

**County of San Diego, Public Defender**  
**SB 395 Juvenile Pre-Miranda Counseling Procedure & Protocol**

**INTRODUCTION**

Effective January 1, 2018, Senate Bill 395 (SB 395) requires youth 15 years of age or younger consult with an attorney prior to custodial interrogation by law enforcement. Youth must consult with an attorney prior to a waiver of *Miranda* rights. The consultation with an attorney cannot be waived by the child or law enforcement. However, *Miranda*'s public safety exception applies when the interrogation's purpose is solely to protect life or property from imminent threat.

Welfare & Institutions Code section 625.6, created by SB 395, states in relevant part:

**625.6** (a) 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 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 15 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a).

(c) This section does not apply to the admissibility of statements of a youth 15 years of age or younger if both of the following criteria are met:

(1) The officer who questioned the youth reasonably believed the information he or she 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.

(d) This section does not require a probation officer to comply with subdivision (a) in the normal performance of his or her duties under Section 625, 627.5, or 628.

**Custodial Interrogation**

Interrogation is defined as any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. Background questions are not necessarily interrogation, but if police officers ask questions that could result in an incriminating response, then those questions would trigger SB 395.

**Actors Who Must Comply with SB 395**

The requirement of providing *Miranda* warnings is triggered when a youth is in custody and a state actor is asking questions likely to elicit an incriminating response. However, *Miranda* warnings do not apply to questions asked of youth by school principals or staff, or caseworkers or therapists at group homes. Additionally, SB 395 does not apply to probation officers in the normal performance of their duties relating to the taking of juveniles into custody at juvenile hall.

**Nature of Consultation**

SB 395 does not mandate an in-person attorney consultation; it provides that the consultations can be completed in person, via telephone, or by videoconference. SB 395 provides counsel solely to ensure a youth understands his or her *Miranda* rights and the implications of waiver. Thus, it is incumbent on the responding attorney to determine the level of interaction with the youth.

Due to the limited nature of the consultation, it does not mean the attorney is representing the youth during the interrogation. When multiple youths involved in the same offense require consultation with an attorney, there is no conflict of interest because the nature of the interaction with the youths is to educate about their *Miranda* rights.

## **IMPLEMENTATION**

The primary mission of the San Diego Public Defender's Office is to provide quality representation. With this in mind, and in accordance with SB 395, the Public Defender will provide the same quality representation to youth 15 years old or younger, prior to any custodial interrogation by law enforcement. Best practices demand that attorneys will provide in-person consultations to all youth whenever practicable; telephone or videoconference consultations will occur in circumstances when an in-person consultation is not feasible or time is of the essence. This assignment will be referred to as "SB 395 Duty," and will occur seven days a week, 24 hours a day, including weekends and holidays.

The Department will maintain an SB 395 Duty telephone number(s) which will be provided to all County law enforcement agencies. The SB 395 Duty telephone number(s) will be answered by an attorney seven days a week, 24 hours a day. The SB 395 Duty telephone will forward calls pursuant to the designated protocol below.

### **SB 395 COUNSELING DURING BUSINESS HOURS**

During the hours of County operation, normally Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., SB 395 duty is the responsibility of the Juvenile Delinquency Division of the Primary Public Defender's Office at [REDACTED]. All calls from law enforcement will be coordinated by the Supervising Attorney or Assistant Supervising Attorney who will assign an attorney from the Juvenile Delinquency Division to provide consultation on a case-by-case basis. Whenever practicable, the assigned attorney will travel to the destination where the youth is in custody and consult with him or her regarding their *Miranda* rights.

### **SB 395 COUNSELING AFTER BUSINESS HOURS/WEEKENDS ("ON-CALL")**

Outside the hours of County operation, defined as nights, weekends, and holidays, SB 395 Duty is a Department-wide responsibility. That number is [REDACTED]. When an attorney is assigned to SB 395 duty after business hours, they are considered "on-call." On-call means the attorney will respond to phone calls from law enforcement to consult with a youth in a timely manner. Whenever practicable, the assigned on-call attorney will travel to the destination where the youth is in custody and consult with him or her regarding their *Miranda* rights. Because of the need to travel, attorneys on-call must remain within the County of San Diego and be able to immediately respond to a request for consultation.

### **SAFETY ISSUES**

Because most of the SB 395 Duty assignments occur after 5:00 p.m. and on weekends, it is imperative attorneys assigned to such duty remain vigilant about their personal safety. Therefore, when responding to a call from law enforcement, attorneys should ask that any consultation with a youth occur at a place of relative safety; namely at a police station or other public location with adequate protection for the attorney.

Public Defender  
Randy Mize  
[REDACTED]

Chief Deputy, Primary Public Defender  
Angela Bartosik  
[REDACTED]

Juvenile Supervisor  
Mary Beth Wirkus  
[REDACTED]