

# Juvenile Interrogation

District Court Judges' Summer Conference

June 19, 2024

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# Juvenile rights

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What constitutes custodial interrogation

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Invocation and waiver of rights

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**Constitutional  
privilege against  
self-incrimination**  
*(Miranda)*

**Enhanced  
statutory rights**

# Everyone under age 18

State v. Fincher, 309 N.C. 1 (1983)



G.S. 7B-2101(A)  
PROCEDURES FOR  
YOUTH UNDER AGE 16

Right to have a  
parent, guardian, or  
custodian present  
during questioning

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Statements are not admissible  
when made by a juvenile under  
age 16 and without a parent,  
guardian, custodian, or attorney  
present

(G.S. 7B-2101(b))

G.S. 7B-2101(A1)  
PROCEDURES FOR  
YOUTH AGE 16/17

Right to have a  
parent, guardian,  
custodian, or  
caretaker present  
during questioning

# CARETAKER

“ANY PERSON OTHER THAN A PARENT, GUARDIAN, OR CUSTODIAN WHO HAS **RESPONSIBILITY FOR THE HEALTH AND WELFARE OF A JUVENILE IN A RESIDENTIAL SETTING...**

- stepparent,
- foster parent,
- adult member of the juvenile's household,
- adult entrusted with the juvenile's care,
- potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department,
- any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or
- any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services.”

G.S. 7B-2101(e)



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16/17  
requests PGC  
presence



LE makes  
reasonable  
effort to  
contact PGC  
and PGC not  
available



Caretaker can  
be present  
during  
questioning

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# GUARDIAN OR CUSTODIAN

Must have established a legal relationship  
with the child through a legal process

*State v. Oglesby*, 361 N.C. 550 (2007)

*State v. Benitez (Benitez I)*, 258 N.C. App. 491 (2018).



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In Custody?



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Objective  
assessment, given  
totality of  
circumstances

Was there a formal arrest or a restraint on the juvenile's freedom of movement to the degree associated with a formal arrest?



Child's age (if known or objectively apparent to reasonable officer) must be included in objective analysis. How would a reasonable child have felt in that situation?

J.D.B. v. North Carolina, 564 U.S. 261 (2011)

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## FACTORS TO CONSIDER

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

the presence of  
uniformed officers  
and their weapons



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Interrogation?



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**Express  
questioning**

**Functional  
equivalent of  
express  
questioning**

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## FUNCTIONAL EQUIVALENT OF EXPRESS QUESTIONING

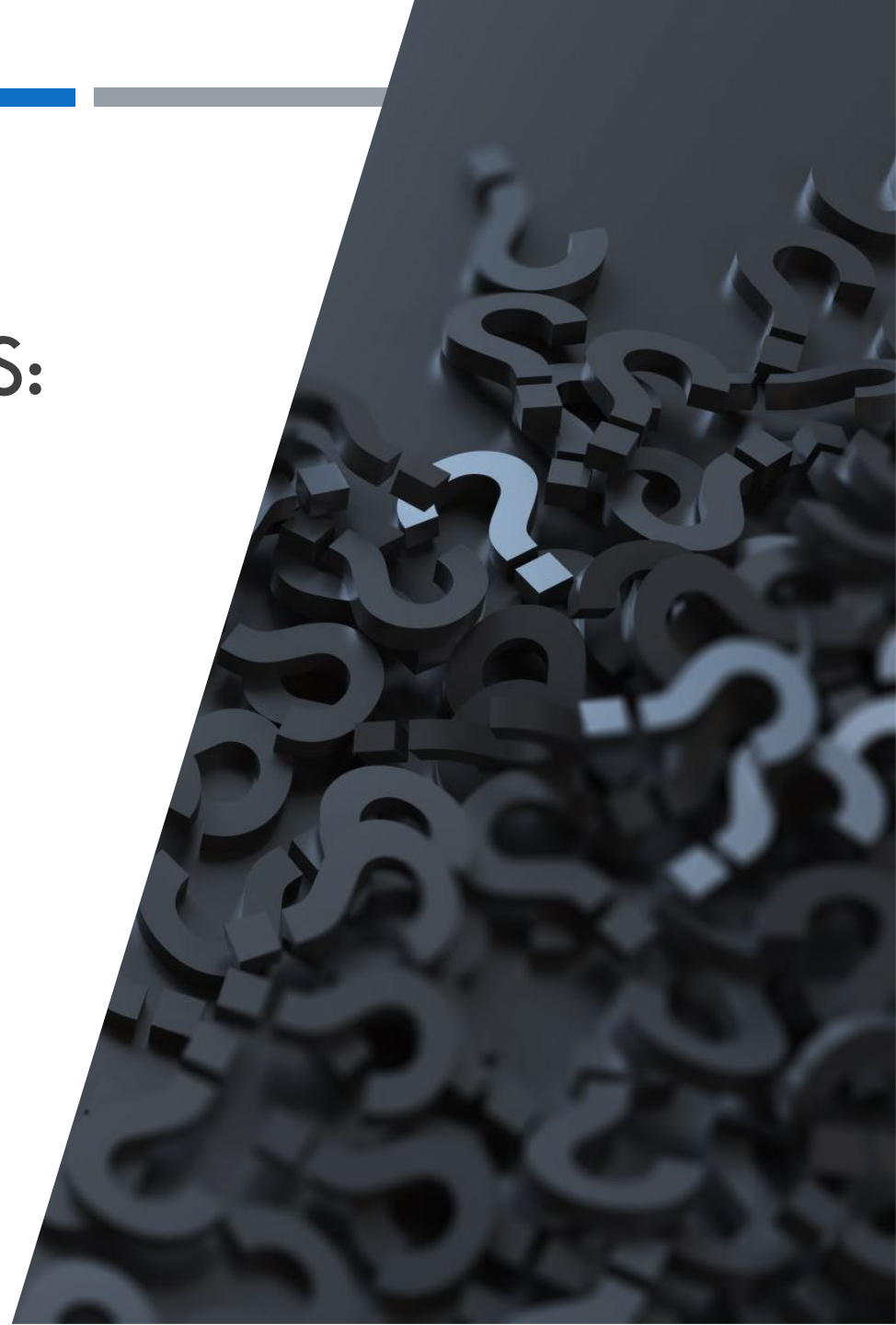
Words or actions by law enforcement that they should have known were reasonably likely to elicit an incriminating response



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## FUNCTIONAL EQUIVALENT OF EXPRESS QUESTIONING FACTORS:

1. Officer intent
2. Practice designed to elicit incriminating response
3. Officer knowledge about juvenile's unusual susceptibility to a specific form of persuasion



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## INVOCATION OF RIGHTS

Must be unambiguous

“Um, can I call my mom?” –  
ambiguous

State v. Saldierna, 369 N.C. 401  
(2016)

# ONLY THE JUVENILE CAN WAIVE THEIR RIGHTS

Mom couldn't waive privilege against self-incrimination that belonged to her 10-year-old child (In re Ewing, 83 N.C. App. 535 (1986))

Parental refusal to be present does not constitute waiver by juvenile

(In re Butts, 157 N.C. App. 609 (2003), State v. Branham, 153 N.C. App. 91 (2002))

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## ***WAIVER MUST BE:***

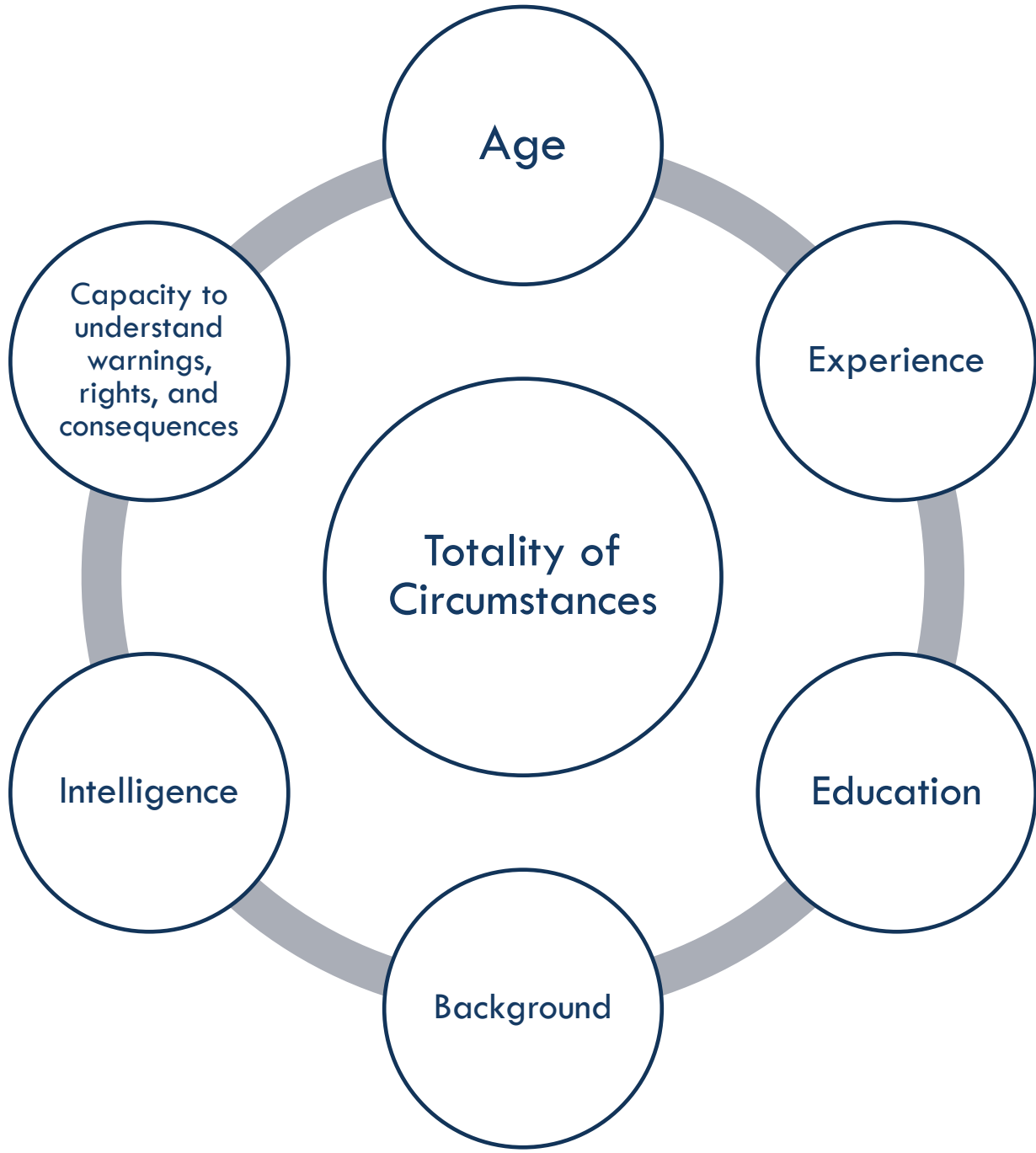
**Knowing**

**Willing**

**Understanding**

G.S. 7B-2101(d)





Age

Experience

Totality of  
Circumstances

Education

Background

Intelligence

Capacity to  
understand  
warnings,  
rights, and  
consequences



- Expert testimony not required to establish that juvenile understood their rights
- Question of law to be decided by trial court based on evidence provided

State v. Benitez (*Benitez II*), 283 N.C.App. 40 (2022)

# EXPRESS WRITTEN WAIVER

Strong proof of valid  
waiver

Not dispositive:

- Not fully informed of rights
- Wrongly informed of rights (i.e. waiver stating can have a parent, guardian, custodian, or any other person present - In re M.L.T.H., 200 N.C. App. 476 (2009).)

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*SCHOOLHOUSE  
CUSTODIAL  
INTERROGATION*



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## FACTORS MOST RELEVANT IN DETERMINING CUSTODY IN CONTEXT OF SCHOOLHOUSE INTERVIEW

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- (1) traditional indicia of arrest;
- (2) the location of the interview;
- (3) the length of the interview;
- (4) the student's age;
- (5) what the student is told about the interview;
- (6) the people present during the interview; and,
- (7) the purposes of the questioning.

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## **FACTORS MOST RELEVANT IN DETERMINING INTERROGATION IN CONTEXT OF SCHOOLHOUSE INTERVIEW**

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(1) the nature of the questions asked (interrogative or mandatory);

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(2) the willingness of the juvenile's responses;

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(3) the extent of the SRO's involvement;

A pair of black-rimmed glasses is resting on a stack of papers. A red ribbon bookmark is visible, tucked between the pages. The background is blurred, showing more papers and a wooden surface.

## CASE STUDIES

- Is it custody?
- Is it interrogation?
- Was there a valid waiver?