

# ALR 6th *Alert*

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## From the **editor**

Miranda warnings are due only when a suspect interrogated by police is in custody. A “custodial interrogation” that triggers the requirement that law enforcement officers administer Miranda warnings to a suspect is defined as 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. Two discrete inquiries are essential to the determination of whether a suspect was in custody at the time of an interrogation: first, what were the circumstances surrounding the interrogation, and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate interrogation and leave. Recent A.L.R.6th annotations have addressed specific applications of the Miranda custodial interrogation requirement to defendants at police stations and their residences, and annotations in 30 and 31 A.L.R.6th address applications of the requirement to hospital patients and visitors. The forthcoming electronic annotation of 2007 to 2008 A.L.R. United States Supreme Court Review Part I, [2008 A.L.R.6th 1](#), notes the issues that were addressed, via opinions, or grants or denials of certiorari, by the United States Supreme Court in the first half of its 2007-2008 term, that are within the scope of and further analyzed by American Law Reports annotations.

*Jason Binimoxe, J.D.*

## Highlights

### CONFRONTATION OF WITNESSES

#### Crawford Rule on Admissibility of Hearsay Evidence

The Confrontation Clause of the U.S. Constitution (U.S. Const. Amend. VI), in relevant part, provides as follows: “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with witnesses against him ....” Frequently, at trial, an attempt is made to introduce hearsay evidence over the objection of the accused that it violates the Confrontation Clause. The admissibility of such evidence is now governed by the Supreme Court’s rationale in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177, 63 Fed. R. Evid. Serv.



1077 (2004), in which the Court held that the out-of-court statements by witnesses that are testimonial in nature are barred, under the Confrontation Clause, unless the witnesses are available at trial, or if unavailable, the defendants had a prior opportunity to cross-examine the

witnesses, and irrespective of whether such statements are deemed reliable by the court. This annotation collects representative state and federal cases in which the courts considered the construction and application of the *Crawford* case to Confrontation Clause challenges to the admissibility of a hearsay statement by a declarant whom the defendant had no opportunity to cross-examine. [30 A.L.R.6th 1](#)

## INTERNET

### First Amendment Protection Afforded to Website Operators

The First Amendment to the Constitution of the United States, U.S. Const. Amend. I, and the bills of rights of most of the states, contain express prohibitions against the enactment of laws that would abridge the freedom of speech or of the press. With the widespread use of the Internet as a means of communication, information exchange, and the marketing of goods, the courts have considered the First Amendment protection afforded to web site operators. [30 A.L.R.6th 299](#)

## INTERNET

### Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers

Taxation of Internet sellers and Internet access providers raises both questions of statutory interpretation and concerns embodying what one court has called “issues at the junction of Internet technology and constitutional principles.” This annotation collects and analyzes all the federal and state cases discussing the validity, construction, or application of (1) state or local enactments imposing sales or use taxes, or similar assessments, on sales by an Internet seller, or (2) enactments or agreements providing for the assessment of sales, use or utility taxes on, or for the payment of franchise fees by, an Internet access provider. [30 A.L.R.6th 341](#)

## MIRANDA WARNINGS

### Custodial Interrogation of Hospital Patient

Police must read Miranda warnings only to criminal suspects who are subject to “custodial interrogation,”

which requires that the police have deprived suspects of their freedom of action in a significant way. The courts have examined various factors in determining whether a suspect interviewed in a hospital setting has been custodially interrogated. This annotation collects and analyzes all cases discussing whether the police have engaged in custodial interrogation of individuals present at a hospital for medical treatment. Note the related annotations of: What Constitutes “Custodial Interrogation” of Adult by Police Officer Within Rule of *Miranda v. Arizona* Requiring that Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation—At Police Station or Sheriff’s Office, Where Defendant Voluntarily Appears or Appears at Request of Law Enforcement Personnel, or Where Unspecified as to Circumstances Upon Which Defendant Is Present, [29 A.L.R.6th 1](#); What Constitutes “Custodial Interrogation” by Police Officer Within Rule of *Miranda v. Arizona* Requiring That Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation—At Suspect’s or Third Party’s Residence, [28 A.L.R.6th 505](#); What Constitutes “Custodial Interrogation” of Juvenile by Police Officer Within Rule of *Miranda v. Arizona* Requiring that Suspect Be Informed of Federal Constitutional Rights Before Custodial Interrogation—At Police Station or Sheriff’s Office, [26 A.L.R.6th 451](#); and What Constitutes “Custodial Interrogation” at Hospital by Police Officer Within Rule of *Miranda v. Arizona* Requiring That Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation—Suspect Injured or Taken Ill Before or After Commission of Crime, [25 A.L.R.6th 379](#). [30 A.L.R.6th 103](#)

# Coming Soon

Listed below are a few of the topics scheduled to be published in *31 A.L.R.6th* in February 2008. Some of the annotations listed may be rescheduled.



conflict with basic First Amendment freedom of expression guarantees. The courts have reached a variety of conclusions as to standing and as to the constitutionality of such flag statutes, as this annotation illustrates. [31 A.L.R.6th](#)

## FLAGS

### Flag Desecration and Misuse

There is no national symbol more meaningful to Americans than the flag. Accordingly, most states have enacted legislation prohibiting the desecration, burning, or other misuse of “Old Glory,” and federal constitutional amendments prohibiting flag desecration have been proposed, and almost approved by Congress, countless times. However, it is clear that throughout the world whenever a protestor wishes to make a strong political point, burning or otherwise defacing a flag is a simple, if crude and extreme, way of doing so, so that state statutory restrictions on mistreating flags would

## GUILTY PLEA

### Effective Assistance of Counsel

To prevail on a claim that his or her counsel was ineffective for Sixth Amendment purposes, a defendant must show that the counsel’s performance was deficient, and that his or her deficient performance prejudiced the defense. The issue arises as to the adequacy of defense counsel’s representation of a criminal client regarding guilty and nolo contendere pleas where the issue concerned probation, parole, or pardon possibilities. This annotation collects and discusses the cases that have considered the adequacy of defense counsel’s representation of a criminal client regarding guilty and nolo contendere pleas where the issue concerned probation, parole, or pardon possibilities. See also *Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Guilty Pleas—Coercion or Duress*, [19 A.L.R.6th 411](#). [31 A.L.R.6th](#)

## HABEAS CORPUS

### Suspension Clause of United States Constitution

The Constitution of the United States, in Art. I, § 9, cl. 2, provides that “the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” Although the existence of a constitutional prohibition against suspension of the writ of habeas corpus means that the writ may not be abrogated or its efficiency curtailed by legislative action, it is generally recognized that a legislature may regulate the procedure with respect to habeas corpus, and, to some extent, the purposes for which it may be used. This annotation collects and discusses federal and state cases in which the courts considered and discussed the scope and application of the Suspension Clause of the U.S. Constitution. **31 A.L.R.6th**

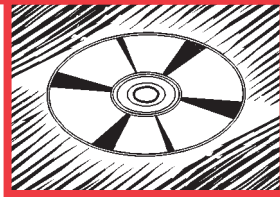
## MIRANDA WARNINGS

### Custodial Interrogation of Hospital Visitor

The police must read Miranda warnings only to criminal suspects who are subject to “custodial interrogation,” which requires that the police have deprived suspects of their freedom of action in a significant way. The courts have examined various factors in determining whether a suspect interviewed in a hospital setting has been custodially interrogated. This annotation collects and discusses all the cases discussing whether the police have engaged in custodial interrogation of individuals present at a hospital for the accompaniment or visitation of hospital patients. Note also What Constitutes “Custodial Interrogation” at Hospital by Police Officer Within Rule of Miranda v. Arizona Requiring That Suspect be Informed of His Federal Constitutional Rights Before Custodial Interrogation—Suspect Hospital Patient, **30 A.L.R.6th 103**. **31 A.L.R.6th**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 30 A.L.R.6th or scheduled for publication in 31 A.L.R.6th. Some of the annotations listed may be re-scheduled.



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