

One Minute Brief

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TOPIC: Juvenile Interviews

ISSUE: What are the current legal requirements for an interview of an in-custody juvenile?

Effective January of 2021, subdivision (a) of Welfare and Institutions Code Section 625.6 created a new requirement for law enforcement interviews of in-custody juveniles. Section 625.6 states:

- (a) Prior to a **custodial interrogation**, and before the waiver of any *Miranda* rights, a youth 17 years of age or younger **shall consult with legal counsel** in person, by telephone, or by video conference. **The consultation may not be waived.**
- (b) The court shall, in adjudicating the admissibility of statements of a youth 17 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a) and, additionally, shall consider any willful violation of subdivision (a) in determining the credibility of a law enforcement officer under Section 780 of the Evidence Code.
- (c) This section does not apply to the admissibility of statements of a youth 17 years of age or younger if both of the following criteria are met:
 - (1) The officer who questioned the youth reasonably believed the information the officer sought was necessary to protect life or property from an imminent threat.
 - (2) The officer's questions were limited to those questions that were reasonably necessary to obtain that information.

Section 625.6 only applies to *custodial interrogation*.

While Section 625.6 creates a strict requirement of consultation with legal counsel before a minor is questioned or advised of their *Miranda* rights, it is important to note its limits.

NO INTERROGATION: You can avoid interrogation, by allowing a minor to be questioned by non-law enforcement personnel such as school officials while just listening to the interview.

NO CUSTODY: Engaging in questioning in a non-custodial setting is another way to avoid triggering the requirements of Section 625.6. But note, that circumstances the courts would not consider "custodial" for an adult have been deemed "custodial" with respect to "minors." Following are circumstances the courts have considered in determining whether a minor was in custody during an interview.

- Whether the minor was told they were under arrest.
- Whether the minor was handcuffed.
- Whether the minor was patted down.
- Whether officers unholster weapons.
- How many officers were present.
- If an officer was standing behind the minor during the interview.
- Whether officers blocked exits.
- Whether it was indicated to the minor that they were free to leave.
- Whether it was indicated to the minor that officers would leave on request.
- Whether parents were allowed to be present.
- What time of day the interview occurred.
- Whether the minor was free to move about during the interview.

While every situation has counterbalancing considerations such as public safety and officer safety, each of the above scenarios, when added to another, will increase the likelihood that a court will make a finding that a minor was in custody.

What to do when a minor age 17 or younger is in custody.

If a minor age 17 or younger is in custody, you must permit them to contact an attorney prior to questioning. Even if they say they don't want to – the consultation cannot be waived if questioning is going to occur. But, after they contact an attorney, advise them of their *Miranda* rights and ask them if they will speak to you. The answer may be, “no” but it may be “yes.” One more question costs nothing. Note that the attorney cannot invoke the right to remain silent on behalf of the minor.

When interviewing a minor avoid the type of “psychologically manipulative interrogation tactics” prohibited by Welfare & Institutions Code Section 625.7 that might be permissible in an adult interview.

Section 625.6 also has an exception for emergent circumstances where the information sought is necessary to protect life or property from an imminent threat and the officer's questions are limited to those questions that were reasonably necessary to obtain that information.

Welfare & Institutions Code Section 626.8 requires the agency to maintain a copy of any recording made of the interrogation until the minor is no longer subject to the jurisdiction of the juvenile court.

BOTTOM LINE - Remedies for violation:

Because Section 625.6 was not enacted by a two-thirds vote of each house of the Legislature, as required by the Truth-In-Evidence Provision of the California Constitution, statements that violate Section 625.6 do not necessarily get excluded. *In re Anthony L.* (2019) 43 Cal.App.5th 438. In analyzing the admissibility of a statement that violates Section 625.6, the court must still look to federal Constitutional standards. However, willful violation of the terms of subdivision (a) of Section 625.6 shall be considered by the court in evaluating the credibility of a law enforcement officer.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.