S T A T E O F N E W Y O R K

110

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. SAMPSON -- 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 recording of statements in certain criminal investigations

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

Section 1. The criminal procedure law is amended by adding a new section 60.53 to read as follows:

S 60.53 RULES OF EVIDENCE; ELECTRONIC RECORDING OF CUSTODIAL INTERROGATION.

1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "WRITTEN STATEMENT OF AN ACCUSED" MEANS ANY STATEMENT SIGNED BY THE ACCUSED OR A STATEMENT MADE BY THE ACCUSED IN HIS OR HER OWN HANDWRITING OR, IF THE ACCUSED IS UNABLE TO WRITE, A STATEMENT BEARING HIS OR HER MARK, WHEN THE MARK HAS BEEN WITNESSED BY A PERSON.

(B) "CUSTODIAL INTERROGATION" MEANS ANY INTERROGATION DURING WHICH THE PERSON BEING INTERROGATED IS NOT FREE TO LEAVE.

(C) "PLACE OF DETENTION" MEANS A FACILITY UNDER THE CONTROL OF A LAW ENFORCEMENT AGENCY.

2. AN ORAL OR WRITTEN STATEMENT OF AN ACCUSED MADE AS A RESULT OF A CUSTODIAL INTERROGATION AT A POLICE STATION OR OTHER PLACE OF DETENTION SHALL BE PRESUMED TO BE INADMISSIBLE AS EVIDENCE AGAINST THE ACCUSED IN ANY CRIMINAL PROCEEDING CHARGING A FELONY OFFENSE OR FELONY OFFENSES BROUGHT UNDER THIS CHAPTER, UNLESS:

(A) AN ELECTRONIC VIDEO AND AUDIO RECORDING IS MADE OF THE CUSTODIAL INTERROGATION;

(B) PRIOR TO THE CUSTODIAL INTERROGATION BUT DURING THE RECORDING THE ACCUSED IS GIVEN THE FOLLOWING WARNING:

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

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(I) THAT THE ACCUSED HAS THE RIGHT TO REMAIN SILENT AND NOT MAKE ANY STATEMENT AT ALL, AND THAT ANY STATEMENT THE ACCUSED MAKES MAY BE USED AGAINST THE ACCUSED AT HIS OR HER TRIAL;

(II) THAT ANY STATEMENT THE ACCUSED MAKES MAY BE USED AS EVIDENCE AGAINST THE ACCUSED IN COURT;

(III) THAT THE ACCUSED HAS THE RIGHT TO HAVE AN ATTORNEY PRESENT TO ADVISE HIM OR HER PRIOR TO AND DURING ANY QUESTIONING; AND

(IV) THAT IF THE ACCUSED IS UNABLE TO EMPLOY AN ATTORNEY, HE OR SHE HAS THE RIGHT TO HAVE AN ATTORNEY APPOINTED TO ADVISE HIM OR HER PRIOR TO AND DURING ANY QUESTIONING;

(C) PRIOR TO THE STATEMENT BUT DURING THE RECORDING, THE ACCUSED WAIVES THE RIGHTS DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION;

(D) THE RECORDING IS ACCURATE AND HAS NOT BEEN ALTERED; AND

(E) ALL VOICES ON THE RECORDING ARE IDENTIFIABLE.

3. EVERY ELECTRONIC VIDEO AND AUDIO RECORDING OF ANY STATEMENT MADE BY AN ACCUSED DURING A CUSTODIAL INTERROGATION AT A POLICE STATION OR OTHER PLACE OF DETENTION SHALL BE PRESERVED UNTIL SUCH TIME AS THE DEFENDANT'S CONVICTION FOR ANY OFFENSE RELATING TO THE STATEMENT IS FINAL AND ALL DIRECT AND HABEAS CORPUS APPEALS ARE EXHAUSTED, OR THE PROSECUTION OF SUCH OFFENSES IS BARRED BY LAW.

4. NOTHING IN THIS SECTION PRECLUDES THE ADMISSION OF:

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

(B) A STATEMENT THAT IS MADE PRIOR TO THE ACCUSED BEING TAKEN INTO CUSTODY;

(C) A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT WAS NOT RECORDED AS REQUIRED BY THIS SECTION, BECAUSE VIDEO OR AUDIO RECORDING, OR BOTH, WAS NOT FEASIBLE;

(D) A VOLUNTARY STATEMENT, WHETHER OR NOT THE RESULT OF A CUSTODIAL INTERROGATION, THAT WAS A BEARING ON THE CREDIBILITY OF THE ACCUSED AS A WITNESS;

(E) A STATEMENT MADE UNDER EXIGENT CIRCUMSTANCES;

(F) A SPONTANEOUS STATEMENT THAT IS NOT MADE IN RESPONSE TO A QUESTION;

(G) A STATEMENT MADE AFTER QUESTIONING THAT IS ROUTINELY ASKED DURING THE PROCESSING OF THE ARREST OF THE SUSPECT;

(H) A STATEMENT MADE DURING A CUSTODIAL INTERROGATION BY A SUSPECT WHO AGREES, PRIOR TO MAKING THE STATEMENT, TO RESPOND TO THE INTERROGATOR'S QUESTIONS ONLY IF EITHER A VIDEO OR AN AUDIO RECORDING, OR BOTH, IS NOT MADE OF THE STATEMENT, PROVIDED THAT AN ELECTRONIC VIDEO OR AUDIO RECORDING IS MADE OF THE STATEMENT OF AGREEING TO RESPOND TO THE INTERROGATOR'S QUESTION, ONLY IF A RECORDING IS NOT MADE OF THE STATEMENT;

(I) A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT IS CONDUCTED OUT-OF-STATE; OR

(J) A STATEMENT MADE BY A SUSPECT WHO IS BEING INTERROGATED SIMULTANEOUSLY WITH OTHER SUSPECTS CONCERNING THE SAME OFFENSE, BUT ONLY TO THE EXTENT THAT NO ELECTRONIC RECORDING EQUIPMENT, VIDEO OR AUDIO, IS AVAILABLE BECAUSE SUCH EQUIPMENT IS BEING UTILIZED FOR THE INTERROGATIONS OF THE OTHER SUSPECTS FOR THE SAME OFFENSE.

5. THE PEOPLE SHALL BEAR THE BURDEN OF PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT ONE OF THE EXCEPTIONS DESCRIBED IN SUBDIVISION FOUR OF THIS SECTION IS APPLICABLE.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to custodial interrogations occurring on or after such effective date.