

# CLIENT NEWS BRIEF

## New Law Requires Legal Consult Prior to Custodial Interrogation of Minor under Age 16

Beginning January 1, 2018, minors under the age of 16 must consult with legal counsel prior to a custodial interrogation and before waiving their Miranda rights.

Existing law requires a peace officer to advise minors of their rights by providing a *Miranda* warning. But if the minor or parent waives those rights, officers can interrogate the minor. Senate Bill (SB) 395, which adds section 625.6 to the Welfare and Institutions Code, will prohibit a law enforcement officer from conducting a custodial interrogation of or accepting a waiver of *Miranda* rights by a minor 15 or younger until the minor has had an opportunity to consult with legal counsel. This consultation must occur in person, by telephone or by video conference and may not be waived.

SB 395 requires a court to consider the impact of a peace officer's failure to provide such legal consultation in determining the admissibility of statements the minor made during or after a custodial interrogation.

SB 395 provides limited exceptions to its consultation requirement. The new law does not require probation officers to comply with its requirements and also excludes questions related to obtaining information believed to be necessary to protect life or property from an imminent threat.

SB 395 creates new issues for police and other public agencies, including schools, when dealing with minors and illegal or inappropriate conduct. School districts that rely upon interviews of students by school district police department officers or contract school resource officers (SRO) in relation to student discipline proceedings may wish to review those practices for conformance with the new law, which covers potential criminal misconduct occurring on school campuses. In particular, school districts may wish to review how and when a law enforcement officer or an SRO may become involved with investigations of student misconduct.

Lozano Smith is currently working with our law enforcement, municipal, school district and community college district clients to address these and other issues related to the enactment of SB 395. If you have questions or need more information on how the new law impacts your agency, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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