Chapter 12: Evidentiary Rules in Juvenile Proceedings

[12.1] Overview

In the state juvenile court systems, questions about the admissibility of evidence arise primarily regarding two stages in the process: (1) the police investigatory process; and (2) the court's adjudicatory process.[18]

Police Investigatory Process—Both the *Gault* and *Kent*[19] decisions have been interpreted to require the application of the U.S. Constitution's Fourth Amendment[20] and the exclusionary rule to the juvenile justice process. The exclusionary rule is the rule that evidence obtained in violation of an accused person's constitutional rights cannot be admitted into evidence (cannot be used to prove guilt in court).

In juvenile cases, the most difficult issue has revolved around the juvenile's competency to waive his or her Miranda rights, and then to make a statement or confession that may be used as evidence of his or her guilt in court. In general, state courts have relied on a "totality of circumstances" approach in determining the validity of the waiver. This standard is used to determine whether a juvenile's statement or confession may be used as evidence in court and includes a weighing by the judge of factors at the time of his or her questioning including his or her age, competency, and educational level; his or her ability to understand the nature of the charges; and the methods used in, and the length of, interrogation.

Many state juvenile acts are based upon the Uniform Juvenile Court Act of 1968.[21] The Uniform Juvenile Court Act states that evidence seized illegally will not be admitted over objection.[22] Also, a valid confession made by a juvenile out of court is "insufficient to support an adjudication of delinquency unless it is corroborated in whole or in part by other evidence."[23]

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[18] Characterizations of state juvenile justice system process are taken from Cox et al., *Juvenile Justice*.
[19] *Kent v. United States*, 383 U.S. 541 (1966).
[20] Fourth Amendment of the U.S. Constitution: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
[21] National Conference of Commissioners on Uniform State Laws, 1968.
[22] Id. at sec. 27(b).
[23] Id.

Adjudicatory Process—Two of the post-*Gault* rights implicate evidentiary rules in juvenile adjudicatory proceedings: (1) the right to confront and cross-examine witnesses and (2) the right to remain silent. Under the Uniform Juvenile Court Act, the juvenile is entitled to introduce evidence and otherwise be heard in his or her own behalf and to cross-examine witnesses.[24] Also under the Uniform Act, a juvenile accused of a delinquent act need not be a witness against or otherwise incriminate himself or herself.[25] While a majority of state juvenile court acts do not set out a detailed set of rules of evidence, most do specify that only competent, material, and relevant evidence is admissible to prove guilt.

About "out-of-court statements" and the general prohibition against "hearsay"—"Hearsay" is defined as testimony that is given by a witness who relates not what he or she knows personally, but what others have said and that is therefore dependent on the credibility of someone other than the witness. This type of testimony is generally inadmissible under rules of evidence. The "hearsay rule" is the rule that no statement made by a witness on the stand can be received as testimony, unless it is or has been open to test by cross-examination or an opportunity for cross-examination, except as allowed by the rules of evidence. The gist of the rule is that the testimony of the person on the stand who is retelling a story told to them (as opposed to the testimony of the person who actually experienced the event) will not be admitted as reliable evidence.

About Standards of Proof—Finally, although many state and tribal juvenile proceedings are classified as "civil" in nature, the U.S. Supreme Court, post-*Gault*, has required that the highest standard of proof be applied in state juvenile proceedings—proof beyond a reasonable doubt. As discussed in earlier chapters, this higher standard is preferable in tribal juvenile proceedings as well, to ensure fair process and to protect the rights of the juvenile and his or her family by reliably establishing guilt. However, there may be some confusion where the practice in Indian country has been to combine juvenile offender proceedings and child maltreatment (abuse and neglect) proceedings within one tribal statute (ordinance or code). In many cases a lower civil standard of proof is applied as well to the juvenile proceedings. The preferred practice is to apply the standard of "beyond a reasonable doubt" to juvenile offender proceedings and the lower civil standards to child maltreatment proceedings.

[24] Id. at sec. 27(a).
[25] Id.

[12.2] Model Code Examples

(1989) BIA Tribal Juvenile Justice Code
1-7 RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS

1-7 B. Admissibility of Evidence.

In a proceeding on a petition alleging that a child is a "juvenile offender" or a child whose family is "in need of services":

1. an out-of-court statement that would be inadmissible in a criminal matter in tribal court shall not be received in evidence;

2. evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition;

3. unless advised by counsel, the statements of a child made while in custody to a juvenile counselor, including statements made during a preliminary inquiry, informal adjustment or predispositional study, shall not be used against a child in determining the truth of allegations of the petition;

4. a valid out-of-court admission or confession by the child is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence;

5. neither the fact that the child has at any time been a party to a "family in need of services" proceeding nor any information obtained during the pendency of such proceedings shall be received into evidence.

University of Washington
Center of Indigenous Research and Justice
Model Tribal Juvenile Code
CHAPTER 2 DELINQUENCY

2.01. RULES IN DELINQUENCY PROCEEDINGS

2.01.110 Rules - Generally

Delinquency proceedings before the Juvenile Court shall be governed by the rules of evidence and procedure governing criminal proceedings before the Tribal Court, to the extent that such rules are not in conflict with the provisions of this title.

(2.01.130 Omitted)

2.01.150 Admissibility of Evidence

In any proceedings on a delinquency petition brought under the provisions of this chapter:

(a) no out-of-court statement which would be inadmissible in criminal proceedings before the Tribal Court shall be admissible to establish the allegations of the delinquency petition;

(b) no evidence which would be inadmissible in criminal proceedings before the Tribal Court because such evidence was illegally seized or obtained shall be admissible to establish the allegations of the delinquency petition;

(c) no statement of the child made to the juvenile case coordinator, nor any evidence derived from such a statement, shall be admissible to establish the allegations of the delinquency petition, unless the statement is made after consultation with and in the presence of counsel;

(d) an out-of-court statement by the child shall be insufficient to support a finding that the child committed the acts alleged in the delinquency petition, unless the statement is corroborated by other evidence; and

(e) the fact that a child has at any time been a party to child-in-need-of-services proceedings shall be inadmissible to establish the allegations of the delinquency petition, and any statement made by the child during the pendency of such proceedings shall be treated as a statement made in response to custodial interrogation, and subject to the provisions of § 2.04.150.

2.04 INTERROGATION

(2.04.110 and 2.04.120 Omitted)

2.04.150 Inadmissible Statements and Derivative Evidence

(a) An oral, written, or other statement of a child made as a result of any interrogation shall be inadmissible as evidence against the child in any delinquency or criminal proceedings, unless:

(1) the child was advised in accordance with § 2.04.130; and

(2) the child clearly and affirmatively waived his or her rights before being questioned.

(b) An oral, written, or other statement of a child made as a result of a custodial interrogation shall be inadmissible as evidence against the child in any delinquency or criminal proceedings, unless:

(1) the statement is made after consultation with and in the presence of counsel;

(2) an electronic recording is made of the custodial interrogation; and

(3) the recording is accurate and not intentionally altered.

(c) An oral, written, or other statement of a child made as a result of any interrogation prior to or during which the child was subjected to threats or physical punishment shall be inadmissible as evidence against the child in any delinquency or criminal proceedings.

(d) If the Juvenile Court finds that a statement is inadmissible under this section, then any statements or other evidence derived from the inadmissible statement, including subsequent statements made by the child, shall be likewise inadmissible as evidence against the child in any delinquency or criminal proceedings.

2.04.170 Other Statements

(a) The provisions of § 2.04.150 shall not preclude the admission of:

(1) a statement made by the child in open court in any Juvenile Court or Tribal Court proceeding in which the child was represented by counsel;

(2) a spontaneous statement not made in response to interrogation; or

(3) a statement made in response to a question that is:

(A) routinely asked during the processing of a child being taken into custody; and

(B) not a question that the law enforcement officer knows or should know is reasonably likely to elicit an incriminating response.

(b) The Tribe shall bear the burden of proving by a preponderance of the evidence that a statement falls within one of the exceptions identified in subsection (a).

2.04.190 Factors Relating to Admissibility

Before permitting any child's statement to be introduced as evidence against the child, the Juvenile Court must find that the statement was voluntarily and knowingly made, taking into account these and any other relevant factors:

(a) whether the child had the opportunity to consult with his or her parent, guardian or custodian, or counsel before making the statement;

(b) the child's age, maturity, and level of education;

(c) the child's level of intelligence and mental development; as well as the presence of any cognitive or mental disability or impairment;

(d) the child's physical and mental condition at the time the statement was made;

(e) the length of time the child was detained prior to interrogation, and the length of time the child was interrogated before making the statement;

(f) the environment in which the interrogation took place;

(g) the number of law enforcement officers who conducted or were present during the interrogation, as well as their physical characteristics and demeanor;

(h) any use of deception by the law enforcement officer(s) conducting the interrogation;

(i) whether, either prior to or during the interrogation, the child was held in isolation, deprived of food or sleep, or subjected to other potentially coercive measures.

1.04 RIGHTS OF PARTIES

1.04.170 Privilege Against Self-Incrimination

(a) Every child coming within the jurisdiction of the Juvenile Court shall be accorded and advised of the privilege against self-incrimination, and the child's exercise of the privilege shall not be used against the child in any proceedings conducted pursuant to the provisions of this title.

(b) No statement, admission or confession made by, nor incriminating information obtained from a child in the course of any screening, assessment, evaluation, or treatment undertaken in conjunction with proceedings under this title, including but not limited to that which is court-ordered, shall be admitted into evidence in any proceedings before the Juvenile Court or the Tribal Court.

[12.3] Tribal Code Examples

Sault St. Marie Tribal Code
CHAPTER 36: JUVENILE CODE
SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE JUVENILE DIVISION

36.402 Rights of Parties in Juvenile Proceedings.

(2) In a proceeding on a petition alleging that a child is a juvenile offender:

(a) An out-of-court statement that would be inadmissible in a criminal matter in Tribal Court shall not be received in evidence.

(b) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition.

The Cherokee Code of the Eastern Band of the Cherokee Nation
Chapter 7A - JUVENILE CODE
ARTICLE II. - SCREENING OF DELINQUENCY AND UNDISCIPLINED PETITIONS

Sec. 7A-46.—Rules of evidence.

Where delinquent or undisciplined behavior is alleged and the allegation is denied, the court shall proceed in accordance with rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the intake counselor during the preliminary inquiry and evaluation process shall be admissible prior to the dispositional hearing.

Absentee-Shawnee Tribe of Indians of Oklahoma
TITLE 2 JUVENILE CODE
Chapter One

Section 111. Hearing

A. **Findings of Fact.** The judge, or in the proper case, the jury, shall be trier of fact and shall base the findings upon the requirement that each allegation must be proved beyond a reasonable doubt. Such findings shall be made only upon evidence which is admissible under the rules of the Tribal Court.

[12.4] Tribal Code Commentary

Many tribes have based their evidentiary provisions upon the 1989 BIA Tribal Juvenile Justice Code. The alternative University of Washington's Center of Indigenous Research and Justice Model Tribal Juvenile Code was completed in the fall of 2014 and has only recently been made available to the public. It includes comprehensive, juvenile-specific, evidentiary provisions that would be very useful in protecting both the welfare and rights of youth and their families in tribal juvenile court systems (incorporating the 1989 BIA Tribal Juvenile Justice Code's evidentiary provisions and adding in special provisions governing the admissibility of youth statements acquired as part of an interrogation). However, it provides a right to paid-for attorneys for youth and their parents, guardians, and custodians at various stages and more comprehensive evidentiary rules tailored to protecting youth, which will necessitate skillful advocacy (at the level of a licensed attorney).

The 1989 BIA Tribal Juvenile Justice Code makes the following inadmissible "in a proceeding on a petition alleging that a child is a 'juvenile offender'":

- An out-of-court statement (by anyone) that would be inadmissible in a criminal matter in tribal court.
- Evidence illegally seized or obtained.
- Statements of a child made while in custody (unless advised by counsel).
- A valid out-of-court admission or confession by the child (unless it is corroborated by other evidence).
- The fact that the child has been a party to a Family In Need of Services (FINS) proceeding and any information obtained during such proceeding.

The 1989 BIA Tribal Juvenile Justice Code evidence provisions are modified and tailored to tribal juvenile court process (as informed by U.S. Supreme Court precedent on fair juvenile process and given the experience of the state juvenile justice systems) and are the preferred alternative to a tribe's wholesale application of the federal rules of evidence used in adult criminal proceedings to tribal juvenile proceedings (and the preferred alternative to the random adoption of rules of evidence from various sources). However, tribes prioritizing a paid-for right to counsel for their youth and their families should consider following the University of Washington's model code provisions mentioned previously.

The Sault Ste. Marie Tribe's Section 36.402 incorporates two limitations on the admissibility of evidence: out-of-court statements that would be inadmissible in a criminal matter in tribal court and evidence illegally seized or obtained. There is no limit on admitting a youth's statement or confession as evidence. Contrast this with Section 111 A of the Absentee-Shawnee Juvenile statute, which incorporates the tribe's entire body of rules of evidence. The Eastern Band of Cherokee also incorporate the evidence code used in the adult court to juvenile offender adjudications but exclude

any statements made by the juvenile to the intake counselor during the preliminary inquiry and evaluation process. The purpose of this type of exclusion is to ensure that the youth will be able to speak freely prior to adjudication, that the matter be resolved preadjudication, and that the youth will have received the assistance and/or treatment that he or she needed. The Eastern Band of Cherokee's approach keeps the prehearing phases informal where the focus can then be on screening, identification of youth and family problems, and rehabilitation. The Absentee-Shawnee Tribe of Indians of Oklahoma code is an example of a law requiring that there be sufficient evidence presented at an adjudication to meet the "beyond a reasonable doubt" standard. This is the highest standard of proof and is required in criminal cases.

[12.5] Exercises

The following exercises are meant to guide you in writing the evidence section of the tribal juvenile code.

- Find and examine your tribal court code provisions or court rules governing rules of evidence—is there a special set of evidence rules applicable to your juvenile court?
- Do your rules of evidence provide special protections against using false or coerced confessions (e.g., obtained during a police interrogation) in your juvenile court to find that the juvenile is guilty of committing the alleged offense?
- Do your rules of evidence provide special protections against using statements or admissions made during the intake, treatment, or case management process in your juvenile court to find that the juvenile is guilty of committing the alleged offense?
- Do your rules of evidence require that the juvenile judge determine that a youth's admission in court is voluntarily, intelligently, and knowingly made and that he or she understands his or her rights and the consequences of pleading guilty, before accepting the youth's guilty plea?
- Do your rules of evidence allow a youth's statement, admission, or confession, without other evidence, to be used as the sole evidence of guilt in juvenile proceedings?
- Do your evidence rules allow third-party "out-of-court-statements" (otherwise known as "hearsay" and sometimes referred to as gossip) to be used as evidence against a youth in juvenile proceedings?
- What types of information would be more or less reliable for the court to use?

Read and Discuss*

Should we include statutory protections against false confessions?

A false confession is an admission of guilt in a crime in which the confessor is not responsible for the crime. False confessions can be induced through coercion or by the mental disorder or incompetency of the accused. Even though false confessions might appear to be an exceptional and unlikely event, they occur on a regular basis in case law, which is one of the reasons why jurisprudence has established a series of rules to detect, and subsequently reject, false confessions.

False confessions can be categorized into three general types, as outlined by Saul M. Kassin in an article for *Current Directions in Psychological Science*:

- **Voluntary false confessions** are those that are given freely, without police prompting. Sometimes they may be sacrificial, to divert attention from the actual person who committed the crime.
- **Compliant false confessions** are given to escape a stressful situation, avoid punishment, or gain a promised or implied reward.
- **Internalized false confessions** are those in which the person genuinely believes that they have committed the crime, as a result of highly suggestive interrogation techniques.

According to the Innocence Project, approximately 25% of convicted criminals ultimately exonerated had, in fact, confessed to the crime. . . . The high pressure generated may push innocent individuals to produce a confession.

Central Park Jogger (1989)

In the Central Park jogger case, on April 19, 1989, five teens aged from 14 to 16 were arrested and each confessed on videotape to the crime of attacking and raping a jogger and implicated each other. They later repudiated these confessions and maintained their innocence. The five were: Yusef Salaam, Kevin Richardson, Antron McCray, Raymond Santana, and Kharey Wise. In 1989, the police were aware that an unidentified sixth person had left semen on the victim's body. In 2002, Matias Reyes, a convicted murderer and rapist, admitted that he was responsible for the rape and attack of the jogger. The DNA obtained from the crime scene matched Reyes. New York state justice Charles J. Tejada vacated the convictions of five defendants on December 19, 2002. Yusef Salaam served six and a half years in prison. Kharey Wise was imprisoned until summer 2002, which was when his sentence was completed.

*Taken from Wikipedia—False Confessions. Go to http://en.wikipedia.org/wiki/False_confession