Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System

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no person shall be compelled in any criminal case to be a witness against himself...
U.S. CONSTITUTION, Amendment V.

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Juvenile Law Center is a non-profit, public-interest law firm that advances the rights and well-being of children in jeopardy. JLC ensures that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become happy, healthy, productive adults. Founded in 1975, JLC is one of the oldest public interest law firms for children in the United States.

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Executive Summary

In the last decade states and localities have launched various initiatives to identify the large percentage of youth in the juvenile justice system who have mental health disorders. Jurisdictions are experimenting with different models to achieve at least two ends: first, identify youth earlier in the juvenile court process who may require assessment and services and, second, refer the youth with needs into appropriate treatment as quickly as possible. Protocols for many projects around the country call for the screening and assessment of youth even before they have been formally adjudicated delinquent by a court.

While the potential benefit to court-involved youth of earlier and comprehensive screening, assessment and treatment is discussed elsewhere, the potential risks to such youth have not been as widely explored. There is the danger, for example, of over- and mis-diagnosis of youth if screens and assessments are administered or interpreted by improperly trained personnel. Screening and assessment can cause a "net-widening effect" whereby youth exhibiting symptoms, or who have a diagnosis, enter and are kept in justice system longer because the system can more quickly obtain behavioral services for them. Another risk is that juvenile court actors use results from instruments to make critical decisions about the youth with instruments that are not designed for such a purpose. Many initiatives call for information-sharing across agencies and, consequently, sensitive mental health and substance abuse assessment and treatment information will find its way into a youth's court or probation files; those files, in turn, generally are not subject to the same legal strictures against re-disclosure as records held by, for example, a mental health care provider or drug and alcohol treatment program.

Screening, assessment and treatment initiatives also pose a significant challenge to the defense attorneys charged with protecting the due process rights of youth as trial defendants. As screening, assessment and treatment for behavioral health problems is inserted at different stages of the juvenile court process, the potential arises for youth to make statements or provide information that could be used to adjudicate them delinquent or convict them in adult criminal court and to impose more severe and restrictive dispositions and sentences. Youth charged with a delinquent act have a right against self-incrimination under both federal and state laws. Many screening and assessment instruments designed for use with youth can elicit self-incriminating information by asking questions of youth about a variety of illegal activities including drug use, assaultive behaviors and weapons possession. Similarly, interviews conducted as part of a clinical assessment to follow up on a "positive" screen may elicit self-incriminating information from youth, as can treatment interventions such as individual and group talk therapy. Without appropriate legal safeguards, this information can be used against the youth in court to find them guilty of an offense or enhance their punishment.

For this reason, Juvenile Law Center undertook a systematic review of current law on this issue. Specifically, we sought to determine to what extent protections already exist on the federal and state level to prevent information elicited from youth during these processes from later being used against them in a delinquency or criminal proceeding. We reviewed statutes, court rules and case law in each state and the District of Columbia in an attempt to find safeguards against self-incrimination when screening, assessment or treatment for behavioral health disorders is undertaken at different point in the juvenile court process, from intake to disposition. Our conclusion from this exhaustive review is that the vast majority of states currently do not have comprehensive protections that prevent statements made by, and information obtained from, youth during all these processes from being used against the youth at the guilt and punishment phases of delinquency cases and criminal trials. When information is elicited from court-involved youth as part of a screening and assessment project within the juvenile justice system, that information is often not protected by the same federal and state laws that govern the confidentiality of information gathered in purely clinical settings.

Legislators, policymakers and juvenile justice stakeholders must take steps to ensure that youths' rights against self-incrimination are not endangered in these processes. The authors recommend that all states should enact statutes or court rules providing that self-incriminating statements or information gathered from youth who participate in behavioral screening, assessment or treatment as part of their juvenile court case cannot be used against the youth in any delinquency or criminal case. Toward that end, we highlight in this monograph those statutes and court rules that policymakers can use as models to enact similar protections in their own states. Juvenile Law Center also developed model statutory language as follows:

> No statements, admissions or confessions made by, or incriminating information obtained from, a child in the course of *any screening* that is undertaken in conjunction with proceedings under this chapter, including but not limited to that which is court-ordered, shall be admitted into evidence in any civil or criminal proceeding. Moreover, no statements, admissions or confessions made by, or incriminating information obtained from, a child in the course of *any assessment or evaluation, or any treatment* provided by or at the direction of a clinician or health care professional, that is undertaken in conjunction with proceedings under this chapter, including but not limited to that which is court-ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act in any juvenile court proceeding, or on the issue of guilt in any criminal proceeding.

Juvenile Law Center offers technical assistance to states and localities that wish to undertake an interagency effort to enact these safeguards. If you are interested in such assistance, please contact us.

Terms Used in this Monograph

The term **mental health disorder** is used generally to describe the various disorders described in the DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV) (4th ed. 1994, American Psychiatric Association). Similarly, **substance abuse disorder** refers to the substance-related disorders listed in the DSM-IV. **Behavioral health disorder** is a catch-all term that refers to both mental health and substance abuse disorders.

The term **screening** is used to refer to a relatively brief process to identify youth who potentially may have mental health and/or substance abuse needs, and typically involves administration of a formal **screening instrument**. The purpose of screening is to triage and identify youth who may warrant immediate attention or intervention (i.e., suicide watch for a youth with suicidal ideation) or a further, more comprehensive clinical evaluation. An **assessment** or **evaluation** differs from screening in that it is a more comprehensive, individualized examination conducted by a clinician that usually involves a more lengthy and labor intensive process (i.e., multiple interviews and record reviews), and can include administration of one or more **assessment instruments**. The purpose of assessment or evaluation varies from diagnosing the type and extent of an individual's behavioral health disorders and needs, to making specific treatment recommendations, to assessing a youth's legal competencies. Some forensic assessment focuses on issues such as the competence of the juvenile to stand trial or to waive constitutional rights.

Finally, **treatment** refers to any type of therapeutic intervention designed to address the disorders and needs identified in a screen or assessment/evaluation including, but not limited to individual therapy, group therapy, the administration of psychotropic medication, and any testing undertaken in conjunction with the treatment process.

Introduction

Introduction

Research studies show what many juvenile professionals know too well: there is a high prevalence of youth with mental health and substance abuse disorders in the juvenile justice system. As a result, in the last decade states and localities have launched various initiatives to better serve this population. Jurisdictions are experimenting with different models to achieve at least two ends: first, identify youth earlier in the juvenile court process who may require a behavioral health assessment and services and, second, refer the youth with needs into appropriate treatment as quickly as possible. Protocols for some projects call for the screening and assessment of youth even before they have been formally adjudicated delinquent by a court. Additionally, the results of major research studies, such as those conducted by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, prompt judges and defense attorneys to request forensic evaluations to determine, for example, if youth are competent to stand trial or waive certain constitutional rights. To aid these efforts, psychiatrists and psychologists have been developing and fine-tuning screening and assessment instruments specifically for youth who become involved in the juvenile justice system.

Court-involved youth could potentially benefit from earlier and more comprehensive screening, assessment, and treatment efforts in a number of ways. First, screening and assessment protocols can be used to identify youth with mental health and substance abuse treatment needs and divert them out of the juvenile court process and into appropriate services. Second, such tools can help pinpoint youth in pretrial detention facilities with behavioral health disorders who will need specialized monitoring or treatment to prevent them from de-compensating and keep them and other youth safe while they await trial. Third, for an adjudicated youth, the court can use the results of a behavioral health evaluation to fashion a disposition that will address the youth's needs, including diverting them from residential placements and into community-based treatment programs. Fourth, by getting youth into the right type of treatment the first time around, the system can help them avoid "failures to adjust" (FTAs) at multiple placements and prevent youth from sinking deeper into the juvenile justice system. Identifying and addressing youths' behavioral health needs is also consistent with the mission of Balanced and Restorative Justice that is the hallmark of some states' juvenile justice systems. For example, an assessment may inform the court about a youth's

capacities to take responsibility for his/her actions and repair the harm they have caused, as well as how best to build the competencies and skills of that particular youth. Ultimately, the focus on identifying youth's behavioral health needs and providing them with individually-tailored services is consistent with the juvenile court's fundamental missions of rehabilitation and treatment.

On the flip side, comprehensive screening, assessment and treatment protocols also pose risks to youth in the juvenile justice system. There is the danger of over- or mis-diagnosis of youth if screens and assessments are administered and/or interpreted by improperly trained personnel. Screening and assessment can cause a "net-widening effect" whereby youth with a diagnosis enter or are kept in the justice system longer because the system can more quickly obtain behavioral health services for them. Another risk is that juvenile court actors use the results from screening and assessment instruments to make critical decisions about the youth with instruments that are not designed for such a purpose. An example of this pitfall is deciding a youth's placement on the basis of the results of a simple screening instrument. Many initiatives also call for information-sharing across agencies and, consequently, sensitive mental health and substance abuse screening, assessment and treatment information may find its way into a youth's court or probation files; those files, in turn, generally are not subject to the same legal strictures against re-disclosure as records held by, for example, a mental health care provider or drug & alcohol treatment program. A forensic evaluation may be ordered by the court for a particular purpose, placed in a file, and then later used by another party for a purpose different than that for which the evaluation was intended.

The risk that is the focus of this monograph is of potential self-incrimination. As screening, assessment and treatment for various behavioral health needs is inserted at different stages of the juvenile court process, the potential arises for youth to make statements or provide information that could be used to adjudicate them delinquent or convict them in adult criminal court. Youth charged with a delinquent act have a right against self-incrimination under both federal and state laws. Many screening and assessment instruments designed for use with juvenile justice youth can elicit potentially self-incriminating information by asking questions of youth about a variety of illegal activities including drug use, assaultive behaviors and weapons possession. Similarly, clinical interviews conducted as part of a forensic evaluation can elicit self-incriminating information from youth, as can different services to treat behavioral health disorders such as individual and group psychotherapy. Professionals evaluating and/or treating youth in the juvenile justice system may focus on trying to get the youth to admit to misbehavior – including conduct that was not the basis of the delinquency adjudication – as they believe that such admissions are an important part of the rehabilitative process.

Because Juvenile Law Center is concerned with advancing the rights and well-being of court-involved youth, we undertook a systematic review of current law on this issue. Specifically, we sought to determine the extent to which

protections exist on the federal and state level to prevent information elicited from youth during these processes from later being used against them in a delinquency or criminal proceeding. We reviewed statutes, court rules and case law in each state and the District of Columbia to find safeguards against self-incrimination when screening, assessment and/or treatment for behavioral health disorders is undertaken at different points in the juvenile court process, from intake to disposition.

Our conclusion from this exhaustive review is that most states do not have comprehensive protections that prevent statements made by, and information obtained from, youth during these processes from being used against the youth at the guilt and punishment stages in delinquency cases and criminal trials. When information is elicited from court-involved youth as part of a behavioral health screening, assessment, or treatment program within the juvenile justice system, that information is often not protected by the same federal and state laws that govern the confidentiality of information gathered in purely clinical settings. Juvenile Law Center generally favors efforts to identify court-involved youth with behavioral health disorders and direct them into appropriate treatment, particularly when this is done as part of a diversion project. However, legislators, policymakers and juvenile justice stakeholders must take steps to ensure that youths' rights against self-incrimination are not endangered in the process. For that reason, Juvenile Law Center recommends that all states enact statutes or court rules providing that any self-incriminating information including statements gathered from youth who participate in behavioral screening, assessment or treatment as part of their juvenile court case cannot be used against the youth in any delinquency or criminal case to either make a finding of guilt or to enhance punishment.

Juvenile Law Center recommends that all states enact statutes or court rules providing that any self-incriminating information including statements gathered from youth who participate in behavioral screening, assessment or treatment as part of their juvenile court case cannot be used against the youth in any delinquency or criminal case to either make a finding of guilt or to enhance punishment.

To support that recommendation and give guidance to lawmakers, we offer this monograph. Part I provides background on the prevalence of youth with behavioral health disorders in the justice system, highlights strategies that jurisdictions are employing to address the needs of this population, and demonstrates how many of these strategies may implicate youths' rights against self-incrimination. In Part II we describe the federal and state law bases for youths' rights against self-incrimination. Part III then describes in more detail where the potential for self-incrimination arises in the context of screening, evaluation and treatment conducted when youth become involved in the juvenile

justice system. After reviewing federal law protections in Part IV, we present in Part V the results of our research on state law protections against self-incrimination when information is elicited from court-involved youth as part of a behavioral health screening, assessment, or treatment program within the juvenile justice system. (State-by-state profiles that describe those protections are found at Appendix C.) Finally, in Part VI we highlight those statutes and court rules that policymakers can use as models to enact similar protections in their own states.

To use this guide in your state, we first suggest that you look at your state profile in Appendix C to determine in what areas your state currently has protections in either statute, court rule or case law, and where there are currently no protections. Then consult Appendix A, which contains excerpts of the statutes and court rules that we think are the best models to use in drafting language for your own state. We realize that enacting new legislation and/or court rules is often a lengthy process. For that reason, we also include at Appendix B a template that jurisdictions can use to craft an interagency memorandum of understanding (MOU) that sets forth the permitted and prohibited disclosures and uses of information and statements gathered during mental health screening, assessment and treatment. While localities can implement MOUs as a short-term "band-aid" to address these concerns, we still urge stakeholders to work on enacting statewide solutions via statute or court rule, as the latter strategy will avoid confusion and differing practices within a state.

One last note: legislatures often pass new laws and courts enact new rules before revised editions of publications can get to press. For that reason, we ask readers to inform us if information in the state profiles at Appendix C needs to be updated. (Please e-mail us at info@jlc.org and type the phrase "Self-Incrimination" in the subject line.) The state profiles will be posted on our website at www.jlc.org, and updated as we receive new information.

Part I

Youth with Behavioral Health Disorders in the Juvenile Justice System: Prevalence, Implications and What the System is Doing to Respond

Part I

Youth with Behavioral Health Disorders in the Juvenile Justice System: Prevalence, Implications and What the System is Doing to Respond

The exact rate of behavioral health disorders among youth in the juvenile justice system is currently unknown, as there have been few large scale empirical studies conducted. A number of small studies previously showed that the rate of behavioral health disorder is much higher among court-involved youth than youth in the general population. But the numbers varied widely depending on the methodology used, including differing definitions and measures of what constitutes serious mental illness.[1] More recently, some large scale studies suggest that as many as 65%-75% of the youth involved in the juvenile justice system have one or more diagnosable psychiatric disorders. For example, researchers administered the Diagnostic Interview Schedule for Children (DISC) version 2.3 to a random sample of 1,829 youth ages 10-18 years who were arrested and detained in Cook County, Illinois from November 1995 through June 1998. Of the total, 1,172 were males, and 657 were females. Researchers found that nearly two-thirds of the males and three quarters of the females met the diagnostic criteria for one or more psychiatric disorders. Excluding conduct disorder, nearly 60% of the males and more than two-thirds of the females met diagnostic criteria for one or more psychiatric disorders. About one-half of both males and females had a substance abuse disorder, and more than 20% of females met criteria for a major depressive disorder. The researchers also found higher rates of disorder among the females, non-Hispanic whites, and older adolescents who were assessed.[2]

Another group of researchers studied 292 recently-admitted males in secure placement with the New Jersey and Illinois juvenile justice authorities in 1999-2000. They used the voice version of the Diagnostic Interview Schedule for Children – IV (Voice DISC-IV), a self-administered, computerized diagnostic instrument that poses questions to the youth, who wear headphones during the assessment process. Researchers found that approximately 50% of the youth met the criteria for substance use disorders, 9.6% for mood disorders and 19.5% for

anxiety disorders. About 10% of the youth reported thinking about death or suicide in the past month, and 3.1% of the sample reported a suicide attempt within the past month.[3] The Voice DISC-IV was used in another study in Texas to compare the rates of psychiatric disorders of girls as compared to boys in contact with the juvenile justice system. Specifically, 200 girls and 791 boys ages 10-17 took the Voice DISC-IV at probation intake in Texas's eight most populous counties during a six-month period in 2002. The girls were found to have a significantly higher rate of anxiety disorders as compared to boys (29.0% versus 17.4%), as well as affective disorders (13.0% versus 5.9%), most notably major depressive disorder (11.4% versus 5.1%).[4]

The high prevalence of court-involved youth who suffer from mental health and substance abuse disorders has serious implications for the juvenile justice system.

Most recently, the National Center for Mental Health and Juvenile Justice (NCMHJJ), in conjunction with the Council of Juvenile Correctional Administrators, reported on the results of another large scale study. According to NCMHJJ, their study differs from past studies in that they collected data from youth in three states that were previously understudied and, within each state, from three different juvenile justice settings. (Past studies were more limited in scope in terms of geography, representation of females and minorities, and because they typically drew their sample from one setting within the juvenile justice system as opposed to multiple settings.) Specifically, more than 1,400 youth from 29 different community-based programs, detention centers, and residential facilities in Louisiana, Texas and Washington self-administered the Voice DISC-IV. (Girls, Hispanic and Native American youth were over-sampled.) The NCMHJJ study found that about 70% of the youth met the criteria for at least one mental health disorder. When analyzed separately that rate rose to 80% for the girls, who showed higher rates of internalizing disorders as compared to boys. Disruptive disorders were the most common followed by substance use, anxiety and mood disorders. But even after excluding conduct disorders, 66.3% of the youth still met the criteria for a mental health disorder. The vast majority of youth met criteria for multiple disorders, with more than 60% of the sample meeting diagnostic criteria for three or more disorders. Similarly 60.8% of the youth with a mental health diagnosis had a co-occurring substance use disorder.[5]

The high prevalence of court-involved youth who suffer from mental health and substance abuse disorders has serious implications for the juvenile justice system, as documented in a number of reports issued in the last six years.[6] While a full description of these reports is beyond the scope of this monograph, we highlight some of their key findings and recommendations here.

The high rate of youth with behavioral health disorders in juvenile and detention facilities reflects the failure of multiple systems to identify and effectively

treat these children. Consequently, for many youths the juvenile justice system becomes the treatment system of last resort. In 1999-2000, the United States Surgeon General's Office reported that while approximately 20% of youth in the general population have a diagnosable mental health disorder, and 10% have a disorder that causes functional impairment, as few as 10% of the youth suffering from mental illness receive any treatment.[7] "There is broad evidence that the nation lacks a unified infrastructure to help these children and many are falling through the cracks. Too often, children who are not identified as having mental health problems and who do not receive services end up in jail. Children and families are suffering because of missed opportunities for prevention and early identification, fragmented treatment services, and low priorities for resources."[8]

An investigation by the United States House of Representatives in 2004 confirmed that lack of access to community mental health resources drives youth into juvenile detention facilities. More than 500 juvenile detention center administrators in 49 states responded to a House survey. Two-thirds of the facilities in 47 states reported holding youth who were awaiting mental health treatment and did not need to be in detention. In 33 states, facilities reported holding youth with mental illness *who did not have any charges pending against them.*[9] Similarly, a 2003 report by the U.S. General Accounting Office documented the tragic phenomenon of families having to relinquish custody of their children to the child welfare or juvenile justice systems so they could receive needed mental health services. The GAO found that several factors influenced parents' decisions to place their children including the lack of health insurance coverage and a scarcity of certain services in their communities.[10] Indeed, many youth with mental health disorders who become involved in the juvenile justice system are alleged to have committed relatively minor offenses and end up in the system because of a lack of community based treatment options.[11] Moreover, youth who do not have pre-existing, chronic mental health disorders may still experience acute symptoms of distress – such as depression, anxiety and even suicidal ideation – upon arrest and detention. These symptoms, while not necessarily an indication that the youth has an undiagnosed disorder, must still be appropriately addressed while the youth is in custody to ensure their personal safety.

While the juvenile justice system is receiving these troubled youth, it does not have the capacity to deal with this crisis. Two-thirds of the detention centers in the House of Representatives survey reported attempted suicides and youth-on-youth attacks. But one-fourth of the facilities revealed that they had either poor or no mental health treatment services for youth, and one-half said that line staff were ill-equipped to deal with youth who had mental health disorders.[12] Recent U.S. Department of Justice investigations into conditions in juvenile detention and correctional facilities around the country found that many facilities failed to address the mental health needs of youth in their care, and that there was a lack of screening, assessment and treatment services consistently across facilities.[13]

Left untreated, court-involved youth with behavioral health disorders sink deeper into the juvenile justice system as they fail terms of probation, skip school,

and fail to adjust to the requirements of placement facilities. Un-identified, un-treated youth in such facilities pose a safety risk to both themselves and other youth. To address this crisis, a number of organizations have issued recommendations and guidelines regarding the identification and treatment of youth in the juvenile justice system. For example, some groups – including NCMHJJ and the Coalition for Juvenile Justice – emphasize the *early* screening, assessment and treatment of youth who come into contact with the system.[14] Many of these same organizations recommend collaboration across systems and agencies, including blending of dollars to create services as well as sharing information to facilitate an integrated approach to serve this population. NCMHJJ states that "[i]n order to appropriately respond and effectively provide services to youth with mental health needs, the juvenile justice and mental health systems should collaborate in all areas and at all critical intervention points," including "every key stage of juvenile justice processing from initial contact with law enforcement to re-entry."[15] Similarly, an underlying principle of the Criminal Justice/Mental Health Consensus Report by the Council of State Governments is that the mental health and criminal justice systems, and all the stakeholders therein, must collaborate in order to effectively serve the needs of mentally ill offenders.[16]

The crisis has spawned a number of innovative projects around the country, including programs that: (1) try to prevent at-risk youth from entering the juvenile justice system; (2) divert arrested youth out of the system altogether; and/or (3) keep youth in the justice system in the community and in their homes, instead of sending them to institutional placements.[17] It should be noted that many of these innovations are not without considerable controversy as to whether they are of benefit to youth. Juvenile Law Center, for example, shares the concerns of other child advocates that universal screening protocols have a net-widening effect as more and more youth are labeled with disorders; juvenile justice professionals, in turn, feel compelled to treat and resolve these problems prior to releasing the youth from the court's jurisdiction. However, we describe these projects here not to address these controversies but instead to specifically demonstrate how they expose youth to the possibility of self incrimination.

For example, several state agencies, including mental health, substance abuse, social services and juvenile probation, collaborate in the New York State Persons in Need of Supervision (PINS) diversion project. The project's objective is to divert status offenders to community-based programs to prevent their penetration in the juvenile justice system. Recent legislation now requires all New York counties to provide diversion services to youth up to the age of 18 years who are at risk of juvenile justice involvement.[18] The Jefferson County, Alabama Mental Health Diagnostic and Evaluation (D&E) Units operate in schools, the local child welfare agency and the Family Court. The court D&E unit receives referrals from judges and probation intake officers; the latter refer cases in which a petition will be filed and cases that will be diverted without the filing of charges. For both diverted and non-diverted youth, the unit provides initial screens and fuller

assessments, and offers a variety of mental health services including out-patient therapy, crisis intervention and case management.[19] And the Special Needs Diversionary Program (SNDP) operates in a number of counties in Texas. The project, which is a collaboration between the Texas Juvenile Probation Commission and the Texas Council on Offenders with Mental Impairments, pairs specialized juvenile probation officers with licensed mental health professionals to provide intensive community-based case management services to court-involved youth ages 10-18 years. Youth receive a clinical assessment to determine their mental health diagnosis and whether they meet other eligibility criteria. Among the target population are youth who are at risk of placement outside of their homes.[20]

Another model that we have seen emerge in the past five to 10 years in different parts of the country are juvenile mental health and drug treatment courts. NCMHJJ reports that currently 11 juvenile mental health courts operate in the United States. The courts are inter-agency collaborations to identify and provide treatment services to youth and closely monitor their compliance and progress with their treatment plan. Typically, team members include the district attorney, public defender, mental health providers, and probation officers.[21] Similarly, juvenile drug courts are characterized by coordination between the court, law enforcement, treatment providers, schools, and other community agencies to treat and monitor youth. Such specialty courts typically seek "closer integration of the information obtained during the intake and assessment process with subsequent decisions made in the case."[22] The National Council of Juvenile and Family Court Judges supports the use of juvenile drug courts.[23]

Other jurisdictions have created what are known as community or juvenile assessment centers. The basic function of the community assessment model is to provide youth in the juvenile justice system, or those who are at high risk of involvement, with a single point of entry to access various services including behavioral health. Multiple agencies co-locate in this "one-stop shop" to provide immediate, comprehensive assessment of the youth as well as integrated case management supported by a shared information database.[24] Currently there are community/juvenile assessment centers in a number of localities including Kansas, Denver and Jefferson County, Colorado, and various counties in Florida.[25] While there are variations between centers, the Hillsborough County, Florida Juvenile Assessment Center (JAC) well illustrates this approach. Representatives from law enforcement and various human services agencies co-locate at the JAC, which performs preliminary screening and, if indicated, in-depth psychosocial assessments of the youth. The JAC links youth and families with services, makes disposition recommendations to the court and tracks the youth in services. As part of this process the JAC will collect data on, among other things, the

> Universal screening protocols have a net-widening effect as more and more youth are labeled with Disorders.

youth's alcohol and substance use and delinquent activity and manage a common data base that can be accessed by the various agencies involved with the youth.[26]

In addition to the models described above, some jurisdictions have implemented behavioral health screening and assessment projects at key points in the juvenile justice pipeline; these projects are described in more detail in Part III of this text.

While they differ in some respects, the models that are being implemented to address this specialized population share at least two common strategies that have implications for the rights of youth. First, they all emphasize cross-agency collaboration that requires information-sharing about individual youth. Such information-sharing practices must be closely examined to ensure that they do not violate youths' confidentiality rights with respect to their behavioral health records, under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA),[27] and the federal drug and alcohol laws,[28] as well as applicable state confidentiality laws.

A second strategy common to these various initiatives is to screen and assess youth as early as possible when they come into contact with the system, and then get them into treatment. But as is demonstrated in the following part, the processes of screening, assessment, and treatment can elicit information and statements from youth about offending behavior that, in turn, may threaten youths' rights against self-incrimination. For that reason, stakeholders in these initiatives must take steps to ensure that these rights are not violated. Indeed, the federal Office of Juvenile Justice and Delinquency Prevention regards the community assessment model described above as a promising practice, but cautions that they must "ensure due process for juvenile offenders."[29] Similarly, the developers of the juvenile mental health court in Santa Clara County, California, the first one of its kind in the United States, cautions that "to protect the psychotherapist privilege, [partners in the project] must agree that the extent of mental health information to be shared is limited to the diagnosis, medication and treatment plan. In particular, if any content-based information is disclosed, it shall not be used against the juvenile in any delinquency proceeding."[30]

Before exploring other strategies for protecting youth, we first turn to a brief description of the right against self-incrimination guaranteed to youth charged with delinquent and criminal offenses under federal and state laws.

Endnotes

1. *See* Boesky, 2002, at 3-4; Cocozza & Skowyra, 2000, at 3-6; Grisso, 1999, at 146-47.
2. Teplin, Abram, McClellan, Dulcan & Mericle, 2002, at 1133.
3. Wasserman, McReynolds, Lucas, Fisher, and Santos, 2002, at 314, 317.

4. Wasserman, McReynolds, Ko, Katz, & Carpenter, 2005, at 131-133.
5. Shufelt & J. Cocozza, 2006, at 2-5.
6. *See generally*, K. Skowyra and J. Cocozza, 2006; United States House of Representatives, 2004; National Council on Disability, 2003; U.S. General Accounting Office, 2003; United States Department of Health and Human Services, 2000; and Coalition for Juvenile Justice, 2000.
7. Surgeon General's Report, 2000, at. p. 11-12. Surgeon General's Report, 1999, at 123, 180.
8. United States Department of Health and Human Services, 2000; Surgeon General's Report, 2000, at 11-12.
9. United States Department of Health and Human Services, 2000; House of Representatives Report, 2004, at 4-5 and 9-10.
10. General Accounting Office, 2003, at 20.
11. Skowyra & Cocozza, 2006, at 1.
12. United States House of Representatives, 2004.
13. U.S. Department of Justice Report, 2005.
14. National Center for Mental Health and Juvenile Justice. Skowrya & Cocozza, 2006, at 5 and Coalition for Juvenile Justice, 2000, at 69-71. The National Center for Mental Health and Juvenile Justice will soon release BLUEPRINT FOR CHANGE: A COMPREHENSIVE MODEL FOR THE IDENTIFICATION AND TREATMENT OF YOUTH WITH MENTAL HEALTH NEEDS IN CONTACT WITH THE JUVENILE JUSTICE SYSTEM (Skowrya & Cocozza, in press). A "cornerstone" of their model is that "[t]he mental health needs of youth. . . be systematically identified at all critical stages of juvenile justice processing," and that "[a] mental health assessment. . . be administered to any youth whose mental health screen indicates a need for further assessment." Skowrya & Cocozza, 2006, at 5.
15. Skowrya & Cocozza, 2006, at 4-5.
16. Council of State Governments, 2002, *See generally* Chapter V "Improving Collaboration." The Consensus Report is a series of policy statements and recommendations designed for policymakers to better identify and respond to individuals with mental illness who come into contact with, or are at high risk of involvement with, the adult criminal justice system. (But many of the policy statements and recommendations are relevant to the juvenile justice population as well.
17. Skowrya & Cocozza, 2006, at 6; Skowyra & Powell, 2006, generally.
18. Skowrya & Cocozza, in press, at 90.
19. Skowyra & Powell, 2006, at 5.
20. Texas Juvenile Probation Commission, 2003, at 41-43; Skowyra & Powell, 2006, at 4.

21. Cocozza & Shufelt, 2006, generally.
22. Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project, 1999, at 164.
23. Juvenile Drug Court Advisory Committee, 1999, at 211.
24. OJJDP, 1999, generally.
25. OJJDP, 1999, generally; Dembo & Brown, 1994, at 25.
26. Dembo & Brown, 1994, at 26-27, 31-35.
27. Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (1996); *see also* HIPPA implementing regulations at 45 C.F.R. Parts 160 and 164.
28. 42 U.S.C.A. § 290dd-1 through 290dd. *See also* implementing regulations at Title 42 C.F.R. Chapter 2.
29. OJJDP, 1999, generally.
30. Arredondo, Kumli, Soto, Colin, Ornellas, Davilla, Edwards, & Hyman, 2001, at 9.

Part II

The Right Against Self-Incrimination

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The Right Against Self-Incrimination

The United States Constitution guarantees to citizens the right against self-incrimination. The Fifth Amendment provides that "no person…shall be compelled in any criminal case to be a witness against himself…"[1] The Sixth Amendment further protects those individuals charged with crimes, stating that "[i]n all criminal prosecutions, the accused shall enjoy the right. . .to have the Assistance of Counsel for his defence [sic]."[2] Thus, the accused has the right to the advice of an attorney prior to waiving his/her privilege against self-incrimination. The United States Supreme Court extended these rights to youth in the seminal case of *In re Gault*. In *Gault*, the Court held that juveniles accused of criminal offenses must be afforded many of the same constitutional protections available to adult criminal defendants, including due process rights and the guarantees under the Bill of Rights.[3] Therefore, youth charged with offenses hold the same right as adults against self-incrimination as specified in the Fifth and Sixth Amendments of the United States Constitution.

Under the Fifth Amendment, a statement is inadmissible if it was involuntary under the totality of the circumstances.[4] Because the voluntariness of a confession or statement is a question of fact, the court must consider the totality of the circumstances which includes both the characteristics of the accused (such as age and mental capacity) as well as the details of the interrogation.[5] Thus, for example, the fact that a defendant has been detained for a lengthy period of time and deprived of basic needs will call into question voluntariness of his/her statements. Similarly, if the defendant was coerced into giving his or her statement, either by promises or by physical or psychological pressure, the Court is more likely to determine that the statement was made involuntarily. Moreover, the U.S. Supreme Court case law has long recognized that children, because of their unique developmental and situational vulnerabilities, are more easily manipulated by suggestion or coercion as compared to adults. For that reason, the Court has consistently held that extra care must be taken to ensure that statements by youth are not elicited by coercion or suggestion, and that the child has been made fully aware of his or her rights prior to questioning.[6]

A second basis by which a statement also is inadmissible is if an accused was not advised of his or her privilege against self-incrimination or did not make a valid

waiver of his or her rights as described in *Miranda v. Arizona* prior to custodial interrogation.[7] When a person is taken into custody or deprived of his/her freedom in any significant way, and then subject to questioning, procedural safeguards must be employed to protect that privilege against self-incrimination. In *Miranda v. Arizona*, the Court held that before being subjected to a custodial interrogation, the individual must be warned of his or her rights against self-incrimination and his or her right to counsel. Any statement obtained during a custodial interrogation absent these warnings or the individual's valid waiver of these rights would be inadmissible and violative of the individual's right against self-incrimination.[8] Prior to questioning or eliciting any statements from the defendant, s/he must be warned that s/he has the right to remain silent, that anything s/he says can be used against him or her in court, and that s/he has the right to the presence of an attorney and to have an attorney appointed before questioning if s/he cannot afford one. The opportunity to exercise these rights must be afforded to the defendant throughout interrogation. Only after these rights are read to the accused can the individual make a valid waiver. To make a valid waiver, s/he must demonstrate an understanding of the rights read to him or her and then knowingly and voluntarily waive them and agree to answer questions and make statements. Unless and until evidence is introduced that the warnings were given and a voluntary and knowing waiver was executed, the prosecution may not introduce any statements obtained as a result of the custodial interrogation.[9] And many jurisdictions require even more than a simple showing that the child was advised of the *Miranda* warnings and gave a valid waiver. Some states mandate that an "interested adult"— either the child's parent/guardian, legal custodian, or attorney be present during the questioning, or that the minor was at least given the opportunity to consult with one of these adults prior to waiving his or her *Miranda* rights.[10]

The Sixth Amendment's guarantee of the right to counsel also undergirds the right against self-incrimination, as counsel plays a critical role in ensuring that any waiver of the right against self-incrimination is indeed knowing and voluntary. A third basis by which statements are inadmissible is if they are deliberately elicited from the defendant once the Sixth Amendment right to counsel attaches and the accused has not made a valid waiver of his or her right to counsel. It is well settled that the right to counsel attaches at the initiation of the adversarial judicial proceeding,[11] which is usually at arraignment in the adult criminal system and when the petition is filed in the juvenile justice system. The assistance of counsel guarantee is not limited to an attorney's representation at trial. The United States Supreme Court has reasoned that to deprive the accused of counsel during the critical pre-trial period may be more

Youth hold the same rights against self-incrimination as adults under the 5th and 6th Amendments of the United States Constitution.

damaging than denying him or her counsel at the trial itself.[12] For youth, the right to counsel is even more significant. An attorney can explain the charges facing the young person and, more importantly, the consequences of waiving rights against self-incrimination. The Court has recognized that counsel can provide protection against the individual's inexperience and immaturity.[13]

In addition to the protections found in the United States Constitution and established by United States Supreme Court precedent, almost every state constitution has a provision that affords the right against self-incrimination to individuals arrested or charged with offenses.[14] And several states have expressly extended these state constitutional protections to youth in the juvenile justice system through provisions in their state juvenile codes or juvenile court procedural rules.[15] In Part V, we provide a comprehensive overview of state statutory and procedural laws providing youth with protections against self-incrimination at various stages in the adversarial process. However, we must first determine where in the juvenile court process the potential for self-incrimination arises for a youth undergoing behavioral health screening, assessment/evaluation, or treatment, to which we now turn.

Endnotes

1. U.S. Const. amend. V.
2. U.S. Const. amend. VI.
3. *In re Gault*, 387 U.S. 1 (1967). Juveniles are afforded all constitutional protections available to adult criminal defendants with the exception of the right to a jury trial.
4. *See Arizona v. Fulminante*, 499 U.S. 279 (1991); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).
5. The factors the Court considered when determining the voluntariness of the defendant's confession were the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) (internal citations omitted). The Court determined the factual circumstances surrounding the confession, assessed the psychological impact on the accused, and evaluated the legal significance of how the accused reacted. *Id.*, quoting *Culombe v. Connecticut*, 367 U.S. 568 (1961).
6. *See In re Gault*, 387 U.S. 1 (1967). See also *Gallegos v. Colorado*, 370 U.S. 49 (1962); *Haley v. Ohio*, 332 U.S. 596 (1948).
7. *Miranda v. Arizona*, 384 U.S. 436 (1966).
8. *Miranda v. Arizona*, 384 U.S. 436 (1966).
9. *Miranda v. Arizona*, 382 U.S. 436 (1966).

10. *See*, *e.g.*, COLO. REV. STAT. § 19-2-511 (statements by a juvenile resulting from custodial interrogation are inadmissible unless parent/guardian or legal or physical custodian was present at the interrogation and both were advised of the juvenile's rights and both waived the rights in writing; if parent/guardian or custodian was not present, statements may be admissible if attorney was present); 705 ILL. COMP. STAT. 405/5-170 (minor under 13 must be represented by counsel during entire custodial interrogation); IND. CODE § 31-32-5-1 (rights guaranteed to child can be waived by (1) counsel for child if child knowingly and voluntarily joins the waiver; (2) child's parent/guardian [including guardian *ad litem*] or custodian if that person knowingly and voluntarily waives, has no adverse interest, meaningful consultation has occurred between that person and child, and child knowingly and voluntarily joins in waiver; or (3) emancipated child); IOWA CODE § 232.11 (child less than 16 years of age cannot waive right to be represented by counsel in custodial interrogation without the written consent of the child's parent, guardian or custodian; waiver by child 16 years of age and older is only valid if good faith effort made to notify parent/guardian or custodian of child's location, alleged act, and right to visit and confer with child); *In the Matter of B.M.B.*, 955 P.2d 1302, 1312-1313 (Kansas 1998) (juvenile under 14 must be given opportunity to consult with parent/guardian or attorney before waiving rights to an attorney and against self-incrimination; both parent/guardian and juvenile shall be advised of these rights); *Commonwealth v. A Juvenile*, 449 N.E.2d 654, 657 (Mass. 1983) (holding that waiver of Miranda rights by juvenile under 14 is not effective without showing that parent or interested adult was present, understood the warnings, and had opportunity to explain rights to juvenile; for youth 14 years of age and over, for waiver to be valid without consultation, "the circumstances should demonstrate a high degree of intelligence, experience, knowledge or sophistication on the part of the juvenile"); ME. REV. STAT. ANN. tit. 15 § 3203-A(2-A) (when juvenile is arrested, officer may not question juvenile until either: legal custodian is present during questioning; legal custodian gives consent for questioning in his/her absence; or after reasonable effort, officer cannot contact custodian and officer seeks to question juvenile about continuing or imminent criminal activity); MISS. CODE ANN. § 43-21-303(3) (person taking child into custody shall make continuing reasonable efforts to notify and invite parent, guardian, or custodian to be present during questioning), *see also M.A.C. v. Harrison County Family Court*, 566 So.2d 472, 475 (Miss. 1990) (holding that parent has statutory right to be present during interrogation of child); MONT. CODE ANN. § 41-5-331 (youth under 16 years of age may waive rights if youth and youth's parents agree to waiver, or, if youth and parents do not agree, youth made waiver with advice of counsel); *In the Interest of J.F.*, 668 A.2d 426, 430 (N.J. 1995) (holding that police may interrogate a juvenile without a parent/guardian present "only if juvenile has withheld their names and addresses, a good faith effort to locate them is unsuccessful, or they simply refuse to attend the interrogation"); N.Y.

FAM. CT. LAW § 305.2(7) (minor under 16 who is in custody for alleged delinquency offense shall not be questioned unless minor and parent or other person legally responsible for minor are advised of minor's rights); N.C. GEN. STAT. § 7B-2101 (when juvenile is under 14 years of age, no in-custody statement shall be admitted into evidence unless made in presence of juvenile's parent/guardian or custodian, or juvenile's attorney; if attorney is not present, parent may not waive any rights on behalf of juvenile); OKLA. STAT. tit. 10, § 7303-3.1 (no information gained by a custodial interrogation of a child under 16 years of age is admissible unless the interrogation is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the child and, if no attorney is present, only after both child and adult have been fully advised of the rights of the child); TEX. FAM .CODE. ANN. § 51.09 (child can only waive rights if waiver made in writing or recorded by attorney and child); *In re E.T.C.*, 449 A.2d 937, 940 (Vt. 1982) (before juvenile can waive rights, he must be given opportunity to consult with an adult [i.e, parent, legal guardian or attorney] who is completely disassociated from the prosecution and is informed of the juvenile's rights); W. VA. CODE § 49-5-2(k)(1) (statements made by juvenile 14 or 15 years of age while in custody are not admissible unless made in the presence of the juvenile's counsel, or in the presence of and with the consent of the juvenile's parent or custodian after the parent/custodian has been fully advised of juvenile's rights; statements made by youth under age 14 are not admissible unless made in the presence of youth's counsel).

11. See *Maine v. Moulton*, 474 U.S. 159, 160 (1985); *United States v. Henry*, 447 U.S. 264, 270 (1980); *Massiah v. United States*, 377 U.S. 201, 205 (1964).
12. *Maine v. Moulton*, 474 U.S. 159, 159-60 (1985).
13. *Gallegos v. Colorado*, 370 U.S. 49 (1962).
14. *See* State Profiles in Appendix C for citations to state constitutional provisions regarding right against self-incrimination.
15. *See* state profiles in Appendix C for citations to juvenile act provisions regarding right against self-incrimination.

Part III

Where the Potential for Self-Incrimination Arises When Youth Become Involved in the Juvenile Justice System

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There are at least four different points in the juvenile justice system pipeline where youth may undergo behavioral screening, assessment and/or treatment:

- at initial intake with probation or court personnel;
- upon admission to a detention center;
- as part of a court-ordered evaluation either pre- or post-adjudication; and
- when participating in treatment as part of the court's post-adjudication disposition order.

Below we describe a number of projects, without endorsing their use, to show the breadth of circumstances in which youth may be placed in a position of divulging information that could later be used against them during a delinquency or criminal proceeding.

Intake/preliminary interview/preliminary inquiry

Almost every jurisdiction has a mechanism by which youth who are arrested initially meet with an intake officer (such as a juvenile probation officer or other court employee). This process is referred to as "intake," "preliminary interview," or "preliminary inquiry" depending on the state.[1] The intake interview often takes place before a petition/charges have been filed, and therefore before the right to counsel has attached. NCMHJJ advises that "[s]creening and assessment should occur at a youth's earliest point of contact with the system, such as at probation or juvenile court intake, as well as at all key transition points, and should be used to inform decision-making," and that a more comprehensive mental health assessment be administered to those youth whose screens indicate a need for follow up.[2] Similarly, the federal Juvenile Accountability Block Grant calls for early screening and treatment of youth with mental health needs.[3] And the juvenile delinquency guidelines issued by the National Council of Juvenile and Family Court Judges (NCJFCJ) recommend that trained personnel administer screening

tools to every youth entering specific phases of the juvenile justice system, including at intake and detention, and that positive screens be followed up by more in depth clinical assessments which can include administration of a validated assessment tool.[4]

And some states are doing just that. In 2001, the Texas legislature enacted a statute[5] that requires probation officers at intake to administer a mental health screening instrument selected by the Texas Juvenile Probation Commission. Consequently, juvenile probation offices began using the Massachusetts Youth Screening Instrument–Second Version (MAYSI-2) in September of that year.[6] The Commission has adopted a cut-off score that requires probation officers to obtain further, more in-depth assessments for about one-fifth of the youth who are screened.[7] Kansas has what are known as intake and assessment coordinators in all 31 judicial districts in the state. These intake coordinators gather information about youth taken into custody by law enforcement that will be used to make appropriate referrals and shared with other agencies involved with the youth. As part of this process, coordinators administer either the MAYSI-2 or the Problem Oriented Screening Instrument for Teenagers (POSIT).[8] And the Hillsborough County, Florida Juvenile Assessment Center uses the POSIT to screen arrested youth who are brought to the center, to identify potential problems in one or more of the 10 psychosocial functioning areas including substance abuse and aggressive behavior and delinquency. Youth whose POSIT scores indicate the need for further evaluation may be administered more in-depth assessment instruments such as the Personal Experience Inventory (PEI), which measures drug abuse, and the National Youth Survey Delinquency Scale (NYS scale) to gather information on delinquent activity such as crimes against persons and drug sales.[9]

Detention

A portion of youth who are arrested are held in temporary detention facilities while they await trial, wait for a longer-term placement pursuant to a court's post-adjudication disposition order, or when they have "failed to adjust" to other placements. Screening and assessment instruments can be administered to youth in detention facilities as well as those in secure correctional settings.[10] Numerous organizations and reports recommend that all youth entering juvenile detention or correctional facilities be screened for mental health and substance use disorders, suicide risk factors and behaviors, and other emotional or behavioral problems upon admission or very soon thereafter.[11] They further advise that youth who score high on such screening instruments, or who demonstrate suicidal ideation/attempts or symptoms of mental health or substance abuse disorders, be fully evaluated by a mental health clinician.[12] Moreover, accrediting organizations such as the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC) require that facilities conduct some type of intake screening to identify youth with mental health needs who should receive a more comprehensive evaluation by a trained clinician and/or special monitoring while at the facility.[13] NCCHC further requires that facilities refer youth with

positive screens for mental health problems to a qualified mental health professional for further evaluation.[14]

Consequently, states are implementing screening and assessment projects in their detention centers. In 2000, the Juvenile Detention Centers Association of Pennsylvania undertook a project for its member detention centers to administer the MAYSI-2 to newly admitted youth. Currently 21 out of Pennsylvania's 22 juvenile detention centers screen youth within 24 to 48 hours of admission.[15] Connecticut has implemented statewide use of the MAYSI-2 in all juvenile detention centers and probation offices.[16] Illinois has a program to screen and assess youth who are *exiting* their detention centers for serious mental illness such as a major affective disorder or a psychotic disorder. Through its Mental Health Juvenile Justice Initiative, community mental health agency liaisons first administer the Childhood Severity of Psychiatric Illness (CSPI) to determine a youth's eligibility for the program. For youth found to have a severe mental health disorder, the liaisons use the Child and Adolescent Needs and Strengths-Mental Health Scale (CANS-MH) to develop a care plan with the youth and the family that is then presented to the court.[17]

Screening and assessment instruments used at intake and/or in detention

The process of screening, including using formal screening instruments, inquires into a variety of areas including current and past substance use, history of violent or assaultive behavior, sexual deviancy and sex offenses, victimization and abuse.[18] Clinicians who work in juvenile detention facilities and correctional facilities are called upon to do more comprehensive assessments of youth whose screens send up red flags. An evaluation can consist of administration of a formal assessment instrument, a structured interview or review of a youth's health care records to inquire into various areas of the youth's life, including the youth's drug and alcohol use, and history of sexual offenses and violence against others.[19] Such questioning, in turn, raises the very real possibility that youth will reveal information about chargeable offenses.

In Box A on pages 22 through 24 we review some of the screening and assessment instruments administered to youth in the juvenile justice system, and list some of the questions they pose.

BOX A — SCREENING AND ASSESSMENT INSTRUMENTS

Massachusetts Youth Screening Instrument–Second Version (MAYSI-2)

The MAYSI-2 is a self-report questionnaire consisting of 52 questions to which youth respond yes or no. The screen is designed to identify potential instances of mental and emotional disturbance or distress, and drug/alcohol use.[20] Questions include:[21]

- "Have you hurt or broken something on purpose, just because you were mad?"
- "Have you thought a lot about getting back at someone you have been angry at?"
- "Have you done anything you wish you hadn't, when you were drunk or high?"
- "Have you gotten in trouble when you've been high or have been drinking?" and, if yes, "has the trouble been fighting?"
- "Have you ever seen someone severely injured or killed (in person - not in movies or on TV)?"

GAIN-Short Screener (GAINS-SS)

This screening instrument asks youth "[w]hen was the last time you...":[22]

- " used alcohol or drugs weekly?"
- "had a disagreement in which you pushed, grabbed or shoved someone?"
- "took something from a store without paying for it?"
- "sold, distributed or helped to make illegal drugs?"
- "drove a vehicle while under the influence of alcohol or illegal drugs?"
- "purposely damaged or destroyed property that did not belong to you?"

Child Behavior Checklist (CBCL), Youth Self-Report Form

The CBCL, Youth Self-Report is completed by the youth, and includes "syndrome scales" such as delinquent and aggressive behaviors.[23] The instrument asks youth to endorse/not endorse such items as[24]:

- "I destroy things belonging to others."
- "I physically attack people."
- "I set fires."
- "I steal from places other than home."
- "I threaten to hurt people."

Millon Adolescent Clinical Inventory (MACI)

The MACI is an assessment instrument comprised of 160 true-or-false items that measures clinical syndromes and helps identify personality dysfunctions.[25] Statements to be endorsed/not endorsed include the following:[26]

- "I've never done anything for which I could have been arrested."
- "I used to get so stoned that I did not know what I was doing."
- "I'm no different from lots of kids who steal things now and then."
- "I've gone through periods when I smoked pot several times a week."
- "I sometimes get pleasure by hurting someone physically."
- "I used to try hard drugs to see what effect they'd have."
- "I often have fun doing certain unlawful things."
- "I enjoy starting fights."

Comprehensive Adolescent Severity Index (CASI)

The CASI is an interview-based assessment instrument designed to measure the severity of a youth's addiction as well as their problems in other life areas. Questions on the CASI include the following[27]:

- Have there ever been significant periods during which you "had accidents or been injured when using substances" or "experienced recurrent substance-related legal issues (e.g., driving under the influence, substance related disorderly conduct)?"
- Have you ever had significant periods when you "stole substances, stole money to buy substances, or used money from stolen goods to buy substances" or "dealt drugs for drugs, skimmed off dealt drugs for own use or used money from dealing to buy substances?"
- Have you ever witnessed "shootings, stabbings, muggings, or other forms of severe violence or abuse" or "the murder or attempted murder of someone?"
- Have you ever had significant periods during which you "consistently initiated physical fights" or "carried guns, knives or other weapons?"
- Have you ever hung around people who "committed illegal acts" or "were members of gangs?"
- Have you ever "forced someone to engage in sexual activity when they did not want to?"
- Have you ever "committed a crime", and specifically have you ever committed any of a long list of crimes, including various violent crimes and weapons possession?

Problem-Oriented Screening Instrument for Teenagers (POSIT)

The POSIT is a 139-item, yes-no, self-administered assessment instrument that has 10 functional scales. The instrument is designed to measure problems such as substance abuse and aggressive and delinquent behavior.[28] Questions include:[29]

- "Do you get into trouble because you use drugs or alcohol at school?"
- "Do you threaten to hurt people?"
- "Have you accidentally hurt yourself or someone else while high on alcohol or drugs?"
- Do you miss out on activities because you spend too much money on drugs or alcohol?"
- "Have you stolen things?"
- "Do you get into fights a lot?"
- "Have you started using more and more drugs or alcohol to get the effect you want?"
- "Have you ever threatened anyone with a weapon?"
- "Have you had a car accident while high on alcohol or drugs?"
- "During the past month have you driven a car while you were drunk or high?"
- "Does your alcohol or drug use ever make you do something you would not normally do, like breaking rules, missing curfew, or breaking the law?"

Child and Adolescent Needs and Strengths–Juvenile Justice (CANS-JJ)

The CANS-JJ is an assessment tool that can be completed in a variety of ways, including by interviewing the youth and his family and/or conducting a records review. In addition to assessing the youth's strengths, the CANS-JJ measures criminal/delinquent behavior, substance abuse and other risk behaviors.[30] Specifically, the CANS requires the administrator to assign a rating, based on the information gathered, to various dimensions including "seriousness of criminal behavior" (i.e., has the youth engaged in status offenses, misdemeanors and/or felony criminal behavior), "history of criminal behavior" (which considers the frequency and recency of criminal activity), "sexually abusive behavior," "danger to others," and "peer involvement in crime."[31]

Assessments/Evaluations

Formal assessment instruments can also be used as part of a more comprehensive clinical evaluation. Such an assessment can follow a screen that sends up red flags about a youth's behavioral health status as in the various projects described

above. In addition, juvenile courts order more comprehensive clinical evaluations for various purposes, and a number of these evaluations take place prior to adjudication.[32] The most frequent use of mental health evaluations in juvenile court is for disposition planning purposes, as judges seek the input of clinicians on appropriate treatment and placements for a youth with special needs.[33] Additionally, courts order forensic evaluations to determine whether a youth:

- is/was competent to waive certain constitutional rights such as the rights against self-incrimination, to counsel and to a trial;
- is competent to stand trial;[34]
- is not responsible for his/her conduct due to mental status; and
- is amenable to treatment and/or poses a risk of harm to others (a key consideration in waiver/transfer hearings to adult court)

Some jurisdictions – including Cook County, Illinois,[35] Connecticut,[36] and Boston, Massachusetts[37] – have court-based assessment clinics that perform forensic evaluations to aid the court in decision-making, including treatment planning. Indeed, NCJFCJ has emphasized the critical role of such clinics in performing evaluations that will assist the court in making decisions with regard to the various issues described above.[38]

Such court-ordered evaluations can elicit information about offending behavior from youth, as described in various guidelines for forensic assessment The forensic evaluator collects information through various means that typically includes an interview with the accused youth.[39] In this interview, the evaluator may elicit potentially self-incriminating statements by inquiring into, for example, the youth's past incidents of violent and assaultive behavior, to determine the chronicity, recency, frequency, severity and context of these violent acts, as well as the use of alcohol and illegal substances.[40]

Treatment as part of court's post-adjudication disposition order————————-

Another situation in which youth may be compelled to divulge information about offending behavior is during treatment that they take part in pursuant to a court's disposition order. Rehabilitation and treatment are two of the fundamental missions of the juvenile court. In states in which the courts have the authority to directly place youth into particular programs, judges will often order youth with mental health and substance abuse problems into some type of treatment as part of their post-adjudication disposition. There are states and localities in which the juvenile court does not have such direct placement authority but instead commits the youth to the custody of a public agency; these jurisdictions have implemented various programs to ensure that youth are referred by the agency into the appropriate treatment. Thus, for example, a number of states, including California, Massachusetts, Ohio, Texas and Virginia, run what are known as Juvenile Correctional Reception and Diagnostic Centers. These centers serve as a gateway for adjudicated youth referred by the juvenile court to secure placement within

state's juvenile correctional system. Reception and Diagnostic Centers will typically perform various types of psychological and behavioral evaluations to develop treatment plans and determine the appropriate placement for each youth.[41]

Additionally, a number of state juvenile correctional systems offer a wide array of behavioral health services to youth placed in their facilities, such as individual, group and family psychotherapy, substance abuse treatment and sex offender treatment.[42] When publicly-run correctional settings do not offer appropriate treatment, youth can be sent to specialized, privately-run residential treatment facilities as part of their dispositions. The danger in some types of treatment is that youths' perceived cooperation and compliance with treatment may depend in part on the extent to which the program staff believe that they are being forth-coming about all their offending behavior and taking responsibility for it. This is certainly a risk in many sex offender programs which emphasize such disclosures, indeed even mandate them, as part of the therapeutic process.[43]

The need for safeguards with regard to potential self-incrimination in screening, assessment/evaluation and treatment

Because of the potential risk of self-incrimination, the developers of screening and assessment instruments caution in their implementation protocols/manuals and training curricula that agencies administering these instruments must establish parameters with respect to the sharing and use of information gathered. For example, the CASI's developer emphasizes that before interviews, youth must be informed of who will have access to the information collected, including any court/juvenile justice staff, and the possible uses of the information, including whether the youth can get into trouble for any of the information revealed. The youth should be cautioned against talking about past or current charges, and the interviewer should stop the interview if the youth does start discussing charges.[44] The CASI administration manual cautions that data collected should not be used to convict youth or impose harsher sentences:

> Procedural safeguards MUST be in place to assure that information is NOT used to incriminate the youth in any type of criminal conduct or for pursuing an investigation or charges against others who the juvenile may implicate. Agreements with the juvenile/ criminal justice system must stipulate that information collected as part of juvenile intake CANNOT be admitted as evidence in future court proceedings against the juvenile. Assessment staff should NOT collect information that could implicate a youth (or others) in criminal conduct UNLESS there are statutes/written agreements that this information will NOT be used for these purposes.[45]

The Diagnostic Interview Schedule for Children-IV (Voice DISC), a structured youth self-report interview that is administered via a computer and provides a provisional DSM-IV diagnosis, was used in many of the prevalence studies briefly described in Part I above.[46] The Center for the Promotion of

Mental Health in Juvenile Justice, which is the institutional contact for use of the Voice DISC in juvenile justice settings, points out on its website that

> [i]n the course of a mental health assessment, in order to learn if a juvenile has certain specific disorders, questions are asked about activities that are against the law, such as physically harming others, shoplifting or substance use. This raises the unwelcome possibility that a youth might self-incriminate by answering those questions truthfully, setting up a tension between fully understanding the youth's difficulties and guarding his legal rights.... Thus, justice facilities must have protections in place so that either information provided in an intake screen cannot be used in support of current or future charges, or facilities do not ask questions by which youths may self-incriminate.[47]

The Center specifically advises with respect to use of the Voice DISC with pre-adjudicated youth that four disorder modules that may elicit self-incriminating information – Conduct Disorder, Alcohol Abuse, Marijuana Abuse, and Other Substance Abuse – should not be administered if there are no existing safeguards at the state or local levels.[48]

Similarly, the users manual for the MAYSI-2 advises that

> attention be paid to the potential uses of mental health screening data beyond the provision of necessary mental health services. Specifically, there is the potential for mental health screening information to be used in ways that may violate youthful defendants' rights to avoid self-incrimination in the adjudicative process (e.g., self-reports about substance use, anger, or traumatic experiences). Although a system may intend to use screening data in a manner that promotes youths' mental health needs, it is possible that the same information may be used to further adjudication. This, of course, will be of considerable concern to anyone who is charged with assuring fairness and the protection of constitutional rights of youthful defendants.[49]

Thus, the MAYSI-2 manual instructs that "[e]thical and legal obligations" require juvenile justice professionals who administer the screening instrument to do one of two things. The first option, which is undesirable, is for youth to be informed at the time of the screen's administration that anything they say can be used against them at adjudication. This, of course, would present a high risk of jeopardizing the whole purpose of mental health screening, creating a tendency for youths to conceal certain feelings or behaviors about which the MAYSI-2 asks. The second approach is to "develop system-wide protections that control the preadjudication use of screening data," including limiting its distribution and the purposes for which it may be used.[50]

Indeed, in a recent report on the use of the MAYSI-2 in Pennsylvania

detention centers, Thomas Grisso, one of the screen's developers, recommends as the most desirable strategy the enactment of statewide legislation or court rules that prohibit any information obtained from mental health screening in detention from being introduced as evidence against the youth in any adjudicatory or disposition hearing:

> Establishing this protection would allow detention staff to inform youths that their answers on mental health screening would be used to determine how detention staff could best keep them safe and respond to any mental health emergencies, and would not be used in their legal proceedings. This would reduce the likelihood that some youths might withhold information important for their safety and mental welfare due to fears that their answers might be revealed to authorities involved in their adjudication. [51]

In addition to the developers of the screening and assessment instruments, a number of organizations advise as to safeguards that must be implemented in order to protect youth's due process rights.

For example, various groups have issued speciality guidelines for mental health professionals who work in correctional settings or conduct forensic evaluations. The American Academy of Psychiatry and the Law advises that when conducting a forensic evaluation, clinicians must inform the evaluee as to the limitations on confidentiality, including telling them specifically for whom the psychiatrist is conducting the evaluation and who will receive the information collected. For psychiatrists providing treatment to an individual in a correctional setting, the Academy advises that the usual physician duties with respect to protecting the confidentiality of the patient apply.[52] Presumably this would mean that statutory and common law privileges protecting communications between patient and physician would prevent incriminating information gathered by the psychiatrist from being admitted at trial. Similarly, the Committee on Ethical Guidelines for Forensic Psychologists advises that "[f]orensic psychologists have an obligation to ensure that prospective clients are informed of their legal rights with respect to the anticipated forensic service, of the purposes of any evaluation ...of the intended uses of any product of their services ..."[53] Forensic psychologists must know the legal standards that may apply to their assessment or treatment of an individual involved with the juvenile justice system, including limitations on confidentiality and privilege that apply in their evaluation or treatment of the population. The guidelines further provide that unless otherwise stipulated by the party, no statements made by a defendant in the course of an examination, nor the examiner's testimony based on the statements, nor any other "fruits" of the statement can be admitted into evidence against the defendant, except on the issue of the defendant's mental condition where the defendant has introduced such testimony. Forensic psychologists are cautioned to avoid including in their reports any statements from the defendant about the time period of the alleged offense.[54]

The American Academy of Child and Adolescent Psychiatry advises that

mental health professionals who treat youth in juvenile detention and correctional facilities must pay particular attention to the issue of patient confidentiality and define and maintain their role as clinicians "as opposed to an agent of the court or of the state."[55] Clinicians are cautioned against exploring in clinical interviews, or recording in any documents, any information or details about the alleged offense(s) because the information potentially could be used against the youth at a hearing or trial.[56] The American Association for Correctional Psychology instructs that before any psychological service is performed in a correctional setting, the psychologist must inform the individual, both verbally and in writing, about the limits on confidentiality and any legally or administratively mandated "duties to report" they have. The warning must explain to whom the psychologist must or may provide the information s/he obtains from the individual without the individual's consent, as well as all the possible uses of that information.[57]

Accrediting organizations such as the National Commission on Correctional Health Care warn that health services staff in juvenile detention and correctional facilities must not collect forensic information, such as performing psychological examinations for use in adversarial proceedings.[58] Similarly, organizations such as NCMHJJ assert that as one of the underlying principles of a comprehensive model for responding to the mental health needs of juvenile justice youth is that "[i]nformation collected as part of a pre-adjudicatory mental health screen should not be used in any way that might jeopardize the legal interests of youth as defendants."[59] And the NCJFCJ emphasizes in its delinquency court guidelines that "information a youth reveals during the screening process should not be used against her or him at trial. Otherwise, the youth will not likely disclose important information related to immediate needs."[60]

The co-developer of the MAYSI-2, an instrument widely used in the juvenile justice system, succinctly makes the case for the need for safeguards:

> When these questions are asked in clinical settings by clinicians, typically they are protected from disclosure to third parties by a doctor-patient relationship that includes medical confidentiality. But when they are being asked in justice settings by employees of juvenile justice agencies (e.g., detention staff, probation officers at pretrial interviews), the confidential status of youths' communication of such information cannot be presumed. Absent confidentiality, the information that youths provide during mental health screening could (in theory) be used in prejudicial ways to influence (a) how they are managed at the pretrial stage (e.g., whether they will be remanded to secure detention prior to trial), (b) at the adjudication of their charges (e.g., whether they have used drugs with sufficient frequency to make the facts of a drug charge more or less plausible), and (c) at the disposition stage after adjudication (e.g., whether their anger or drug use suggests the need for more restrictive dispositional conditions).[61]

Parts IV and V examine current federal and state law to identify where protections exist to prevent these misuses, and where there are gaps.

Endnotes

1. Snyder & Sickmund, 1999 at 97; Rubin, 1980, at 310.
2. Cocozza & Skowyra, in press, at 25-27.
3. Cocozza & Skowyra, in press, at 16.
4. Naional Council of Juvenile and Family Court Judges, 2005, at 46-48.
5. Texas Hum. Res. Code § 141.042(e).
6. Texas Juvenile Probation Commission, 2003, at 9.
7. Texas Juvenile Probation Commission, 2003, at 21.
8. Kansas Juvenile Justice Authority, 2006.
9. Dembo & Brown, 1994, at 32-35.
10. Grisso & Underwood, 2004, at 3-5.
11. *See* American Academy of Child and Adolescent Psychiatry, 2004 at 6; American Association for Correctional Psychology, 2000, at 464.
12. American Academy of Child and Adolescent Psychiatry, 2004 at 8; American Association for Correctional Psychology, 2000, at 466.
13. American Correctional Association, 1991, at 84; National Commission on Correctional Health Care, 2004, at 60-62 and 68-69.
14. National Commission on Correctional Health Care, 2004, at 68-69.
15. Grisso & Williams, 2006, at 12; Cauffman, Shulman, Dickman, Farrugia, 2006, at 17.
16. Cocozza & Skowyra, in press, at 18-19.
17. Cocozza & Skowyra, in press, at 53, 81.
18. American Association for Correctional Psychology, 2000, at 465; National Commission on Correctional Health Care, 2004, at 68-69.
19. American Academy of Child and Adolescent Psychiatry, 2004, at 10, 12; American Association for Correctional Psychology, 2000, at 466; National Commission on Correctional Health Care, 2004, at 68-69.
20. Grisso & Underwood, 2004, at 45.
21. Juvenile Detention Centers of Pennsylvania, 2003, at 25, 30.
22. Chestnut Health Systems, 2005.
23. Grisso & Underwood, 2004, at 33.
24. Achenbach, 2001.
25. Grisso & Underwood, 2004, at 47.
26. Millon, 1993.
27. Meyers, 2004.

28. Grisso & Underwood, 2004, at 55.
29. National Institute on Drug Abuse.
30. Grisso & Underwood, 2004, at 29.
31. Buddin Praed Foundation, 1999, at 3, 7-8.
32. Grisso & Underwood, 2004, at 3-5; Grisso, 1998 at 21-23.
33. Grisso, 1998, at 23.
34. Indeed a recent study by the MacArthur Foundation Research Network on Adolescent and Juvenile Justice suggests that courts and defense attorneys should be requesting more evaluations to assess youths' competence as trial defendants. The study used measures of both trial-related abilities and developmental maturity to assess the adjudicative competence of 927 adolescents ages 11-17 from detention facilities and communities in four locations across the United States, as compared to 466 young adults ages 18-24 in jails and in the community. Thomas Grisso *et al.,* (2003)*, Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 337-38. *See also* MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Issue Brief 1: Adolescent Competence in Court* available at www.adjj.org. Researchers found that on the scales that measure understanding and reasoning nearly one-third of 11-13 year-olds and one-fifth of 14-15 year olds had deficits that seriously call into question their ability to proceed as trial defendants. Grisso, 2003, at 344.
35. Scally, J., Kavanaugh, A., Budd, K., Baerger, D., Kahn, B., & Biehl, J., 2001-2002.
36. Cocozza & Skowyra, in press, at 19.
37. Cocozza & Skowyra, in press, at 55, 69.
38. NCJFCJ, 2005, at 32-33.
39. Grisso, 1998, at 152.
40. Virginia Department of Juvenile Justice Reception and Diagnostic Center, 2006; California Department of Corrections and Rehabilitation, 2006; Correctional Management Co., 2006; Grisso & Underwood, 2004, at 5.
41. *See, e.g.,* Virginia Department of Juvenile Justice Behavioral Services Unit, 2006; California Department of Corrections and Rehabilitation, 2006.
42. Levenson & D'Amora, 2005, at 149; Glaser, 2003, at 146. *See also Welch v. Kentucky*, 149 S.W.3d 407, 409 (Kentucky 2004) (noting that court-ordered participants in sex offender treatment programs are strongly encouraged by counselors to disclose all prior sexual misconduct; such disclosure is necessary to obtain and keep certain privileges during treatment and to demonstrate successful program completion to the court).
43. Meyers, 2005, at 16-18.
44. Meyers, 2005, at 18 (emphasis in the original).

45. Grisso & Underwood, 2004, at 38.
46. Center for the Promotion of Mental Health in Juvenile Justice, "Self Incrimination," *available at* http://www.promotementalhealth.org/confidentiality.htm.
47. Center for the Promotion of Mental Health in Juvenile Justice, "Self Incrimination," *available at* http://www.promotementalhealth.org/confidentiality.htm.
48. Grisso & Barnum, 2003, at 9.
49. Grisso & Barnum, 2003, at 9.
50. Grisso & Williams, 2006, at 59.
51. American Academy of Psychiatry and the Law, 2005, at 1-2.
52. Committee on Ethical Guidelines for Forensic Psychologist, 1991, at 659.
53. Committee on Ethical Guidelines for Forensic Psychologist, 1991, 660, 662-663.
54. American Academy of Child and Adolescent Psych., 2004, at 1, 9.
55. American Academy of Child and Adolescent Psychiatry, 2004, at 9. *See also* Wasserman, Jensen, Ko, Cocozza, Trupin, Angold, Cauffman, & Grisso, 2003, at 755 ("Facilities charged with processing juveniles prior to adjudication must balance the need to provide mental health care with the responsibility to protect youth from self-incrimination. Information disclosed to detention staff may not be confidential. During screening for emergent risk a youth may admit illegal behavior. . .that was not the focus of detention. . . . Thus justice facilities must have protections in place so that either information provided in an intake screen cannot be used in support of current or future charges, or facilities do not ask questions by youths may self-incriminate.")
56. American Association for Correctional Psychology, 2000, 455, 487.
57. National Commission on Correctional Health Care, 2004, at 135-36.
58. Cocozza & Skowyra, in press, at 11. *See also* Council of State Governments, 2002 at 194, 197 (calling on policymakers to "[d]evelop protocols to ensure that criminal justice and mental health partners share mental health information without infringing on individuals' civil liberties" and "[e]nsure that information shared for the purpose of arranging appropriate treatment not be used to jeopardize a person's rights in criminal proceedings.")
59. National Council of Juvenile and Family Court Judges, 2005, at 47.
60. Grisso & Williams, 2006, at 58.

Part IV

Federal Protections Against Self-Incrimination for Youth Undergoing Screening, Assessment or Treatment in the Juvenile Justice System

Part IV

Federal Protections Against Self-Incrimination for Youth Undergoing Screening, Assessment or Treatment in the Juvenile Justice System

It is axiomatic that individuals accused of crimes have a right against self-incrimination at all stages of a criminal case or delinquency proceeding. In Part III, we discussed the general provisions against self-incrimination that exist in the United States Constitution and federal case law. Here, we review federal case law and statutes to determine whether they contain protections that safeguard the rights of youth when they undergo any mental health or substance abuse screening, assessment or treatment at any point in their juvenile justice case.

In *Estelle v. Smith*, the United States Supreme Court held that statements made to a psychiatrist during a court-ordered psychiatric examination were inadmissible during both the guilt and penalty phases of a criminal trial. The defendant in *Estelle* was indicted for murder. Prior to his trial, the judge ordered a psychiatric examination to determine if he was competent to stand trial. The defendant was later convicted of murder and subsequently sentenced to death. During the sentencing hearing, the examining psychiatrist testified to disclosures that the defendant made to him, as well as his own personal conclusions as to the defendant's future dangerousness. The Court found that because the psychiatric examination was ordered by the court to determine the defendant's competence, the psychiatrist was acting as an agent of the state. Prior to submitting to the psychiatric exam, the defendant was not read *Miranda* warnings, nor did he make a valid waiver of his rights. The Court held that the compelled examination of the defendant while he was in state custody violated his Fifth Amendment privilege against self-incrimination. Furthermore, the defendant's right to counsel had attached prior to the court-ordered evaluation. Consequently, the Court held that the defendant's Sixth Amendment right to counsel was violated because his attorney was not advised as to the full scope of the possible uses of the defendant's statements prior to the psychiatric examination. The *Estelle* holding confirms the right to counsel and privilege against self-incrimination at both the guilt and penalty phases.[1]

Thus, *Estelle* stands for the propositions that statements made by youth in the juvenile justice system who are in state custody and undergoing court-ordered evaluation or treatment may not be admitted at either the adjudicatory hearing/trial or disposition/sentencing[2] if: (1) the youth was not advised of his rights as per *Miranda* and did not make a voluntary and knowing waiver of his/her rights; and/or (2) the youth's attorney was not advised of all possible uses of statements made by the client prior to the client undergoing evaluation or treatment. But as we demonstrated in Part III, there are other instances within the juvenile court process where the potential for self-incrimination arises that would not be covered by the *Estelle* holding. For example, a child may or may not be in state custody for purposes of receiving *Miranda* warnings at the time of the screening, assessment or treatment. Moreover, screening and/or assessment may be a part of the routine pre-adjudicatory protocol in juvenile court and not specifically ordered by the court as was the situation in *Estelle*.

Certain federal laws that govern the disclosures and uses of health information may extend to disclosures made by youth in some of these situations. For example, federal drug and alcohol regulations include a provision against the use of incriminating statements in criminal proceedings. The law specifically provides that records of an individual's drug and/or alcohol treatment may not be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.[3] However, no similar protection exists explicitly within the Health Insurance Portability and Accountability Act (HIPAA), which governs the confidentiality of health care records. Indeed, HIPAA provides a comprehensive list of circumstances whereby protected health information may be disclosed to law enforcement officers or detention facility officers without obtaining the subject's prior written consent.[4]

Because federal law does not provide adequate protections for court-involved youth at all the different instances where screening, assessment or treatment may occur, we turn in the next Part to an examination of state law.

Endnotes

1. *Estelle v. Smith*, 451 U.S. 454 (1981).
2. Juvenile dispositions are generally treated the same as criminal sentences for the purposes of admitting evidence and affording certain protections. In *McKeiver v. Pennsylvania*, the U.S. Supreme Court reasoned that the purposes of juvenile disposition and adjudication, although more focused on rehabilitation and not solely on punishment, are not different from the traditional guilt and sentencing phases of adult criminal court. 403 U.S. 528 (1971). Indeed, the United States Court of Appeals for the Third Circuit most recently held that New Jersey juvenile court dispositions should be treated as sentences under the sentencing guidelines of the state. *U.S. v. McKoy*, 452 F.3d 234 (3d Cir. 2006).
3. 42 U.S.C. § 290dd-2(c).
4. *See* 45 C.F.R. 164.512.

Part V

State Law Protections Against Self-Incrimination for Youth Undergoing Screening, Assessment, or Treatment in the Juvenile Justice System

Part V

State Law Protections Against Self-Incrimination for Youth Undergoing Screening, Assessment, or Treatment in the Juvenile Justice System

As discussed in Part II, almost every state constitution has a general provision ensuring a right against self-incrimination to those accused of committing criminal offenses.[1] Most states have explicitly extended this protection to youth via provisions in their juvenile codes or its juvenile court procedural rules, affording youth the right against self-incrimination at the various stages of delinquency proceedings.[2] The stages which are the focus of this monograph are those at which youth may undergo behavioral health screening, assessment or treatment. In Part III, we identified at least four different points in the juvenile justice system where the potential for self-incrimination may arise during behavioral health screening, assessment, or treatment – at initial intake, upon admission to a pre-trial detention center, as part of a court-ordered evaluation either pre- or post-adjudication, and during treatment pursuant to the court's post-adjudication disposition order. Several states have enacted specific laws tailored to meet the potential for self-incrimination in one or more of these instances.

Intake/preliminary interview/preliminary inquiry

During the intake stage, a child is typically interviewed by a probation officer or other juvenile court officer. The interview is often conducted before formal charges or a petition have been filed and therefore the right to counsel has not yet attached. Several states have recognized the potential for self-incrimination at this stage and enacted laws to protect minors against incriminating statements they may make. Fourteen states – Arkansas, Arizona, District of Columbia, Hawaii, Iowa, Kentucky, Maine, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Texas, and Virginia – disallow statements made during intake, the preliminary interview, or preliminary inquiry to court or probation officers from being admitted into evidence at an adjudicatory hearing and/or criminal trial.[3] Each of these statutes provides that any information obtained during the preliminary or intake stage is inadmissible at one or more future proceedings. The Texas and

Virginia statutes specifically state that information obtained at this stage by the use of a behavioral health screening instrument is inadmissible.[4]

In addition to legislature-created law, case law in at least two states provides that statements made to probation and juvenile court officers at this stage are inadmissible in later proceedings. In California, the state supreme court held that admitting into evidence statements made to a probation officer during intake would frustrate the intended purpose of the preliminary inquiry.[5] Several years later, a California appellate court followed precedent and held that statements a child made to her probation officer when being held at a detention center were inadmissible on the issue of guilt at her adjudicatory hearing, but could be introduced for impeachment if she testified inconsistently.[6] Similarly, a New York family court has held that statements made by a child at the preliminary intake stage are inadmissible at the fact-finding phase, but available at disposition.[7]

Finally, some states, including Alaska, Connecticut, District of Columbia, New Mexico, Mississippi, and Tennessee have enacted legislation prohibiting the admission of statements made to intake officers and probation officers unless the juvenile has been advised of his or her rights against self-incrimination and made a valid waiver of those rights.[8]

Detention

As discussed in Part IV, United States Supreme Court case law provides some important protections to youth undergoing evaluation or treatment for behavioral health disorders. Specifically, *Estelle v. Smith's* holding would preclude the admission at adjudication or disposition of any statements made by a youth in detention as part of *court-ordered* evaluation or treatment if the youth did not make a valid waiver of his/her *Miranda* rights and/or if the youth's attorney was not advised of the possible uses of statements made in these processes.[9] But as already noted, upon admission to a detention facility, youth may be subject to screening and assessment to determine mental health needs, suicide risks, and other behavioral or emotional disorders as part of the facility's routine procedures. It is not clear that *Estelle*'s holding would extend to situations in which mental health evaluation or treatment was not specifically court ordered but simply part of the facility's protocols, although arguably the youth's cooperation in such processes is not voluntary. Thus we investigated state protections that would cover this scenario. We found four states–Alabama, Illinois, Mississippi, and Tennessee–that offer protections regarding the use of any incriminating statements made by a child to detention staff during this time.[10] The Mississippi statute, for example, specifically prohibits admission of adverse testimony of those employed by the court or detention center.[11] A handful of other states, including Colorado, Delaware, and Kentucky, have not enacted legislation directly on point but have heard cases on this issue. For example, in a Colorado case, a child held at the juvenile detention center requested to speak with a counselor prior to charges being filed against him. In that facility, the counselor's duties included determining

which juveniles were eligible for home detention, and reporting any information gathered regarding whether the juveniles might cause or had caused bodily injury to another person. The Colorado supreme court found that the counselor was an agent of the state and suppressed the statements because the juvenile was not advised of his *Miranda* rights.[12] In a similar case, the Delaware Supreme Court specifically found that communications made to a counselor at a juvenile detention center were not privileged under the Rules of Evidence because the counselor did not represent himself to be a psychotherapist when he questioned the child, nor did he make a diagnosis or recommend any treatment. Nonetheless, the court held that the counselor was a state actor and statements would only be admissible at the adjudicatory stage if the child was advised of and waived his *Miranda* rights.[13] These cases all suggest that *Estelle*'s holding extends to any situation in which a youth in custody is questioned as part of a facility's protocols as the questioners are often state agents and the youth's participation in these processes is not voluntary.

Court-ordered assessments/evaluations

As described in Part III, forensic evaluations may be used for a number of purposes, including to determine the child's competency to waive his or her rights, or his or her competence to stand trial, mental state, amenability to treatment or potential for future risk of harm. At least thirteen states, including Alabama, Arizona, Connecticut, Illinois, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Oregon, Tennessee, Vermont, and Washington have enacted statutes or court rules that statements made during court-ordered evaluations are inadmissible as to guilt for purposes of adjudication and/or conviction.[14] In addition, some state courts have decided on this issue in the absence of any state statute or evidentiary rule on point. For example, the Michigan state supreme court held that the juvenile transfer process, which included mandatory mental health evaluations, did not violate a minor's Fifth Amendment rights as long as the statements were used *only* to determine whether the juvenile should be tried as an adult.[15] In Mississippi, the state supreme court similarly held that a defendant who raises an insanity defense may be compelled, without violating his privilege against self-incrimination, to submit to a psychiatric examination as long as incriminating statements are not used during the guilt phase.[16] Courts in at least five other states have followed this rule.[17]

Similarly, three other states – including Connecticut, Mississippi, and Montana – provide that statements in court-ordered evaluations are inadmissible unless the child is advised of his or her right against self-incrimination and makes a valid waiver.[18] In Pennsylvania, for example, an intermediate appellate court acknowledged the danger of allowing statements made during court-ordered evaluations to be admitted as evidence against a defendant. The court stated that in instances where these statements may be used against the defendant, the psychotherapist becomes an "agent of the state and not a comforter to the accused."[19] A Washington state appellate court similarly held that only after a knowing and intelligent waiver of rights may a juvenile's statements during court

ordered evaluations be used in the case against him.[20] Both the Pennsylvania and Washington appellate courts specifically distinguished civil proceedings from criminal proceedings, holding that statements that may be admissible in civil proceedings may not be in criminal proceedings.[21]

Additionally, other states, including Alabama, California, Colorado, Connecticut, Florida, Kansas, Michigan, Mississippi, New York, Rhode Island, and Virginia have similar provisions for evaluations ordered for the specific purpose of determining competency. They provide that statements made during such evaluations are inadmissible as to the guilt of the defendant or his or her involvement in the wrongful act.[22] Furthermore, some cases have specifically held that statements made in court-ordered evaluations are inadmissible as to amenability to treatment. The Alaska Court of Appeals, for example, relied on *Estelle* to hold that a court-ordered psychiatric evaluation of a juvenile to determine his amenability to treatment as a minor violated his privilege against self-incrimination.[23] Similarly, in Colorado, a juvenile may not be compelled to participate in a psychological evaluation for use at a transfer hearing, as it would violate his privilege against self-incrimination. The purpose of such an evaluation is clearly adverse to the juvenile, as transfer would lead to the application of adult penalties. Therefore, a juvenile cannot be ordered to undergo a psychological evaluation for the purpose of transfer because of the risk of a substantial increase in the deprivation of liberty.[24] A small number of courts have held that *any* compelled evaluation would violate an individual's right against self-incrimination. The Indiana supreme court found that a statute that required the defendant to undergo an evaluation to determine if he was a criminal sexual psychopath violated his right against self-incrimination.[25] And more recently, in Washington, an appellate court held that an order compelling a child to submit to a sex offender evaluation violated his privilege against self-incrimination because any admissions could be used to enhance his sentence.[26] Finally, many states have included provisions in their evidentiary rules that statements made in court-ordered evaluations are admissible *only* for the specific purpose ordered,[27] and thus could not be admitted as to a finding of involvement in an offense.

Treatment pursuant to a disposition order

The last stage where a juvenile may be compelled to divulge information about his or her past offending behavior is during treatment as part of his/her post-adjudication disposition. As discussed in Part III, children in this stage are sometimes compelled to discuss past offenses to successfully complete their treatment. If a child fears further prosecution or believes that the information may be used against him or her, s/he will be reluctant to disclose the information and therefore will not complete the court-ordered treatment. As described above, the *Estelle* holding prohibits the admission at adjudication or disposition of statements made by youth in custody who are court-ordered to undergo treatment when the youth does not make a valid waiver of his/her *Miranda* rights or their right to counsel is violated. Some states accord additional protections to youth in these

contexts such that their statements are not admissible regardless of whether they were advised of their rights as per *Miranda*.[28] Thus, for example, some provide that statements made during court-ordered attempts to restore competency are inadmissible as to the guilt of the person charged.[29]

Several state courts, including those in Hawaii, Idaho, Kentucky, Minnesota, Montana, North Carolina, Ohio, Oregon, and Washington, have upheld the right against self-incrimination during court ordered-treatment in situations in which a defendant was threatened with probation revocation or another penalty for failing to "cooperate" with treatment.[30] Illustrative is a case in Hawaii, in which the court ordered a convicted defendant to participate in a sex-offender treatment program which required participants to admit their acts. The defendant failed to disclose any past acts, and consequently was deemed to have failed to complete the program. The trial court revoked the defendant's probation on the grounds that he had not successfully completed the treatment program. On appeal, the court held that the requirement of admission violated the defendant's privilege against self-incrimination, and his refusal to admit that he committed offenses was not a valid reason to revoke his probation.[31] In a similar case in Oregon, the defendant appealed a judgment of conviction for sexual abuse in the first degree. He argued that his motion to suppress statements made to a probation officer and police detective pursuant to court-ordered treatment should have been granted. Specifically, the defendant argued that the statements to his probation officer were involuntary because they were compelled by a condition of probation that required him to disclose his sexual history, and that his subsequent statements to the detective were the result of police exploitation of the illegally obtained statements to the probation officer. The appellate court acknowledged that the privilege against self-incrimination is not self-executing and recognized that there are situations where the state threatens to penalize the exercise of the privilege. The court held that because the defendant had no choice other than to disclose or face revocation of his probation, any subsequent statement made pursuant to the court-ordered treatment was given involuntarily and, therefore, in violation of his right against self-incrimination.[32] In a Kentucky case, a child placed in a residential treatment facility was ordered to participate in sex-offender treatment in which he was required to discuss past sexual behavior. The Kentucky supreme court held that his participation in the program was involuntary and therefore the questioning amounted to coercion in the course of a custodial interrogation. The court specifically stated that "the availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement of admission and the exposure which it invites...the privilege is not limited to criminal proceedings and protects in circumstances where the person's freedom is curtailed."[33]

Courts in at least seven states, including Alaska, Indiana, Kentucky, Montana, New York, Pennsylvania, and Wisconsin, have held that admitting statements made in a compelled course of treatment would violate an individual's right against self-incrimination.[34]

Finally, the doctor-patient or psychologist-patient privilege in some states may extend to protect communications in court-ordered treatment. The Massachusetts state supreme court held that the state's statutory privilege protects admissions made in court-ordered treatment unless the patient was warned that communications were not privileged.[35] Similarly, a New York court noted that the statutory psychologist-patient privilege precludes the use in criminal prosecutions of statements made in court-ordered treatment.[36] And in states where the physician-patient or psychologist-patient statutory privilege does not explicitly state that the privilege is inapplicable to court-ordered treatment, the privilege arguably extends to protect admissions in such treatment.[37]

Summary

Since the inception of the juvenile justice system there has been a constant struggle to balance the dual purposes of rehabilitation and accountability. To ensure rehabilitation, several states have enacted court procedural rules or statutes designed to protect children from the adverse use of statements they make while in the course of behavioral health screening, evaluation or treatment at one or more stages of the juvenile court process. Although many states have accorded some protections to court-involved youth in these processes, few states have comprehensive protections against self-incrimination for statements made in all of the specific contexts described in this monograph. For that reason, we urge lawmakers to work towards enacting more comprehensive legislation to secure youths' self incrimination in all these processes. In Part VI, we highlight some statutes that can be used as models in fashioning such a comprehensive law and include exact excerpts of the statutory language at Appendix A.

Endnotes

1. *See* the state profiles at Appendix C for citations to state constitutional provisions regarding the right against self-incrimination.
2. *See* the state profiles at Appendix C for citations to state juvenile codes and juvenile court rule provisions regarding the right against self-incrimination.
3. **Arkansas.** ARK. CODE ANN. § 9-27-321 (inadmissible in any proceeding); **Arizona.** ARIZ. RULE OF EVID. 408 (evidence of conduct or statements made in compromised negotiations is not admissible; used in practice to cover statements made to intake, probation officers); **District of Columbia.** D.C. SCR JUV. RULE 111 (shall not be used against the child for any purpose in a delinquency or in need of supervision case prior to the disposition hearing or in a criminal proceeding prior to conviction); **Hawaii.** HAWAII FAM. CT. RULE 123 (shall be inadmissible at the adjudication hearing; considered only in the disposition of an adjudicated petition); **Iowa**. IOWA CODE ANN. §§ 232.45(11)(h), 232.47(7)(a) (inadmissible in case in chief); **Kentucky.** KY. REV. STAT. § 630.060(1) (information received prior to filing of petition remains confidential); **Maine.** 15 ME. REV. STAT. § 3204 (inadmissible at adjudicatory

hearing); **Maryland.** MD. CODE ANN. §§ 3-A8-10, 3-A8-12 (inadmissible at adjudicatory hearings and criminal trials); **Mississippi.** MISS. CODE. ANN. § 43-21-559 (no member of youth court staff [including personnel of detention and shelter facilities] may testify as to an admission or confession made to him); **Missouri.** MO. ANN. STAT § 211.271 (shall not be used for any purpose whatsoever in any civil or criminal proceedings but may be admitted in juvenile proceedings); **New Mexico**. N.M. R.E. 11-509 (child has privilege to refuse to disclose and to prevent others from disclosing confidential communications made to probation officer or social worker during preliminary inquiry phase); **North Carolina**. N.C. GEN STAT. § 7B-2408 (not admissible prior to disposition); **Texas.** TEXAS HUMAN RESOURCES CODE § 141.042 (statements made during mental health screening inadmissible at any hearing); **Virginia.** VA. CODE. ANN. § 16.1-26.1 (statements made by a child to the intake officer or probation officer during the intake process or during a mental health screening or assessment...prior to a hearing on the merits of the petition filed against the child, shall not be admissible at any stage of the proceedings).

4. **Texas.** TEXAS HUMAN RESOURCES CODE § 141.042 (statements made during mental health screening inadmissible at any hearing); **Virginia.** VA. CODE. ANN. § 16.1-26.1 (statements made by a child to the intake officer or probation officer during the intake process or during a mental health screening or assessment...prior to a hearing on the merits of the petition filed against the child, shall not be admissible at any stage of the proceedings).
5. **California**. *See In re Wayne H.,* 596 P.2d 1 (Cal. 1979) (The use of a minor's statements in subsequent juvenile or criminal proceedings would frustrate the purpose of the statute and therefore such statements are inadmissible as substantive evidence or for impeachment; however statements may be admitted for consideration on the issues of detention and fitness for juvenile treatment).
6. **California.** *See People v. Humiston*, 20 Cal. App. 4th 460 (1993) (inadmissible at adjudication but admissible for impeachment when defendant testifies inconsistently with statements made to probation officer at intake).
7. **New York.** *See In the Matter of Randy G.,* 487 N.Y.S.2d 967 (N.Y. Fam. Ct. 1985) (juvenile's statements made at an initial intake with a probation officer are not admissible at a fact-finding proceeding, but may be admitted at the dispositional hearing).
8. **Alaska.** ALASKA STAT. 47.12.040 (the minor and the minor's parents or guardian, if present, must be advised that any statement may be used against the minor, and the minor has the rights to have a parent or guardian present at the interview and to remain silent); **Connecticut.** CONN. GEN. STAT. ANN. § 46b-137(a) (inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement unless made by such child in the presence of his parent or parents or guardian and after the parent or guardian and child have been advised of: the child's right to

retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf; the child's right to refuse to make any statements; and that any statements he makes may be introduced into evidence against him) *but see State v. Ledbetter*, 818 A.2d 1 (Conn. 2003) (admissible in criminal trial) and *In re Ralph M.*, 559 A.2d 179 (Conn. 1989) (admissible in transfer hearing); **District of Columbia** D.C. SCR JUV. R. 111 (statements may only be used in such instances when the judge is satisfied that the statements were made voluntarily and that rights were waived knowingly); **Mississippi**. *Interest of W.R.A.*, 481 So.2d 280 (Miss. 1985) (*Miranda* warnings followed by minor's knowing and intelligent waiver of privilege against self-incrimination and right to counsel . . . Sufficient to render confession admissible); **New Mexico**. N.M. STAT. ANN. §§ 32A-2-7, 32A-2-14 (during the preliminary inquiry on a delinquency complaint...child shall be informed of the child's right to remain silent); (before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained); **Tennessee**. TENN. JUV. PROC. RULE 5 (when a child is brought to the court or placed in detention, a youth services officer or other person designated by the juvenile court judge to serve as an intake officer for the juvenile court shall within a reasonable time inform the child...that the child is not required to say anything and anything child says may be used against him).

9. *See* description of *Estelle v. Smith* in Part IV.
10. **Alabama**. ALA. R. JUV. P. RULE 11 (upon detention in an intake office or detention or shelter care facility child shall be notified of child's right against self-incrimination); **Illinois**. 705 ILCS 405/5-401.5 (statement made during custodial interrogation or during detention shall be inadmissible in criminal or juvenile proceeding); **Mississippi**. MISS. CODE. ANN. § 43-21-559 (no member of youth court staff, including personnel of detention and shelter facilities, may testify as to an admission or confession made to him); **Tennessee**. TENN. JUV. PROC. RULE 7 (no child placed in detention shall be questioned unless child intelligently waives right to remain silent).
11. **Mississippi**. MISS. CODE. ANN. § 43-21-559 (no member of youth court staff, including personnel of detention and shelter facilities, may testify as to an admission or confession made to him).
12. **Colorado**. People *v. Robledo,* 832 P.2d 249 (Colo. 1992) (statement made to counselor while child was detained prior to charges being filed was suppressed because no *Miranda* warnings given).
13. **Delaware**. *Holder v. State*, 692 A.2d 882 (Del. Super. Ct. 1997) (statements made to counselor at juvenile detention facility only admissible to impeach absent evidence that statements were made voluntarily).
14. **Alabama.** ALA. R. CRIM. P. RULE 11.8 (the state may not use evidence obtained by a compulsory mental examination of the defendant in a criminal

proceeding unless the defendant offers evidence in support of an affirmative defense of insanity); **Arizona**. 16A A.R.S. RULE CRIM. PROC. 11.7 (statement inadmissible unless defendant raises insanity defense); **Connecticut**. CONN. GEN. STAT. ANN. § 46b-124(j); CONN. GEN. STAT. ANN. § 52-146f(4) (admissible only on issues regarding mental condition and only if defendant informed that statements would not be confidential); **Illinois**. 740 ILCS 110/10 (admissible only on issues regarding physical or mental condition and only if defendant informed that statements would not be confidential); **Maryland**. MD. CODE ANN. §§ 3-A8-12, 3-A8-17 (statements at preliminary inquiry are inadmissible at any adjudicatory hearing, peace order proceeding [with the exceptions of hearings about the respondent's competence to participate in such proceedings and responsibility for his conduct where a delinquency petition has been filed] or in criminal proceedings prior to conviction); (report of a study under this section is admissible as evidence at a waiver hearing and at a disposition hearing, but not at an adjudicatory hearing); **Massachusetts**. MASS. GEN. LAWS 233 § 20B(b) (if a judge finds that the patient, after having been informed that the communications would not be privileged, has made communications to a psychotherapist in the course of a psychiatric examination ordered by the court, such communications shall be admissible only on issues involving the patient's mental or emotional condition but not as a confession or admission of guilt); **Minnesota**. 49 RULE OF CRIM. P. 20.02(5), MINN. R. JUV. DEL. P. RULE 13.04 (inadmissible unless defendant has raised mental health issue in case) (also inadmissible at sentencing); **Mississippi**. MS. R. UNIF. CIR. AND CTY. CT. RULE 9.07 (when defendant raises insanity defense, no statement made by accused in examination to determine mental state shall be admitted against defendant on issue of guilt in any proceeding; **Missouri**. S. CT. RULE 123.01, MO. REV. STAT. § 552.020 (14) (No statement made by the accused in the course of any examination or treatment pursuant to this section and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt); **Oregon**. ORE. REV. STAT. § 419A.255 (no information used to establish criminal or civil liability. . .except in connection with pre-sentence investigation after guilt has been established or admitted in criminal court, or in connection with a proceeding in another juvenile court); **Tennessee**. TENN. R. CRIM. P. 12.2 (no statement made by the defendant, no testimony by the expert based on such statement, and no other fruits of the statement are admissible in evidence against the defendant in any criminal proceeding, except for impeachment purposes or on an issue concerning a mental condition on which the defendant has introduced testimony); **Vermont**. 13 VT. STAT. ANN. § 4816(c) (no statement made in the course of the examination by the person examined, whether or not he has consented to the examination, shall be admitted as evidence in any criminal proceeding for

the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined); **Washington**. *See State v. Decker*, 68 Wn. App. 246 (1993) (holding that the court may grant immunity – use and derivative use – to respondent in a pre-dispositional evaluation).

15. **Michigan**. *People v. Hana*, 504 N.W.2d 166 (Mich. 1993) (codified in MCR 3.950(G)(1).
16. **Mississippi**. *Cf. Porter v. Mississippi*, 492 So.2d 970 (Miss. 1986), applying Uniform CRIM. RULE OF CIRCUIT CT. PRAC. 907 (formerly Rule 4.08(2) (evaluation when defendant offers insanity defense).
17. **Florida**. *Cf. Parkin v. State*, 238 So. 2d 817 (Fl. 1970) (evaluation when insanity defense raised); **Louisiana**. *Cf. In re: Bruno*, 388 So.2d 784 (1980) (evaluation for transfer hearing); **Maine**. *Cf. State v. Buzynski*, 330 A.2d 422 (Me. 1974) (evaluation when defendant pleads not guilty by reason of mental disease); **New Mexico**. *Christopher P. v. State*, 816 P.2d 485 (N.M. 1991) (youth's right against self-incrimination in transfer hearing violated when compelled to discuss charges during court-ordered exam); **Wisconsin**. *Moore v. State*, 265 N.W.2d 540 (Wis. 1978) (evaluation when ordered by court, statements inadmissible at guilt phase, but admissible at sentencing).
18. **Connecticut**. CONN. RULE OF EVID. 5-1 (psychologist-patient privilege applies unless authorization or waiver by child or child's personal representative); **Mississippi**. *See Gholson v. Estelle*, 675 F.2d 734 (5th Cir. 1982) (holding that psychiatric interrogations may be considered custodial interrogations if statements procured are to be used at either guilt or sentencing phase of trial); See also *Vanderbilt v. Collins*, 994 F.2d 189 (5th Cir. 1993) (holding that 5th amendment violation occurs if defendant is not informed that statements made during psychiatric examination may be used against him later). **Montana**. *Cf. Matter of D.M.B.,* 103 P.3d 514 (Mont. 2004) (prior to disposition 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).
19. **Pennsylvania.** *Com. v. G.P.,* 765 A.2d 363 (Pa. Super. 2000).
20. **Washington.** *State v. Holland,* 656 P.2d 1056 (Wash. 1983) (further holding, however, that if a juvenile fails to validly waive his or her privilege against self-incrimination, his or her statements may be used to impeach his/her credibility after s/he takes the stand.
21. **Pennsylvania.** *Cf. Com. v. G.P.,* 765 A.2d 363 (Pa. Super. 2000) (holding that although a defendant may know that statements can be admissible in a civil hearing, there is no reason to assume that the defendant wished to waive his privilege against self-incrimination in criminal matters); **Washington.** *Cf. Q.L.M. v. State,* 20 P.3d 465 (Wash.App. 2001) (statements admissible in sexually violent predator detention proceeding because they are civil proceedings and resulting detention is treatment not punishment).

22. **Alabama.** ALA. R. CRIM. P., RULE 11.2(b)(1) (results of examination of defendant's mental competency to stand trial are not admissible as evidence in a trial for the offense charged and can not prejudice the defendant in entering a plea of not guilty by reason of mental disease or defect); **Colorado**. COLO. STAT. § 19-2-1305(3) (inadmissible as to issues raised by not guilty plea); **Connecticut**. CONN. GEN. STAT. § 52-146f(4) (admissible only on issues regarding mental condition and only if informed that statements would not be confidential); **Florida**. FLA. R. JUV. P. RULE 8.095 (information learned only for the limited purpose of competency to proceed), FLA. R. CRIM. P. RULE 3.211(e) (limiting use of competency evidence from being used against defendant for any purpose other than determining competency); **Kansas**. KAN. STAT. ANN. § 38-1637 (inadmissible in any hearing), **Michigan**. MICH. COMP. LAWS 330.2028(3); MSA 14.800(1028)(3) (inadmissible as to guilt); **Mississippi**. MS. R. REV. Rule 503(d)(2) (no statement made by accused in course of examination into competency to stand trial is admissible as to guilt); **Rhode Island**. R.I. GEN. LAWS § 40.1-5.3-3 (inadmissible as to any issue other than mental condition); **Virginia**. VA. CODE ANN. § 16.1-360 (inadmissible at adjudicatory or disposition hearings); **California**. *Baqleh v. Superior Court*, 122 Cal. Rptr. 2d 673 (Cal. Ct. App. 2002) (inadmissible at guilt and sentencing phases); **New York**. *People v. DelRio*, 220 A.D.2d 122 (N.Y.App. 1996).
23. **Alaska.** *R.H. v State*, 777 P.2d 204, 209 (Alaska App. 1989).
24. **Colorado.** *People v. A.D.G.*, 895 P.2d 1067 (Colo. App. 1994) (if a juvenile refuses to participate in a court-ordered evaluation by invoking his right against self-incrimination, such refusal cannot be used to prove that he is not agreeable to treatment as an adult).
25. **Indiana.** *Haskett v. State*, 263 N.E.2d 529 (Ind. 1970).
26. **Washington.** *State v. Diaz-Cardona*, 98 P.3d 136 (Wash. App. 2004).
27. **Alabama.** RULE OF EVID. 503(d)(2) (admissible with respect to the particular purpose for which the examination is ordered unless the court orders otherwise); **Alaska.** RULE OF EVID. 504(a)(6) (admissible with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise); *See also M.R.S. v State,* 897 P.2d 63 (Alaska 1995); **Arkansas.** RULE OF EVID. 503 (b) and (d) (admissible with respect to the particular purpose for which the examination is ordered unless the court orders otherwise); **Connecticut.** RULE OF EVID. 5-1 (disclosure permitted pursuant to court-ordered exam); **Delaware.** RULE OF EVID. 503(b) and (d)(2) (no privilege with respect to the particular purpose for which the examination is ordered unless the court orders otherwise); **Hawaii.** RULE OF EVID. 504.1 (b) and (d)(2) (not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise); **Idaho**. RULE OF EVID. 503(d)(2) (exception to psychiatrist/patient privilege when court orders examination of physical, emotional, or mental

condition of patient with respect to particular purpose for which examination was ordered); **Nebraska**. NEB. REV. ST. §§ 71-1.206.29 (This privilege may not be claimed by the client or patient or on his or her behalf by authorized persons, when the client or patient is examined pursuant to court order); 27-504(4)(b) (not privileged only in respect to the particular purpose for which the examination is ordered); **Mississippi.** MS R REV RULE 503(d)(2) (no privilege in court-ordered examination with respect to particular purpose for which examination was ordered); **Ohio**. OHIO JUV. R. 32(13) (may be utilized only for purposes specified in court order); **Oregon**. OR. REV. STAT. § 40.235 (if judge orders examination of the physical condition of the patient, no privilege exists with respect to the purpose for which the judge ordered the examination), OR. RULE OF EVID. 504.1 (when the judge orders an examination of the physical condition of the patient, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise); **South Carolina.** S.C. CODE § 44-22-90(a) (information is admissible only on issues involving the patient's mental condition; *see also Hudgins v. Moore*, 524 S.E.2d 105 (S.C. 1999) (recognizing the need to protect the integrity of a court-ordered mental health examination by forbidding the use of the information obtained for purposes other than that ordered by the court); **Tennessee.** TENN. CODE ANN. § 24-1-207(a) (admissible only on issues involving the patient's mental or emotional condition); **Wyoming.** WYO. STAT. 1977 §33-27-123(vii) (exception to privilege where a patient is examined pursuant to a court-order).

28. *See, e.g.,* **Missouri.** MO. REV. STAT. § 552.020 (14) (no statement made by the accused in the course of any examination or treatment ...shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal); MO. REV. STAT. § 211.271 (all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel and all evidence given in cases under this chapter, as well as all reports and records of the juvenile court, are not lawful or proper evidence against the child and shall not be used for any purpose whatsoever in any proceeding, civil or criminal, other than proceedings under this chapter); **Vermont.** 13 VT. STAT. ANN. § 4816(c) (no statement made in the course of the examination by the person examined...shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense); **Washington.** *See State v. Decker*, 68 Wn. App. 246 (1993) (holding that the court may grant immunity – use and derivative use – to respondent in a pre-dispositional evaluation).

29. **Arizona**. ARIZ. REV. STAT. § 8-291.06 (inadmissible unless juvenile presents evidence to rebut sanity presumption); **Colorado**. COLO. REV. STAT. § 19-2-1305(3) (inadmissible as to issues raised by not guilty plea); and **Virginia**. VA. CODE ANN. § 16.1-360 (inadmissible at adjudicatory or

disposition hearings).

30. **Hawaii.** *State v. Reyes*, 2 P.3d 715 (Hawaii App. 2000); **Idaho**. *Cf. State v. Jones*, 926 P.2d 1318 (Idaho App. 1996) (upholding probation revocation because defendant had immunity from further prosecution as per plea agreement); **Kentucky**. *Welch v. Kentucky*, 149 S.W.3d 407 (Ky. 2004) ("privilege not limited to criminal proceedings and protects in circumstances where person's freedom is curtailed"); **Minnesota**. *State v. Kaquatosh*, 600 N.W.2d 153 (Minn. App. 1999) (finding it was a violation of a probationer's Fifth Amendment right against self-incrimination to revoke his probation for failing to complete a court-ordered sex-offender treatment program where the failure was due to his refusal to admit facts underlying a conviction from which he is appealing); **Montana**. *State v. Imlay*, 813 P.2d 979 (Mont. 1991) (better reasoned decisions protect the defendant's constitutional right against self-incrimination, and prohibit augmenting a defendant's sentence because he refuses to confess to a crime or invokes his privilege against self-incrimination); **North Carolina**. *In the Matter of Linberry*, 572 S.E.2d 229 (N.C. App. 2002) (holding that penalizing a youth who refuses to admit guilt in court-ordered sex offender treatment violated right against self-incrimination); **Ohio**. *State v. Evans*, 760 N.E.2d 909 (Ohio Ct. App. 2001) (upholding suppression of statement made by juvenile as requirement of treatment while in custody of residential treatment facility for adjudicated juveniles); **Oregon.** *State v. Gaither*, 100 P.3d 768 (Or. Ct. App. 2004); **Washington**. *State v. Warner*, 889 P.2d 479 (Wash. 1995) (statements made during court-ordered treatment pursuant to delinquency adjudication inadmissible in criminal trial where compelled by threat of penalty).
31. **Hawaii.** *State v. Reyes*, 2 P.3d 715 (Hawaii App. 2000).
32. **Oregon.** *State v. Gaither*, 100 P.3d 768 (Or. Ct. App. 2004).
33. **Kentucky**. *Welch v. Kentucky*, 149 S.W.3d 407 (Ky. 2004) ("privilege not limited to criminal proceedings and protects in circumstances where person's freedom is curtailed").
34. **Alaska.** *Cf. Beaver v. State*, 933 P.2d 1178 (Alaska App. 1997) (statements made by a juvenile voluntarily participating in a treatment program while institutionalized by court order, are admissible at sentencing hearings); **Indiana.** *Cf. Sims v. State*, 601 N.E.2d 344 (Ind. 1992) (statements during court-ordered treatment protected by right against self incrimination and not admissible). *Cf. Watson v. State,* 784 N.E.2d 515 (Ind. 2003) (right against self-incrimination in court-ordered treatment waived when defendant put mental state at issue); **Kentucky**. *Welch v. Com*, 149 S.W.3d 407 (Ky. 2004) (inadmissible without Miranda warnings and valid waiver at adjudication hearing); **Montana.** *State v. Fuller*, 915 P.2d 809 (Mont. 1996) (suppressing statements in criminal trial that were made in court-ordered sex offender treatment program); **New York.** *Cf. In the Matter of Ashley M.*, 686 N.Y.S.2d 304 (N.Y.A.D. 3d Dep't 1998) (finding that court-ordered treatment in dependency proceeding does not violate right against self-incrimination

because statutory psychologist-patient privilege precludes use of statements in criminal prosecutions); **Pennsylvania**. *Com. v. Carter*, 821 A.2d 601 (Pa. Super. 2003) (records of court-ordered treatment in a delinquency adjudication are protected by the psychologist-patient privilege if made for treatment purposes and are inadmissible unless defendant informed/waived Miranda rights), *but see Com. v. Bruce Smith,* 1357 MDA 2000 (Miranda warnings not required but statements may be inadmissible if not voluntary under totality of circumstances). **Wisconsin.** *In the Interest of Todd. F.M.*, 506 N.W.2d 427 (Wis. 1993) (upholding suppression of statement made by juvenile in treatment while in custody of residential treatment facility pursuant to delinquency adjudication).

35. **Massachusetts**. *Com. v. Lamb*, 311 N.E.2d 47 (Mass. 1974), applying MASS. GEN. LAWS § 233 § 20B(b) (statutory psychotherapist-patient privilege protects admissions in court-ordered treatment unless patient warned that communications not privileged; even if warned, statements inadmissible as to guilt).
36. **New York**. *Cf. In the Matter of Ashley M.*, 686 N.Y.S.2d 304 (N.Y.A.D. 3d Dep't 1998) (finding that court-ordered treatment in dependency proceeding does not violate right against self-incrimination because statutory psychologist-patient privilege precludes use of statements in criminal prosecutions).
37. *See, e.g.*, **Alabama**. ALA. R. EVID., RULE 503(b) (patient has the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, made for the purposes of diagnosis or treatment of the patient's mental or emotional condition; **District of Columbia**. D.C. CODE § 14-307 (physician or surgeon or mental health professional as defined may not be permitted, without consent of the person, or of his/her legal representative, to disclose any information, confidential in its nature, that s/he has acquired in attending a client in a professional capacity whether the information was obtained from the client or from his family or from the person or persons in charge of him/her); **New Hampshire.** RULE OF EVID. 503 (no explicit exceptions for court-ordered treatment between patient and psychotherapist); **New Jersey.** N.J. STAT. ANN. 45:14B-28 (psychologist-patient privilege may apply because no exceptions for court-ordered treatment or evaluation performed by practicing psychologist); **Mississippi.** MISS. CODE. ANN. § 73-20-17 (no licensed professional counselor [includes persons who offer professional counseling] may disclose any information acquired during professional consultation with clients except with the written consent of the client or...in the case of a minor, with written consent of his parent, legal guardian...or other person authorized by the court to file suit; when a communication reveals the contemplation of a crime or harmful act, or intent to commit suicide).

Part VI

A Call for More Comprehensive Statutes and Court Rules

Part VI

A Call for More Comprehensive Statutes and Court Rules

As demonstrated in the previous part, and in the state profiles at Appendix C, most states do not have comprehensive prohibitions against the use of incriminating information obtained from youth during screening, assessment or treatment undertaken at *any and all* points in the juvenile court process. While a number of states have safeguards that apply to statements made at one or perhaps two points in the process, few states extend protections to all of the potential junctures at which youth may disclose.

These protections are necessary in order to encourage youth in the delinquency system to participate fully in the screening, assessment and treatment processes, without fear that their disclosures will be admitted into evidence against them in a delinquency or criminal proceeding. Without such safeguards, defense attorneys, as per their codes of professional ethics, are obligated to advise their youthful clients against participating in these processes or not fully disclosing information that may be highly relevant to the diagnosis and treatment of their behavioral health disorders.[1]

Similarly, clinical professionals, in accordance with their professional duties (see Part III), must inform youth as to the limits of confidentiality and all the potential uses of the information that the youth discloses *prior to* conducting any screening, assessment or treatment. Without protections in state law, clinicians are unable to give assurances to the youth which, in turn, inhibits the full disclosure necessary for diagnostic and therapeutic processes. As the co-developer of one screening instrument points out

> The potential for youths' self-reported information. . .to be used in prejudicial ways in the legal process threatens the value of mental health screening as a way to identify youths' potential mental and emotional conditions in need of clinical response. When defendants are questioned by juvenile justice personnel in non-confidential circumstances, they must be informed how the information will or could be used, especially if there are uses that might jeopardize their legal cases. Were youths to be informed of

> this, however, it would virtually negate the value of mental health screening, because it would often inhibit them from reporting thoughts, feelings, or behaviors that are important to learn in order to determine whether they have mental or emotional conditions that require a response for their own safety and welfare.[2]

Juvenile Law Center urges those states that do not already have them to enact statutes or court rules that prohibit the admission of any self-incriminating statements or information gathered from court-involved youth who participate in behavioral health screening, assessment or treatment into evidence as to guilt in any delinquency adjudication or criminal trial. To aid jurisdictions in implementing this recommendation, we highlight below statutes/court rules from four states – Texas, Maryland, Missouri, and Connecticut – that can be used as models. (Complete excerpts of the relevant code/court rules for these three states are found at Appendix A.) These statutes/court rules were chosen as they represent the most comprehensive protections we found in our review of state law. However, as is noted in the discussion below, none of these states' provisions cover all *four* of the potential points for incrimination that are identified in this monograph. For that reason, jurisdictions are advised to select the language from these provisions that will supplement their own laws to ensure that protections are in place for each of the *four* potential points for incrimination. We also recommend that jurisdictions consider the Juvenile Law Center model legislation that is proposed at the end of this section.

Texas

The Texas Human Resources Code provides for the screening of juveniles who have been referred to the probation department. The statute further provides that "[a]ny statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument under this section is not admissible against the child at any other hearing."[3] So while the Texas statute is limited in that it only covers intake screening, the statute does absolutely prohibit the introduction of any information gathered as part of the screen at any hearing.

Maryland

The Maryland statute provides that information or statements obtained during what is known as a "section 3-8A-17 study," which includes court-ordered mental health evaluations of a youth, are not admissible in evidence "in any adjudicatory hearing or peace order proceeding except on the issue of respondent's competence to participate in the proceedings and responsibility for his conduct . . . where a petition alleging delinquency has been filed, or in a criminal proceeding prior to conviction."[4] Additionally, Section 3-8A-17 of Maryland code covers court-ordered studies of the child, the child's family or the child's environment, including examinations by mental-health professionals.[5] That section further provides that "[t]he report of a study under this section is admissible as evidence at a waiver

hearing and at a disposition hearing, but not at an adjudicatory hearing."[6] Section 3-8A-12 of Maryland code covers intake procedures governed by section 3-8A-10.[7] Like mental-health evaluations, information gathered during a routine intake procedure or preliminary inquiry is inadmissible at any adjudicatory hearing, peace order proceeding (with the exceptions of hearings about the respondent's competence to participate in such proceedings and responsibility for his conduct where a delinquency petition has been filed), or in criminal proceedings prior to conviction.[8] Thus, Maryland statute offers language that protects youths' due process rights during intake and court-ordered evaluations. However, there is no statutory language that pertains to treatment undertaken as part of a court's disposition order nor is there language that explicitly addresses statements offered in detention.

Missouri

Missouri court rules provide that at any time after a delinquency petition has been filed, the court may order that the juvenile be examined by a physician, psychiatrist or psychologist appointed by the court to aid the court in determining the child's mental health.[9] Where the examination is made prior to the adjudicatory phase of the hearing, the juvenile has a right not to incriminate himself.[10] As a result, the juvenile is afforded protections similar to that given to adults under section 552.020(14) of Missouri statutes, which provides in relevant part:

> (14) No statement made by the accused in the course of any *examination or treatment* pursuant to this section and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal.[11]

In addition, after a child is taken into custody, all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel (including physicians, psychiatrist, psychologist) and all evidence given in cases, as well as all reports and records of the juvenile court, are not lawful or proper evidence against the child and cannot be used for any purpose whatsoever in any civil or criminal proceeding other than in juvenile court proceedings.[12] In *State v. Ross*, the Missouri appellate court held that the purpose of excluding statements or confessions made to juvenile officers or personnel pursuant to section 211.271 is to allow a juvenile to discuss his problems with juvenile personnel in a relaxed confidential setting and without fear in order that the juvenile personnel may attempt to aid the youth in his rehabilitation.[13] Missouri's court rules prevent statements made during examination or treatment from being used as to a finding of guilt in any proceeding, but do not address the admissibility of such evidence in

disposition or sentencing hearings. Moreover, the court rule only explicitly prohibits admissions of statements made while in custody in criminal and other non-juvenile court civil proceedings.

Connecticut

Connecticut's statute with respect to juvenile court matters provides that any information concerning a child that is obtained during any mental health screening or assessment of such child shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such screening or assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or provision of services to the child, or pursuant to laws mandating reporting of child abuse and elder abuse. The information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.[14]

Juvenile Law Center Model Legislation

The model statutory language developed by Juvenile Law Center would extend protections to all *four* of the potential points for incrimination that are identified in this monograph as follows:

> No statements, admissions or confessions made by, or incriminating information obtained from, a child in the course of *any screening* that is undertaken in conjunction with proceedings under this chapter, including but not limited to that which is court-ordered, shall be admitted into evidence in any civil or criminal proceeding. Moreover, no statements, admissions or confessions made by, or incriminating information obtained from, a child in the course of *any assessment or evaluation, or any treatment* provided by or at the direction of a clinician or health care professional, that is undertaken in conjunction with proceedings under this chapter, including but not limited to that which is court-ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act in any juvenile court proceeding, or on the issue of guilt in any criminal proceeding.

Endnotes

1. *See, e.g.*, American Council of Chief Defenders and National Juvenile Defender Center, 2005 ("Counsel's paramount responsibilities to children charged with delinquency offenses are to zealously defend them from the charges leveled against them and to protect their due process rights.")
2. Grisso & Williams, 2006, at 58.
3. TEXAS HUM. RES. CODE §141.042.
4. MD. CODE ANN., CTS. & JUD. PROC. §§ 3-8A-12, 3-8A-17.

5. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.
6. MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-17.
7. MD. CODE ANN., CTS. & JUD. PROC. §§ 3-8A-10, 3-8A-12.
8. MD. CODE ANN., CTS. & JUD. PROC. §§ 3-8A-10, 3-8A-12.
9. Missouri Supreme Court Rules, 123.01.
10. Missouri Supreme Court Rules, 123.01 (comment).
11. MO. REV. STAT. § 552.020 (2005) (emphasis added).
12. MO. REV.. STAT. § 211.271.
13. 516 S.W.2d 311 (Mo. Ct. App. 1974).
14. CONN. GEN. STAT. ANN. § 46b-124(j).

Conclusion

Conclusion

Juvenile Law Center created this monograph in support of its key recommendation that states enact statutes or court rules that put strict prohibitions on the use and admissibility of any self-incriminating statements or information gathered from youth who participate in behavioral screening, assessment, or treatment as part of the juvenile court process. In addition to examining the current legal landscape with respect to these issues, enacting legislation or court rules in this area requires a dialogue between all the key stakeholders. Juvenile Law Center offers technical assistance to states and localities that wish to undertake an interagency effort to enact these safeguards. If you are interested in such assistance, please contact us. Until states are able to enact such legislation or court rules, they should use such stop-gap measures as the memorandum of understanding outlined in Appendix B to protect youth's due process rights.

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Appendices

Appendix A

Excerpts from State Statutes

Appendix B

Template for Preparing a Memorandum of Understanding Regarding Prohibited and Permitted Disclosures and Uses of Information Obtained From and Statements Made by Youth in the Juvenile Justice System During Screening, Assessment/Evaluation and Treatment

Appendix C

State Law Provisions Regarding Prohibited and Permitted Uses of Information Obtained From and Statements Made by Youth in the Juvenile Justice System During Screening, Assessment/Evaluation and Treatment

Appendix A

Excerpts from State Statutes

Texas

Vernon's Texas Statutes and Codes Annotated
Human Resources Code
Title 10. Juvenile Boards, Juvenile Probation Departments, and Family Services Offices
Subtitle A. Juvenile Probation Services
Chapter 141. Texas Juvenile Probation Commission
Subchapter C. Powers and Duties of Commission
§ 141.042. Rules Governing Juvenile Boards, Probation Departments, Probation Officers, Programs, and Facilities

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(e) Juvenile probation departments shall use the mental health screening instrument selected by the commission for the initial screening of children under the jurisdiction of probation departments who have been formally referred to the department. The commission shall give priority to training in the use of this instrument in any preservice or in-service training that the commission provides for probation officers. A clinical assessment by a licensed mental health professional may be substituted for the mental health screening instrument selected by the commission if the clinical assessment is performed in the time prescribed by the commission. Juvenile probation departments shall report data from the use of the screening instrument or the clinical assessment to the commission in a format and in the time prescribed by the commission.

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(g) Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument under this section is not admissible against the child at any other hearing. The person administering the mental health screening instrument shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any other hearing.

Maryland

Maryland Code Annotated
Title 3. Courts of General Jurisdiction-
Jurisdiction/Special Causes of Action
Subtitle 8A. Juvenile Causes—Children Other Than CINAs and Adults

§ 3-8A-12. Certain information admissible in subsequent proceedings.

(a) Counsel and advice. — 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 may not be admitted in evidence in any adjudicatory hearing or peace order proceeding or in a criminal proceeding against the participant prior to conviction.

(b) Information secured during§ 3-8A-10 inquiry or § 3-8A-17 study. — Any information secured or statement made by a participant during a preliminary or further inquiry pursuant to § 3-8A-10 or a study pursuant to § 3-8A-17 may not be admitted in evidence in any adjudicatory hearing or peace order proceeding except on the issue of respondent's competence to participate in the proceedings and responsibility for his conduct as provided in § 3-109 of the Criminal Procedure Article where a petition alleging delinquency has been filed, or in a criminal proceeding prior to conviction.

(c) Statements made at waiver hearing inadmissible in criminal proceedings. — A statement made by a child, his parents, guardian or custodian at a waiver hearing is not admissible against him or them in criminal proceedings prior to conviction except when the person is charged with perjury, and the statement is relevant to that charge and is otherwise admissible.

(d) Statements made at waiver hearing inadmissible at adjudicatory hearing. — If jurisdiction is not waived, any statement made by a child, his parents, guardian, or custodian at a waiver hearing may not be admitted in evidence in any adjudicatory hearing unless a delinquent offense of perjury is alleged, and the statement is relevant to that charge and is otherwise admissible.

§ 3-8A-10. Complaint; preliminary procedures.

(a) Applicability. — This section does not apply to allegations that a child is in need of assistance, as defined in § 3-801.

(b) Receipt of complaints. — An intake officer shall receive:

(1) Complaints from a person or agency having knowledge of facts which may cause a person to be subject to the jurisdiction of the court under this subtitle; and

(2) Citations issued by a police officer under § 3-8A-33 of this subtitle.

(c) Jurisdictional inquiry. —

(1) Except as otherwise provided in this subsection, in considering the complaint,

the intake officer shall make an inquiry within 25 days as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child.

§ 3-8A-17. Study and examination of child, etc.

(a) In general. — After a petition or a citation has been filed with the court under this subtitle, the court may direct the Department of Juvenile Services or another qualified agency to make a study concerning the child, the child's family, the child's environment, and other matters relevant to the disposition of the case.

(b) Examination by professionally qualified person. — As part of a study under this section, the child or any parent, guardian, or custodian may be examined at a suitable place by a physician, psychiatrist, psychologist, or other professionally qualified person.

(c) Admissibility; inspection; impeachment evidence. — The report of a study under this section is admissible as evidence at a waiver hearing and at a disposition hearing, but not at an adjudicatory hearing. However, the attorney for each party has the right to inspect the report prior to its presentation to the court, to challenge or impeach its findings and to present appropriate evidence with respect to it.

Missouri

Supreme Court Rules
Rules of Practice and Procedure in Juvenile Courts
Rule 123. Physical and Mental Examination

123.01. Physical and Mental Examination of Juvenile

a. At any time after a petition has been filed, the court may order that the juvenile be examined by a physician, psychiatrist or psychologist appointed by the court to aid the court in determining:

(1) any allegation in the petition relating to the juvenile's mental or physical condition;

(2) the juvenile's competence to participate in the proceedings;

(3) whether the juvenile is a proper subject to be dealt with by the juvenile court; or

(4) any other matter relating to the adjudication or disposition of the case, including the proper disposition or treatment of the juvenile.

b. The services of a public or private hospital, institution, or psychiatric or health clinic may be used for the purpose of examination under this Rule.

COMMENT

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Many cases coming before the juvenile court involve the issue of the mental or physical condition of the juvenile. This Rule empowers the court to order an examination of the juvenile at any time after a petition has been filed. Thus, a pre-adjudication examination may be made to aid in determining such issues as whether the juvenile has been subjected to neglect or abuse, or whether the juvenile is mentally responsible for his actions or is in a fit condition to proceed. Where the court has determined that the juvenile is within its jurisdiction, an examination may be of substantial aid in deciding the proper disposition of the juvenile.

Under Section 211.161RSMo, the juvenile court may cause a juvenile to be examined "in order that the condition of the child may be given consideration in the disposition of his case." This Rule makes clear that the court may order an examination in connection with any aspect of the proceeding, provided that a petition has first been filed. Until a petition is filed, there is no case before the court, and there is no sufficient ground for requiring the juvenile to submit to an examination.

Where the examination is made prior to the adjudicatory phase of the hearing, in a case in which the petition alleges a violation of state law or municipal ordinance, the right of the juvenile not to incriminate himself is not meant to be violated by this Rule. The juvenile should be afforded protection similar to that given adults by Section 552.020.11 RSMo.

Vernon's Annotated Missouri Statutes
Title XXXVII. Criminal Procedure
Chapter 552. Criminal Proceedings Involving Mental Illness
552.020. Lack of mental capacity bar to trial or conviction — psychiatric examination, when, report of — commitment to hospital, when — statements of accused inadmissible, when jury may be impaneled to determine mental fitness

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14. No statement made by the accused in the course of any examination or treatment pursuant to this section and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal. A finding by the court that the accused is mentally fit to proceed shall in no way prejudice the accused in a defense to the crime charged on the ground that at the time thereof he was afflicted with a mental disease or defect excluding

responsibility, nor shall such finding by the court be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

Vernon's Annotated Missouri Statutes
Title XII. Public Health and Welfare
Chapter 211. Juvenile Courts
211.271. Court orders not to affect civil rights — not evidence, exception

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3. After a child is taken into custody as provided in section 211.131, all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel and all evidence given in cases under this chapter, as well as all reports and records of the juvenile court, are not lawful or proper evidence against the child and shall not be used for any purpose whatsoever in any proceeding, civil or criminal, other than proceedings under this chapter.

Connecticut

Connecticut General Statues Annotated

Title 46B. Family Law
Chapter 815T. Juvenile Matters
General Provisions

§ 46b-124. Confidentiality of records of juvenile matters. Exceptions.

(a) For the purposes of this section, "records of cases of juvenile matters" includes, but is not limited to, court records, records regarding juveniles maintained by the Court Support Services Division, records regarding juveniles maintained by an organization or agency that has contracted with the judicial branch to provide services to juveniles, records of law enforcement agencies including fingerprints, photographs and physical descriptions, and medical, psychological, psychiatric and social welfare studies and reports by juvenile probation officers, public or private institutions, social agencies and clinics.

(c) All records of cases of juvenile matters involving delinquency proceedings, or any part thereof, shall be confidential and for the use of the court in juvenile matters and shall not be disclosed except as provided in this section.

(d) Records of cases of juvenile matters involving delinquency proceedings shall be available to (1) judicial branch employees who, in the performance of their duties, require access to such records, and (2) employees and authorized agents of state or federal agencies involved in (A) the delinquency proceedings, (B) the provision of services directly to the child, or (C) the design and delivery of treatment programs pursuant to section 46b-121j. Such employees and authorized agents include, but are not limited to, law enforcement officials, state and federal prosecutorial officials, school officials in accordance with section 10-233h, court officials

including officials of both the regular criminal docket and the docket for juvenile matters, officials of the Division of Criminal Justice, the Division of Public Defender Services, the Department of Children and Families, the Court Support Services Division, the Board of Pardons and Paroles and agencies under contract with the judicial branch, and an advocate appointed pursuant to section 54-221 for a victim of a crime committed by the child. Such records shall also be available to (i) the attorney representing the child, including the Division of Public Defender Services, in any proceeding in which such records are relevant, (ii) the parents or guardian of the child, until such time as the subject of the record reaches the age of majority, (iii) the subject of the record, upon submission of satisfactory proof of the subject's identity, pursuant to guidelines prescribed by the Office of the Chief Court Administrator, provided the subject has reached the age of majority, (iv) law enforcement officials and prosecutorial officials conducting legitimate criminal investigations, and (v) a state or federal agency providing services related to the collection of moneys due or funding to support the service needs of eligible juveniles, provided such disclosure shall be limited to that information necessary for the collection of and application for such moneys. Records disclosed pursuant to this subsection shall not be further disclosed, except that information contained in such records may be disclosed in connection with bail or sentencing reports in open court during criminal proceedings involving the subject of such information.

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(j) Notwithstanding the provisions of subsection (d) of this section, any information concerning a child that is obtained during any mental health screening or assessment of such child shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such screening or assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or provision of services to the child, or pursuant to sections 17a-101 to 17-101, inclusive, 17b-450, 17b-451 or 51-36a. Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.

Appendix B

Template for Preparing a Memorandum of Understanding Regarding Prohibited and Permitted Disclosures and Uses of Information Obtained From and Statements Made by Youth in the Juvenile Justice System During Screening, Assessment/ Evaluation and Treatment

This template was prepared to assist jurisdictions in which there currently are no or inadequate protections in current law or court rules that specifically provide for the prohibited and permitted disclosures and uses of information obtained from, including statements made by, youth involved with the juvenile court when undergoing screening, assessment/evaluation or treatment. The template should be used by all stakeholders in the juvenile court system to prepare an interagency memorandum of understanding as to permitted disclosures and uses of such information and statements *prior to* undertaking any major screening, assessment/ evaluation and/or treatment project.

Colored text that is underlined in the template indicates where the parties must fill in the relevant information.

The template is divided into three main sections: screening; assessment/ evaluation; and treatment. Depending on the scope of your jurisdiction's screening, assessment and treatment programs, you may need to use one, two or all of the sections.

For purposes of this document, the terms listed below have the following meanings:

- **Screen/Screening**. A relatively brief process which does or does not involve the use of a formal instrument that is used for triage purposes to identify youth who warrant immediate attention or intervention (i.e., suicide watch for a youth with suicidal ideation) or further, more comprehensive assessment/ evaluation. Screens may or may not be administered by clinicians.
- **Assessment/Evaluation**. The words assessment and evaluation are used interchangeably to mean a more comprehensive, individualized examination

than a screen. An assessment/evaluation is usually a more lengthy and labor intensive process (i.e., it involves multiple interviews, record reviews, psychological testing) that can involve the administration of a formal instrument. An assessment/evaluation is usually administered by a trained professional/clinician to diagnose the type and extent of behavioral disorders and needs, and make treatment recommendations. Sometimes assessments/evaluations are conducted in the juvenile court context for other purposes, (i.e., to assess a youth's competence to stand trial or to waive constitutional rights, or to assess a youth's responsibility for his/her conduct).

- **Treatment.** Any type of therapeutic intervention designed to address the disorders and needs identified on a screen or assessment including, but not limited to individual therapy, group therapy, the administration of psychotropic medication, and any testing undertaken in conjunction with the treatment process (i.e., random urine tests, lie detector polygraphs, etc.).

It should be noted that in developing an interagency of memorandum of understanding, jurisdictions should include a glossary defining terms used therein. At the end of the template, there is a list of suggested documentation that should be appended to a memorandum of understanding.

MEMORANDUM OF UNDERSTANDING AMONG

TRIAL COURT OF COUNTY/MUNICIPALITY, OR STATE
JUVENILE COURT OF COUNTY/MUNICIPALITY, OR STATE
PUBLIC DEFENDER'S OFFICE OF COUNTY/MUNICIPALITY, OR STATE
DISTRICT ATTORNEY'S OFFICE OF COUNTY/MUNICIPALITY, OR STATE
JUVENILE PROBATION OFFICE OF COUNTY/MUNICIPALITY, OR STATE
JUVENILE DETENTION FACILITY OF COUNTY/MUNICIPALITY, OR STATE
PUBLIC MENTAL HEALTH/SUBSTANCE ABUSE AGENCY OF COUNTY/MUNICIPALITY, OR STATE
PRIVATE TREATMENT AGENCY NAME HERE
OTHER AGENCIES LISTED HERE

as to the
Prohibited and Permitted Disclosures and Uses of Information Obtained From and Statements Made by Youth in the Juvenile Justice System During Screening, Assessment/Evaluation and Treatment

WHEREAS, youth who are in the juvenile and/or criminal justice systems have a high incidence, when compared to the general population, of behavioral health disorders and needs; and

WHEREAS, Describe here the obligations of the above agencies as per state law and regulations with respect to identifying and treating youth with various behavioral health needs/disorders; and

WHEREAS, Describe here the obligations of the above agencies as per state law and regulations to keep confidential the health care information of youth in their care; and

WHEREAS, youth who are charged with committing delinquent acts and/or criminal acts are guaranteed the rights against self-incrimination and to counsel pursuant to the Fifth and Sixth Amendments, respectively, of the United States Constitution and Add here additional protections under your state constitution and/or state statute;

NOW, THEREFORE, the parties to this Memorandum of Understanding (MOU) set forth the following as the terms and conditions of their understanding:

Include all sections that apply.

I. Screening.

A. Description of Screening Process

The above agencies agree that youth will be screened as follows: Provide here a detailed description of the screening process including the following information:

1. Identify the agency with responsibility for conducting the screening, as well as the designated individuals within the agency who will actually administer the screen to the youth.

   a. *Example*: "The county mental health agency will designate and train staff to administer the screen to all youth who have been adjudicated delinquent by the juvenile court."

   b. *Example:* "The juvenile detention facility shall designate and train staff to administer the screen to all youth upon their admission to the facility."

2. Identify the screening instrument to be used, including a statement that each of the parties have received and reviewed the screening instrument to be used. Attach the screening instrument as an appendix to this MOU.

   a. *Example:* "The Children's Depression Inventory will be administered as a screening instrument as described in this MOU. All parties have received and reviewed a copy of the Children's Depression Inventory, including a sample report generated by the Children's Depression Inventory. A copy of the Inventory and sample report are attached as an appendix to this MOU."

3. State which, if any, questions or elements on the screen will NOT be asked and/or filled out.

   a. *Example:* "Youth will not be asked to respond to the following questions on the screening instrument...."

4. State which youth will receive the screen, including any triggers for administration of the screen.

   a. *Example:* "All youth entering juvenile detention will receive the screen."

   b. *Example:* "The intake officer shall administer the screen to any youth who the intake officer determines, as a result of interviewing the youth and his/her family, has a history of behavioral health needs and/or treatment."

5. State when youth will receive the screen.

a. *Example:* "All youth entering juvenile detention will receive a screen within 24 hours of admission."

b. *Example:* "The intake officer shall administer the screen at the time of the intake interview."

6. State which youth will NOT receive the screen.

   a. *Example:* "The screen will not be administered to any youth charged with the following offenses:…"

7. Describe what information about the screen will be provided to youth by the screen's administrator immediately prior to being screened. This statement should be in language that a youth can understand. It should describe the possible and prohibited disclosures and uses of the information and statements gathered during the screen, including what access youth will/will not have to the screen results.

   a. *Example*: "I am going to ask you to answer some questions about how you are feeling. I'm asking you these questions only to find out if there is anything we need to do for you while you're in detention to keep you health and safe. None of your answers to the questions will be said in court. If your answers tell me that you may need some follow up, I will share the results of the screen with the facility nurse. I will tell you the results of the screen unless I think that it might be harmful to you if I do. If you tell me anything that makes me think you are going to hurt yourself or someone else, I need to share that information with the facility nurse and the head of the facility."

B. Permissible and Prohibited *Disclosure and Uses* of Information/ Statements Obtained During Screening

The above agencies agree that the information and statements obtained from the youth as part of the screening process will be maintained, disclosed and used only as follows and in accordance with all applicable state and federal laws and regulations: Provide here a detailed description regarding permissible and prohibited disclosure and uses of information/ statements gathered during the screen including the following information:

1. Identify the agency or agencies that shall maintain the records of the screen results, including any information collected and statements made incident to the screen. Identify any applicable laws and regulations.

   a. *Example:* " XYZ private agency shall maintain the results of the screens, including any information collected and statements obtained incident to the screen, in their records as follow..... The maintenance of such records shall be in accordance with the provisions of the federal Health Information Protection and Accountability Act of 1996 (HIPAA)."

2. Provide a detailed statement as to what information obtained from the screen is to be disclosed to which agencies/individuals including:

   a. What exact information from the screening instrument will be disclosed

      (1) *Example:* "A list of the scales on the MAYSI-2 on which the youth scored at either the "caution" or "warning" levels shall be provided to the following entities/individuals:..."

      (2) *Example:* "The report generated by the Voice DISC, a sample of which is attached to this memorandum, shall be provided to the following entities/ individuals: ...".

   b. What exact information will NOT be disclosed

      (1) *Example:* "Under no circumstances will information as to which items on the Child Behavioral Checklist (CDCL) a particular youth did or did not endorse be released to...."

   c. Under what circumstances will the disclosure be made, including which personnel are designated to make the disclosure, to whom will the disclosure be made and when.

      (1) *Example:* "The detention staff member administering the screen shall forward the results along with the youth's

admission paperwork to the facility nurse and director."

(2) *Example:* "If the youth scores on the screen indicate the need for further assessment by a clinical professional, the intake officer shall immediately forward the screen results to the court's behavioral health unit to schedule an assessment."

d. Disclosure in emergency situations

(1) *Example:* If the youth scores at either the "caution" or "warning" levels on the suicidal ideation scale of the MAYSI-2, the intake officer shall immediately contact the crisis unit at the county mental health office to arrange prompt intervention."

3. Provide a detailed statement as to the *permitted* uses of information obtained from the screen.

a. *Example:* "Any information concerning a child that is obtained during any mental health screening or assessment of such child shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such screening or assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or provision of services to the child. Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose."

4. Provide a detailed statement as to the *prohibited* uses of information and statements obtained from the screen, including inadmissibility at different stages of the juvenile and/or criminal court processes.

a. *Example:* "Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument is not admissible against the child at any hearing. "

b. *Example:* "Statements of a juvenile or of a juvenile's parents, guardian or legal custodian made during the course of screening and assessment for participation in a juvenile drug treatment court program are not admissible in evidence at an adjudicatory or probation violation hearing against that juvenile."

II. Assessment/Evaluation

A. Description of Assessment/Evaluation Process

The above agencies agree that youth will receive an assessment/evaluation as follows: Provide here a detailed description of the assessment/evaluation process including the following information:

1. Identify the trigger for a youth to receive an assessment/evaluation, including the purpose of the assessment/evaluation.

   a. *Example:* "At any time after a petition has been filed, the court may order that the juvenile be examined by a physician, psychiatrist or psychologist appointed by the court to aid the court in determining: (1) any allegation in the petition relating to the juvenile's mental or physical condition; (2) the juvenile's competence to participate in the proceedings; (3) whether the juvenile is a proper subject to be dealt with by the juvenile court; or (4) any other matter relating to the adjudication or disposition of the case, including the proper disposition or treatment of the juvenile."

   b. *Example:* "If a youth scores in the caution range on two or more scales on the MAYSI-2 screen, the detention facility shall refer the youth to its in-house clinical social worker for further assessment/evaluation."

2. Identify the agency with responsibility for conducting the assessment/evaluation, including the qualifications of those actually conducting the assessment/evaluation.

   a. *Example:* "The county mental health agency will designate and train a licensed clinical psychologist to conduct an assessment/evaluation of all youth who have been ordered to undergo an evaluation by the juvenile court."

b. *Example:* "In preparation for disposition, the juvenile court clinic shall conduct a full behavioral health assessment for each child who has been adjudicated delinquent."

3. Identify the assessment/evaluation instrument to be used, including a statement that each of the parties have received and reviewed the assessment/evaluation instrument to be used. Attach the assessment/evaluation instrument as an appendix to this MOU.

   a. *Example:* "The Millon Adolescent Clinical Inventory (MACI) will be administered as an assessment instrument to adjudicated youth for disposition planning purposes. All parties have received and reviewed a copy of the MACI, including a sample report generated by the MACI. A copy of the MACI and sample report are attached as an appendix to this MOU."

   b. *Example:* "The parties to this MOU have agreed that the interview protocol attached herein shall be used by a master's level clinical social worker or licensed psychologist to interview the youth and the youth's parent/guardian/caretaker in order to make a recommendation to the court as to the youth's placement."

4. State which, if any, questions or elements on the assessment instrument will NOT be asked and/or filled out.

   a. *Example:* "The Conduct Disorder, Alcohol Abuse, Marijuana Abuse and Other Substance Abuse modules of the Diagnostic Interview for Children (DISC) will not be administered to pre-adjudicated youth."

5. State when youth will undergo the assessment/evaluation

   a. *Example:* "After a petition has been filed with the court, the court may direct the Department of Juvenile Services to make a study concerning the child and the child's family, including an evaluation by a licensed psychologist."

6. State which youth will NOT undergo an assessment/evaluation.

a. *Example:* "The assessment will not be conducted for any youth over the objection of the youth's attorney."

7. Describe what information about the assessment/evaluation process will be provided to youth by the evaluator immediately prior to the process. This statement should be in language that a youth can understand. It should describe the possible and prohibited disclosures and uses of the information and statements gathered during the process, including what access youth will/will not have to the results.

a. *Example:* "I have been asked by the judge to ask you some questions to see how well you understand what's going on with your court case. It's important that you know that I am going to write a report to the judge about what I find out from you, including anything you tell me. Your lawyer and the district attorney will also get a copy of my report, and your lawyer will tell you what's said in the report."

B. Permissible and Prohibited *Disclosure and Uses* of Information/ Statements Obtained During Assessment/Evaluation

The above agencies agree that the information and statements obtained from the youth as part of the assessment/evaluation process will be maintained, disclosed and used only as follows and in accordance with all applicable state and federal laws and regulations: Provide here a detailed description regarding permissible and prohibited disclosure and uses of information/statements gathered during the assessment/evaluation process including the following information:

1. Identify the agency or agencies that shall maintain the records of the assessment/evaluation results, including any information collected and statements made incident thereto. Identify any applicable laws and regulations.

a. *Example:* " The juvenile court clinic shall maintain the records of all assessment/ evaluations conducted for purposes of disposition planning, including any information collected and statements obtained incident thereto, in their records as follows:. . .The maintenance of such records shall be in accordance with the provisions of the Juvenile Act and the juvenile court rules."

2. Provide a detailed statement as to what information obtained from the assessment/evaluation is to be disclosed to which agencies/individuals including:

   a. What exact information from the assessment/evaluation will be disclosed and under what circumstances.

      (1) *Example:* "The report generated by the Voice DISC, a sample of which is attached to this MOU, shall be provided to the following entities/individuals at the times specified: ...".

      (2) *Example:* "The report of the psychological examination will be made available to the court and parties in the proceeding no later than five (5) business days prior to the youth's disposition hearing."

      (3) *Example:* "The court, upon its own motion, or upon request of counsel, may order a psychological examination of the juvenile. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than seventy-two hours prior to the disposition hearing."

   b. What exact information will NOT be disclosed

      (1) *Example:* "Under no circumstances will information as to which items on the Child Behavioral Checklist (CBCL) a particular youth did or did not endorse be released to. . ."

3. Provide a detailed statement as to the *permitted* uses of information obtained during the assessment/evaluation process.

   a. *Example:* "Any information concerning a child that is obtained during any mental health assessment of such child shall be used solely for

planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or provision of services to the child. Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose."

4. Provide a detailed statement as to the *prohibited* uses of information and statements obtained as a result of the assessment/evaluation process, including inadmissibility at different stages of the juvenile and/or criminal court process.

   a. *Example:* "Any information secured or statement made by a participant during an assessment/ evaluation undertaken pursuant to this MOU may not be admitted in evidence in any adjudicatory hearing or peace order proceeding except on the issue of respondent's competence to participate in the proceedings and responsibility for his conduct where a petition alleging delinquency has been filed, or in a criminal proceeding prior to conviction."

   b. *Example:* "No statement made by the accused in the course of any assessment or evaluation and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal."

III. Treatment

A. Description of Treatment Programs to Which the Provisions of this MOU Apply

The above agencies recognize that youth under the court's jurisdiction may undergo treatment for various disorders or needs identified during the screening and assessment processes, and that the disclosures and uses of information and statements obtained as a consequence of such treatment shall be governed by the terms of this MOU as well as any

applicable state and federal laws and regulations. Provide a detailed description of when/how treatment covered by the terms of this MOU including the following formation:

1. Specify when in the juvenile court process treatment covered by the terms of this MOU will occur.

   a. *Example:* "The terms of this MOU apply to pre-adjudicated youth in detention who have been identified as requiring interim mental health treatment to prevent a deterioration in their condition while they await trial and disposition and who shall receive treatment from the county mental health agency pursuant to the agreement between that agency, the detention facility and the court."

   b. *Example:* "Youth who have been found to be incompetent to stand trial and are court-ordered to undergo treatment in an attempt to restore competency are protected by the provisions of this MOU."

   c. *Example:* "Pursuant to the provisions of the Juvenile Act, upon an adjudication of delinquency the court shall enter an order of disposition. The disposition order may include provisions directing that the youth receive treatment in order to address any mental health or drug and alcohol disorders identified in the social investigation conducted by the juvenile probation department. Treatment can include, but is not limited to, participation in outpatient therapy or a partial hospitalization/day treatment program; commitment to an inpatient psychiatric ward; and/or commitment to a residential treatment facility."

2. Identify the agencies with responsibility for providing treatment. Note: treatment agencies which regularly provide treatment services to court-involved youth should be a party to this MOU.

   a. *Example:* "The court contracts with various treatment providers to provide outpatient therapy to youth on probation, including the following agencies:. . ."

b. *Example:* "The court may order a youth adjudicated delinquent of a sexual offense to an appropriate treatment program, including but not limited to the following agencies..."

3. Describe what information will be provided to youth by the treatment team prior to the initiation of treatment and periodically during the course of treatment. This statement should be in language that a youth can understand. It should describe the possible and prohibited disclosures and uses of the information and statements gathered during treatment, including what access youth will/will not have to the records of their treatment.

a. *Example:* "I have been asked by the judge to ask you some questions to see how well you understand what's going on with your court case. It's important that you know that I am going to write a report to the judge about what I find out from you, including anything you tell me. Your lawyer and the district attorney will also get a copy of my report, and your lawyer will tell you what's said in the report."

B. Permissible and Prohibited *Disclosure and Uses* of Information/ Statements Obtained During Treatment

The above agencies agree that the information and statements obtained from the youth as part of the treatment described herein will be maintained, disclosed and used only as follows: Provide here a detailed description regarding permissible and prohibited disclosure and uses of information/statements gathered during treatment including the following information:

1. Identify the agency or agencies that shall maintain the treatment records, including any information collected and statements made incident thereto. Identify any applicable laws and regulations that govern.

a. *Example:* " The treatment provider shall maintain records on the child in accordance with the provisions of the federal Health Information Protection and Accountability Act of 1996 (HIPAA)."

2. Provide a detailed statement as to what information and/ or statements obtained during treatment is to be disclosed to which agencies/individuals including:

a. What exact information from treatment will be disclosed and under what circumstances.

(1) *Example:* "The treatment provider shall generate a report every quarter to update the court on the youth's progress. The report shall contain the following information... The report shall be provided to the court, juvenile probation, and the youth's lawyer."

b. What exact information will NOT be disclosed

(1) *Example:* "No statements made by the youth during individual therapy shall be disclosed to the court or probation except for the following..."

3. Provide a detailed statement as to the *permitted* uses of information obtained during treatment.

a. *Example:* "Any information concerning a child that is obtained during any mental health treatment of such child shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity delivering such treatment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or provision of services to the child. Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose."

4. Provide a detailed statement as to the *prohibited* uses of information and statements obtained during treatment, including inadmissibility at different stages of the juvenile and/or criminal court process.

a. *Example:* "Any information secured or statement made by a participant during treatment may not be admitted in evidence in any adjudicatory hearing or peace order proceeding except on the issue of respondent's competence to participate in the proceedings and responsibility for his conduct where a petition alleging delinquency

has been filed, or in a criminal proceeding prior to conviction."

b. *Example:* "No statement made by the accused in the course of any treatment and no information received by any treatment provider shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal."

In witness whereof the parties hereto have executed this Memorandum of Understanding. Where applicable the undersigned state that this Memorandum of Understanding has been reviewed by their legal counsel and such legal counsel has approved the MOU as to form and legality.

TRIAL COURT OF COUNTY/MUNICIPALITY, OR STATE

/s/ _____
President Judge Date

JUVENILE COURT OF COUNTY/MUNICIPALITY, OR STATE

/s/ _____
Chief Judge Date

PUBLIC DEFENDER'S OFFICE OF COUNTY/MUNICIPALITY, OR STATE

/s/ _____
Chief Public Defender Date

DISTRICT ATTORNEY'S OFFICE OF COUNTY/MUNICIPALITY, OR STATE

/s/ _____
District Attorney Date

JUVENILE PROBATION OFFICE OF COUNTY/MUNICIPALITY, OR STATE

/s/ _____
Chief Juvenile Probation Officer Date

JUVENILE DETENTION FACILITY OF COUNTY/MUNICIPALITY, OR STATE

/s/ _____
Director of Facility Date

PUBLIC MENTAL HEALTH/SUBSTANCE ABUSE AGENCY OF COUNTY/ MUNICIPALITY, OR STATE

/s/ _____
Director of Agency Date

PRIVATE TREATMENT AGENCY NAME HERE

/s/ _____
Director of Agency Date

OTHER AGENCIES LISTED HERE

/s/ _____
Director of Agency Date

Appendices to be included with MOU:

- Include a glossary of terms, acronyms and/or abbreviations used in this document.
- Attach copies of any screening instruments referenced in this document.
- Attach copies of any assessment/evaluations instruments referenced in this document.
- Attach copies of sample reports generated by any screening and/or assessment instruments or processes referenced in this document.
- Attach text of any applicable federal and state laws and regulations regarding the maintenance, disclosure and/or uses of information and statements obtained consequent to the processes described in this document

Appendix C

State Law Provisions Regarding Prohibited and Permitted Uses of Information Obtained From and Statements Made by Youth in the Juvenile Justice System During Screening, Assessment/Evaluation and Treatment

This section provides to practitioners an analysis of the law in their home state regarding the use of information obtained from youth in behavioral health screenings, assessments, and treatment in the juvenile court process. The individual state profiles detail the legal provisions in each state that may protecting youth against self-incrimination during each of the stages that were identified in Part III. Although some states have very extensive protections for youth, few states provide protections at each of these critical stages

For each state, we reviewed state constitutions, juvenile codes, court rules of procedure, rules of evidence, and statutes to determine whether any protections exist in the categories below, which essentially track the critical stages in the juvenile court process where the potential for self-incrimination arises. Each state profile identifies those protections that are currently in place and what gaps exist. See the list below to understand each individual provision we researched.

We ask readers to inform us if information in the state profiles at Appendix C needs to be updated. (Please e-mail us at info@jlc.org and type the phrase "Self-Incrimination" in the subject line.) The state profiles will be posted on our website at www.jlc.org, and updated as we receive new information.

State constitutional provisions on the right against self-incrimination generally. These provisions found in state constitutions typically mirror the United States Constitution's Fifth Amendment. They provide for the right against self-incrimination in general terms.

State juvenile code provisions on the right against self-incrimination generally. These provisions are more specific in providing the right against self-incrimination to youth. Many of these provisions simply state that the right extends to youth.

Statements made during intake/preliminary interview to court or probation officers inadmissible. These provisions protect any statement a child may make to a probation or court officer during intake, preliminary interview, or preliminary inquiry from being used for any purpose at a later stage of the court process.

Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination. These provisions differ slightly from the above section because they permit statements when the child has made a valid waiver of his or her rights. Generally, a valid waiver is made when it is knowingly, intelligently, and voluntarily given.

Statements made to detention staff inadmissible without valid waiver of rights. In these provisions, any statement made to a detention officer will be inadmissible unless the child made a valid waiver of his or her right against self-incrimination. But it should be noted that while many states have not codified protections for statements made to detention staff, the United States Supreme Court case of *Estelle v. Smith*, described in Part IV, provides important protections to detained youth.

Statements made during court-ordered evaluations inadmissible as to guilt. These provisions prohibit the use of statements made during any evaluation ordered by the court – for any purpose – to be used to establish the child's guilt or involvement in the wrongful act at the adjudicatory stage of the juvenile court case or at trial in a criminal proceeding. Many states do allow the introduction of these statements during the dispositional stage of the juvenile court process.

Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt. Provisions that fall under this category generally state that compelling an individual to submit to a court-ordered evaluation will not violate that individual's self-incrimination rights so long as the information is not used at the adjudicatory stage of the hearing to determine the guilt or innocence of the individual.

Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination. Here, the provisions differ slightly from the provisions above in that they require a valid waiver of the right against self-incrimination in order to admit statements made during a court-ordered evaluation.

All compelled evaluations violate right against self-incrimination. This category references statutes and case law that state that any compelled evaluation violates an individual's right against self-incrimination.

Statements in court-ordered evaluations only admissible for purpose ordered. A number of court rules, statutes, and common law provisions state that when a youth submits to a court-ordered evaluation, the statements made by the

youth may only be admissible for the specific purpose for which the evaluation was ordered. Many of these provisions are found in the court procedural rules.

Statements in court-ordered evaluations to determine competency inadmissible as to guilt. These provisions are specifically related to evaluations that are ordered to determine the child's competency to stand trial. These statements may be used in many states during the disposition stage.

Statements in court-ordered evaluations inadmissible as to amenability to treatment. These provisions state that when a child submits to a court-ordered evaluation, no evidence of the child's amenability to treatment may be introduced by way of statements made during the evaluation.

Statements in court-ordered treatment inadmissible as to guilt. In this category, statutes, court rules, and case law provides that when the court orders treatment for the juvenile, the statements the juvenile makes during the course of the treatment may not be admissible to prove the juvenile's involvement in the act or guilt at an adjudication hearing or criminal trial. Many states allow the admission of statements made during a course of court-ordered treatment during the disposition phase of the juvenile court process.

Admission of statements in compelled treatment violates right against self-incrimination. This category contains statutes and case law that state that the admission of statements made during any compelled course of treatment would violate the right against self-incrimination.

Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination. Provisions in this category state that penalizing an individual for failing to make admissions during court-ordered treatment would be in violation of the individual's self-incrimination rights. These penalties may include revocation of probation or enhancement of sentence or disposition.

Statements in court-ordered attempts to restore competency inadmissible as to guilt. These provisions state that when a youth makes statements in restoration hearings, these statements may not be admissible to show the youth's involvement or guilt at the adjudication stage or at a criminal trial. Many states allow these statements to be admissible at disposition.

ALABAMA

State constitutional provisions on the right against self-incrimination generally	Ala. Const. Art. 1 § 6 (in all criminal prosecutions, the accused...shall not be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	Ala. Code § 12-15-66 (A child charged with a delinquent act or who is alleged to be in need of supervison shall be accorded the privilege against self-incirmination).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	Al. R. Juv. P. Rule 11 (B)(3)(upon detention in an intake office or detention or shelter care facility child shall be notified of child's right against self-incrimination).
Statements made during court-ordered evaluations inadmissible as to guilt	Ala. R. Juv. P. Rule 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. Rule 11.8 (the State may not use evidence obtained by a compulsory mental examination of the defendant in a criminal proceeding unless the defendant offers evidence in support of an affirmative defense of insanity).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found

Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	Ala. R. Evid. Rule 503(d)(2) (communications made in the course of court-ordered examinations are not privileged with respect to the particular purpose for which the examination is ordered).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	Ala. R. Juv. P. Rule 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. Rule 11.2(b)(1) (results of examinations on the defendant's mental competency to stand trial is not admissible as evidence in a trial for the offense charged and cannot prejudice the defendant in entering a plea of not guilty by reason of mental disease or defect).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

ALASKA

State constitutional provisions on the right against self-incrimination generally	Alaska Const. Art. 1, § 9 (No person shall be put in jeopardy twice for the same offense. No person shall be compelled in any criminal proceeding to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	Alaska Del. Rule 10(b)(2) (The court shall advise the parties of their privilege against self-incrimination before temporary custody hearing, arraignment petition, Alaska Del. Rule 14(b)(2) and probation revocation hearing, Alaska Del. Rule 24(c).) No general provision found.
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	AS 47.12.040 (the minor and the minor's parents or guardian, if present must be advised that any statement may be used against the minor and of the following rights of the minor: to have a parent or guardian present at the interview; to remain silent).
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	Alaska Rules of Evid. Rule 504(a)(b) (admissible with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise). .
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	*Cf. Beaver v. State*, 933 P.2d 1178 (Alaska App. 1997) (statements made by a juvenile voluntarily participating in a treatment program while institutionalized by court order, are admissible at sentencing hearings).
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

ARIZONA

State constitutional provisions on the right against self-incrimination generally	Ariz. Rev. Stat. Const. Art. 2 § 10 (No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense).
State juvenile code provisions on the right against self-incrimination generally	17B Ariz. Rev. Stat. Juv. Ct. Rules of Proc., Rule 28 (court shall advise parties of juvenile's right to remain silent throughout proceeding at advisory hearing).
Statements made during intake/preliminary interview to court or probation officers inadmissible	Ariz. Rule of Evid. 408 (evidence of conduct or statements made in compromised negotiations is not admissible; this rule is used in practice to cover statements made to intake, probation officers).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	Ariz. Rev. Stat. Rule Crim. Proc. 11.7 (statements inadmissible unless defendant raises insanity defense).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	Ariz. Rev. Stat. § 13-4066 (forbidding the use of any statements regarding past sexual offenses the juvenile discloses during court-ordered treatment - this only applies to sex offender treatment).
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	Ariz. Rev. Stat. § 8-291.06 (unless juvenile presents evidence to rebut sanity presumption).

ARKANSAS

State constitutional provisions on the right against self-incrimination generally	Ark. Const. Art. 2, § 8 (No person shall…be compelled, in any criminal case, to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	Ark. Code Ann. § 9-27-317 (A law enforcement officer who takes a juvenile into custody for a delinquent or criminal offense shall advise the juvenile of his or her Miranda rights in the juvenile's own language).
Statements made during intake/preliminary interview to court or probation officers inadmissible	Ark. Code Ann. § 9-27-321 (inadmissible in any proceeding);
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	Ark. Rules Evid. Rule 503503 (b) and (d) (admissible with respect to the particular purpose for which the examination is ordered unless the court orders otherwise).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

CALIFORNIA

State constitutional provisions on the right against self-incrimination generally	West's Ann. Cal. Const. Art. 1, § 15 (Persons may not. . .be compelled in a criminal cause to be a witness against themselves).
State juvenile code provisions on the right against self-incrimination generally	Cal Wel & Inst Code § 627.5 (In any case where a minor is taken before a probation officer the probation officer shall immediately advise the minor and his parent or guardian that anything the minor says can be used against him and shall advise them of the minor's constitutional rights, including his right to remain silent).
Statements made during intake/preliminary interview to court or probation officers inadmissible	*In re Wayne H.*, 596 P.2d 1 (Cal. 1979) (because would frustrate purpose of statute requiring preliminary investigation; but admissible for detention and fitness for juvenile treatment); *People v. Humiston*, 20 Cal. App. 4th 460 (1993) (inadmissible at adjudication but admissible for detention, amenability to treatment and for impeachment when defendant testifies).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	*Baqleh v. Superior Court*, 122 Cal. Rptr. 2d 673 (Cal. Ct. App. 2002) (inadmissible at guilt and sentencing phases).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

COLORADO

State constitutional provisions on the right against self-incrimination generally	Col. Const. Art. II, § 18 (No person shall be compelled to testify against himself in a criminal case).
State juvenile code provisions on the right against self-incrimination generally	Col. Rev. Stat. § 19-2-511. (No statements or admissions of a juvenile made as a result of the custodial interrogation of such juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile shall be admissible in evidence against such juvenile without valid waiver).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	*People v. Robledo*, 832 P.2d 249 (Colo. 1992) (statement made to counselor while child was detained prior to charges being filed was suppressed because no Miranda warnings given).
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	Col. Rev. Stat. Ann. § 19-2-1305(3) (inadmissible as to issues raised by not guilty plea).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	Col. Rev. Stat. Ann. § 19-2-1305(3) (inadmissible as to issues raised by not guilty plea).

CONNECTICUT

State constitutional provisions on the right against self-incrimination generally	Conn. Const. Amend. Art. 17 (No person shall be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	Conn. Gen. Stat. § 46b-137 (statement made by child to police officer or Juvenile Court official shall be inadmissible in any proceeding concerning the alleged delinquency of the child unless valid waiver).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	Conn. Gen. Stat. Ann. § 46b-137(a) but see *State v. Ledbetter*, 818 A.2d 1 (Conn. 2003) (admissible in criminal court) and *In re Ralph M.*, 559 A.2d 179 (Conn. 1989) (admissible in transfer hearing).
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	Conn. Gen. Stat. Ann. § 46b-124(j); Conn. Gen. Stat. Ann. § 52-146f(4) (admissible only on issues regarding mental condition and only if informed that statements would not be confidential).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	Conn. Rule of Evid. 5-1 (psychologist-patient privilege unless authorization or waiver by child or child's personal representative).
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	Conn. Rule of Evid. 5-1 (disclosure permitted pursuant to court-ordered exam for purposes ordered).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	Conn. Gen. Stat. Ann. § 52-146f(4) (admissible only on issues regarding mental condition and only if informed that statements would not be confidential).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	Conn. Rule of Evid. 5-1 (psychologist-patient privilege unless authorization or waiver by child or child's personal representative).
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

DELAWARE

State constitutional provisions on the right against self-incrimination generally	Del. Const. Art. I, § 7 (he or she shall not be compelled to give evidence against himself or herself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	*Holder v. State*, 692 A.2d 882 (Del. Super. Ct. 1997) (statements made to counselor at juvenile detention facility only admissible to impeach absent evidence that statements were not made voluntarily).
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	Del. Rule of Evid. 503(b) and (d)(2) (no privilege with respect to the particular purpose for which the examination is ordered unless the court orders otherwise).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

DISTRICT OF COLUMBIA

State constitutional provisions on the right against self-incrimination generally	none found
State juvenile code provisions on the right against self-incrimination generally	D.C. R. Juv. Rule 111 (A child charged with a delinquent act or alleged to be in need of supervision shall be accorded the privilege against self-incrimination. Statements made to law enforcement shall not be used unless child made a knowing waiver of rights).
Statements made during intake/preliminary interview to court or probation officers inadmissible	D.C. SCR JUV R. 102 (2006) (statements made during an intake interview shall not be admissible for any purpose at a subsequent fact-finding hearing or criminal trial based on the allegations set forth in the juvenile complaint); D.C. SCR JUV R. 111 (2006) (Unless advised by counsel, the statement of a child made to the Corporation Counsel, or to a probation officer during the processing of the case, including a statement made during a preliminary inquiry, pre-disposition study or consent decree, shall not be used against the child for any purpose in a delinquency or need of supervision case prior to the dispositional hearing or in a criminal proceeding prior to conviction).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	D.C. R. Juv. Rule 111 (statements may only be used in such instances when the judge is satisfied that the statements were made voluntarily and that rights were waived knowingly. Statements made without a knowing waiver may only be used against a child for impeachment purposes).
Statements made to detention staff inadmissible without valid waiver of rights	D.C. DC R. JUV Rule 111 (2006) (statements made while in police custody shall not be used against a child as part of the government's case in chief or in a criminal proceeding prior to conviction. These statements may only be used in such instances when the judge is satisfied that the statements were made voluntarily and that rights were waived knowingly).
Statements made during court-ordered evaluations inadmissible as to guilt	D.C. Code § 24-531.10 (2006) (Any statement that is obtained during a court-ordered examination, evaluation, or treatment, or any evidence resulting from that statement, is not admissible at any proceeding to determine a defendant's guilt or innocence or to determine an appropriate sentence, except when the defendant puts his competence or mental health at issue in the proceeding).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	*Clifford v. United States*, 532 A.2d 628, 636 (D.C.1987) (unless defendant has waived the fifth amendment right against self-incrimination and the sixth amendment right to counsel, the government cannot attempt to prove guilt or to determine punishment with expert testimony based on statements of the accused made during a compelled psychiatric examination). See also *White v. United States*, 451 A.2d 848, 850 (D.C. 1982) (Cases from adult cases may be controlling in juvenile proceedings).

Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	*White v. United States*, 451 A.2d 848, 850 (D.C. 1982). (Pre-trial examination may be for the dual purpose of determining competency to stand trial and sanity at the time of the offense as long as the defendant, through his counsel, is informed of both purposes. Cases from adult cases may be controlling in juvenile proceedings); D.C. Code § 7-1204.01 (2006) (mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed in a manner provided by rules of court or by order of the court).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	D.C. Code 16-2315(d) (results of competency examinations can be used at trial to determine a material allegation concerning the child's mental or physical condition).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	D.C. Code §24-531.10 (2006) (any statement obtained during a court-ordered examination, evaluation, or treatment, or any evidence resulting from that statement, is not admissible at any proceeding to determine a defendant's guilt or innocence or to determine an appropriate sentence, except when the defendant puts his competence or mental health at issue in the proceeding).
Admission of statements in compelled treatment violates right against self-incrimination	D.C. Code Ann. § 24-531.10 (2006) (Any statement obtained during a court-ordered examination, evaluation, or treatment, or any evidence resulting from that statement, is not admissible at any proceeding to determine a defendant's guilt or innocence or to determine an appropriate sentence, except when the defendant puts his competence or mental health at issue in the proceeding).
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	D.C. code 16-2315(d) (permits the results of competency examinations to be used at trial to determine a material allegation concerning the child's mental or physical condition).

FLORIDA

State constitutional provisions on the right against self-incrimination generally	Fla. Const. Art. I, § 9 (No person shall…be compelled in any criminal matter to be a witness against oneself).
State juvenile code provisions on the right against self-incrimination generally	Fla. Stat. § 985.35 (child charged with a delinquent act or in violation of law must be afforded all rights against self-incrimination).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	*Cf. Parkin v. State*, 238 So. 2d 817 (Fl. 1970) (evaluation when insanity defense raised).
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	Fla. R. Juv. P. Rule 8.095 (information learned only for the limited purpose of competency to proceed); Fla. R. Crim. P. Rule 3.211(e) (limiting use of comeptency evidence from being used against defendant for any prupose other than determining competency).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

GEORGIA

State constitutional provisions on the right against self-incrimination generally	GA Const. Art. 1, § 1, P XVI (No person shall be compelled to give testimony tending in any manner to be self-incriminating).
State juvenile code provisions on the right against self-incrimination generally	Ga. Code Ann. § 15-11-7(b) (A child charged with a delinquent act need not be a witness against or otherwise incriminate himself or herself).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

HAWAII

State constitutional provisions on the right against self-incrimination generally	HRS Const. Art. I, § 10 (No person shall…be compelled in any criminal case to be a witness against oneself).
State juvenile code provisions on the right against self-incrimination generally	Hawaii Fam. Ct. Rule 142 (statements made during custodial interrogation inadmissible absent a showing that required warnings of child's constitutional rights were given in a meaningful way).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	Hawaii Fam. Ct. Rule 123 (shall be inadmissible at the adjudication hearing; considered only in the disposition of an adjudicated petition).
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	Hawaii Rule Evid. 504.1(b) and (d)(2)(not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	*State v. Reyes*, 2 P.3d 725 (Hawaii App. 2000) (requirement of admission of past sexual acts in court-ordered treatment program violated the defendant's privilege against self-incrimination, and his refusal to admit that he committed offenses was not a valid reason to revoke his probation).
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

IDAHO

State constitutional provisions on the right against self-incrimination generally	Idaho Const. Art. I, § 13 (No person shall…be compelled in any criminal case to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	Id. R. Juv. Rule 6(d) (At the hearing, the court shall inform the juvenile and the juvenile's parent(s), guardian, or custodian: Of the potential consequences to admission of the alleged offense; Of the juvenile's right against self-incrimination).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	Id. Rule of Evid. Rule 503(d)(2) (exception to psych/patient privilege when court orders examination of physical, emotional, or mental condition of patient with respoect to particular purpose for which examination was ordered).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	*Cf. State v. Jones*, 926 P.2d 1318 (Idaho App. 1996) (upholding probation revocation because defendant had immunity from further prosecution as per plea agreement).
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

ILLINOIS

State constitutional provisions on the right against self-incrimination generally	Ill.Const., Art. I, § 10 (No person shall be compelled in a criminal case to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	705 Ill. Comp. Stat. 405/1-2(3)(a) (The procedural rights assured to the minor shall be the rights of adults unless specifically precluded by laws which enhance the protection of such minors); 705 ILCS 405/5-401.5 (statement made during custodial interrogation or during detention shall be inadmissible in criminal or juvenile proceeding for homicide).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	705 Ill. Comp. Stat. 405/5-401.5 (statement made during custodial interrogation or during detention shall be inadmissible in criminal or juvenile proceeding).
Statements made during court-ordered evaluations inadmissible as to guilt	740 Ill. Comp. Stat. 110/10 (admissible only on issues regarding physical or mental condition and only if informed that statements would not be confidential).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

INDIANA

State constitutional provisions on the right against self-incrimination generally	Ind. Const. Art. 1, § 14 (No person, in any criminal prosecution, shall be compelled to testify against himself).
State juvenile code provisions on the right against self-incrimination generally	Burns Ind. Code Ann. § 31-32-2-2 (A child charged with a delinquent act is also entitled to: refrain from testifying against the child).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	*Haskett v. State*, 263 N.E.2d 529 (Ind. 1970) ((statute requiring Defendant to undergo evaluation to determine if criminal sexual psychopath violates privilege against self-incrimination).

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	*Sims v. State*, 601 N.E.2d 344 (Ind. 1992) (statements during court-ordered treatment protected by right against self-incrimination). See also *Watson v. State*, 784 N.E.2d 515 (Ind. 2003) (right against self-incrimination in court-ordered treatment waived when defendant put mental state at issue).
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

IOWA

State constitutional provisions on the right against self-incrimination generally	none found
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	Iowa Code Ann. § 232.45(11)(h), 232.47(7)(a) (inadmissible in case in chief).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

KANSAS

State constitutional provisions on the right against self-incrimination generally	Kan. Const. B. of R. § 10 (No person shall be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	Kan. Stat. Ann. § 38-1624, (c)(3)(A) (When the juvenile is less than 14 years of age, no in-custody or arrest admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made following a consultation between the juvenile and the juvenile's parents, guardian or attorney as to whether the juvenile will waive such juvenile's right to an attorney and right against self-incrimination).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	Kan. Stat. Ann. § 38-1637 (inadmissible in any hearing).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

KENTUCKY

State constitutional provisions on the right against self-incrimination generally	Ky. Const. § 11 (in all criminal prosecutions the accused cannot be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	Ky. Rev. Stat. § 610.060(1)(b) (when the child is brought before the court the court must explain the right against self-incrimination by saying that the child, parents, relative, guardian, or custodian may remain silent concerning the charges against the child, and that anything said may be used against the child).
Statements made during intake/preliminary interview to court or probation officers inadmissible	Ky. Rev. Stat. § 630.060(1) (prior to filing of petition without written consent of child).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	*Welch v. Kentucky*, 149 S.W.3d 407 (Ky. 2004) ((inadmissible without Miranda warnings and valid waiver at adjudication hearing).
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	*Welch v. Kentucky*, 149 S.W.3d 407 (Ky. 2004) (inadmissible without Miranda warnings and valid waiver).
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

LOUISIANA

State constitutional provisions on the right against self-incrimination generally	La. Const. Art. I, § 13 (When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination).
State juvenile code provisions on the right against self-incrimination generally	La. Ch.C. Art. 808 (All rights guaranteed to criminal defendants by the Constitution of the United States or the Constitution of Louisiana, except the right to jury trial, shall be applicable in juvenile court proceedings brought under this Title).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	*Cf. In re Bruno*, 388 So.2d 784 (1980) (evaluation for transfer hearing).
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MAINE

State constitutional provisions on the right against self-incrimination generally	Me. Const. Art. I, § 6 (In all criminal prosecutions, the accused shall not be compelled to furnish or give evidence against himself or herself).
State juvenile code provisions on the right against self-incrimination generally	15 Me. Rev. Stat. § 3203-A(2)(A)(When a juvenile is arrested, no law enforcement officer may question that juvenile until a legal custodian of the juvenile is notified of the arrest and is present during the questioning).
Statements made during intake/preliminary interview to court or probation officers inadmissible	15 Me. Rev. Stat. §3204 (inadmissible at adjudicatory hearing).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	*Cf. State v. Buzynski*, 330 A.2d 422 (Me. 1974) (evaluation when defendant pleads not guilty by reason of mental disease).
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MARYLAND

State constitutional provisions on the right against self-incrimination generally	Md. Decl. of Rights. Art. 22 (That no man ought to be compelled to give evidence against himself in a criminal case).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	Md. Code Ann., Cts. & Jud. Proc. §§ 3-8A-10, 3-8A-12 (inadmissible at adjudicatory hearings and criminal trials).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	Md. Code Ann.. Cts. & Jud. Proc. § 3-8A-12 (preliminary inquiry is inadmissible at any adjudicatory hearing, peace order proceeding [with the exceptions of hearings about the respondent's competence to participate in such proceedings and responsibility for his conduct where a delinquency petition has been filed] or in criminal proceedings prior to conviction); § 3-8A-17 (report of a study under this section is admissible as evidence at a waiver hearing and at a disposition hearing, but not at an adjudicatory hearing).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found

Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MASSACHUSETTS

State constitutional provisions on the right against self-incrimination generally	ALM Const. Pt. 1, Art. XII (No subject shall be compelled to accuse, or furnish evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	Mass. Gen. Laws 233 § 20B(b) (If a judge finds that the patient, after having been informed that the communications would not be privileged, has made communications to a psychotherapist in the course of a psychiatric examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient's mental or emotional condition but not as a confession or admission of guilt).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MICHIGAN

State constitutional provisions on the right against self-incrimination generally	MI Const. Art. I, § 17 (No person shall be compelled in any criminal case to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	*Cf. People v. Hana*, 504 N.W.2d 166 (1993) (evaluation for juvenile waiver) (codified in MCR 3.950(G)(1)).
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	Mich. Comp. Laws 330.2028(3); M.S.A.14.800(1028)(3) (inadmissible as to guilt).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MINNESOTA

State constitutional provisions on the right against self-incrimination generally	Minn. Const., Art. I, § 7 (No person shall be held to answer for a criminal offense without due process of law, nor be compelled in any criminal case to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	Minn. Stat. § 611.11 (The defendant in the trial of an indictment, complaint, or other criminal proceeding shall, at the defendant's own request and not otherwise, be allowed to testify; but failure to testify shall not create any presumption against the defendant, nor shall it be alluded to by the prosecuting attorney or by the court).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	Minn. R. Crim. P. 20.02; Minn. R. Juv. Del. P. 13.04 (unless defendant has made mental health issue in case) (also inadmissible at sentencing).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	*State v. Kaquatosh*, 600 N.W.2d 153 (Minn. App. 1999) (finding it was a violation of a probationer's Fifth Amendment right against self-incrimination to revoke his probation for failing to complete a court-ordered sex-offender treatment program where the failure was due to his refusal to admit facts underlying a conviction from which he is appealing). .
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MISSISSIPPI

State constitutional provisions on the right against self-incrimination generally	Miss. Const. Art. 3, § 26 (the accused…shall not be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	Miss. Code. Ann. § 43-21-557(At the beginning of each adjudicatory hearing, the youth court shall explain to the parties the right to remain silent).
Statements made during intake/preliminary interview to court or probation officers inadmissible	Miss. Code. Ann. § 43-21-559 (no member of youth court staff [including personnel of detention and shelter facilities] may testify as to an admission or confession made to him).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	*Interest of W.R.A.*, 481 So.2d 280 (Miss. 1985) (Miranda warnings followed by minor's knowing and intelligent waiver of privilege against self-incrimination and right to counsel . . . sufficient to render confession admissible).
Statements made to detention staff inadmissible without valid waiver of rights	Miss. Code. Ann. § 43-21-559 (no member of youth court staff [including personnel of detention and shelter facilities] may testify as to an admission or confession made to him).
Statements made during court-ordered evaluations inadmissible as to guilt	MS. R. Unif. Cir. And Cty. Ct. Rule 9.07 (when defendant raises insanity defense, no statement made by accused in examination to determine mental state shall be admitted against defendant on issue of guilt in any proceeding).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	*Cf. Porter v. Mississippi*, 492 So.2d 970 (Miss. 1986), applying Uniform Crim. Rule of Circuit Ct. Prac. 907 (formerly Rule 4.08(2) (evaluation when defendant offers insanity defense).
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	*See Gholson v. Estelle*, 675 F.2d 734 (5th Cir. 1982) (holding that psychiatric interrogations may be considered custodial interrogations if statements procured are to be used at either guilt or sentencing phase of trial); *See also Vanderbilt v. Collins*, 994 F.2d 189 (5th Cir. 1993) (holding that 5th amendment violation occurs if defendant is not informed that statementsmade during psychiatric examination may be used against him later).

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	MS Rule Evid. Rule 503(d)(2) (no privilege in court-ordered examination with respect to particular purpose for which examination was ordered).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	MS. Rule Evid. Rule 503(d)(2) (no statement made by accused in course of examination into competency to stand trial is admissible as to guilt).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	*See Gholson v. Estelle*, 675 F.2d 734 (5th Cir. 1982) (holding that psychiatric interrogations may be considered custodial interrogations if statements procured are to be used at either guilt or sentencing phase of trial); *See also Vanderbilt v. Collins*, 994 F.2d 189 (5th Cir. 1993) (holding that 5th amendment violation occurs if defendant is not informed that statementsmade during psychiatric examination may be used against him later).
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MISSOURI

State constitutional provisions on the right against self-incrimination generally	Mo. Const. Art. I, § 19 (That no person shall be compelled to testify against himself in a criminal cause).
State juvenile code provisions on the right against self-incrimination generally	Mo. Rev. Stat. § 211.059 (When a child is taken into custody by a juvenile officer or law enforcement official the child shall be advised prior to questioning that he has the right to remain silent; and that any statement he does make to anyone can be and may be used against him).
Statements made during intake/preliminary interview to court or probation officers inadmissible	Mo. Ann. Stat 211.271 (shall not be used for any purpose whatsoever in any civil or criminal proceedings but may be admitted in juvenile proceedings).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	S. Ct. Rule 123.01, Mo. Rev. Stat. § 552.020 (14) (No statement made by the accused in the course of any examination or treatment pursuant to this section and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	
Statements in court-ordered treatment inadmissible as to guilt	S. Ct. Rule 123.01; Mo. Rev. Stat. §§ 552.020 (14) (no statement made by the accused in the course of any examination or treatment ...shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal); Mo. Rev. Stat. § 211.271 (all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel and all evidence given in cases under this chapter, as well as all reports and records of the juvenile court, are not lawful or proper evidence against the child and shall not be used for any purpose whatsoever in any proceeding, civil or criminal, other than proceedings under this chapter).
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

MONTANA

State constitutional provisions on the right against self-incrimination generally	Mont. Const., Art. II § 25 (No person shall be compelled to testify against himself in a criminal proceeding).
State juvenile code provisions on the right against self-incrimination generally	Mont. Code Anno. § 41-5-331 (When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the youth must be advised of the youth's right against self-incrimination and the youth's right to counsel).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	*Matter of D.M.B.*, 103 P.3d 514 (Mont. 2004) (prior to disposition 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).

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	*Matter of D.M.B.,* 103 P.3d 514 (Mont. 2004) (prior to disposition 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).
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	*State v. Fuller*, 915 P.2d 809 (Mont. 1996) (suppressing statements in criminal trial that were made in court-ordered sex offender treatment program).
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	*State v. Imlay*, 813 P.2d 979 (Mont. 1991) (better reasoned decisions protect the defendant's constitutional right against self-incrimination, and prohibit augmenting a defendant's sentence because he refuses to confess to a crime or invokes his privilege against self-incrimination).
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NEBRASKA

State constitutional provisions on the right against self-incrimination generally	Neb. Const. Art. I, § 12 (No person shall be compelled, in any criminal case, to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	Neb. Rev. Stat. 27-504(4)(b).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NEVADA

State constitutional provisions on the right against self-incrimination generally	Nev. Const. Art. 1, § 8 (No person in any criminal case, shall be forced to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	Nev. Rev. Stat. Ann. § 62D.040 (At the child's first appearance at intake and before the juvenile court, the child must be advised of his rights).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NEW HAMPSHIRE

State constitutional provisions on the right against self-incrimination generally	RSA Const. Part FIRST, Art. 15 (No subject shall be compelled to accuse or furnish evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NEW JERSEY

State constitutional provisions on the right against self-incrimination generally	N.J. Const., Art. I, Para. 21(This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people).
State juvenile code provisions on the right against self-incrimination generally	N.J. Stat. Ann. § 2A:4A-40 (All rights guaranteed to criminal defendants by the Constitution of the United States and the Constitution of this State, except the right to indictment, the right to trial by jury and the right to bail, shall be applicable to cases arising under this act).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NEW MEXICO

State constitutional provisions on the right against self-incrimination generally	N.M. Const. Art. II, § 15 (No person shall be compelled to testify against himself in a criminal proceeding).
State juvenile code provisions on the right against self-incrimination generally	N.M. Stat. Ann. § 32A-1-16 (A child is entitled to the same basic rights as an adult); N.M. Stat. Ann. § 32A-2-14(Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained).
Statements made during intake/preliminary interview to court or probation officers inadmissible	N.M. Rule Evid. 11-509 (child has privilege to refuse to disclose and to prevent others from disclosing confidential communications made to probation officer or social worker during preliminary inquiry phase).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	N.M. Stat. Ann. §§ 32A-2-7, 32A-2-14 (During the preliminary inquiry on a delinquency complaint...child shall be informed of the child's right to remain silent), (Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained).
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found

Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NEW YORK

State constitutional provisions on the right against self-incrimination generally	NY CLS Const Art I, § 6 (No person shall be compelled in any criminal case to be a witness against himself or herself).
State juvenile code provisions on the right against self-incrimination generally	NY CLS Family Ct Act § 320.3 (At the time the respondent first appears before the court, the respondent and his parent or other person legally responsible for his care shall be advised of the respondent's right to remain silent and of his right to be represented by counsel chosen by him or by a law guardian assigned by the court).
Statements made during intake/preliminary interview to court or probation officers inadmissible	*In the Matter of Randy G.*, 487 N.Y.S.2d 967 (N.Y. Fam. Ct. 1985) (inadmissible at fact-finding because protected by right against self-incrimination, but admissible at disposition).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	*People v. DelRio*, 220 A.D.2d 122 (N.Y.App. 1996).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	*Cf. In the Matter of Ashley M.*, 683 N.Y.S.2d 304 (N.Y.A.D. 3d Dep't 1998) (finding that court-ordered treatment in dependency proceeding does not violate right against self-incrimination because statutory psychologist-patient privilege precludes use of statements in criminal prosecutions).
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NORTH CAROLINA

State constitutional provisions on the right against self-incrimination generally	N.C. Const. Art. I, § 23 (In all criminal prosecutions, every person charged with crime has the right not be compelled to give self-incriminating evidence).
State juvenile code provisions on the right against self-incrimination generally	N.C. Gen. Stat. § 7B-2101 (Any juvenile in custody must be advised prior to questioning that the juvenile has a right to remain silent; that any statement the juvenile does make can be and may be used against the juvenile).
Statements made during intake/preliminary interview to court or probation officers inadmissible	N.C. Gen Stat. § 7B-2408 (not admissible prior to disposition).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	*In the Matter of Linberry*, 572 S.E.2d 229 (N.C. App. 2002) (penalizing youth who refuses to admit guilt in court-ordered sex offender treatment violates right against self-incrimination).
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

NORTH DAKOTA

State constitutional provisions on the right against self-incrimination generally	N.D. Const. Art I, § 12 (In criminal prosecutions in any court whatever, the party accused shall be compelled in any criminal case to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	N.D. Cent. Code, § 27-20-27 (A child charged with a delinquent act need not be a witness against or otherwise incriminate oneself. An extrajudicial statement, if obtained in the course of violation of this chapter or which would be constitutionally inadmissible in a criminal proceeding, may not be used against a child).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

OHIO

State constitutional provisions on the right against self-incrimination generally	Oh. Const. Art. I, § 10 (No person shall be compelled, in any criminal case, to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	Ohio Juv. R. 32(B).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	*State v. Evans*, 760 N.E.2d 909 (Ohio Ct. App. 2001) (upholding suppression of statement made by juvenile as requirement of treatment while in custody of residential treatment facility for adjudicated juveniles);
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

OKLAHOMA

State constitutional provisions on the right against self-incrimination generally	Okl. Const. Art. II, § 21 (No person shall be compelled to give evidence which will tend to incriminate him).
State juvenile code provisions on the right against self-incrimination generally	10 Okl. St. § 7303-3.1(No information gained by a custodial interrogation of a child or a youthful offender under sixteen (16) years of age nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the child or youthful offender without valid waiver).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

OREGON

State constitutional provisions on the right against self-incrimination generally	Ore. Const. Art. I, § 12 (No person shall be put in jeopardy twice for the same offence [sic], nor be compelled in any criminal prosecution to testify against himself).
State juvenile code provisions on the right against self-incrimination generally	Ore. Rev. Stat. § 419C.109(2)(b)(A)-(B) (The court shall inform the youth: A) of the youth's rights, including the right to be represented by counsel and the right to remain silent; and B) Of the allegations against the youth).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	Ore. Rev. Stat. § 419A.255 (no information used to establish criminal or civil liability...except in connection with pre-sentence investigation after guilt has been established or admitted in criminal court, or in connection with a proceeding in another juvenile court).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	Ore. Rev. Stat. § 40.235 (if judge orders examination of the physical condition of the patient, no privilege exists with respect to the purpose for which the judge ordered the examination); Ore. Rule of Evid. 504.1 (the judge orders an examination of the physical condition of the patient, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	*Cf. State v. Gaither*, 100 P.3d 768 (Or. Ct. App. 2004) (statements made to probation officer as part of court-ordered treatment were involuntary when defendant faced probation revocation if he did not comply).
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

PENNSYLVANIA

State constitutional provisions on the right against self-incrimination generally	Pa. Const. Art. 1, § 9 (In all criminal prosecutions the accused cannot be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	42 Pa.C.S. § 6338 (A child charged with a delinquent act need not be a witness against or otherwise incriminate himself).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	*Com. v. G.P.*, 765 A.2d 363 (Pa. Super. 2000) (holding that although a defendant may know that statements can be admissible in a civil hearing, there is no reason to assume that the defendant wished to waive his privilege against self-incrimination in criminal matters).
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	*Com. v. G.P.*, 765 A.2d 363 (Pa. Super. 2000) (holding that although a defendant may know that statements can be admissible in a civil hearing, there is no reason to assume that the defendant wished to waive his privilege against self-incrimination in criminal matters).
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

RHODE ISLAND

State constitutional provisions on the right against self-incrimination generally	R.I. Const. Art. I, § 13 (No person in a court of common law shall be compelled to give self-incriminating evidence).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	R.I. Gen. Laws § 40.1-5.3-3 (inadmissible as to any issue other than mental condition).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

SOUTH CAROLINA

State constitutional provisions on the right against self-incrimination generally	S.C. Const. Ann. Art. I, § 12 (No person shall…be compelled in any criminal case to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	S.C. Code Ann. § 20-7-7405 (statements of the juvenile contained in the department's files must not be furnished to the solicitor's office as part of the intake review procedure, and the solicitor's office must not be privy to these statements in connection with its intake review).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	S.C. Code § 44-22-90(a). See also *Hudgins v. Moore*, 524 S.E.2d 105 (S.C. 1999).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

SOUTH DAKOTA

State constitutional provisions on the right against self-incrimination generally	S.D. Const. Article VI, § 9 (No person shall be compelled in any criminal case to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

TENNESSEE

State constitutional provisions on the right against self-incrimination generally	Tenn. Const. Art. I, § 9 (That in all criminal prosecutions, the accused…shall not be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	Tenn. Code Ann. § 37-1-127 (A child charged with a delinquent act need not be a witness against self-interest or otherwise engage in self-incrimination).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	Tenn. Juv. Proc. Rule 7 (no child placed in detention shall be questioned unless child intelligently waives right to remain silent).
Statements made during court-ordered evaluations inadmissible as to guilt	Tenn. Crim. Proc. Rule 12.2 (no statement made by the defendant, no testimony by the expert based on such statement, and no other fruits of the statement are admissible in evidence against the defendant in any criminal proceeding, except for impeachment purposes or on an issue concerning a mental condition on which the defendant has introduced testimony).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	Tenn. Code Ann. § 24-1-207(a) (admissible only on issues involving the patient's mental or emotional condition).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

TEXAS

State constitutional provisions on the right against self-incrimination generally	Tex. Const. Art. I, § 12 (In all criminal prosecutions the accused…shall not be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	Tex. Fam. Code § 51.095 (the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if the child has at some time before the making of the statement received from a magistrate a warning that the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child…).
Statements made during intake/preliminary interview to court or probation officers inadmissible	Texas Human Resources Code § 141.042 (statements made during mental health screening inadmissible at any hearing).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

UTAH

State constitutional provisions on the right against self-incrimination generally	Utah Const. Art. I, § 12 (In criminal prosecutions the accused…shall not be compelled to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
All compelled evaluations violate right against self-incrimination	none found

Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

VERMONT

State constitutional provisions on the right against self-incrimination generally	Vt. Const. Ch. I, Art. 10 (That in all prosecutions for criminal offenses, a person cannot be compelled to give evidence against oneself).
State juvenile code provisions on the right against self-incrimination generally	33 Vt. Stat. Ann. § 5524 (child charged with a delinquent act need not be a witness against, nor otherwise incriminate, himself).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	13 Vt. Stat. Ann. § 4816(c) (no statement made in the course of the examination by the person examined...shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined).
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	13 Vt. Stat. Ann. § 4816(c).
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

VIRGINIA

State constitutional provisions on the right against self-incrimination generally	Va. Const. Art. I, § 8 (That in criminal prosecutions a man may not be compelled in any criminal proceeding to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	none found
Statements made during intake/preliminary interview to court or probation officers inadmissible	Va. Code. Ann.§ 16.1-261 (statements made by a child to the intake officer or probation officer during the intake process or during a mental health screening or assessment...prior to a hearing on the merits of the petition filed against the child, shall not be admissible at any stage of the proceedings).
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	Va. Code Ann. § 16.1-360 (inadmissible at adjudicatory or disposition hearings).
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	Va. Code Ann. § 16.1-360 (inadmissible at adjudicatory or disposition hearings).

WASHINGTON

State constitutional provisions on the right against self-incrimination generally	Wash. Const. Art. I, § 9 (No person shall be compelled in any criminal case to give evidence against himself).
State juvenile code provisions on the right against self-incrimination generally	Rev. Code Wash. (ARCW) § 13.40.140(8) (A juvenile shall be accorded the same privilege against self-incrimination as an adult. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence at an adjudicatory hearing over objection).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	See *State v. Decker*, 68 Wn. App. 246 (1993) (holding that the court may grant immunity—use and derivative use—to respondent in a pre-dispositional evaluation)
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	*State v. Holland*, 656 P.2d 1056 (Wash. 1983) (but admissible for impeachment) but see *Q.L.M. v. State*, 20 P.3d 465 (Wash. App. 2001) (statements admissible in sexually violent predator detention proceeding because they are civil proceedings and resulting detention is treatment not punishment).

All compelled evaluations violate right against self-incrimination	*State v. Diaz-Cardona*, 98 P.3d 136 (Wash. App. 2004) (order compelling adjudicated juvenile to undergo sex offender evaluation violates privilege against self-incrimination because admissions could be used to enhance sentence).
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	*State v. Holland*, 656 P.2d 1056 (Wash. 1983) (but admissible for impeachment) but see *Q.L.M. v. State*, 20 P.3d 465 (Wash. App. 2001) (statements admissible in sexually violent predator detention proceeding because they are civil proceedings and resulting detention is treatment not punishment).
Statements in court-ordered treatment inadmissible as to guilt	See *State v. Decker*, 68 Wn. App. 246 (1993) (holding that the court may grant immunity--use and derivative use--to respondent in a pre-dispositional evaluation)
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	See *State v. Warner*, 889 P.2d 479 (Wash. 1995) (statements made during court-ordered treatment pursuant to delinquency adjudication inadmissible in criminal trial where compelled by threat of penalty).
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

WEST VIRGINIA

State constitutional provisions on the right against self-incrimination generally	W. Va. Const. Art. III, § 5 (No person ... shall any person, in any criminal case, be compelled to be a witness against himself).
State juvenile code provisions on the right against self-incrimination generally	W. Va. Code § 49-5-8a (The judge, juvenile referee or magistrate shall inform the juvenile of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation may be made without the presence of a parent or counsel).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

WISCONSIN

State constitutional provisions on the right against self-incrimination generally	Wis. Const. Art. I, § 8 (No person…may be compelled in any criminal case to be a witness against himself or herself).
State juvenile code provisions on the right against self-incrimination generally	Wis. Stat. § 938.243 (before conferring with the parent or juvenile during the intake inquiry, the intake worker shall personally inform a juvenile of the right to remain silent and the fact that in a delinquency proceeding the silence of the juvenile shall not be adversely considered by the court although the silence of any party may be relevant in any nondelinquency proceeding).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	*Moore v. State*, 265 N.W.2d 540 (Wis. 1978) (but statements admissible at sentencing).
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	none found
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	*In the Interest of Todd. F.M.*, 506 N.W.2d 427 (Wis. 1993) (upholding suppression of statement made by juvenile in treatment while in custody of residential treatment facility pursuant to delinquency adjudication).
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found

WYOMING

State constitutional provisions on the right against self-incrimination generally	Wyo. Const. Art. 1, § 11 (No person shall be compelled to testify against himself in any criminal case).
State juvenile code provisions on the right against self-incrimination generally	Wyo. Stat. § 14-6-223 (child alleged to be delinquent may remain silent and need not be a witness against or otherwise incriminate himself).
Statements made during intake/preliminary interview to court or probation officers inadmissible	none found
Statements made during intake to court or probation officers inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found
Statements made to detention staff inadmissible without valid waiver of rights	none found
Statements made during court-ordered evaluations inadmissible as to guilt	none found
Compelled mental health evaluations do not violate right against self-incrimination as long as evaluation not used to determine guilt	none found
Statements in court-ordered evaluations inadmissible unless defendant advised and made valid waiver of right against self-incrimination	none found

All compelled evaluations violate right against self-incrimination	none found
Statements in court-ordered evaluations only admissible for purpose ordered	Wyo. Stat. 1977 33-27-123(vii).
Statements in court-ordered evaluations to determine competency inadmissible as to guilt	none found
Statements in court-ordered evaluations inadmissible as to amenability to treatment	none found
Statements in court-ordered treatment inadmissible as to guilt	none found
Admission of statements in compelled treatment violates right against self-incrimination	none found
Revocation of probation/penalizing for failure to make admissions in court-ordered treatment violates rights against self-incrimination	none found
Statements in court-ordered attempts to restore competency inadmissible as to guilt	none found