

STATE OF NEW YORK

2800--B

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. BAILEY, BENJAMIN, HOYLMAN, JACKSON, KRUEGER, MYRIE, RIVERA, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

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

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1 a family court appearance ticket to the child and the person to whose
2 custody the child is released; or

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

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

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

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

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

32 5. If such child has allegedly committed a designated felony act as
33 defined in subdivision eight of section 301.2, and the family court in
34 the county is in session, the officer shall forthwith take the child
35 directly to such family court or, when the family court is not in
36 session, to the most accessible magistrate, if any, designated by the
37 appellate division of the supreme court in the applicable department to
38 conduct a hearing under section 307.4[~~, unless the officer takes the~~
39 ~~child to a facility for questioning in accordance with paragraph (b) of~~
40 ~~subdivision four. If such child has not allegedly committed a designated~~
41 ~~felony act and such family court is in session, the officer shall either~~
42 ~~forthwith take the child directly to such family court, unless the offi-~~
43 ~~cer takes the child to a facility for questioning in accordance with~~
44 ~~paragraph (b) of subdivision four or release the child in accordance~~
45 ~~with paragraph (a) of subdivision four].~~

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

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

52 § 7. Subdivisions 7 and 8 of section 305.2 of the family court act,
53 subdivision 7 as amended by chapter 398 of the laws of 1983 and subdivi-
54 sion 8 as amended by chapter 299 of the laws of 2020, are amended and a
55 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.

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, notification pursuant to subdivision three and, where the child has been interrogated at a facility designated by the chief administrator of the courts as a suitable place for the questioning of juveniles, whether the interrogation was in compliance with the video-recording and disclosure requirements of subdivision five-a of this section 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; or 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.

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

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

(b) After making every reasonable effort to give notice under ~~paragraph~~ subdivision (a) of this section, the officer shall

1 (i) when the officer reasonably believes such parent or other person
2 legally responsible for the child's care will appear, take the child to
3 his or her home, the police station house, or another location agreed
4 upon with the parent or person legally responsible, and release the
5 youth to the custody of [~~his or her parent or other~~] such person [~~legal-~~
6 ~~ly responsible for his or her care~~] upon the written promise, without
7 security, of the person to whose custody the youth is released that he
8 or she will produce the youth before the lead agency designated pursuant
9 to section seven hundred thirty-five of this article in that county at a
10 time and place specified in writing; or

11 (ii) when the officer does not reasonably believe such parent or other
12 person legally responsible for the child's care will appear for the
13 child, forthwith and with all reasonable speed take the youth directly,
14 and without first being taken to the police station house, to the desig-
15 nated lead agency located in the county in which the act occasioning the
16 taking into custody allegedly was done[~~, unless the officer determines~~
17 ~~that it is necessary to question the youth, in which case he or she may~~
18 ~~take the youth to a facility designated by the chief administrator of~~
19 ~~the courts as a suitable place for the questioning of youth or, upon the~~
20 ~~consent of a parent or other person legally responsible for the care of~~
21 ~~the youth, to the youth's residence and there question him or her for a~~
22 ~~reasonable period of time~~]; or

23 (iii) take a youth in need of crisis intervention or respite services
24 to a runaway and homeless youth crisis services program or other
25 approved respite or crisis program; or

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

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

35 (d) If the officer determines that questioning of the child is neces-
36 sary prior to taking action authorized by subdivision (b) of this
37 section, the officer may take the child to a facility designated by the
38 chief administrator of the courts as a suitable place for the question-
39 ing of children or, upon the consent of a parent or other person legally
40 responsible for the care of the child, to the child's residence and
41 there, subject to the requirements of subdivision (e) of this section,
42 question him or her for a reasonable period of time.

43 (e) In determining the suitability of questioning and determining what
44 is a "reasonable period of time" for questioning a child, the child's
45 age [~~and~~], the presence or absence of his or her parents or other person
46 legally responsible for his or her care and notification pursuant to
47 subdivision (a) of this section shall be included among the relevant
48 considerations.

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

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

55 6. (a) Upon arresting a juvenile offender or a person sixteen or
56 [~~commencing October first, two thousand nineteen,~~] seventeen years of

1 age without a warrant, the police officer shall immediately, before
 2 transporting the child to the police station house, notify the parent or
 3 other person legally responsible for his or her care or the person with
 4 whom he or she is domiciled, that such juvenile offender or [~~person~~]
 5 sixteen or seventeen year old has been arrested, and the location of the
 6 facility where he or she [~~is being~~] will be detained.

7 (b) If the officer determines that it is necessary to question a juve-
 8 nile offender or [~~such person~~] sixteen or seventeen year old, the offi-
 9 cer must take him or her to a facility designated by the chief adminis-
 10 trator of the courts as a suitable place for the questioning of children
 11 or, upon the consent of a parent or other person legally responsible for
 12 the care of the juvenile or [~~such person~~] sixteen or seventeen year old,
 13 to his or her residence and there, subject to the requirements of para-
 14 graph (c) of this subdivision, question him or her for a reasonable
 15 period of time.

16 (c) A juvenile offender or [~~such person~~] sixteen or seventeen year old
 17 shall not be questioned pursuant to this section unless or until:

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

20 [~~(a)~~] (A) of the juvenile offender's or [~~such person's~~] sixteen or
 21 seventeen year old's right to remain silent;

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

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

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

28 (ii) the juvenile offender or sixteen or seventeen year old has
 29 consulted with an attorney in person, by telephone, or by video confer-
 30 ence. This consultation may not be waived.

31 (d) In determining the suitability of questioning and determining the
 32 reasonable period of time for questioning such a juvenile offender or
 33 [~~person~~] sixteen or seventeen year old, his or her age, the presence or
 34 absence of his or her parents or other persons legally responsible for
 35 his or her care and notification pursuant to paragraph (a) of this
 36 subdivision shall be included among relevant considerations.

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

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

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

55 (b) If the officer determines that it is necessary to question a juve-
 56 nile offender or [~~such person~~] sixteen or seventeen year old, the offi-

1 cer must take him or her to a facility designated by the chief adminis-
2 trator of the courts as a suitable place for the questioning of children
3 or, upon the consent of a parent or other person legally responsible for
4 the care of a juvenile offender or [~~such person~~] sixteen or seventeen
5 year old, to his or her residence and there, subject to the requirements
6 of paragraph (c) of this subdivision, question him or her for a reason-
7 able period of time.

8 (c) A juvenile offender or [~~such person~~] sixteen or seventeen year old
9 shall not be questioned pursuant to this section unless or until:

10 (i) the juvenile offender or [~~such person~~] sixteen or seventeen year
11 old and a person required to be notified pursuant to paragraph (a) of
12 this subdivision, if present, have been advised:

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

14 [~~(b)~~] (B) that the statements made by the juvenile offender or [~~such~~
15 ~~person~~] sixteen or seventeen year old may be used in a court of law;

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

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

20 (ii) the juvenile offender or sixteen or seventeen year old has
21 consulted with an attorney in person, by telephone or by video confer-
22 ence. This consultation may not be waived.

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

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

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

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

47 (b) If the officer determines that it is necessary to question a juve-
48 nile offender or [~~such person~~] sixteen or seventeen year old the officer
49 must take him or her to a facility designated by the chief administrator
50 of the courts as a suitable place for the questioning of children or,
51 upon the consent of a parent or other person legally responsible for the
52 care of the juvenile offender or [~~such person~~] sixteen or seventeen year
53 old, to his or her residence and there, subject to the requirements of
54 paragraph (c) of this subdivision, question him or her for a reasonable
55 period of time.

1 (c) A juvenile offender or [~~such person~~] sixteen or seventeen year old
2 shall not be questioned pursuant to this section unless or until:

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

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

6 [~~(b)~~] (B) that the statements made by the juvenile offender or [~~such~~
7 ~~person~~] sixteen or seventeen year old may be used in a court of law;

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

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

12 (ii) the juvenile offender or sixteen or seventeen year old has
13 consulted with an attorney in person, by telephone, or by video confer-
14 ence. This consultation may not be waived.

15 (d) In determining the suitability of questioning and determining the
16 reasonable period of time for questioning such a juvenile offender or
17 [~~such person~~] sixteen or seventeen year old, his or her age, the pres-
18 ence or absence of his or her parents or other persons legally responsi-
19 ble for his or her care and notification pursuant to paragraph (a) of
20 this subdivision shall be included among relevant considerations.

21 (e) In addition to statements that must be suppressed as involuntarily
22 made within the definition in subdivision two of section 60.45 of this
23 chapter, a statement shall be suppressed: when the child has not
24 consulted with an attorney as required by paragraph (c) of this subdivi-
25 sion; or when a person notified pursuant to paragraph (a) of this subdivi-
26 vision, if present, has not been advised of and voluntarily waived the
27 rights delineated in paragraph (c) of this subdivision.

28 § 12. This act shall take effect April 1, 2022; provided, however,
29 that if chapter 299 of the laws of 2020 shall not have taken effect on
30 or before such date then the amendments to subdivision 8 of section
31 305.2 of the family court act made by section seven of this act shall
32 take effect on the same date and in the same manner as such chapter of
33 the laws of 2020 takes effect.