California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief		**INFORMATION BULLETIN**	
Subject: **Mandatory Consultation with Counsel Prior to Custodial Interrogations of Youth Under 18**		*No.* 2023-DLE-02 *Date:* 03/15/2023	*Contact for information:* Michael Newman Senior Assistant Attorney General Civil Rights Enforcement Section (213) 269-6280

TO: ALL CALIFORNIA LAW ENFORCEMENT AGENCIES

The California Department of Justice, Division of Law Enforcement, is issuing this Information Bulletin to provide clarity regarding the rights of youth under the age of 18 subject to custodial interrogation. As of January 1, 2021, following enactment of Senate Bill 203 (SB 203), any youth 17 years of age or younger must consult with counsel prior to a custodial interrogation and before the waiver of any Miranda rights. This consultation is mandatory and may not be waived.

This bulletin provides a summary of the law and suggested protocols that law enforcement officers should follow before conducting a custodial interrogation of a youth 17 years of age or younger.

Senate Bill 203

SB 203 amended Welfare and Institutions Code section 625.6. In recognition of the growing body of research concluding that "children and adolescents are much more vulnerable to psychologically coercive interrogations and in other dealings with the police" than adults, the bill requires that a youth 17 years of age or younger consult with legal counsel prior to a custodial interrogation, and this consultation may not be waived. (Stats. 2020, c. 335, § 1.)

1. SB 203 Requires A Youth to Consult with Legal Counsel Prior To A Custodial Interrogation and Before the Waiver of Any Miranda Rights

SB 203 provides that "[p]rior 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." (Welf. & Inst. Code, § 625.6, subd. (a).) SB 203 went into effect on January 1, 2021.

SB 203 extended SB 395's consultation requirement, which was adopted in 2017 and applied to youth 15 years of age or younger. (See Stats. 2020, c. 335, § 2; Stats. 2017, c. 681, § 2.) In addition, SB 203 removed SB 395's sunset provision, thereby making the law permanent. (Stats. 2020, c. 335, § 2.) SB 203 does not apply to a probation officer "in the normal performance of the probation officer's duties under Section 625, 627.5, or 628." (Welf. & Inst. Code, § 625.6, subd. (d).)

2. SB 203 Applies Before A "Custodial Interrogation" of A Youth

Generally, a "custodial interrogation" means "questioning initiated by law enforcement

officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (*Miranda v. Arizona* (1966) 384 U.S. 436, 444.)

The term "interrogation" refers not only to express questioning, but also to any words or actions on the part of the police that are reasonably likely to elicit an incriminating response. (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301.) The questions need not be asked by a police officer to constitute an "interrogation"—Miranda rights apply where a person is interrogated by law enforcement officials "or with their complicity," including "under any arrangement with the authorities, at their direction, or with their approval." (*In re Deborah C.* (1981) 30 Cal.3d 125, 131-132; see also *In re I.F.* (2018) 20 Cal.App.5th 735, 779-780 [holding that Miranda applied to a parent's interrogation of his child "pursuant to an arrangement with authorities"].) For example, an interrogation may occur where law enforcement directs school officials to interview or ask specific questions to students.

An interrogation is "custodial" when, given the circumstances surrounding the interrogation, a reasonable person would have felt that they were not at liberty to terminate the interrogation and leave. (*Thompson v. Keohane* (1995) 516 U.S. 99, 112.) Because children "are much more vulnerable to psychologically coercive interrogations and in other dealings with the police" than adults, a child's age is relevant to determining whether an interrogation is "custodial." (*J.D.B. v. North Carolina* (2011) 564 U.S. 261, 272 ["[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go"]; Stats. 2020, c. 335, § 1; Stats. 2017, c. 681, § 1.)

3. SB 203 Requires Courts to Consider an Officer's Failure to Ensure that a Youth Consult with Legal Counsel

SB 203 requires courts to consider an officer's failure to comply with the law's consultation requirement when adjudicating the admissibility of a youth's statements in court. In particular, SB 203 provides that "[t]he 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)." (Welf. & Inst. Code, § 625.6, subd. (b).)[1] In addition, SB 203 provides that a court "shall consider any willful violation of subdivision (a) in determining the credibility of a law enforcement officer under Section 780 of the Evidence Code." (*Ibid*.)

SB 203 provides a limited exception to the requirement that a court consider an officer's failure to comply with the law's consultation requirement, where two 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;" and (2) "The officer's questions were limited to those questions that were reasonably necessary to obtain that information." (Welf. & Inst. Code, § 625.6, subd. (c).)

[1] Because SB 203 was enacted by two-thirds vote of the membership in each house of the Legislature, unlike SB 395, the "Truth-in-Evidence" provision of the California Constitution does not preclude a court from exercising its discretion to exclude statements obtained in violation of the section 625.6, even if exclusion is not required by the federal Constitution. (See Sen. Bill No. 203 (2019-2020 Reg. Sess.), Assem. Floor vote, Aug. 30, 2020 & Sen. Floor vote, Aug. 31, 2020 <https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200SB203> [as of April 22, 2022]; cf. *In re Anthony L.* (2019) 43 Cal.App.5th 438, 448-450 [holding that SB 395, which was not enacted by a two-thirds majority of each house, does not authorize a court to exercise its discretion to exclude statements if those statements are admissible under federal law].)

Suggested Protocol to Comply with Senate Bill 203

In light of SB 203, law enforcement agencies should update relevant policies and procedures in accordance with the law and train law enforcement officers in the proper implementation of the law. Below are suggested law enforcement protocols for engaging with youth. Officers should consider the suggestions below in conjunction with any existing county protocol, including consultation with the District Attorney.

1. Prior to conducting a custodial interrogation, as defined above, determine the age of the youth.

2. If the youth is 17 years of age or younger, refrain from questioning until the youth has consulted with an attorney.

3. Contact the county's Public Defender office or county public defense provider to ensure youth consult with an attorney prior to questioning. Many county Public Defender offices have established 24-hour hotlines for this purpose.

4. The consultation with the attorney may take place in person, by telephone, or by video conference. The consultation must be private and may not be recorded.

5. After the consultation has occurred, if a youth invokes their Miranda right to remain silent or to have counsel present during any interrogation, refrain from questioning.

This Information Bulletin does not create or confer any rights for or on any person or entity, nor does it impose any requirements beyond those required under applicable law and regulations. For questions about this Information Bulletin, please contact Senior Assistant Attorney General Michael Newman in the Department's Civil Rights Enforcement Section at (213) 269-6280.