

# 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:

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:

23 (b) when the officer does not reasonably believe the parent or other  
24 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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1 child, forthwith and with all reasonable speed take the child directly,  
2 and without his or her first being taken to the police station house, to  
3 the family court located in the county in which the act occasioning the  
4 taking into custody allegedly was committed, or, when the family court  
5 is not in session, to the most accessible magistrate, if any, designated  
6 by the appellate division of the supreme court in the applicable depart-  
7 ment to conduct a hearing under section 307.4 [~~of this part, unless the~~  
8 ~~officer determines that it is necessary to question the child, in which~~  
9 ~~case he or she may take the child to a facility designated by the chief~~  
10 ~~administrator of the courts as a suitable place for the questioning of~~  
11 ~~children or, upon the consent of a parent or other person legally~~  
12 ~~responsible for the care of the child, to the child's residence and~~  
13 ~~there question him or her for a reasonable period of time~~]; or

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

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

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

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

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

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

42 § 7. Subdivisions 7 and 8 of section 305.2 of the family court act,  
43 subdivision 7 as amended by chapter 398 of the laws of 1983 and subdivi-  
44 sion 8 as amended by chapter 299 of the laws of 2020, are amended and a  
45 new subdivision 10 is added to read as follows:

46 7. If the officer determines that questioning of the child is neces-  
47 sary prior to taking action authorized by subdivision four or five, the  
48 officer may take the child to a facility designated by the chief admin-  
49 istrator of the courts as a suitable place for the questioning of chil-  
50 dren or, upon the consent of a parent or other person legally responsi-  
51 ble for the care of the child, to the child's residence and there,  
52 subject to the requirements of subdivision eight, question him or her  
53 for a reasonable period of time. Questioning is necessary only when the  
54 officer reasonably determines that the child's life or health, or the  
55 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, notification pursuant to subdivi-  
 20 sion three and, where the child has been interrogated at a facility  
 21 designated by the chief administrator of the courts as a suitable place  
 22 for the questioning of juveniles, whether the interrogation was in  
 23 compliance with the video-recording and disclosure requirements of  
 24 subdivision five-a of this section shall be included among relevant  
 25 considerations.

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

34 § 8. Section 724 of the family court act, the section heading and  
 35 subdivisions (b) and (c) as amended by chapter 843 of the laws of 1980,  
 36 subdivision (a) as amended by chapter 920 of the laws of 1982, para-  
 37 graphs (i), (ii), and (iv) of subdivision (b), paragraphs (i) and (ii)  
 38 as amended and paragraph (iv) as added by section 4 of part E of chapter  
 39 57 of the laws of 2005, paragraph (iii) of subdivision (b) as amended by  
 40 section 7 of part M of chapter 56 of the laws of 2017, and subdivision  
 41 (d) as added by chapter 809 of the laws of 1963, is amended to read as  
 42 follows:

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

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

52 (i) when the officer reasonably believes such parent or other person  
 53 legally responsible for the child's care will appear, take the child to  
 54 his or her home, the police station house, or another location agreed  
 55 upon with the parent or person legally responsible, and release the  
 56 youth to the custody of [~~his or her parent or other~~] such person [~~legal-~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 5. (a) If a police officer takes an arrested juvenile offender or a  
49 person sixteen or commencing October first, two [~~thosuan~~] thousand  
50 nineteen, seventeen years of age into custody, the police officer shall  
51 immediately, before transporting the child to the police station house  
52 notify the parent or other person legally responsible for his or her  
53 care or the person with whom he or she is domiciled, that such juvenile  
54 offender or person has been arrested, and the location of the facility  
55 where he or she [~~is-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 offender or such person, to his or her residence and there, subject to  
7 the requirements of paragraph (c) of this subdivision, question him or  
8 her for a reasonable period of time. Questioning is necessary only when  
9 the officer reasonably determines that the child's life or health, or  
10 the life or the health of another individual, is in imminent danger and  
11 that the child may have information that would assist the officer in  
12 taking 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 his or her right to remain silent;

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

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

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

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

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

39 § 12. This act shall take effect April 1, 2022; provided, however,  
40 that if chapter 299 of the laws of 2020 shall not have taken effect on  
41 or before such date then the amendments to subdivision 8 of section  
42 305.2 of the family court act made by section seven of this act shall  
43 take effect on the same date and in the same manner as such chapter of  
44 the laws of 2020 takes effect.