STATE OF NEW YORK

2800

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

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

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:

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

§ 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**

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

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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, subdivision 7 as amended by chapter 398 of the laws of 1983 and subdivision 8 as amended by chapter 299 of the laws of 2020, 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, 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; 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. 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), (ii), and (iv) of subdivision (b), paragraphs (i) and (ii) as amended and paragraph (iv) 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 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 care, or the person with whom he is domiciled, that he has been taken into custody.

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

(i) 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 police station house, or another location agreed upon with the parent or person legally responsible, and release the youth to the custody of [~~his or her parent or other~~] such person [~~legal~~

~~ly responsible for his or her care~~] upon the written promise, without security, of the person to whose custody the youth is released that he or she will produce the youth before the lead agency designated pursuant to section seven hundred thirty-five of this article in that county at a time and place specified in writing; or

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

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

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

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

(d) **If the officer determines that questioning of the child is necessary prior to taking action authorized by subdivision (b) of this section, 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 (e) of this section, 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.**

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

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

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

6. **(a)** Upon arresting a juvenile offender or a person sixteen or commencing October first, two thousand nineteen, seventeen years of age without a warrant, the police officer shall immediately**, before transporting the child to the police station house,** notify the parent or

other person legally responsible for his or her care or the person with whom he or she is domiciled, that such **juvenile** offender or person has been arrested, and the location of the facility where he or she [~~is being~~] **will be** detained.

(b) If the officer determines that it is necessary to question a juvenile offender or such person, the officer must take him or her 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 juvenile or such person, to his or her residence and there**, subject to the requirements of paragraph (c) of this subdivision,** question him or her for a reasonable period of time. **Questioning is necessary only when the officer reasonably determined 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.**

(c) A juvenile **offender** or such person shall not be questioned pursuant to this section unless **or until:**

(i) he or she and a person required to be notified pursuant to **paragraph (a) of** this subdivision, if present, have been advised:

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

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

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

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

(ii) the juvenile offender or such person has consulted with an attorney in person, by telephone, or by video conference. This consultation may not be waived.

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

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

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

5. **(a)** Upon arresting a juvenile offender or a person sixteen or commencing October first, two thousand nineteen, seventeen years of age without a warrant, the peace officer shall immediately**, before transporting the child to the police station house,** notify the parent or other person legally responsible for his or her care or the person with whom he or she is domiciled, that such **juvenile** offender or person has

been arrested, and the location of the facility where he or she [~~is being~~] **will be** detained.

(b) If the officer determines that it is necessary to question a juvenile offender or such person, the officer must take him or her 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 a juvenile offender or such person, to his or her residence and there**, subject to the requirements of paragraph (c) of this subdivision,** 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.**

(c) A juvenile offender or such person shall not be questioned pursuant to this section unless **or until:**

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

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

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

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

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

(ii) the juvenile offender or such person has consulted with an attorney in person, by telephone or by video conference. This consultation may not be waived.

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

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

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

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

(b) If the officer determines that it is necessary to question a juvenile offender or such person the officer must take him or her 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 juvenile offender or such person, to his or her residence and there**, subject to the requirements of paragraph (c) of this subdivision,** 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 the health of another individual, is in imminent danger and that the child may have information that would assist the officer in taking protective action.**

(c) A juvenile offender or such person shall not be questioned pursuant to this section unless **or until:**

(i) he or she and a person required to be notified pursuant to **paragraph (a) of** this subdivision, if present, have been advised:

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

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

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

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

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

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

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