## STATE OF NEW YORK

2800--В

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 delivered to him or her under section 305.1, he or she shall immediately. 4 5 before transporting the child to the police station house, notify the parent or other person legally responsible for the child's care, or if б 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:

(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 eare] such person upon the issuance in accordance with section 307.1 of

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

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a family court appearance ticket to the child and the person to whose 1 custody the child is released; or 2 § 3. Paragraph (b) of subdivision 4 of section 305.2 of the family 3 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: б (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 taking into custody allegedly was committed, or, when the family court 11 is not in session, to the most accessible magistrate, if any, designated 12 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 officer determines that it is necessary to question the child, in which 15 case he or she may take the child to a facility designated by the chief 16 17 administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally 18 responsible for the care of the child, to the child's residence and 19 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 juvenile detention facility for the reception of children; or 28 § 5. Subdivision 5 of section 305.2 of the family court act, as 29 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 the county is in session, the officer shall forthwith take the child 34 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 conduct a hearing under section 307.4[, unless the officer takes the 38 child to a facility for questioning in accordance with paragraph (b) of 39 subdivision four. If such child has not allegedly committed a designated 40 felony act and such family court is in session, the officer shall either 41 forthwith take the child directly to such family court, unless the offi-42 cer takes the child to a facility for questioning in accordance with 43 paragraph (b) of subdivision four or release the child in accordance 44 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 subdivision 8 as amended by chapter 299 of the laws of 2020, are amended and a 54 55 new subdivision 10 is added to read as follows:

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1 If the officer determines that questioning of the child is neces-7. sary prior to taking action authorized by subdivision four or five, the 2 officer may take the child to a facility designated by the chief admin-3 4 istrator of the courts as a suitable place for the questioning of chil-5 dren or, upon the consent of a parent or other person legally responsiб ble for the care of the child, to the child's residence and there, 7 subject to the requirements of subdivision eight, question him or her 8 for a reasonable period of time. 9 8. A child shall not be questioned pursuant to this section unless 10 [he] or until: 11 (a) the child and a person required to be notified pursuant to subdivision three if present, have been advised: 12 [(a)] (i) of the child's right to remain silent; 13 14 [(b)] (ii) that the statements made by the child may be used in а court of law; 15 16 [<del>(c)</del>] (iii) of the child's right to have an attorney present at such 17 questioning; and 18 [(d)] (iv) of the child's right to have an attorney provided for him 19 or her without charge if he or she is indigent; and 20 (b) the child has consulted with legal counsel in person, by tele-21 phone, or by video conference. This consultation may not be waived. 22 [8-] 9. In determining the suitability of questioning and determining the reasonable period of time for questioning such a child, the child's 23 age, the presence or absence of his or her parents or other persons 24 25 legally responsible for his or her care, notification pursuant to subdi-26 vision three and, where the child has been interrogated at a facility 27 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 28 29 30 subdivision five-a of this section shall be included among relevant 31 considerations. 32 10. In addition to statements that must be suppressed as involuntarily 33 made within the definition in subdivision two of section 344.2, a statement shall be suppressed: when the child has not consulted with legal 34 counsel as required by paragraph (b) of subdivision eight; or when a 35 36 person notified pursuant to subdivision three, if present, has not been 37 advised of and voluntarily waived the rights delineated in paragraph (a) 38 of subdivision eight. § 8. Section 724 of the family court act, the section heading and 39 40 subdivisions (b) and (c) as amended by chapter 843 of the laws of 1980, 41 subdivision (a) as amended by chapter 920 of the laws of 1982, para-42 graphs (i) and (ii) as amended and paragraph (iv) of subdivision (b) as 43 added by section 4 of part E of chapter 57 of the laws of 2005, para-44 graph (iii) of subdivision (b) as amended by section 7 of part M of 45 chapter 56 of the laws of 2017, and subdivision (d) as added by chapter 46 809 of the laws of 1963, is amended to read as follows: 47 § 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 48 police officer takes into custody or if a person is delivered to him or 49 her under section seven hundred twenty-three, the officer shall imme-50 51 diately, before transporting the child to any other location, notify the 52 parent or other person legally responsible for his or her care, or the 53 person with whom he or she is domiciled, that he or she has been taken 54 into custody. 55 (b) After making every reasonable effort to give notice under [para-56 **graph**] **subdivision** (a) **of this section**, the officer shall

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1 (i) when the officer reasonably believes such parent or other person legally responsible for the child's care will appear, take the child to 2 his or her home, the police station house, or another location agreed 3 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 [legally responsible for his or her care ] upon the written promise, without б security, of the person to whose custody the youth is released that he 7 8 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 9 10 time and place specified in writing; or 11 (ii) when the officer does not reasonably believe such parent or other person legally responsible for the child's care will appear for the 12 child, forthwith and with all reasonable speed take the youth directly, 13 14 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 15 16 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 17 take the youth to a facility designated by the chief administrator of 18 the courts as a suitable place for the questioning of youth or, upon the 19 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 reasonable period of time]; or 22 (iii) take a youth in need of crisis intervention or respite services 23 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, provided that the officer affirms on the record that he or she attempted 28 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 [() 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 section, the officer may take the child to a facility designated by the 37 chief administrator of the courts as a suitable place for the question-38 ing of children or, upon the consent of a parent or other person legally 39 responsible for the care of the child, to the child's residence and 40 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 is a "reasonable period of time" for questioning a child, the child's 44 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 the commencement of a fact-finding hearing may be admitted into evidence 50 51 at a fact-finding hearing. § 9. Subdivision 6 of section 140.20 of the criminal procedure law, as 52 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. <u>(a)</u> Upon arresting a juvenile offender or a person sixteen or 56 [commencing October first, two thousand nineteen,] seventeen years of

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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 <b>juvenile</b> offender or [person]
5	sixteen or seventeen year old has been arrested, and the location of the
6	facility where he or she [ <del>is being</del> ] <u>will be</u> 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	$\left[\frac{(c)}{(c)}\right]$ of his or her right to have an attorney present at such
25	questioning; and
26	$\left[\frac{d}{d}\right]$ (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[ $-$ ];
28	(ii) the juvenile offender or sixteen or seventeen year old has
~ ~	
29	<u>consulted with an attorney in person, by telephone, or by video confer-</u>
29 30	consulted with an attorney in person, by telephone, or by video confer- ence. This consultation may not be waived.
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30 31 32	<pre>ence. 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</pre>
30 31	<pre>ence. 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] sixteen or seventeen year old, his or her age, the presence or</pre>
30 31 32 33 34	<pre>ence. 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] sixteen or seventeen year old, his or her age, the presence or absence of his or her parents or other persons legally responsible for</pre>
30 31 32 33	<pre>ence. 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] sixteen or seventeen year old, 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</pre>
30 31 32 33 34 35 36	<pre>ence. 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] sixteen or seventeen year old, 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.</pre>
30 31 32 33 34 35	<pre>ence. 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] sixteen or seventeen year old, 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</pre>
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30 31 32 33 34 35 36 37 38 39	<pre>ence. 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] sixteen or seventeen year old, 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</pre>
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30 31 32 33 34 35 36 37 38 39 40 41 42	<pre>ence. 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] sixteen or seventeen year old, 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 subdivi- sion; or when a person notified pursuant to paragraph (a) of this subdi- vision, if present, has not been advised of and voluntarily waived the</pre>
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30 31 32 33 34 35 36 37 38 39 40 41 42 43 44	<pre>ence. 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] sixteen or seventeen year old, 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; or when a person notified pursuant to paragraph (a) of this subdi- vision, if present, has not been advised of and voluntarily waived the rights delineated in paragraph (c) of this subdivision.   § 10. Subdivision 5 of section 140.27 of the criminal procedure law,</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45	<pre>ence. 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] sixteen or seventeen year old, 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 subdivi- sion; or when a person notified pursuant to paragraph (a) of this subdi- vision, if present, has not been advised of and voluntarily waived the rights delineated in paragraph (c) 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:</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46	<pre>ence. 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] sixteen or seventeen year old, 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 (a) of this subdivision; or 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.   § 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 </pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47	<pre>ence. 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] sixteen or seventeen year old, 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; or 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.   § 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,]</pre>
30 31 32 33 34 35 36 37 38 39 40 41 42 43 445 46 47 48	<pre>ence. 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] sixteen or seventeen year old, 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 (a) of this subdivision; or when a person notified pursuant to paragraph (a) of this subdivision; or when a person notified pursuant to paragraph (a) of this subdivision; or when a person notified pursuant to paragraph (a) of this subdivision; or when a person notified pursuant to paragraph (a) of this subdivision; or when a person notified pursuant to paragraph (a) of this subdivision; or when a person notified pursuant to paragraph (a) of this subdivision; or when a person notified pursuant to paragraph (a) of this subdivision; or when a person notified pursuant to paragraph (b) of this subdivision; or when a person notified pursuant to paragraph (c) of this subdivision; or when a person notified pursuant to paragraph (c) 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</pre>
30 31 32 33 35 36 37 38 39 40 41 42 43 445 467 48 49	<pre>ence. 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] sixteen or seventeen year old, 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; or 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.   § 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,]</pre>
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30 31 32 33 35 36 37 38 40 41 42 43 45 46 47 489 50 51	<pre>ence. 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] sixteen or seventeen year old, 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 (a) of this subdivision; or 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.    § 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</pre>
30 31 32 33 35 36 37 38 30 412 43 45 46 47 489 51 52	<pre>ence. 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] sixteen or seventeen year old, 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 (a) of this subdiv- sion; if present, has not been advised of and voluntarily waived the rights delineated in paragraph (c) 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] </pre>
30 31 32 33 35 36 37 39 41 42 43 45 46 47 489 51 52 53	<pre>ence. 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] sixteen or seventeen year old, 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 (a) of this subdiv- sion; or when a person notified pursuant to paragraph (a) of this subdi- vision, if present, has not been advised of and voluntarily wate delineated in paragraph (c) 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 <u>juvenile</u> offender or [person] </pre>

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cer must take him or her to a facility designated by the chief adminis-
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   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
б
   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
   this subdivision, if present, have been advised:
12
13
      [(a)] (A) of his or her right to remain silent;
14
      [<del>(b)</del>] <u>(B)</u> 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)] 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
   her without charge if he or she is unable to afford counsel[-]; and
19
20
     (ii) the juvenile offender or sixteen or seventeen year old has
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   consulted with an attorney in person, by telephone or by video confer-
   ence. This consultation may not be waived.
22
     (d) In determining the suitability of questioning and determining the
23
   reasonable period of time for questioning such a juvenile offender or
24
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
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   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
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   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
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   consulted with an attorney as required by paragraph (c) of this subdivi-
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   sion; or when a person notified pursuant to paragraph (a) of this subdi-
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   vision, if present, has not been advised of and voluntarily waived the
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   rights delineated in paragraph (c) of this subdivision.
36
        11. Subdivision 5 of section 140.40 of the criminal procedure law,
      S
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
         (a) If a police officer takes an arrested juvenile offender or a
      5.
   person sixteen or [commencing October first, two thousand nineteen,]
40
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
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   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
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   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-
   nile offender or [such person] sixteen or seventeen year old the officer
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49
   must take him or her to a facility designated by the chief administrator
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   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
         to his or her residence and there, subject to the requirements of
   old,
54 paragraph (c) of this subdivision, question him or her for a reasonable
55
   period of time.
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1	(c) A juvenile offender or [ <del>such person</del> ] <u>sixteen or seventeen year old</u>
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	[ <del>(a)</del> ] <u>(A)</u> of his or her right to remain silent;
б	[ <del>(b)</del> ] <u>(B)</u> that the statements made by the juvenile offender or [ <del>such</del>
7	<pre>person] sixteen or seventeen year old may be used in a court of law;</pre>
8	[ <del>(G)</del> ] <u>(C)</u> of his or her right to have an attorney present at such
9	questioning; and
10	[ <del>(d)</del> ] <u>(D)</u> 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[ <del>,</del> ] <u>; and</u>
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 subdi-
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.