

2345

2009-2010 Regular Sessions

I N S E N A T E

February 18, 2009

Introduced by Sens. SCHNEIDERMAN, DIAZ, DUANE, KRUEGER, PERKINS -- 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 requiring 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. Legislative intent. Properly recorded interrogations
2 provide the best evidence of the communications that occurred during an
3 interrogation; prevent disputes about how an officer conducted himself
4 or herself or treated a suspect during the course of an interrogation;
5 prevent a defendant from lying about his or her account of events
6 originally provided to law enforcement; spare judges and jurors the time
7 necessary to assess which account of an interrogation to believe; and
8 enhance public confidence in the criminal investigation process. It is
9 the intent of this legislature to require the video and audio recording
10 of custodial interrogations in New York state.

11 S 2. The criminal procedure law is amended by adding a new section
12 60.53 to read as follows:

13 S 60.53 RULES OF EVIDENCE; ELECTRONIC RECORDING OF CUSTODIAL INTERRO-
14 GATION.

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

17 (A) "CUSTODIAL INTERROGATION" MEANS AN INTERVIEW, BEGINNING WITH A LAW
18 ENFORCEMENT OFFICER'S ADVICE OF A PERSON'S MIRANDA RIGHTS AND ENDING
19 WHEN THE INTERVIEW HAS COMPLETELY FINISHED, WHICH OCCURS WHILE A PERSON
20 REASONABLY BELIEVES HE OR SHE IS IN CUSTODY, INVOLVING A LAW ENFORCEMENT
21 OFFICER'S QUESTIONING THAT IS REASONABLY LIKELY TO ELICIT INCRIMINATING
22 RESPONSES.

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

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(B) "PLACE OF DETENTION" MEANS A JAIL, POLICE OR SHERIFF'S STATION, HOLDING CELL, CORRECTIONAL OR DETENTION FACILITY OF OTHER PLACE WHERE PERSONS ARE QUESTIONED IN CONNECTION WITH CRIMINAL CHARGES.

(C) "ELECTRONIC RECORDING" OR "ELECTRONICALLY RECORDED" MEANS AN AUDIO AND VISUAL RECORDING THAT IS AN AUTHENTIC, ACCURATE AND UNALTERED RECORD OF A CUSTODIAL INTERROGATION.

(D) "STATEMENT" MEANS ANY ORAL, WRITTEN, SIGN LANGUAGE OR VERBAL COMMUNICATION.

2. (A) ALL STATEMENTS MADE BY A PERSON DURING A CUSTODIAL INTERROGATION AT A PLACE OF DETENTION RELATING TO A FELONY OFFENSE OR FELONY OFFENSES BROUGHT UNDER THIS CHAPTER SHALL BE ELECTRONICALLY RECORDED.

(B) IF ANY PART OF THE INTERROGATION NECESSARILY TAKES PLACE OUTSIDE OF A PLACE OF DETENTION, AUDIO RECORDING IS AN ACCEPTABLE ALTERNATIVE TO AUDIO AND VISUAL RECORDING.

(C) IN PLACES OF DETENTION, THE CAMERA SHALL BE FOCUSED UPON BOTH THE INTERROGATOR AND THE SUSPECT SIMULTANEOUSLY.

3. EXCEPT AS PROVIDED IN SUBDIVISIONS FOUR AND FIVE OF THIS SECTION, ALL STATEMENTS MADE BY A PERSON DURING A CUSTODIAL INTERROGATION THAT ARE NOT ELECTRONICALLY RECORDED, AND ALL STATEMENTS MADE THEREAFTER BY THE PERSON DURING THE CUSTODIAL INTERROGATIONS, INCLUDING BUT NOT LIMITED TO STATEMENTS THAT ARE ELECTRONICALLY RECORDED, SHALL BE INADMISSIBLE AS EVIDENCE AGAINST THE PERSON IN ANY FELONY CRIMINAL PROCEEDING BROUGHT AGAINST SUCH PERSON.

4. THE PRESUMPTION OF INADMISSIBILITY OF STATEMENTS PROVIDED IN SUBDIVISION THREE OF THIS SECTION MAY BE OVERCOME, AND STATEMENTS THAT WERE NOT ELECTRONICALLY RECORDED MAY BE ADMITTED INTO EVIDENCE IN A FELONY CRIMINAL PROCEEDING BROUGHT AGAINST THE PERSON, IF THE COURT FINDS:

(A) THAT THE STATEMENTS ARE ADMISSIBLE UNDER APPLICABLE RULES OF EVIDENCE; AND

(B) THAT THE STATEMENTS ARE PROVEN TO HAVE BEEN MADE VOLUNTARILY, AND ARE RELIABLE; AND

(C) THAT LAW ENFORCEMENT PERSONNEL MADE A CONTEMPORANEOUS RECORD OF THE REASON FOR NOT MAKING AN ELECTRONIC RECORDING OF THE STATEMENTS; AND

(D) THAT IT IS PROVEN THAT ONE OR MORE OF THE FOLLOWING CIRCUMSTANCES EXISTED AT THE TIME OF THE CUSTODIAL INTERROGATION:

(I) THE QUESTIONS PUT FORTH BY LAW ENFORCEMENT PERSONNEL, AND THE PERSON'S RESPONSIVE STATEMENTS, WERE PART OF THE ROUTINE PROCESSING OR "BOOKING" OF THE PERSON; OR

(II) BEFORE OR DURING A CUSTODIAL INTERROGATION, AFTER HAVING CONSULTED WITH HIS OR HER LAWYER, THE PERSON INDICATED THAT HE OR SHE WOULD ONLY RESPOND TO THE OFFICER'S QUESTIONS IF HIS OR HER STATEMENTS WERE NOT ELECTRONICALLY RECORDED AND A RECORD IS MADE OF SUCH REFUSAL; OR

(III) THE CUSTODIAL INTERROGATION NECESSARILY TOOK PLACE IN ANOTHER JURISDICTION AND WAS CONDUCTED BY OFFICIALS OF THAT JURISDICTION IN COMPLIANCE WITH THE LAW OF THAT JURISDICTION; OR

(IV) EXIGENT CIRCUMSTANCES EXISTED WHICH PREVENTED THE MAKING OF, OR RENDERED IT NOT FEASIBLE TO MAKE, AN ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION.

5. STATEMENTS, WHETHER OR NOT ELECTRONICALLY RECORDED, WHICH ARE ADMISSIBLE UNDER APPLICABLE RULES OF EVIDENCE, AND ARE PROVEN BY CLEAR AND CONVINCING EVIDENCE TO HAVE BEEN MADE BY THE PERSON VOLUNTARILY, AND ARE RELIABLE, MAY BE ADMITTED INTO EVIDENCE IN A FELONY CRIMINAL PROCEEDING BROUGHT AGAINST THE PERSON IF THE COURT FINDS:

(A) THE CUSTODIAL INTERROGATION OCCURRED BEFORE A GRAND JURY OR COURT; OR

1 (B) THE PERSON AGREED TO PARTICIPATE IN A NON-RECORDED CUSTODIAL
2 INTERROGATION AFTER HAVING CONSULTED WITH HIS OR HER LAWYER.

3 6. (A) COMPLIANCE WITH THE ELECTRONIC RECORDING REQUIREMENTS SET FORTH
4 IN THIS SECTION SHALL BE MONITORED BY THE OFFICE OF COURT ADMINISTRATION
5 THROUGH THE SUBMISSION OF FORMS BY THE TRIAL JUDGE AND THE PROSECUTOR IN
6 EACH CASE OF AN INTERROGATION THAT WAS NOT RECORDED BUT WAS NONETHELESS
7 INTRODUCED AS EVIDENCE IN A CRIMINAL CASE. THESE FORMS SHALL BE DEVEL-
8 OPED BY THE OFFICE OF COURT ADMINISTRATION, WITH THE EXPECTATION THAT
9 THE REPORTING FORMS SHALL IDENTIFY ANY PATTERNS OF NONCOMPLIANCE.

10 (B) COMPLIANCE WITH THE ELECTRONIC RECORDING REQUIREMENTS SET FORTH IN
11 THIS SECTION SHALL BE MONITORED BY THE DIVISION OF CRIMINAL JUSTICE
12 SERVICES THROUGH THE SUBMISSION OF FORMS BY THE INTERROGATING OFFICER OR
13 OFFICERS IN EACH CASE OF AN UNRECORDED CONFESSION, BOTH THOSE NOT
14 PRESUMED INADMISSIBLE INTO EVIDENCE UNDER SUBPARAGRAPHS (II), (III) AND
15 (IV) OF PARAGRAPH (D) OF SUBDIVISION FOUR OF THIS SECTION, OR THOSE
16 INADMISSIBLE UNDER THIS SECTION. THESE FORMS SHALL BE DEVELOPED BY THE
17 DIVISION OF CRIMINAL JUSTICE SERVICES, WITH THE EXPECTATION THAT THE
18 REPORTING FORMS SHALL IDENTIFY ANY PATTERNS OF NONCOMPLIANCE.

19 7.(A) EVERY ELECTRONIC RECORDING OF A CUSTODIAL INTERROGATION SHALL BE
20 CLEARLY IDENTIFIED AND CATALOGUED BY LAW ENFORCEMENT PERSONNEL.

21 (B) IF A FELONY CRIMINAL PROCEEDING IS BROUGHT AGAINST A PERSON WHO
22 WAS THE SUBJECT OF AN ELECTRONICALLY RECORDED CUSTODIAL INTERROGATION,
23 THE ELECTRONIC RECORDING SHALL BE PRESERVED BY LAW ENFORCEMENT PERSONNEL
24 UNTIL ALL APPEALS, POST-CONVICTION AND HABEAS CORPUS PROCEEDINGS ARE
25 FINAL AND CONCLUDED, OR THE TIME WITHIN WHICH THEY SHALL BE BROUGHT HAS
26 EXPIRED.

27 (C) IF NO FELONY CRIMINAL PROCEEDING IS BROUGHT AGAINST A PERSON WHO
28 HAS BEEN THE SUBJECT OF AN ELECTRONICALLY RECORDED CUSTODIAL INTERRO-
29 GATION, THE RELATED ELECTRONIC RECORDING SHALL BE PRESERVED BY LAW
30 ENFORCEMENT PERSONNEL UNTIL ALL APPLICABLE STATE AND FEDERAL STATUTES OF
31 LIMITATIONS BAR PROSECUTION OF THE PERSON.

32 S 3. This act shall take effect on the first of November next succeed-
33 ing the date on which it shall have become a law and shall apply to
34 custodial interrogations occurring on or after such effective date.