

JUVENILE INTERVIEWS AND CUSTODIAL INTERROGATION



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What is a Miranda warning?

- “Miranda warnings” advise people who are arrested of their Fifth Amendment right against self-incrimination. They are the result of the famous United States Supreme Court case [Miranda v. Arizona](#).
- In Miranda, the Supreme Court held that law enforcement must advise people of certain rights before a “custodial interrogation.”
- These rights are usually described as follows:
 - You have the right to remain silent.
 - Anything you say can and will be used against you in a court of law.
 - You have the right to an attorney.
 - If you cannot afford an attorney, one will be provided for you.

What is “custodial interrogation”?

- A custodial interrogation is one in which a person:
 - Is not free to leave, and
 - Is being asked questions designed to illicit an incriminating response.
- Under California law, police must give a Miranda warning anytime they take someone underage into custody -- even if they don't intend to question the minor.

When is a child considered to be “in custody”?

A child is considered in custody if he or she:

- Is deprived of his or her freedom in any significant way, or
- Has a reasonable belief that he or she is not free to leave.

Can police ever question a juvenile without reading a Miranda warning?

- California law requires a Miranda warning any time a law enforcement officer takes someone under 18 into custody.
- But the police can question *anyone* briefly -- including a minor -- without giving a Miranda warning. This is known as a “Terry Stop,” after the U.S. Supreme Court holding in [Terry v. Ohio](#).
- A Terry Stop is legal if an officer has a “reasonable suspicion” of criminal activity. “Reasonable suspicion is a lower standard than the [“probable cause”](#) an officer needs to arrest someone.

Example:

- A sheriff's deputy discovers broken glass and wet gang graffiti on a building. A block away he comes across teenagers Alex and Bobby who are carrying large backpacks and wearing the gang's colors.
- The officer suspects that Alex and Bobby may be guilty of vandalism. He stops and asks them what they are doing. The officer does not need to give the boys a Miranda warning because they are free to go.

How does someone invoke the right to remain silent?

- No special words are required to invoke the right to remain silent. But a suspect must affirmatively invoke this right. Simply remaining silent is not enough.
- Example: The police arrest 16-year old Avery for an alleged violation of assault. Avery tells the police he wants to call his mother. The police tell him he can do so as soon as he tells them what happened. They then question Avery for an hour, after which he “confesses.”

Can a child waive his or her Miranda rights?

- A child may waive Miranda rights, but only if the waiver is voluntary. In California a child aged 15 or younger may not waive Miranda rights unless the child has consulted with a lawyer.
- The prosecutor bears the burden of proving that a waiver was voluntary. The prosecutor must prove this by a [“preponderance of the evidence.”](#)

Factors the court will consider include:

- Did the police physically harm or threaten to harm the child?
- Did the police threaten to arrest or jail the suspect's family members?
- Did detectives promise a more lenient sentence in exchange for a confession?
- Did the officers deny the suspect the right to see a lawyer or to remain silent?
- Did officers deny the child sleep, water, food and/or use of the toilet?
- Was the interrogation unrelenting or unduly lengthy?
- If the answer to one or more of these questions is “yes,” a confession might not be voluntary.

Children under 15 must consult with a lawyer before waiving Miranda rights.

- California law prohibits police from interrogating a child 15 or younger in custody until the child has consulted with a lawyer.
- The consultation may take place in person, by telephone, or by video conference. **Neither the child nor his parent may waive this consultation.**
- **Exception for an imminent threat**
- Law enforcement may question a child 15 or younger *before* the child has consulted with a lawyer if:
 - The officer reasonably believes the information is necessary to protect life or property from an imminent threat, AND
 - The officer's questions are limited to those that are reasonably necessary to obtain that information.

Do parents have to consent before the police can question their child?

- No. In California, the police may generally question minors without their parents' consent.
- But, as noted above, a juvenile interrogation must be voluntary. If a child asks to have a parent present and the request is denied, a judge may decide the child's participation was not voluntary.
- Do parents have the right to be present when their child is interrogated?
 - No.

Other interview tactics:

- Phone interviews:
 - No need for Miranda or Beheler advisement. The defendant is free to hang up the phone at any point and their interview is considered to be given voluntarily.
- Beheler interview and admonition:
 - This is a voluntary interview. Defendants need to be advised they are not under arrest and are free to leave at any point.
 - Examples: Leaving the door open, showing them the door is unlocked, etc....

