

STATE OF NEW YORK

2800--A

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. BAILEY, BENJAMIN, HOYLMAN, JACKSON, KRUEGER, MYRIE, RIVERA, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee and committed to the Committee on Finance -- 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

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

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

(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 admin-

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

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

(a) the child and a person required to be notified pursuant to subdivision three if present, have been advised:

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

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

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

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

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

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

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

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

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

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

(i) when the officer reasonably believes such parent or other person legally responsible for the child's care will appear, take the child to his or her home, the police station house, or another location agreed upon with the parent or person legally responsible, and release the

1 youth to the custody of [~~his or her parent or other~~] such person [~~legal-~~
2 ~~ly responsible for his or her care~~] upon the written promise, without
3 security, of the person to whose custody the youth is released that he
4 or she will produce the youth before the lead agency designated pursuant
5 to section seven hundred thirty-five of this article in that county at a
6 time and place specified in writing; or

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

19 (iii) take a youth in need of crisis intervention or respite services
20 to a runaway and homeless youth crisis services program or other
21 approved respite or crisis program; or

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

28 (c) In the absence of special circumstances, the officer shall release
29 the child in accord with paragraph [~~(b)~~] (i) of subdivision (b) of this
30 section.

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

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

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

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

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

1 been arrested, and the location of the facility where he or she [~~is~~
2 ~~being~~] will be detained.

3 (b) If the officer determines that it is necessary to question a juve-
4 nile offender or such person, the officer must take him or her to a
5 facility designated by the chief administrator of the courts as a suit-
6 able place for the questioning of children or, upon the consent of a
7 parent or other person legally responsible for the care of the juvenile
8 or such person, to his or her residence and there, subject to the
9 requirements of paragraph (c) of this subdivision, question him or her
10 for a reasonable period of time.

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

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

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

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

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

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

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

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

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

39 § 10. Subdivision 5 of section 140.27 of the criminal procedure law,
40 as amended by section 23 of part WWW of chapter 59 of the laws of 2017,
41 is amended to read as follows:

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

50 (b) If the officer determines that it is necessary to question a juve-
51 nile offender or such person, the officer must take him or her to a
52 facility designated by the chief administrator of the courts as a suit-
53 able place for the questioning of children or, upon the consent of a
54 parent or other person legally responsible for the care of a juvenile
55 offender or such person, to his or her residence and there, subject to

1 the requirements of paragraph (c) of this subdivision, question him or
2 her for a reasonable period of time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~[(e)]~~ (C) of his or her right to have an attorney present at such
2 questioning; and

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

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

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

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

21 § 12. This act shall take effect April 1, 2022; provided, however,
22 that if chapter 299 of the laws of 2020 shall not have taken effect on
23 or before such date then the amendments to subdivision 8 of section
24 305.2 of the family court act made by section seven of this act shall
25 take effect on the same date and in the same manner as such chapter of
26 the laws of 2020 takes effect.