



LAW OFFICES OF
CHRISTOPHER W. MILLER
ATTORNEY AT LAW

PROTECTING THOSE WHO PROTECT AND SERVE

LABOR LAW • DISCIPLINE DEFENSE • EMPLOYMENT LITIGATION • CONTRACT NEGOTIATIONS • TRAINING

CLIENT BULLETIN

"SEVENTEEN AIN'T SO SWEET": BEWARE THE NEW RULES ON JUVENILE CUSTODIAL INTERROGATIONS

October 16, 2020

Doubling down on a 2018 law that was due to expire in five years, California next year will require minors 17 years old or younger to be advised of their *Miranda* rights and given access to a lawyer before any custodial interrogation. A "custodial interrogation" means questioning by peace officers of a person who is detained or arrested or otherwise not free to leave. The statute, Welfare & Institutions Code section 625.6, previously extended those rights to minors at or below the age of 15.

Under current law, before a peace officer questions a minor 15 or younger who is in temporary custody for a crime or a violation of a juvenile court order, the officer is required to give the minor a *Miranda* advisement. The officer also is required to give the minor access to a lawyer in person or by telephone or video conference before any questioning or any *Miranda* waiver by the minor. The new law applies these rules to the custodial interrogation of any minor up to age 18.

Statutory Exceptions for Probation Peace Officers

Peace officers already are required to give *Miranda* warnings to minors under most circumstances. Both the 2018 law and the new statute operate to exempt probation officers from the requirement to provide access to counsel when the probation officer is performing the officer's regular duties:

- taking a minor into temporary custody as a truant, ward of the court or for a new offense or violation of a court order (Welf. & Inst. Code §§ 601, 602, 625)
- accepting custody of a minor arrested by another peace officer (Welf. & Inst. Code §§ 626, 627.5)
- conducting an intake investigation (Welf. & Inst. Code §§ 628).

SACRAMENTO: 8950 CAL CENTER DRIVE, SUITE 108 • SACRAMENTO, CA 95826

BAY AREA: 825 WEBSTER STREET, SUITE A • FAIRFIELD, CA 94533

(916) 382-4980 (O) • (916) 956-6361 (M) • (916) 368-5820 (F)

CMILLER@CHRISMILLERLAW.NET • WWW.CHRISMILLERLAW.NET

The new statutory requirements draw on longstanding studies finding children and young adults are less able to comprehend the meaning of *Miranda* rights and the consequences of waiving those rights. California statutes and court decisions have relied on such findings since the late 1960s. Of significance today is the fact the new legislation was enacted as part of the “juvenile justice reform” and anti-law enforcement agenda legislators are imposing on probation departments statewide.

New Law Attacks Peace Officer Credibility

Current law requires courts to consider the effect on the reliability of a minor’s statement of an officer’s failure to give *Miranda* warnings and provide access to an attorney. In the only published case to consider the admissibility of a statement taken in violation of section 625.6, a court rejected a minor’s claim his admission to beating an elderly man should be excluded from the criminal proceeding. (*In re Anthony L.* (2019) 43 Cal.App.5th 438.) Two police officers questioned the minor in his bedroom in circumstances constituting a custodial interrogation; they gave him *Miranda* warnings but did not provide access to a lawyer. The court found this violation had no effect on the minor’s statement because he had knowingly waived his *Miranda* rights.

This year’s amendments to Welfare & Institutions Code section 625.6 include the provision that a peace officer’s “willful failure” to give a minor *Miranda* warnings and access to a lawyer must be considered by a court as affecting not only the admissibility of the minor’s statement but the officer’s own credibility. This “you deny, you lie” provision goes far beyond current Fourth Amendment jurisprudence, which penalizes the failure to give a *Miranda* warning by suppressing the subsequent statement. Under the revised statute, a peace officer who fails to give the required warnings or provide access to an attorney is at risk of landing on a prosecutor’s *Brady* list with credibility problems or having an arrest thrown out by the court.

© 2020 Law Offices of Christopher W. Miller