

5213

2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. LENTOL, BOYLAND, PEOPLES -- read once and referred 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 INTERROGATION WHICH IS
10 CONDUCTED IN A PLACE OF DETENTION AND DURING WHICH A REASONABLE PERSON
11 IN THE SUBJECT'S POSITION WOULD CONSIDER HIMSELF OR HERSELF TO BE IN
12 CUSTODY.

13 (C) "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL FACILI-
14 TY, HOLDING FACILITY FOR PRISONERS, OR OTHER GOVERNMENT FACILITY WHERE
15 PERSONS ARE HELD IN DETENTION IN CONNECTION WITH CRIMINAL CHARGES WHICH
16 HAVE BEEN OR MAY BE FILED AGAINST THEM.

17 2. DURING THE PROSECUTION OF A FELONY, AN ORAL, WRITTEN, OR SIGN
18 LANGUAGE STATEMENT OF A DEFENDANT MADE DURING A CUSTODIAL INTERROGATION
19 SHALL BE PRESUMED INADMISSIBLE AS EVIDENCE AGAINST A DEFENDANT IN A
20 CRIMINAL PROCEEDING UNLESS AN ELECTRONIC RECORDING IS MADE OF THE CUSTO-
21 DIAL INTERROGATION IN ITS ENTIRETY AND THE RECORDING IS SUBSTANTIALLY
22 ACCURATE AND NOT INTENTIONALLY ALTERED.

23 3. IF THE COURT FINDS THAT THE DEFENDANT WAS SUBJECTED TO A CUSTODIAL
24 INTERROGATION IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, THEN ANY
25 STATEMENTS MADE BY THE DEFENDANT FOLLOWING THAT CUSTODIAL INTERROGATION,

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

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1 EVEN IF OTHERWISE IN COMPLIANCE WITH THIS SECTION, ARE ALSO PRESUMED
2 INADMISSIBLE.

3 4. THE PEOPLE MAY REBUT A PRESUMPTION OF INADMISSIBILITY THROUGH CLEAR
4 AND CONVINCING EVIDENCE THAT THE STATEMENT WAS BOTH VOLUNTARY AND RELI-
5 ABLE AND:

6 (A) EXIGENT CIRCUMSTANCES EXISTED NECESSITATING INTERROGATION AT A
7 PLACE IN A LOCATION OTHER THAN A POLICE STATION, CORRECTIONAL FACILITY,
8 OR HOLDING FACILITY FOR PRISONERS AND WHERE THE REQUISITE RECORDING
9 EQUIPMENT WAS NOT READILY AVAILABLE;

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

12 (C) THE FAILURE TO ELECTRONICALLY RECORD AN ENTIRE INTERROGATION WAS
13 THE RESULT OF EQUIPMENT FAILURE AND OBTAINING REPLACEMENT EQUIPMENT WAS
14 NOT FEASIBLE.

15 5. NOTHING IN THIS SECTION PRECLUDES THE ADMISSION OF:

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

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

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

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

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

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

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

30 6. THE PEOPLE SHALL NOT DESTROY OR ALTER ANY ELECTRONIC RECORDING MADE
31 OF A CUSTODIAL INTERROGATION UNTIL SUCH TIME AS THE DEFENDANT'S
32 CONVICTION FOR ANY OFFENSE RELATING TO THE INTERROGATION IS FINAL AND
33 ALL DIRECT AND HABEAS CORPUS APPEALS ARE EXHAUSTED, OR THE PROSECUTION
34 OF THAT OFFENSE IS BARRED BY LAW.

35 S 2. This act shall take effect on the ninetieth day after it shall
36 have become a law, and shall apply to any criminal proceeding commenced
37 on and after such date.