STATE OF NEW YORK

324--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. MYRIE, BAILEY, BIAGGI, BRISPORT, BROUK, COONEY, GIANARIS, GOUNARDES, HOYLMAN, RAMOS, RIVERA, SALAZAR, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the family court act, in relation to defendants' and juvenile respondents' statement admissibility and recorded interrogations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1 and 2 of section 60.45 of the criminal procedure law are amended and a new subdivision 4 is added to read as follows:

1. Evidence of a written or oral confession, admission, or other statement made by a defendant with respect to his **or her** participation or lack of participation in the offense charged, may not be received in evidence against him **or her** in a criminal proceeding if such statement was involuntarily made.

2. A confession, admission or other statement is "involuntarily made" by a defendant when it is obtained from him **or her**:

(a) By any person by the use or threatened use of physical force upon the defendant or another person, or by means of any other improper conduct or undue pressure which impaired the defendant's physical or mental condition to the extent of undermining his **or her** ability to make a choice whether or not to make a statement; or

(b) By a public servant engaged in law enforcement activity or by a person then acting under his **or her** direction or in cooperation with him **or her**:

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

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(i) by means of any promise or statement of fact, which promise or statement **undermines the reliability of the defendant's statement, or** creates a substantial risk that the defendant might falsely incriminate himself **or herself**; [~~**or**~~]

(ii) **by knowingly communicating false facts about evidence to the defendant; or**

(iii) in violation of such rights as the defendant may derive from the constitution of this state or of the United States.

4. The division of criminal justice services shall collect and analyze the following data related to the recordation of interrogations pursuant to the requirements of subdivision three of this section, including but not limited to:

(a) The aggregate annual number of recorded interrogations in detention facilities for all categories of criminal charges, including such charges as required by paragraph (a) of subdivision three of this section and any additional recorded interrogations.

(b) The disaggregate data for each case involving a custodial interrogation of a person suspected of committing a crime that occurred in a detention facility, including:

(i) Whether the interrogation was recorded.

(ii) If the interrogation was not recorded, whether there was a showing of good cause pursuant to paragraph (c) of subdivision three of this section.

(iii) The duration of the interrogation and the circumstances of the recorded interrogation, including:

(1) Whether the recording began: (A) when the suspect entered the interrogation room; (B) when the suspect was read his or her Miranda rights; or (C) after the suspect was read his or her Miranda rights; and

(2) Whether the recording ended: (A) after the interrogation ended; (B) immediately after the suspect confessed; or (C) at another time prior to the end of the interrogation.

(iv) Whether the suspect confessed to the crime during the interrogation.

(v) Whether the interrogation was recorded with video and audio or audio only.

§ 2. Subparagraph (iii) of paragraph (b) of subdivision 2 of section 344.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

(iii) in violation of section 305.2 **of this article; or**

(iv) in violation of subdivision two of section 60.45 of the criminal procedure law.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law.