

## The Use of Juvenile Statements Made in Uncounseled Interviews, Assessments, and Evaluations: A Survey of National Practices

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When youth come into contact with the justice system they find themselves in a wide array of situations where they are asked, coerced, or even required to make statements without having access to a lawyer. This occurs—beyond the police interrogation context—despite the fact that children have the same Fifth Amendment right against self-incrimination as adults.

Initial intake interviews, diversion interviews, risk and needs assessments, and mental health evaluations often occur before a child is given access to an attorney. Any number of people—including detention staff, probation officers, court-appointed evaluators, to name a few—might be involved in eliciting these statements. While this may be done in the interests of diverting youth from formal processing in juvenile court or may be intended to provide youth with quick access to needed services, these situations create confusion for children who are unlikely to understand the role of all people they interact with, or the legal ramifications of statements they make without the advice of defense counsel. The implications of statements given during these interactions can be significant and ultimately lead to future prosecution or deeper involvement in the system. In recognition of this tension between wanting to provide the best services for youth and wanting to protect their legal rights, some states have come up with a variety of approaches to limit the potential harm of statements youth make without the benefit of legal counsel during interactions with various court and outside actors.

In addition to pre-trial interviews and assessments aimed at providing services to juveniles, there are a host of other court-ordered evaluations or treatments that may require youth to give up their right to remain silent. These include evaluations for competency or mental health issues, treatment programs that are required as a condition of pretrial release, probation, or diversion, and evaluations prior to and during transfer proceedings. In order to address this imbalance between a youth's right to remain silent and a court order to comply with treatment or evaluations that require candor, states have developed varying solutions that range from little to no protection in many states, to more comprehensive, sensible protections in others.

As stakeholders in the juvenile justice system try to reconcile the due process rights of children with the rehabilitative goal of the juvenile justice system, an understanding of the vast array of approaches being used may be helpful. To that end, NJDC has compiled this survey of statutes and cases from around the country that address the issue of uncounseled statements outside of police interrogations. This list is a compilation only. It is not intended to be a definitive analysis of the laws regulating the use of statements. Case law, court rules, and other considerations may alter or affect how these statutes are interpreted in local courts. Additionally, statutes are regularly amended, repealed, or otherwise changed. Lawyers should know the relevant laws and practices within their own jurisdictions.

**Jurisdictions with Statutory Limits on Admissions or Statements Made During the Initial Stages of Court Involvement  
(intake, informal diversion, and/or preliminary interviews)**

Absolute Prohibition at All Stages

- Arkansas
  - Statements made by a juvenile to the intake officer or probation officer during the intake process before a hearing on the merits of the petition filed against the juvenile are not admissible against the juvenile at any stage of any proceedings. Ark. Code Ann. § 9-27-321.
- New Mexico
  - A child has privilege to refuse to disclose and to prevent others from disclosing confidential communications made to probation officers or social workers during the preliminary inquiry phase. N.M. R. Evid. 11-509.
- Pennsylvania
  - Statements made in informal adjustment process cannot be used against the declarant over objection in any criminal proceeding or juvenile hearing. 42 Pa. Cons. Stat. Ann. § 6323(e).
- Texas
  - An incriminating statement made by a participant in a Deferred Prosecution Meeting to the person giving advice and in the discussions or conferences incident thereto may not be used against the declarant in any court hearing. Tex. Fam. Code Ann. § 53.03(c).
- Virginia
  - Statements made by a child to the intake officer or probation officer during the intake process prior to a hearing on the merits shall not be admissible at any stage. Va. Code Ann. § 16.1-261.
- West Virginia
  - No information obtained as the result of pre-petition, non-custodial, court-ordered counseling is admissible in a subsequent proceeding. W. Va. Code § 49-5-3.
- Wisconsin
  - If a petition is filed, statements made to the intake worker during the intake inquiry for pre-petition deferred prosecution [informal adjustment] are inadmissible. Wis. Stat. Ann. § 938.245(6).

Prohibited for Use Prior to Disposition Only

- District of Columbia
  - Uncounseled statements made to Corporation Counsel, or probation during case processing, including a statement made during a preliminary inquiry, pre-disposition study or consent decree, shall not be used against the child prior to the dispositional hearing or in a criminal proceeding prior to conviction. D.C. Superior Ct. R. Juv. P. 111.

- Florida
  - Client information from comprehensive probation assessments is used in the multidisciplinary assessment and classification of each child, but any information obtained directly or indirectly through the assessment process, is inadmissible in court prior to the disposition hearing without the child's written consent. Fla. Stat. Ann. § 985.145(4).
- Georgia
  - Incriminating statements made in during the informal adjustment process shall not be used in any hearing if the juvenile objects, except at disposition in a juvenile court proceeding or in a criminal proceeding upon conviction for the purpose of a presentence investigation. Ga. Code Ann. § 15-11-515(c).
- Illinois
  - Statements made during probation adjustment are inadmissible in delinquency or criminal proceedings until after adjudication. 705 Ill. Comp. Stat. 405/5-305.
- Louisiana
  - Incriminating statements made in an informal adjustment shall not be used in any adjudication hearing or criminal trial if the juvenile objects, except at disposition in a juvenile court proceeding or in a criminal proceeding upon conviction for the purpose of a presentence investigation. La. Child. Code Ann. art. 841(C).
- North Carolina
  - No statement made by a juvenile to the juvenile court counselor during the preliminary inquiry and evaluation process shall be admissible prior to the dispositional hearing. N.C. Gen. Stat. § 7B-2408.
- North Dakota
  - Incriminating statements made in an informal adjustment shall not be used in any if the juvenile objects, except at disposition in a juvenile court proceeding or in a criminal proceeding upon conviction for the purpose of a presentence investigation. N.D. Cent. Code § 27-20-10(3).
- Tennessee
  - Information obtained or divulged or the fact of an attempted informal adjustment will not be used as evidence in any court hearing. Tenn. R. Juv. P. 14.
  - BUT: in a delinquent or unruly case, no statement made by a child to the youth services officer or designated intake officer during the preliminary inquiry and evaluation process, or pursuant to informal adjustment under Rule 14, shall be admissible against the child prior to the dispositional hearing. Tenn. R. Juv. P. 28.<sup>1</sup>

#### Prohibited as Evidence at Fact-Finding Only

- District of Columbia
  - Statements made by the respondent to the intake unit during an intake interview shall not be admissible for any purpose at a subsequent fact-finding hearing or

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<sup>1</sup> Given that Rule 14 states that information will not be used in ANY court hearing, this seems to conflict with Rule 28, which states that statements made during informal adjustment will not be used prior to disposition (thereby implying that they may be used at disposition.)

criminal trial based on the allegations set forth in the juvenile complaint. D.C. Superior Ct. R. Juv. P. 102.

- Hawaii
  - If child denies the petition, all information pertaining to the allegations contained in the petition obtained during the intake interviews/informal adjustment are inadmissible in adjudication, but can be considered at disposition. Haw. Fam. Ct. R. 123; 124.
- Iowa
  - The following statements shall not be admitted:
    - A. Pre-trial post-petition statements or other evidence derived directly or indirectly from such statements which a child makes to a juvenile intake officer without the presence of counsel unless the child and the child's attorney consent to their admission.
    - B. Statements which the child makes to a juvenile probation officer or other person conducting a predisposition investigation during such an investigation. Iowa Code § 232.47.
- Maine
  - Statements of a juvenile or of a juvenile's parents, guardian or legal custodian made to a juvenile community corrections officer during the course of a preliminary investigation or made to a community resolution team are not admissible in evidence at an adjudicatory hearing against that juvenile if a petition based on the same facts is later filed. Me. Rev. Stat. tit. 15, § 3204.
- Maryland
  - A statement made by a participant while counsel and advice are being given, offered, or sought, in the discussions or conferences incident to an informal adjustment or referral may not be admitted in evidence in any adjudicatory hearing or in a criminal proceeding against the participant prior to conviction. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-12(a).
  - Any information secured or statement made by a participant during [intake] or a [basic study by Dept. of Juvenile Services] may not be admitted in evidence in any adjudicatory hearing except on the issue of respondent's competence to participate in the proceedings and have responsibility for his conduct where a petition alleging delinquency has been filed, or in a criminal proceeding prior to conviction. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-12(b).
- Rhode Island
  - Information obtained by intake department during the informal adjustment process is not admissible at the adjudicatory hearing. R.I. R. Juv. P. 4.
- Utah
  - Any information disclosed in statements made during informal adjustment that could tend to incriminate the minor cannot be used against the minor in court at adjudication, but may be used at disposition. Utah R. Juv. P. 15.

Prohibited for Use to Determine Guilt, but Admissible for Other Purposes

- California
  - Statements made by juvenile in temporary custody to a probation officer [“Section 628 interview”] are not admissible as substantive evidence in any subsequent proceeding to determine criminal guilt, whether juvenile or adult, but are admissible for detention, amenability to treatment and for impeachment when defendant testifies. *In re Wayne H.*, 596 P.2d 1, 5 (Cal. 1979); *People v. Humiston*, 20 Cal. App. 4th 460 (1993).

Statements only Inadmissible as Evidence-in-Chief at Criminal Trial after Transfer

- Iowa
  - Statements made by the child during intake are not admissible as evidence in chief against the child in subsequent criminal proceedings (after waiver) over the child’s objection. Iowa Code § 232.45(11)(b).

Statements Cannot be Furnished to Prosecution

- South Carolina
  - Statements of the juvenile contained in intake files must not be furnished to prosecutor, and the prosecutor’s office must not be privy to these statements in connection with its intake review. S.C. Code Ann. § 63-19-1010(A).

Status Offenders Only – Information Received Prior to Filing Petition is Confidential

- Kentucky
  - Information received prior to filing of petition remains confidential. Ky. Rev. Stat. Ann. § 630.060(1).

**Limitations on the Use in Later Proceedings  
of Statements Made During the Course of Assessment for Transfer**

Altogether Prohibits Compelling Psychiatric Assessments for Determining Amenability to Transfer

- Alaska
  - (But case does not dictate limits of statements where juvenile voluntarily submits to evaluation). *R.H. v. State*, 777 P.2d 204 (Ct. App. Alaska 1989).
- Colorado
  - *People in Interest of A.D.G.*, 895 P.2d 1067, 1073 (Colo. App. 1994).

Prohibits Use of Compelled Statements Made in a Transfer Assessment at Any Future Adjudicatory Hearing or Criminal Trial

- Louisiana
  - Any child subject to a motion to transfer may be ordered to take or may request an exam by a physician, optometrist, audiologist, psychologist, or psychiatrist. Unless the child has sought the examination or otherwise waives his privilege against self-incrimination, neither testimony about the report nor any of its contents is admissible in an adjudication hearing or later criminal trial, if any, which would violate the child's privilege against self-incrimination. La. Child. Code Ann. art. 860(A), (D).
- Minnesota
  - Any matters disclosed by the child to the examiner during the course of social, psychiatric, or psychological studies about a juvenile in a certification hearing may not be used as evidence or the source of evidence against the child in any subsequent trial. Minn. St. Juv. Del. R. 18.04(5).

**Limits on the Use in Later Proceedings of Statements Made During *Transfer Hearings* (Adult or Juvenile)**

Absolute Prohibition at All Stages

- California
  - The California Constitution prohibits testimony a minor gives at a fitness hearing from being used against him at a subsequent trial of the offense. *Ramona R. v. Superior Court*, 693 P.2d 789, 795 (Cal. 1985).
- Mississippi
  - Testimony at the transfer hearing is not admissible in any other proceeding. Miss. Code Ann. § 43-21-157(7).
- Tennessee
  - Statements made by the juvenile at a transfer hearing are not admissible, where child objects, in criminal proceedings. Tenn. Code Ann. § 37-1-134(f)(1).
- Wyoming
  - Statements made by juvenile at transfer hearing are not admissible, where child objects, in criminal proceedings after transfer. Wyo. Stat. Ann. § 14-6-237(e).

Absolute Prohibition at Juvenile or Criminal Fact-Finding

- Maryland
  - Statements made at waiver hearings cannot be used in adjudication or criminal trial unless a person is charged with perjury and the statement is relevant to that charge. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-12(c-d)

- New Jersey
  - No testimony of a juvenile hearing (regarding transfer) shall be admissible to determine delinquency or guilt. N.J. Stat. Ann. § 2A:4A-29.

#### Admissible in Criminal Proceedings Only as Impeachment

- Georgia
  - Statements made by a child at a transfer hearing are only admissible against an objecting child as impeachment or rebuttal evidence in criminal proceedings. Ga. Code Ann. § 15-11-563.
- Iowa
  - Statements made by the child during intake or at a waiver hearing are not admissible as evidence in chief against the child in subsequent criminal proceedings over the child's objection. Iowa Code § 232.45(11)(b).
- Louisiana
  - Neither the record of the transfer hearing nor the reasons for the transfer shall be admissible in evidence in any subsequent criminal proceedings, except for impeachment of a witness. La. Child. Code Ann. art. 862(C)(2).
- North Dakota
  - Statements made by the child at the transfer hearing are not admissible against an objecting child in the criminal proceedings following the transfer except for impeachment. N.D. Cent. Code § 27-20-34(6).
- Virginia
  - Statements made by the child at the transfer hearing are not admissible against an objecting child in the criminal proceedings following the transfer except for impeachment. Va. Code Ann. § 16.1-269.2(A).

### **Limits on the Use of Statements Made During the Course of Competency Evaluations**

#### Absolute Prohibition on Use of Competency Evaluation Statements Against Child

- Connecticut
  - Any information obtained during a court-ordered assessment for competency shall be used only for planning and treatment purposes, and is not subject to subpoena or court process. Conn. Gen. Stat. § 52-146f(4).
- Florida
  - Information learned in court-ordered competency evaluations may only be used for the limited purpose of competency to stand trial. Fla. R. Juv. P. 8.095(d)(5).
- Kansas
  - No statement made by the juvenile in the course of a competency evaluation shall be admitted in evidence against the juvenile in any hearing. Kan. Stat. Ann. § 38-2348(b)(2).

- Louisiana
  - The Competency report shall not include any statement of the child relating to the alleged offense, and no such statement may be used against the child in court proceedings on the offense. La. Child. Code Ann. art. 835.
  - Testimony from a restoration service provider and reports provided to the court regarding restoration services shall not include any statement of the child relating to the alleged offense, and no such statement may be used against the child in subsequent court proceedings. La. Child. Code Ann. art. 837.2.
  - Statements made at special competency evaluations performed during informal adjustment agreement period cannot be used in any future court proceedings, adjudication hearing, or later criminal trial. La. Child. Code Ann. art. 841(D).
- Maryland
  - Any statement made or information elicited may not be admitted into evidence in any proceeding except the competency proceeding, *unless counsel for the child introduces the report* of the qualified expert, or any part of it, in any hearing other than a competency hearing. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-17.10(b).
- Minnesota
  - Any statement made by child in competency examination for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent. Minn. St. Juv. Del. R. 20.01(9).
- New York
  - In the criminal context, applied to juveniles through case law, when a defendant is subjected to examination pursuant to an order issued by a criminal court in accordance with this article, any statement made by him for the purpose of the examination or treatment shall be inadmissible in evidence against him in any criminal action on any issue other than that of his mental condition, but such statement is admissible upon that issue whether or not it would otherwise be deemed a privileged communication. N.Y. Crim. Proc. § 730.20(6), *In re Jeffrey C.*, 81 Misc.2d 651 (Fam. Ct. N.Y. 1975).
- Utah
  - Any statement made by the minor in the course of any competency evaluation, and fruits of the statement may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence. The evidence may be admitted if relevant to determine minor's competency. Utah Code Ann. § 78A-6-1302(10).
- Virginia
  - [Caveat: may not apply to pre-trial considerations, *e.g.*, detention.] No statement or disclosure by the juvenile concerning the alleged offense made during a competency evaluation or restoration services may be used against the juvenile at the adjudication or disposition hearings as evidence or as a basis for such evidence. Va. Code Ann. § 16.1-360.

### Prohibition on Use of Statements at Fact Finding Only

- Colorado
  - Evidence obtained during a competency evaluation or during treatment related to the juvenile's competency is not admissible at adjudication (where there is no guilty plea). Colo. Rev. Stat. § 19-2-1305(3).
- Delaware
  - Statements made by the child as part of the competency evaluation may not later be admitted as evidence at trial. Del. Code Ann. § 1007A(b)(4)(c).
- Maine
  - Statements made by the juvenile in the course of a competency examination may not be admitted as evidence in the adjudicatory stage for the purpose of proving any juvenile crime alleged. Me. Rev. Stat. tit. 15, § 3318-A(9).
- Michigan
  - The constitutional protections against self-incrimination apply to all competency evaluations. Any evidence or statement obtained during a competency evaluation is not admissible in any proceeding to determine the juvenile's responsibility. Mich. Comp. Laws § 330.2070.
- Missouri
  - No statement made by the accused or other person in the course of any competency examination or treatment and no information received by any examiner or other person in the course of a competency evaluation, shall be admitted in evidence against the accused on the issue of guilt. Mo. Rev. Stat. § 552.020(14). [Criminal statute, but Supreme Court Rule 117.01 cross-references to it.]
- South Dakota
  - Statements made by the juvenile in the course of a competency evaluation may not be admitted as evidence at adjudication to prove guilt. S.D. Codified Laws § 26-7A-32.9.
- Vermont
  - No statement made in the course of an examination by a child examined, whether or not the child has consented to, or obtained the examination, shall be admitted as evidence in the delinquency proceedings for the purpose of proving the delinquency alleged or for the purpose of impeaching the testimony of the child examined. Vt. R. Fam. P. 1(i)(4).

### Prohibition on Use of Competency Evaluation Statements Except to Counter a Defense of Insanity

- Alabama
  - State may not use evidence obtained by a compulsory mental examination [for purposes of determining competency] of the defendant in a criminal proceeding unless the defendant offers evidence in support of an affirmative defense of insanity. Ala. R. Juv. P. 1(A) (rules of criminal procedure for adults apply to juveniles to the extent they are not inconsistent with the rules of juvenile procedure); Ala. R. Crim. P. 11.8.

- Arizona
  - Any statement made during a competence examination or any evidence resulting from such statement, is not admissible at adjudication unless the juvenile presents evidence to rebut the presumption of sanity. Ariz. Rev. Stat. § 8-291.06(B).

Prohibition Except as to Competency, Ability to Form Specific Intent of Crime Charged, and Impeachment

- Idaho
  - Statements made by juveniles subject to a competency examination or restoration treatment are not admissible in any delinquency or criminal proceeding against them except as to the issue of their ability to assist counsel at trial or to form any specific intent which is an element of the crime charged, and statements of a juvenile to the examiner, evaluation committee or restoration provider may be received for impeachment. Idaho Code Ann. § 20-519D.

Prohibition on Use Except in Transfer Hearing

- Ohio
  - The person preparing the social history or making mental/physical examination shall not testify about the history or examination or information received in its preparation, except as may be required in a transfer hearing. Ohio Juv. R. 32(B).

**Limits on the Use of Statements Made During  
Court-Ordered Mental Health Evaluations**

No Predispositional Screenings without Juvenile's Consent

- Montana
  - Prior to disposition, the youth court may not force a juvenile to undergo a medical or psychological evaluation if the juvenile does not waive his or her constitutional rights. *Matter of D.M.B.*, 103 P.3d 514 (Mont. 2004).

Absolute Prohibition

- New Jersey
  - Statements made by a juvenile in the course of a suicide or mental health screening, conducted with or without the juvenile's consent, or reports or records produced pursuant to such suicide or mental health screenings shall not be disclosed or used, except by an attorney representing the juvenile and with the juvenile's consent. N.J. Stat. Ann. § 2A:4A-60.2.

Inadmissible at Adjudication Unless Juvenile Places Mental Health at Issue

- Colorado
  - Evidence or treatment obtained as a result of a court-ordered mental health screening or assessment shall not be admissible on the issues of not guilty unless the juvenile places his or her mental health at issue. If the juvenile places his or her mental health at issue, then either party may introduce evidence obtained as a result of a mental health screening or assessment. Colo. Rev. Stat. § 19-2-710.

Used for Planning & Treatment Only

- Connecticut
  - Any information obtained during a court-ordered mental health screening shall be used only for planning and treatment purposes, and is not subject to subpoena or court process. Conn. Gen. Stat. § 52-146f(4).

Admissible for Rebuttal or Impeachment Only

- Georgia
  - Statements made by a child during a behavioral health evaluation shall only be admissible into evidence as provided herein: Voluntary statements made in the course of intake screening of a child alleged to be or adjudicated as a delinquent child or in the course of his or her treatment, any evaluation, or any other related services shall be inadmissible in any adjudication hearing in which such child is the accused and shall not be considered by the court except such statement shall be admissible as rebuttal or impeachment evidence. Ga. Code Ann. §§ 15-11-477; 15-11-479.

Inadmissible in Adjudicatory Proceeding (Admissible at Disposition)

- Illinois
  - A statement, admission, confession, or incriminating information made by or obtained from a minor as part of any behavioral health screening, assessment, evaluation, or treatment, whether or not court-ordered, shall not be admissible as evidence against the minor on the issue of guilt only in the instant juvenile court proceeding. 705 Ill. Comp. Stat. 405/5-401.5(h).
- Maryland
  - The report of a court-ordered study by psychiatrist, etc. is admissible as evidence at a waiver hearing and at a disposition hearing, but not at an adjudicatory hearing. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-17.
- Pennsylvania
  - No statements, admissions or confessions made by or incriminating information obtained from a child in the course of a screening or assessment authorized in the juvenile code, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act or is guilty in a criminal proceeding. 42 Pa. Cons. Stat. Ann. § 6338(c).

- Statements made at screenings and assessments are allowed in at disposition. 42 Pa. Cons. Stat. Ann. § 6341(d).
- Texas
  - Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument or the initial risk and needs assessment instruments under this section is not admissible against the child at the adjudication hearing. Tex. Hum. Res. Code Ann. § 221.003(c).
- Vermont
  - Where the court orders a juvenile to submit to a reasonable physical or medical inspection of his body or, if notice is given by the defendant that sanity is in issue, and the court orders the juvenile to submit to a reasonable mental examination by a psychiatrist or other expert, no communications made in the course of such examination shall be used, directly or indirectly, to incriminate the person being examined. Vt. R. Fam. P. 1(h).

#### Inadmissible at Adjudication Except in Cases of Homicide or where Child May Intend to Commit Crime

- Indiana
  - A statement communicated to a mental health evaluator in the evaluator's official capacity may not be admitted as evidence against the child on the issue of whether the child committed a delinquent act or a crime, except in cases of homicide or where the statement reveals that the child may intend to commit a crime. Statements are admissible at probation revocation, disposition modification, and other non-delinquency adjudicatory proceedings. Ind. Code Ann. §§ 31-32-2-2.5 and 31-37-8-4.5. Juvenile Mental Health Statute also provides derivative use immunity—*i.e.*, that prosecutors cannot use statements to develop other evidence. *Indiana v. I.T.*, No. 20S03-1309-JV-583 (Ind. March 12, 2014).

#### Prohibition on Use Except in Transfer Hearing

- Ohio
  - The person preparing the social history or making the examination shall not testify about the history or examination or information received in its preparation in any juvenile traffic offender, delinquency, or unruly child adjudicatory hearing, *except as may be required in a transfer hearing*. Ohio Juv. R. 32(B).

#### Inadmissible Except as to Future Misconduct

- Wyoming
  - Juvenile's admission or incriminating statements made to a professional in the course of court-ordered treatment shall not, without the juvenile's consent, be admitted into evidence in any criminal or juvenile delinquency case brought against the juvenile, except for statements regarding future misconduct. Wyo. R. P. Juv. Ct. 9.