STATE OF NEW YORK

S. 4980 A. 6982

2019-2020 Regular Sessions

SENATE - ASSEMBLY

April 3, 2019

IN SENATE -- Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

IN ASSEMBLY -- Introduced by M. of A. JOYNER -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, 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:

Section 1. Subdivision 3 of section 305.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

3. If an officer takes such child into custody or if a child is delivered to him **or her** under section 305.1, he **or she** shall immediately**, before transporting the child to the police station house,** notify the parent or other person legally responsible for the child's care, or if such legally responsible person is unavailable the person with whom the child resides, that the child has been taken into custody.

§ 2. Paragraph (a) of subdivision 4 of section 305.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

(a) **when the officer reasonably believes such parent or other person legally responsible for the child's care will appear, take the child to his or her home, the station house, or another location agreed upon with the parent or person legally responsible, and** release the child to the custody of [~~his parents or other person legally responsible for his care~~] **such person** upon the issuance in accordance with section 307.1 of a family court appearance ticket to the child and the person to whose custody the child is released; or

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

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§ 3. Paragraph (b) of subdivision 4 of section 305.2 of the family court act, as amended by section 63 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

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

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

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

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

5. If such child has allegedly committed a designated felony act as defined in subdivision eight of section 301.2, and the family court in the county is in session, the officer shall forthwith take the child directly to such family court, unless the officer takes the child to a facility for questioning in accordance with [~~paragraph (b) of subdivision four. If such child has not allegedly committed a designated felony act and such family court is in session, the officer shall either forthwith take the child directly to such family court, unless the officer takes the child to a facility for questioning in accordance with paragraph (b) of subdivision four or release the child in accordance with paragraph (a) of subdivision four~~] **subdivision seven**.

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

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

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

7. **If the officer determines that questioning of the child is necessary prior to taking action authorized by subdivision four or five, the officer may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the child, to the child's residence and there, subject to the requirements of subdivision eight, question him or her**

for a reasonable period of time. Questioning is necessary only when the officer reasonably determines that the child's life or health, or the life or health of another individual, is in imminent danger and that the child may have information that would assist the officer in taking protective action.

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

(a) the child and a person required to be notified pursuant to subdivision three if present, have been advised:

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

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

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

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

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

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

10. In addition to statements that must be suppressed as involuntarily made within the definition in subdivision two of section 344.2, a statement shall be suppressed: when the child has not consulted with legal counsel as required by paragraph (b) of subdivision eight; when a person notified pursuant to subdivision three, if present, has not been advised of and voluntarily waived the rights delineated in paragraph (a) of subdivision eight; or when the questioning of the child was not necessary within the definition in subdivision seven.

§ 8. This act shall take effect immediately.