LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

THE CRIMINAL JUSTICE INSTITUTE
LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

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NUMBER: 2017-25 **DATE**: 12-01-17 **BY**: Devallis Rutledge **TOPIC**: Questioning Juvenile Suspects

ISSUE: How does W&I § 625.6 affect the questioning of juvenile suspects under 16?

Enacted by SB 395, new Welfare and Institutions Code § 625.6, effective 1-1-18, provides that *"Prior to a **custodial interrogation**, and **before** the waiver of any **Miranda rights**, a youth **15 years of age or younger** shall consult with legal counsel."* Exception: questioning reasonably deemed necessary to protect life or property from **imminent** threat. (W&I § 627(b) gives minors 2 phone calls within 1 hour of custody—1 of which may be *"to an attorney."* Satisfying this requirement **before waiver** would arguably satisfy § 625.6, as well.)

Since **this statute applies only to "custodial interrogation,"** it is not implicated by interrogation that is ***non-custodial***, nor by custodial questioning that is ***not interrogation***.

►Police interrogation of a juvenile suspect 15 or younger **before** taking the juvenile into custody, or postponed until **after** releasing him, would not be subject to § 625.6:

• **On-scene and in-field.** "Custody" is *"formal arrest"* or its *"functional equivalent."* *Berkemer v. McCarty* (1984) 468 US 420, 442. Absent actual custody or **custodial restraints** (school isolation, drawn weapons, cuffs, cages), neither *Miranda* nor 625.6 applies. *"General on-the-scene questioning"* is not "custodial." *Miranda v. Arizona* (1966) 384 US 436, 477.

• **After release from custody.** Interrogation delayed until **after removal** of custodial restraints (especially with assurance that "You're not under arrest.") is not "custodial." *People v. Thomas* (2011) 51 Cal.4th 449, 477-78; *In re Joseph R.* (1998) 65 Cal.App.4th 954, 961.

• **Voluntary interview.** With a standard *"Beheler* admonition," officers can interview a **non-custodial** juvenile at school or in the station. *California v. Beheler* (1983) 463 US 1121, 1125; *In re Kenneth S.* (2005) 133 Cal.App.4th 54, 65-66. A *"Howes* admonition" allows

interviews of sentenced minors in the hall, camp, *etc.* (See 1MB 2017-19.)

• ***Perkins* operations. Before** attempting custodial interrogation (which triggers both *Miranda* and § 625.6) and **before** the minor's first court appearance (which triggers the Sixth Amendment *Massiah* rule), officers may still conduct *Perkins* operations. (See 1MB 2015-17.)

► Police also remain free to question juveniles in custody for purposes **other than** to elicit incriminating responses, or if the circumstances **lack apparent police involvement**:

• **Booking questions.** Biographical questions to complete lodging intake records and medical questionnaires are not "interrogation." *Rhode Island v. Innis* (1980) 446 US 291, 300; *People v. Jones* (1979) 96 Cal.App.3d 820, 827. (See 1MB 2012-14.)

• **Witness interview.** Questioning a custodial suspect as a **witness** to someone else's crimes is not "interrogation." *People v. Wader* (1993) 5 Cal.4th 610, 637.

• **Consent to search.** Asking a person in custody for consent to search is not "interrogation." *People v. Brewer* (2000) 81 Cal.App.4th 442, 458.

• **Pretext call.** A victim's monitored or recorded phone call to a custodial suspect to obtain statements (**before** Sixth Amendment attachment) is not apparent interrogation ***"by law enforcement officials,"*** as required to engage *Miranda. In re Deborah C.* (1981) 30 Cal.3d 125, 132; *People v. Plyler* (1993) 18 Cal.App.4th 535, 544-46.

► W&I § 625.6 does **not** dictate the exclusion of statements or amend the California Constitution, which **prohibits** courts **from excluding relevant evidence** unless exclusion is compelled by **US Supreme Court rulings** (none of which requires attorney consultation before waiver). Cal. Const., art. I, § 28(f)(2); *People v. May* (1988) 44 Cal.3d 309, 319.

Miranda **may not be modified** by either legislation or lower court rulings. *Dickerson v. US* (2000) 530 US 428, 444; *Oregon v. Hass* (1975) 420 US 714, 719; *South Carolina v. Butler* (1979) 441 US 369, 376. Therefore, although courts are directed to *"consider"* § 625.6 non-compliance when ruling on the admissibility of affected statements, any statements that comply with *Miranda* and other applicable Supreme Court rulings should be admissible.

BOTTOM LINE: W&I § 625.6 reinforces the wisdom of interrogating criminal suspects—especially those 15 and younger—*before* custody occurs, or *after* it ends. This statute does not supersede § 28(f)(2) or the admissibility rulings of the US Supreme Court.