

# STATE OF NEW YORK

6982--A

2019-2020 Regular Sessions

## IN ASSEMBLY

April 3, 2019

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Children and Families -- 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  
20 § 3. Paragraph (b) of subdivision 4 of section 305.2 of the family  
21 court act, as amended by section 63 of part WWW of chapter 59 of the  
22 laws of 2017, is amended to read as follows:

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

LBD10989-02-9

1 (b) when the officer does not reasonably believe the parent or other  
2 person legally responsible for the child's care will appear for the  
3 child, forthwith and with all reasonable speed take the child directly,  
4 and without his or her first being taken to the police station house, to  
5 the family court located in the county in which the act occasioning the  
6 taking into custody allegedly was committed, or, when the family court  
7 is not in session, to the most accessible magistrate, if any, designated  
8 by the appellate division of the supreme court in the applicable depart-  
9 ment to conduct a hearing under section 307.4 [~~of this part, unless the~~  
10 ~~officer determines that it is necessary to question the child, in which~~  
11 ~~case he or she may take the child to a facility designated by the chief~~  
12 ~~administrator of the courts as a suitable place for the questioning of~~  
13 ~~children or, upon the consent of a parent or other person legally~~  
14 ~~responsible for the care of the child, to the child's residence and~~  
15 ~~there question him or her for a reasonable period of time~~]; or

16 § 4. Paragraph (c) of subdivision 4 of section 305.2 of the family  
17 court act, as amended by section 3 of part G of chapter 58 of the laws  
18 of 2010, is amended to read as follows:

19 (c) when the officer does not release the child pursuant to paragraph  
20 (a) of this subdivision, or take the child to family court or to a  
21 magistrate pursuant to paragraph (b) of this subdivision, take the child  
22 to a place certified by the office of children and family services as a  
23 juvenile detention facility for the reception of children; or

24 § 5. Subdivision 5 of section 305.2 of the family court act, as  
25 amended by chapter 398 of the laws of 1983, is amended to read as  
26 follows:

27 5. If such child has allegedly committed a designated felony act as  
28 defined in subdivision eight of section 301.2, and the family court in  
29 the county is in session, the officer shall forthwith take the child  
30 directly to such family court, unless the officer takes the child to a  
31 facility for questioning in accordance with [~~paragraph (b) of subdivi-~~  
32 ~~sion four. If such child has not allegedly committed a designated felony~~  
33 ~~act and such family court is in session, the officer shall either forth-~~  
34 ~~with take the child directly to such family court, unless the officer~~  
35 ~~takes the child to a facility for questioning in accordance with para-~~  
36 ~~graph (b) of subdivision four or release the child in accordance with~~  
37 ~~paragraph (a) of subdivision four] subdivision seven.~~

38 § 6. Subdivision 6 of section 305.2 of the family court act, as added  
39 by chapter 920 of the laws of 1982, is amended to read as follows:

40 6. [~~In all other cases~~] If such child has not allegedly committed a  
41 designated felony act, and in the absence of special circumstances, the  
42 officer shall release the child in accordance with paragraph (a) of  
43 subdivision four.

44 § 7. Subdivisions 7 and 8 of section 305.2 of the family court act, as  
45 amended by chapter 398 of the laws of 1983, are amended and a new subdivi-  
46 sion 10 is added to read as follows:

47 7. If the officer determines that questioning of the child is neces-  
48 sary prior to taking action authorized by subdivision four or five, the  
49 officer may take the child to a facility designated by the chief admin-  
50 istrator of the courts as a suitable place for the questioning of chil-  
51 dren or, upon the consent of a parent or other person legally responsi-  
52 ble for the care of the child, to the child's residence and there,  
53 subject to the requirements of subdivision eight, question him or her  
54 for a reasonable period of time. Questioning is necessary only when the  
55 officer reasonably determines that the child's life or health, or the  
56 life or health of another individual, is in imminent danger and that the

1 child may have information that would assist the officer in taking  
 2 protective action.

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

5 (a) the child and a person required to be notified pursuant to subdivi-  
 6 sion three if present, have been advised:

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

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

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

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

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

16 [~~8-~~] 9. In determining the suitability of questioning and determining  
 17 the reasonable period of time for questioning such a child, the child's  
 18 age, the presence or absence of his or her parents or other persons  
 19 legally responsible for his or her care and notification pursuant to  
 20 subdivision three shall be included among relevant considerations.

21 10. In addition to statements that must be suppressed as involuntarily  
 22 made within the definition in subdivision two of section 344.2, a state-  
 23 ment shall be suppressed: when the child has not consulted with legal  
 24 counsel as required by paragraph (b) of subdivision eight; when a person  
 25 notified pursuant to subdivision three, if present, has not been advised  
 26 of and voluntarily waived the rights delineated in paragraph (a) of  
 27 subdivision eight; or when the questioning of the child was not neces-  
 28 sary within the definition in subdivision seven.

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

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

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

46 (i) when the officer reasonably believes such parent or other person  
 47 legally responsible for the child's care will appear, take the child to  
 48 his or her home, the police station house, or another location agreed  
 49 upon with the parent or person legally responsible, and release the  
 50 youth to the custody of [~~his or her parent or other~~] such person [~~legal-~~  
 51 ~~ly responsible for his or her care~~] upon the written promise, without  
 52 security, of the person to whose custody the youth is released that he  
 53 or she will produce the youth before the lead agency designated pursuant  
 54 to section seven hundred thirty-five of this article in that county at a  
 55 time and place specified in writing; or

1 (ii) when the officer reasonably believes such parent or other person  
2 legally responsible for the child's care will appear for the child,  
3 forthwith and with all reasonable speed take the youth directly, and  
4 without first being taken to the police station house, to the designated  
5 lead agency located in the county in which the act occasioning the  
6 taking into custody allegedly was done[~~, unless the officer determines~~  
7 ~~that it is necessary to question the youth, in which case he or she may~~  
8 ~~take the youth to a facility designated by the chief administrator of~~  
9 ~~the courts as a suitable place for the questioning of youth or, upon the~~  
10 ~~consent of a parent or other person legally responsible for the care of~~  
11 ~~the youth, to the youth's residence and there question him or her for a~~  
12 ~~reasonable period of time~~]; or

13 (iii) take a youth in need of crisis intervention or respite services  
14 to a runaway and homeless youth crisis services program or other  
15 approved respite or crisis program; or

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

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

25 (d) If the officer determines that questioning of the child is neces-  
26 sary prior to taking action authorized by subdivision (b) of this  
27 section, the officer may take the child to a facility designated by the  
28 chief administrator of the courts as a suitable place for the question-  
29 ing of children or, upon the consent of a parent or other person legally  
30 responsible for the care of the child, to the child's residence and  
31 there, subject to the requirements of subdivision (e) of this section,  
32 question him or her for a reasonable period of time. Questioning is  
33 necessary only when the officer reasonably determines that the child's  
34 life or health, or the life or health of another individual, is in immi-  
35 nent danger and that the child may have information that would assist  
36 the officer in taking protective action.

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

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

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

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

1 (b) If the officer determines that it is necessary to question a juve-  
2 nile offender or such person, the officer must take him or her to a  
3 facility designated by the chief administrator of the courts as a suit-  
4 able place for the questioning of children or, upon the consent of a  
5 parent or other person legally responsible for the care of the juvenile  
6 or such person, to his or her residence and there, subject to the  
7 requirements of paragraph (c) of this subdivision, question him or her  
8 for a reasonable period of time. Questioning is necessary only when the  
9 officer reasonably determined that the child's life or health, or the  
10 life or health of another individual, is in imminent danger and that the  
11 child may have information that would assist the officer in taking  
12 protective action.

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

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

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

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

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

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

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

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

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

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

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

54 (b) If the officer determines that it is necessary to question a juve-  
55 nile offender or such person, the officer must take him or her to a  
56 facility designated by the chief administrator of the courts as a suit-

1 able place for the questioning of children or, upon the consent of a  
2 parent or other person legally responsible for the care of a juvenile  
3 offender or such person, to his or her residence and there, subject to  
4 the requirements of paragraph (c) of this subdivision, question him or  
5 her for a reasonable period of time. Questioning is necessary only when  
6 the officer reasonably determines that the child's life or health, or  
7 the life or health of another individual, is in imminent danger and that  
8 the child may have information that would assist the officer in taking  
9 protective action.

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

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

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

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

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

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

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

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

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

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

43 5. (a) If a police officer takes an arrested juvenile offender or a  
44 person sixteen or commencing October first, two [~~thosuan~~] thousand  
45 nineteen, seventeen years of age into custody, the police officer shall  
46 immediately, before transporting the child to the police station house  
47 notify the parent or other person legally responsible for his or her  
48 care or the person with whom he or she is domiciled, that such juvenile  
49 offender or person has been arrested, and the location of the facility  
50 where he or she [~~is being~~] will be detained.

51 (b) If the officer determines that it is necessary to question a juve-  
52 nile offender or such person the officer must take him or her to a  
53 facility designated by the chief administrator of the courts as a suit-  
54 able place for the questioning of children or, upon the consent of a  
55 parent or other person legally responsible for the care of the juvenile  
56 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. Questioning is necessary only when  
 3 the officer reasonably determines that the child's life or health, or  
 4 the life or the health of another individual, is in imminent danger and  
 5 that the child may have information that would assist the officer in  
 6 taking protective action.

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

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

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

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

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

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

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; when a person notified pursuant to paragraph (a) of this subdivi-  
 29 sion, if present, has not been advised of and voluntarily waived the  
 30 rights delineated in paragraph (c) of this subdivision; or when the  
 31 questioning of the child was not necessary within the definition in  
 32 paragraph (b) of this subdivision.

33 § 12. This act shall take effect April 1, 2020; provided, however,  
 34 that the amendments to subdivision 6 of section 140.20, subdivision 5 of  
 35 section 140.27, and subdivision 5 of section 140.40 of the criminal  
 36 procedure law made by sections nine, ten, and eleven of this act shall  
 37 take effect on the same date and in the same manner as subdivision b of  
 38 section 106 of part WWW of chapter 59 of the laws of 2017, takes effect.