

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:

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

3 S 60.53 RULES OF EVIDENCE; ELECTRONIC RECORDING OF CUSTODIAL INTERRO-
4 GATION.

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

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

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

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

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

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

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

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

LBD01974-01-9

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

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

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

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

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

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

14 (E) ALL VOICES ON THE RECORDING ARE IDENTIFIABLE.

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

21 4. NOTHING IN THIS SECTION PRECLUDES THE ADMISSION OF:

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

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

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

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

32 (E) A STATEMENT MADE UNDER EXIGENT CIRCUMSTANCES;

33 (F) A SPONTANEOUS STATEMENT THAT IS NOT MADE IN RESPONSE TO A QUES-
34 TION;

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

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

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

46 (J) A STATEMENT MADE BY A SUSPECT WHO IS BEING INTERROGATED SIMULTANE-
47 OUSLY WITH OTHER SUSPECTS CONCERNING THE SAME OFFENSE, BUT ONLY TO THE
48 EXTENT THAT NO ELECTRONIC RECORDING EQUIPMENT, VIDEO OR AUDIO, IS AVAIL-
49 ABLE BECAUSE SUCH EQUIPMENT IS BEING UTILIZED FOR THE INTERROGATIONS OF
50 THE OTHER SUSPECTS FOR THE SAME OFFENSE.

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

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