

STATE OF NEW YORK

5891--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 1, 2021

Introduced by M. of A. JOYNER, SIMON, DICKENS, CARROLL, AUBRY, BARRON, O'DONNELL, DINOWITZ, FORREST -- read once and referred to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 3 of section 305.2 of the family court act, as
2 added by chapter 920 of the laws of 1982, is amended to read as follows:

3 3. If an officer takes such child into custody or if a child is deliv-
4 ered to him or her under section 305.1, he or she shall immediately,
5 before transporting the child to the police station house, notify the
6 parent or other person legally responsible for the child's care, or if
7 such legally responsible person is unavailable the person with whom the
8 child resides, that the child has been taken into custody.

9 § 2. Paragraph (a) of subdivision 4 of section 305.2 of the family
10 court act, as added by chapter 920 of the laws of 1982, is amended to
11 read as follows:

12 (a) when the officer reasonably believes such parent or other person
13 legally responsible for the child's care will appear, take the child to
14 his or her home, the station house, or another location agreed upon with
15 the parent or person legally responsible, and release the child to the
16 custody of [~~his parents or other person legally responsible for his~~
17 ~~care~~] such person upon the issuance in accordance with section 307.1 of
18 a family court appearance ticket to the child and the person to whose
19 custody the child is released; or

20 § 3. Paragraph (b) of subdivision 4 of section 305.2 of the family
21 court act, as amended by section 63 of part WWW of chapter 59 of the
22 laws of 2017, is amended to read as follows:

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

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(b) when the officer does not reasonably believe the parent or other person legally responsible for the child's care will appear for the child, forthwith and with all reasonable speed take the child directly, and without his or her first being taken to the police station house, to the family court located in the county in which the act occasioning the taking into custody allegedly was committed, or, when the family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department to conduct a hearing under section 307.4 ~~[of this part, unless the officer determines that it is necessary to question the child, in which case he or she may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the child, to the child's residence and there question him or her for a reasonable period of time]~~; or

§ 4. Paragraph (c) of subdivision 4 of section 305.2 of the family court act, as amended by section 3 of part G of chapter 58 of the laws of 2010, is amended to read as follows:

(c) when the officer does not release the child pursuant to paragraph (a) of this subdivision, or take the child to family court or to a magistrate pursuant to paragraph (b) of this subdivision, take the child to a place certified by the office of children and family services as a juvenile detention facility for the reception of children; or

§ 5. Subdivision 5 of section 305.2 of the family court act, as amended by chapter 398 of the laws of 1983, is amended to read as follows:

5. If such child has allegedly committed a designated felony act as defined in subdivision eight of section 301.2, and the family court in the county is in session, the officer shall forthwith take the child directly to such family court or, when the family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department to conduct a hearing under section 307.4, unless the officer takes the child to a facility for questioning in accordance with paragraph (b) of subdivision four. If such child has not allegedly committed a designated felony act and such family court is in session, the officer shall either forthwith take the child directly to such family court, unless the officer takes the child to a facility for questioning in accordance with paragraph (b) of subdivision four or release the child in accordance with paragraph (a) of subdivision four.

§ 6. Subdivision 6 of section 305.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

6. ~~[In all other cases]~~ If such child has not allegedly committed a designated felony act, and in the absence of special circumstances, the officer shall release the child in accordance with paragraph (a) of subdivision four.

§ 7. Subdivisions 7 and 8 of section 305.2 of the family court act, subdivision 7 as amended by chapter 398 of the laws of 1983 and subdivision 8 as amended by chapter 299 of the laws of 2020, are amended and a new subdivision 10 is added to read as follows:

7. If the officer determines that questioning of the child is necessary prior to taking action authorized by subdivision four or five, the officer may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the child, to the child's residence and there,

1 subject to the requirements of subdivision eight, question him or her
2 for a reasonable period of time.

3 8. A child shall not be questioned pursuant to this section unless
4 ~~[he]~~ or until:

5 (a) the child and a person required to be notified pursuant to subdivi-
6 sion three if present, have been advised:

7 ~~[(a)]~~ (i) of the child's right to remain silent;

8 ~~[(b)]~~ (ii) that the statements made by the child may be used in a
9 court of law;

10 ~~[(c)]~~ (iii) of the child's right to have an attorney present at such
11 questioning; and

12 ~~[(d)]~~ (iv) of the child's right to have an attorney provided for him
13 or her without charge if he or she is indigent; and

14 (b) the child has consulted with legal counsel in person, by tele-
15 phone, or by video conference. This consultation may not be waived.

16 ~~[8-]~~ 9. In determining the suitability of questioning and determining
17 the reasonable period of time for questioning such a child, the child's
18 age, the presence or absence of his or her parents or other persons
19 legally responsible for his or her care, notification pursuant to subdivi-
20 sion three and, where the child has been interrogated at a facility
21 designated by the chief administrator of the courts as a suitable place
22 for the questioning of juveniles, whether the interrogation was in
23 compliance with the video-recording and disclosure requirements of
24 subdivision five-a of this section shall be included among relevant
25 considerations.

26 10. In addition to statements that must be suppressed as involuntarily
27 made within the definition in subdivision two of section 344.2, a state-
28 ment shall be suppressed: when the child has not consulted with legal
29 counsel as required by paragraph (b) of subdivision eight; or when a
30 person notified pursuant to subdivision three, if present, has not been
31 advised of and voluntarily waived the rights delineated in paragraph (a)
32 of subdivision eight.

33 § 8. Section 724 of the family court act, the section heading and
34 subdivisions (b) and (c) as amended by chapter 843 of the laws of 1980,
35 subdivision (a) as amended by chapter 920 of the laws of 1982, para-
36 graphs (i) and (ii) as amended and paragraph (iv) of subdivision (b) as
37 added by section 4 of part E of chapter 57 of the laws of 2005, para-
38 graph (iii) of subdivision (b) as amended by section 7 of part M of
39 chapter 56 of the laws of 2017, and subdivision (d) as added by chapter
40 809 of the laws of 1963, is amended to read as follows:

41 § 724. Duties of police officer or peace officer after taking into
42 custody or on delivery by private person. (a) If a peace officer or a
43 police officer takes into custody or if a person is delivered to him
44 under section seven hundred twenty-three, the officer shall immediately,
45 before transporting the child to any other location, notify the parent
46 or other person legally responsible for his care, or the person with
47 whom he is domiciled, that he has been taken into custody.

48 (b) After making every reasonable effort to give notice under ~~[para-~~
49 ~~graph]~~ subdivision (a) of this section, the officer shall

50 (i) when the officer reasonably believes such parent or other person
51 legally responsible for the child's care will appear, take the child to
52 his or her home, the police station house, or another location agreed
53 upon with the parent or person legally responsible, and release the
54 youth to the custody of ~~[his or her parent or other]~~ such person ~~[legal-~~
55 ~~ly responsible for his or her care]~~ upon the written promise, without
56 security, of the person to whose custody the youth is released that he

1 or she will produce the youth before the lead agency designated pursuant
2 to section seven hundred thirty-five of this article in that county at a
3 time and place specified in writing; or

4 (ii) when the officer does not reasonably believe such parent or other
5 person legally responsible for the child's care will appear for the
6 child, forthwith and with all reasonable speed take the youth directly,
7 and without first being taken to the police station house, to the desig-
8 nated lead agency located in the county in which the act occasioning the
9 taking into custody allegedly was done[, ~~unless the officer determines~~
10 ~~that it is necessary to question the youth, in which case he or she may~~
11 ~~take the youth to a facility designated by the chief administrator of~~
12 ~~the courts as a suitable place for the questioning of youth or, upon the~~
13 ~~consent of a parent or other person legally responsible for the care of~~
14 ~~the youth, to the youth's residence and there question him or her for a~~
15 ~~reasonable period of time~~]; or

16 (iii) take a youth in need of crisis intervention or respite services
17 to a runaway and homeless youth crisis services program or other
18 approved respite or crisis program; or

19 (iv) take the youth directly to the family court located in the county
20 in which the act occasioning the taking into custody was allegedly done,
21 provided that the officer affirms on the record that he or she attempted
22 to exercise the options identified in paragraphs (i), (ii) and (iii) of
23 this subdivision, was unable to exercise these options, and the reasons
24 therefor.

25 (c) In the absence of special circumstances, the officer shall release
26 the child in accord with paragraph ~~(b)~~ (i) of subdivision (b) of this
27 section.

28 (d) If the officer determines that questioning of the child is neces-
29 sary prior to taking action authorized by subdivision (b) of this
30 section, the officer may take the child to a facility designated by the
31 chief administrator of the courts as a suitable place for the question-
32 ing of children or, upon the consent of a parent or other person legally
33 responsible for the care of the child, to the child's residence and
34 there, subject to the requirements of subdivision (e) of this section,
35 question him or her for a reasonable period of time.

36 (e) In determining the suitability of questioning and determining what
37 is a "reasonable period of time" for questioning a child, the child's
38 age ~~and~~, the presence or absence of his parents or other person legal-
39 ly responsible for his care and notification pursuant to subdivision (a)
40 of this section shall be included among the relevant considerations.

41 (f) No statement made to a peace officer or a police officer prior to
42 the commencement of a fact-finding hearing may be admitted into evidence
43 at a fact-finding hearing.

44 § 9. Subdivision 6 of section 140.20 of the criminal procedure law, as
45 amended by section 20 of part WWW of chapter 59 of the laws of 2017, is
46 amended to read as follows:

47 6. (a) Upon arresting a juvenile offender or a person sixteen or
48 commencing October first, two thousand nineteen, seventeen years of age
49 without a warrant, the police officer shall immediately, before trans-
50 porting the child to the police station house, notify the parent or
51 other person legally responsible for his or her care or the person with
52 whom he or she is domiciled, that such juvenile offender or person has
53 been arrested, and the location of the facility where he or she ~~is~~
54 being will be detained.

55 (b) If the officer determines that it is necessary to question a juve-
56 nile offender or such person, the officer must take him or her to a

1 facility designated by the chief administrator of the courts as a suit-
2 able place for the questioning of children or, upon the consent of a
3 parent or other person legally responsible for the care of the juvenile
4 or such person, to his or her residence and there, subject to the
5 requirements of paragraph (c) of this subdivision, question him or her
6 for a reasonable period of time.

7 (c) A juvenile offender or such person shall not be questioned pursu-
8 ant to this section unless or until:

9 (i) he or she and a person required to be notified pursuant to para-
10 graph (a) of this subdivision, if present, have been advised:

11 ~~[(a)]~~ (A) of the juvenile offender's or such person's right to remain
12 silent;

13 ~~[(b)]~~ (B) that the statements made by him or her may be used in a
14 court of law;

15 ~~[(c)]~~ (C) of his or her right to have an attorney present at such
16 questioning; and

17 ~~[(d)]~~ (D) of his or her right to have an attorney provided for him or
18 her without charge if he or she is unable to afford counsel~~[-]~~;

19 (ii) the juvenile offender or such person has consulted with an attor-
20 ney in person, by telephone, or by video conference. This consultation
21 may not be waived.

22 (d) In determining the suitability of questioning and determining the
23 reasonable period of time for questioning such a juvenile offender or
24 person, his or her age, the presence or absence of his or her parents or
25 other persons legally responsible for his or her care and notification
26 pursuant to paragraph (a) of this subdivision shall be included among
27 relevant considerations.

28 (e) In addition to statements that must be suppressed as involuntarily
29 made within the definition in subdivision two of section 60.45 of this
30 chapter, a statement shall be suppressed: when the child has not
31 consulted with an attorney as required by paragraph (c) of this subdivi-
32 sion; or when a person notified pursuant to paragraph (a) of this subdivi-
33 sion, if present, has not been advised of and voluntarily waived the
34 rights delineated in paragraph (c) of this subdivision.

35 § 10. Subdivision 5 of section 140.27 of the criminal procedure law,
36 as amended by section 23 of part WW of chapter 59 of the laws of 2017,
37 is amended to read as follows:

38 5. (a) Upon arresting a juvenile offender or a person sixteen or
39 commencing October first, two thousand nineteen, seventeen years of age
40 without a warrant, the peace officer shall immediately, before trans-
41 porting the child to the police station house, notify the parent or
42 other person legally responsible for his or her care or the person with
43 whom he or she is domiciled, that such juvenile offender or person has
44 been arrested, and the location of the facility where he or she ~~is~~
45 ~~being~~ will be detained.

46 (b) If the officer determines that it is necessary to question a juve-
47 nile offender or such person, the officer must take him or her to a
48 facility designated by the chief administrator of the courts as a suit-
49 able place for the questioning of children or, upon the consent of a
50 parent or other person legally responsible for the care of a juvenile
51 offender or such person, to his or her residence and there, subject to
52 the requirements of paragraph (c) of this subdivision, question him or
53 her for a reasonable period of time.

54 (c) A juvenile offender or such person shall not be questioned pursu-
55 ant to this section unless or until:

1 (i) the juvenile offender or such person and a person required to be
2 notified pursuant to paragraph (a) of this subdivision, if present, have
3 been advised:

4 ~~[(a)]~~ (A) of his or her right to remain silent;

5 ~~[(b)]~~ (B) that the statements made by the juvenile offender or such
6 person may be used in a court of law;

7 ~~[(c)]~~ (C) of his or her right to have an attorney present at such
8 questioning; and

9 ~~[(d)]~~ (D) of his or her right to have an attorney provided for him or
10 her without charge if he or she is unable to afford counsel~~[-]~~; and

11 (ii) the juvenile offender or such person has consulted with an attor-
12 ney in person, by telephone or by video conference. This consultation
13 may not be waived.

14 (d) In determining the suitability of questioning and determining the
15 reasonable period of time for questioning such a juvenile offender or
16 such person, his or her age, the presence or absence of his or her
17 parents or other persons legally responsible for his or her care and
18 notification pursuant to paragraph (a) of this subdivision shall be
19 included among relevant considerations.

20 (e) In addition to statements that must be suppressed as involuntarily
21 made within the definition in subdivision two of section 60.45 of this
22 chapter, a statement shall be suppressed: when the child has not
23 consulted with an attorney as required by paragraph (c) of this subdivi-
24 sion; or when a person notified pursuant to paragraph (a) of this subdivi-
25 vision, if present, has not been advised of and voluntarily waived the
26 rights delineated in paragraph (c) of this subdivision.

27 § 11. Subdivision 5 of section 140.40 of the criminal procedure law,
28 as amended by section 24 of part WWW of chapter 59 of the laws of 2017,
29 is amended to read as follows:

30 5. (a) If a police officer takes an arrested juvenile offender or a
31 person sixteen or commencing October first, two ~~[thosuan]~~ thousand
32 nineteen, seventeen years of age into custody, the police officer shall
33 immediately, before transporting the child to the police station house
34 notify the parent or other person legally responsible for his or her
35 care or the person with whom he or she is domiciled, that such juvenile
36 offender or person has been arrested, and the location of the facility
37 where he or she ~~[is-being]~~ will be detained.

38 (b) If the officer determines that it is necessary to question a juve-
39 nile offender or such person the officer must take him or her to a
40 facility designated by the chief administrator of the courts as a suit-
41 able place for the questioning of children or, upon the consent of a
42 parent or other person legally responsible for the care of the juvenile
43 offender or such person, to his or her residence and there, subject to
44 the requirements of paragraph (c) of this subdivision, question him or
45 her for a reasonable period of time.

46 (c) A juvenile offender or such person shall not be questioned pursu-
47 ant to this section unless or until:

48 (i) he or she and a person required to be notified pursuant to para-
49 graph (a) of this subdivision, if present, have been advised:

50 ~~[(a)]~~ (A) of his or her right to remain silent;

51 ~~[(b)]~~ (B) that the statements made by the juvenile offender or such
52 person may be used in a court of law;

53 ~~[(c)]~~ (C) of his or her right to have an attorney present at such
54 questioning; and

55 ~~[(d)]~~ (D) of his or her right to have an attorney provided for him or
56 her without charge if he or she is unable to afford counsel~~[-]~~; and

1 (ii) the juvenile offender or such person has consulted with an attor-
2 ney in person, by telephone, or by video conference. This consultation
3 may not be waived.

4 (d) In determining the suitability of questioning and determining the
5 reasonable period of time for questioning such a juvenile offender or
6 such person, his or her age, the presence or absence of his or her
7 parents or other persons legally responsible for his or her care and
8 notification pursuant to paragraph (a) of this subdivision shall be
9 included among relevant considerations.

10 (e) In addition to statements that must be suppressed as involuntarily
11 made within the definition in subdivision two of section 60.45 of this
12 chapter, a statement shall be suppressed: when the child has not
13 consulted with an attorney as required by paragraph (c) of this subdivi-
14 sion; or when a person notified pursuant to paragraph (a) of this subdivi-
15 vision, if present, has not been advised of and voluntarily waived the
16 rights delineated in paragraph (c) of this subdivision.

17 § 12. This act shall take effect April 1, 2022; provided, however,
18 that if chapter 299 of the laws of 2020 shall not have taken effect on
19 or before such date then the amendments to subdivision 8 of section
20 305.2 of the family court act made by section seven of this act shall
21 take effect on the same date and in the same manner as such chapter of
22 the laws of 2020 takes effect.