. Late in the afternoon, the eleven-year-old allegedly came in from outside and went to the back of the house, near the bedroom where the two-year-old was sleeping. One of her grandparents then allegedly heard "thumping noises." Later, when the two-year-old was taken to the hospital because she continued to be ill, she died.

An autopsy indicated that the child's death was a homicide, and that she had suffered a severe liver injury caused by a blunt blow to the abdomen, which had broken four of her ribs and split her liver into two pieces. There were thirty other bruises to her head, ear,

forehead, back, shoulder, elbow, chest and the left side of her torso. After the eleven year old was removed to a shelter for children, she became a suspect in the child's death.

Two detectives and a child welfare official were asked to question the child. The detectives consulted with a prosecutor about how to interrogate her. While the child had been at the foster care home, none of the officials believed that she was in the custody of the state, and this, in their minds, removed the need for them to take her before a magistrate, as required by Texas state law for children in state custody. They gave her a [Miranda](#) warning, but did not notify her parents or attorney of the questioning.

After two hours of questioning, the detectives elicited a confession that she had dropped the two-year-old and kicked her. She was charged with capital murder and injury to a child, and was convicted by a jury of negligent homicide and injury to a child after a juvenile court ruled her confession admissible. A new trial was granted and her confession was again admitted, after which she was convicted of injury to a child, and sentenced to 25 years in the custody of the Texas Youth Commission.

The second conviction was later overturned by an intermediate Texas appeals court that ruled that the eleven-year-old had been in the custody of the state at the foster home, so that law enforcement authorities had violated state law by not taking her before a magistrate prior to interrogating her, and that her confession was therefore inadmissible.

The girl then sued the detectives and a number of others for alleged violations of her Fifth Amendment right against self-incrimination and for alleged state law civil conspiracy. The defendants appealed from the denial of their motions for qualified immunity on the Fifth Amendment claims and for official immunity under state law.

The trial court held, the appeals court summarized, that:

under these narrow circumstances ---- an eleven-year-old child is removed from her home, housed at a private shelter by the State for three days, interrogated there for hours by two seasoned investigators to the point of confession without an adult or advocate present to represent her interests, and is convicted largely on the strength of that confession ---- the child may, after the conviction is overturned on the grounds that the confession was inadmissible, sue under § 1983 for damages she suffered as a result of the violation of her constitutional rights.

The appeals court held, however, that the plaintiff could not demonstrate that the defendants acted unreasonably, and that their actions did not proximately cause the damages she suffered, so she could not maintain a federal civil rights lawsuit against them for violation of her Fifth Amendment rights.

The appeals court agreed that the child's questioning constituted custodial interrogation under the circumstances in light of all the factors, including her age. It also found that every factor examined weighed against the conclusion that the child's

statement was voluntary. She could not be held to have knowingly and voluntarily waived her right to be represented by counsel and to remain silent, the court found.

Additionally, the officers told her that they had already talked to everyone in her family, that everyone "knew" what happened, and that she could "help her family" only by telling the truth. The court concluded that her statement was involuntary and that its admission at trial violated her Fifth Amendment right against self-incrimination.

Despite that, the appeals court noted that the judge who presided in her juvenile trial had evidently heard or at least was not prevented from hearing, all of the facts about her interrogation before deciding to admit her confession into evidence, and still concluded that she was not in custody for purposes of *Miranda* or Texas law governing the interrogation of minors, and ruled that her statement was voluntary and admissible.

The admission of the confession by the judge, the appeals court found, was a "superseding cause" of the plaintiff's injury, relieving the defendants of liability for violation of her Fifth Amendment rights. This ruling on causation eliminated the necessity of considering whether the constitutional right violated was clearly established, and whether a reasonable official should have known that he was violating that right. The defendants were therefore entitled to qualified immunity on the federal claims.

Resources

The following are some useful resources related to the subject of this article.

- [Interrogation](#). Summaries of cases reported in AELE publications.
- [Interrogation: Children](#). Summaries of cases reported in AELE publications.

Prior Relevant Monthly Law Journal Articles

- [Civil Liability for Intentional Violations of Miranda. Part One: Liability Considerations](#), 2009 (7) AELE Mo. L. J. 501.
- [Civil Liability for Intentional Violations of Miranda. Part Two: Criminal Admissibility](#), 2009 (8) AELE Mo. L. J. 501.
- [Civil Liability for Coercive Interrogation](#), 2010 (3) AELE Mo. L. J. 101.
- [Greene v. Camreta - The Ninth Circuit's Ruling on Questioning Minors in Abuse Investigations](#), 2010 (6) AELE Mo. L. J. 101.

References:

- Catherine S. Connell and Martha J. Finnegan, "[Interviewing Compliant Adolescent Victims](#)," 79 *FBI Law Enforcement Bulletin* No. 5, pgs. 16-20 (May 2010).

- Kenneth A. Myers, “[Fifth Amendment Protection and Break in Custody](#),” 79 FBI Law Enforcement Bulletin No. 5, pgs. 26-32 (May 2010).
 - Juliet Lapidus, “[Who Stole the Cookie From the Cookie Jar? The Best Way to Interrogate a Child](#),” Slate (Nov. 11, 2008).
 - “[Police Interrogation of Juveniles: an Empirical Study of Policy and Practice](#),” Journal of Criminal Law and Criminology (Sept. 2006),
 - Hilary B. Farber, “[The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?](#),” American Criminal Law Review (July 1, 2004).
 - Robert E. McGuire, “[A Proposal to Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations](#),” Vanderbilt Law Review (May 1, 2000).
 - Stephen Ceci, “[Why Minors Accused of Serious Crimes Cannot Waive Counsel](#),” 8 Court Review (Winter 1999).
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