STATE OF NEW YORK

5284

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the family court act, in relation to statements of those accused of crimes to enhance criminal investigations and prosecutions and to promote confidence in the criminal justice system of this state

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

Section 1. Subdivision 3 of section 60.45 of the criminal procedure law, as added by section 1 of part VVV of chapter 59 of the laws of 2017, is amended to read as follows:

3. (a) [~~Where~~] **When** a person is subject to [~~custodial~~] interrogation by a public servant [~~at a detention facility~~], **and the public servant is aware or has reason to suspect that the person interrogated committed a crime under investigation by such public servant or a law enforcement entity associated with such public servant,** the entire [~~custodial~~] interrogation, including the giving of any required advice of the rights of the individual being questioned, and the waiver of any rights by the individual, shall be recorded by an appropriate video recording device [~~if the interrogation involves a class A-1 felony, except one defined in article two hundred twenty of the penal law; felony offenses defined in section 130.95 and 130.96 of the penal law; or a felony offense defined in article one hundred twenty-five or one hundred thirty of such law that is defined as a class B violent felony offense in section 70.02 of the penal law. For purposes of this paragraph, the term "detention facility" shall mean a police station, correctional facility, holding facility for prisoners, prosecutor's office or other facility where persons are held in detention in connection with criminal charges that have been or may be filed against them~~]**. The interrogation shall be recorded in a manner such that the persons in the recording are shown and the speech is intelligible**.

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

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(b) [~~No confession, admission or other statement shall be subject to a motion to suppress pursuant to subdivision three of section 710.20 of this chapter based solely upon the failure to video record such interrogation in a detention facility as defined in paragraph (a) of this subdivision. However, where~~] **When** the people offer into evidence **against a defendant** a confession, admission or other statement made by a person [~~in custody~~] with respect to [~~his or her participation or lack of participation in~~] an **alleged** offense [~~specified in paragraph (a) of this subdivision,~~] that has not been video recorded, the court shall [~~consider the failure to record as a factor, but not as the sole factor, in accordance with paragraph (c) of this subdivision in determining whether such confession, admission or other statement shall be admissible.~~

~~(c) Notwithstanding the requirement of paragraph (a) of this subdivision, upon a showing of good cause by the prosecutor, the custodial interrogation need not be recorded. Good cause shall include, but not be limited to:~~

~~(i) If electronic recording equipment malfunctions.~~

~~(ii) If electronic recording equipment is not available because it was otherwise being used.~~

~~(iii) If statements are made in response to questions that are routinely asked during arrest processing.~~

~~(iv) If the statement is spontaneously made by the suspect and not in response to police questioning.~~

~~(v) If the statement is made during an interrogation that is conducted when the interviewer is unaware that a qualifying offense has occurred.~~

~~(vi) If the statement is made at a location other than the "interview room" because the suspect cannot be brought to such room, e.g., the suspect is in a hospital or the suspect is out of state and that state is not governed by a law requiring the recordation of an interrogation.~~

~~(vii) If the statement is made after a suspect has refused to participate in the interrogation if it is recorded, and appropriate effort to document such refusal is made.~~

~~(viii) If such statement is not recorded as a result of an inadvertent error or oversight, not the result of any intentional conduct by law enforcement personnel.~~

~~(ix) If it is law enforcement's reasonable belief that such recording would jeopardize the safety of any person or reveal the identity of a confidential informant.~~

~~(x) If such statement is made at a location not equipped with a video recording device and the reason for using that location is not to subvert the intent of the law. For purposes of this section, the term "location" shall include those locations specified in paragraph (b) of subdivision four of section 305.2 of the family court act.~~

~~(d) In the event the court finds that the people have not shown good cause for the non-recording of the confession, admission, or other statement, but determines that a non-recorded confession, admission or other statement is nevertheless admissible because it was voluntarily made then, upon request of the defendant, the court must instruct the jury that the people's failure to record the defendant's confession, admission or other statement as required by this section may be weighed as a factor, but not as the sole factor, in determining whether such confession, admission or other statement was voluntarily made, or was made at all.~~

~~(e) Video recording as required by this section shall be conducted in accordance with standards established by rule of the division of crimi-~~

~~nal justice services~~] exclude such confession, admission or other statement from use as evidence at trial or at any pretrial hearing.

§ 2. Subdivisions 5-a and 8 of section 305.2 of the family court act, subdivision 5-a as added and subdivision 8 as amended by chapter 299 of the laws of 2020, are amended to read as follows:

5-a. [~~Where~~] When at any time a child is subject to interrogation [~~at a facility designated by the chief administrator of the courts as a suitable place for the questioning of juveniles pursuant to subdivision four of this section,~~] by a public servant and the public servant is aware or has reason to suspect that the child interrogated committed an act that would be a crime if committed by an adult and which is under investigation by such public servant or a law enforcement entity associated with such public servant, the entire interrogation, including the giving of any required notice to the child as to his or her rights and the child's waiver of any rights, shall be video recorded [~~in a manner consistent with standards established by rule of the division of criminal justice services pursuant to paragraph (e)~~] and governed in accordance with the provisions of subdivision three of section 60.45 of the criminal procedure law. The interrogation shall be recorded in a manner such that the persons in the recording are [~~identifiable~~] shown and the speech is intelligible. A copy of the recording shall be subject to discovery pursuant to section 331.2 of this article. This subdivision shall not apply to a statement made to the probation service, in accordance with subdivision seven of section 308.1 of this part, except when such statement may be admissible under such subdivision seven of section 308.1.

8. 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 of this section 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.

§ 3. Subdivision 3 of section 344.2 of the family court act, as amended by chapter 299 of the laws of 2020, is amended to read as follows:

3. [~~Where a respondent~~] When at any time a child is subject to interrogation by a public servant [~~at a facility specified in subdivision four of section 305.2 of this article,~~] and the public servant is aware or has reason to suspect that the child interrogated committed an act that would constitute a crime if committed by an adult and which is under investigation by such public servant or a law enforcement entity associated with such public servant, the entire [~~custodial~~] interrogation, including the giving of any required [~~advice of the~~] notice to this child as to his or her rights [~~of the individual being questioned,~~] and [~~the~~] his or her waiver of any rights [~~by the individual~~], shall be video recorded and governed in [~~a manner consistent with standards established by rule of the division of criminal justice services pursuant to paragraph (e)~~] accordance with the provisions of subdivision three of section 60.45 of the criminal procedure law. The interrogation shall be recorded in a manner such that the persons in the recording are [~~identifiable~~] shown and the speech is intelligible. A copy of the recording shall be subject to discovery pursuant to section 331.2 of

this article. **This subdivision shall not apply to a statement made to the probation service, in accordance with subdivision seven of section 308.1 of this article, except when such statement may be admissible under such subdivision seven of section 308.1.**

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