

1400

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sen. PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the electronic recording of interrogations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The criminal procedure law is amended by adding a new
2 section 60.47 to read as follows:
3 S 60.47 RULES OF EVIDENCE; ELECTRONIC RECORDING OF STATEMENTS OF DEFEND-
4 ANTS.
5 1. DEFINITIONS. AS USED IN THIS SECTION:
6 (A) "ELECTRONIC RECORDING" MEANS A CONTEMPORANEOUS VIDEO AND AUDIO
7 RECORDING, OR WHERE VIDEO RECORDING IS IMPRACTICABLE, A CONTEMPORANEOUS
8 AUDIO RECORDING.
9 (B) "CUSTODIAL INTERROGATION" MEANS ANY QUESTIONING WHICH IS CONDUCTED
10 IN A PLACE OF DETENTION OR DURING WHICH A REASONABLE PERSON IN THE
11 SUBJECT'S POSITION WOULD CONSIDER HIMSELF OR HERSELF TO BE IN CUSTODY.
12 (C) "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL FACILI-
13 TY, HOLDING FACILITY FOR PRISONERS, PROSECUTOR'S OFFICE, OR OTHER
14 GOVERNMENT FACILITY WHERE PERSONS ARE HELD IN DETENTION IN CONNECTION
15 WITH CRIMINAL CHARGES WHICH HAVE BEEN OR MAY BE FILED AGAINST THEM.
16 2. DURING THE PROSECUTION OF A FELONY, AN ORAL, WRITTEN, OR SIGN
17 LANGUAGE STATEMENT OF A DEFENDANT MADE DURING A CUSTODIAL INTERROGATION
18 SHALL BE PRESUMED INADMISSIBLE AS EVIDENCE AGAINST A DEFENDANT IN A
19 CRIMINAL PROCEEDING UNLESS AN ELECTRONIC RECORDING IS MADE OF THE CUSTO-
20 DIAL INTERROGATION IN ITS ENTIRETY, INCLUDING ANY ADMINISTRATION AND
21 WAIVER, OR INVOCATION OF RIGHTS, THE RECORDING IS SUBSTANTIALLY ACCURATE
22 AND NOT INTENTIONALLY ALTERED, AND ALL INDIVIDUALS WHO SPEAK DURING THE
23 INTERROGATION ARE IDENTIFIED BY NAME ON THE RECORDING.
24 3. IF THE COURT FINDS THAT THE DEFENDANT WAS SUBJECTED TO A CUSTODIAL
25 INTERROGATION IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, THEN ANY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD03670-01-1

1 STATEMENTS MADE BY THE DEFENDANT FOLLOWING THAT CUSTODIAL INTERROGATION,
2 EVEN IF OTHERWISE IN COMPLIANCE WITH THIS SECTION, ARE ALSO PRESUMED
3 INADMISSIBLE.

4 4. THE PEOPLE MAY REBUT A PRESUMPTION OF INADMISSIBILITY THROUGH CLEAR
5 AND CONVINCING EVIDENCE THAT THE STATEMENT WAS BOTH VOLUNTARY AND IF THE
6 STATEMENT IS INCULPATORY, WAS NOT MADE UNDER CIRCUMSTANCES CREATING A
7 SUBSTANTIAL RISK THAT THE DEFENDANT MIGHT FALSELY INCRIMINATE HIMSELF OR
8 HERSELF, AND:

9 (A) EXIGENT CIRCUMSTANCES EXISTED NECESSITATING INTERROGATION AT A
10 PLACE IN A LOCATION OTHER THAN A POLICE STATION, CORRECTIONAL FACILITY,
11 HOLDING FACILITY FOR PRISONERS, PROSECUTOR'S OFFICE, OR OTHER GOVERNMENT
12 FACILITY WHERE PERSONS ARE HELD IN DETENTION IN CONNECTION WITH CRIMINAL
13 CHARGES WHICH HAVE BEEN OR MAY BE FILED AGAINST THEM, AND WHERE THE
14 REQUISITE RECORDING EQUIPMENT WAS NOT READILY AVAILABLE;

15 (B) THE ACCUSED REFUSED TO HAVE HIS OR HER INTERROGATION ELECTRON-
16 ICALLY RECORDED, AND THE REFUSAL ITSELF WAS ELECTRONICALLY RECORDED; OR

17 (C) THE FAILURE TO ELECTRONICALLY RECORD AN ENTIRE INTERROGATION WAS
18 THE RESULT OF EQUIPMENT FAILURE AND OBTAINING REPLACEMENT EQUIPMENT WAS
19 NOT FEASIBLE.

20 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS TWO, THREE AND FOUR
21 OF THIS SECTION, THE COURT MAY ADMIT A STATEMENT IF IT BELIEVES, BASED
22 ON A SHOWING OF GOOD CAUSE BY THE PEOPLE, THAT SUPPRESSION OF THE STATE-
23 MENT IS TOO HARSH A REMEDY; THE COURT MUST THEN INSTRUCT THE JURY THAT
24 IT SHOULD CONSIDER THE FAILURE TO MAKE A RECORDING AS A FACT ADVERSE TO
25 THE PEOPLE ON ANY ISSUE OF VOLUNTARINESS, OF THE CONTENT OF THE STATE-
26 MENT, AND OF WHETHER THE STATEMENT WAS MADE.

27 6. NOTHING IN THIS SECTION PRECLUDES THE ADMISSION OF:

28 (A) A STATEMENT MADE BY THE ACCUSED IN OPEN COURT AT HIS OR HER TRIAL,
29 BEFORE GRAND JURY, OR AT A PRELIMINARY HEARING;

30 (B) A SPONTANEOUS STATEMENT THAT IS NOT MADE IN RESPONSE TO INTERRO-
31 GATION;

32 (C) A STATEMENT MADE DURING QUESTIONING THAT IS ROUTINELY ASKED DURING
33 THE PROCESSING OF THE ARREST OF THE SUSPECT;

34 (D) A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT IS
35 CONDUCTED OUT-OF-STATE;

36 (E) A STATEMENT OBTAINED BY A FEDERAL LAW ENFORCEMENT OFFICER IN A
37 FEDERAL PLACE OF DETENTION;

38 (F) A STATEMENT GIVEN AT A TIME WHEN THE INTERROGATORS ARE UNAWARE
39 THAT A FELONY HAS IN FACT OCCURRED; OR

40 (G) A STATEMENT, OTHERWISE INADMISSIBLE UNDER THIS SECTION, THAT IS
41 USED ONLY FOR IMPEACHMENT AND NOT AS SUBSTANTIVE EVIDENCE.

42 7. THE PEOPLE SHALL NOT DESTROY OR ALTER ANY ELECTRONIC RECORDING MADE
43 OF A CUSTODIAL INTERROGATION FOR A PERIOD OF TEN YEARS, MEASURED FROM
44 THE DATE OF JUDGMENT.

45 S 2. Section 710.20 of the criminal procedure law is amended by adding
46 a new subdivision 8 to read as follows:

47 8. CONSISTS OF A RECORD OR POTENTIAL TESTIMONY RECITING OR DESCRIBING
48 A STATEMENT OBTAINED IN VIOLATION OF SECTION 60.47 OF THIS CHAPTER.

49 S 3. Subdivision 1 of section 710.30 of the criminal procedure law, as
50 separately amended by chapters 8 and 194 of the laws of 1976, is amended
51 to read as follows:

52 1. Whenever the people intend to offer at a trial (a) evidence of a
53 statement made by a defendant to a public servant, which statement if
54 involuntarily made would render the evidence thereof suppressible upon
55 motion pursuant to subdivision three of section 710.20 OF THIS ARTICLE,
56 or (b) testimony regarding an observation of the defendant either at the

1 time or place of the commission of the offense or upon some other occa-
2 sion relevant to the case, to be given by a witness who has previously
3 identified him as such, they must serve upon the defendant a notice of
4 such intention, specifying the evidence intended to be offered AND, IN
5 THE CASE OF A STATEMENT, WHETHER IT WAS ELECTRONICALLY RECORDED.
6 S 4. This act shall take effect on the ninetieth day after it shall
7 have become a law, and shall apply to any custodial interrogations that
8 take place on and after such date.