## STATE OF NEW YORK

1099--A

2023-2024 Regular Sessions

## IN SENATE

January 10, 2023

- Introduced by Sens. BAILEY, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KENNEDY, KRUEGER, LIU, MAY, MAYER, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY, THOMAS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- 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:

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 deliv-4 ered to him <u>or her</u> under section 305.1, he <u>or she</u> shall immediately, 5 <u>before transporting the child to the police station house</u>, 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**] <u>such person</u> 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 2 custody the child is released; or 3 § 3. Paragraph (b) of subdivision 4 of section 305.2 of the family 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: 6 (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 11 taking into custody allegedly was committed, or, when the family court 12 is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable depart-13 14 ment to conduct a hearing under section 307.4 [of this part, unless the officer determines that it is necessary to question the shild, in which 15 case he or she may take the child to a facility designated by the chief 16 administrator of the courts as a suitable place for the questioning of 17 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 18 19 there question him or her for a reasonable period of time]; or 20 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: (c) when the officer does not release the child pursuant to paragraph 24 25 (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 26 27 to a place certified by the office of children and family services as a 28 juvenile detention facility for the reception of children; or 29 § 5. Subdivision 5 of section 305.2 of the family court act, as 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 34 the county is in session, the officer shall forthwith take the child 35 directly to such family court[, unless the officer takes the child to a 36 facility for questioning in accordance with paragraph (b) of subdivision 37 four. If such child has not allegedly committed a designated felony act and such family court is in session, the officer shall either forthwith 38 take the child directly to such family court, unless the officer takes 39 the child to a facility for questioning in accordance with paragraph (b) 40 of subdivision four or release the child in accordance with paragraph 41 42 (a) of subdivision four] or, when the family court is not in session, to 43 the most accessible magistrate, if any, designated by the appellate 44 division of the supreme court in the applicable department to conduct a 45 hearing under section 307.4. 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 officer shall release the child in accordance with paragraph (a) of 50 51 subdivision four. 52 7. Subdivisions 7 and 8 of section 305.2 of the family court act, S subdivision 7 as amended by chapter 398 of the laws of 1983 and subdivi-53 sion 8 as amended by chapter 299 of the laws of 2020, are amended and a 54 new subdivision 10 is added to read as follows: 55

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1	7. If the officer determines that questioning of the child is neces-
2	sary prior to taking action authorized by subdivision four or five, the
3	officer may take the child to a facility designated by the chief admin-
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 responsi-
б	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] <u>or until:</u>
11	(a) the child and a person required to be notified pursuant to subdi-
12	vision three if present, have been advised:
13	[ <del>(a)</del> ] <u>(i)</u> of the child's right to remain silent;
14	[ <del>(b)</del> ] <u>(ii)</u> that the statements made by the child may be used in a
15	court of law;
16	[ <del>(c)</del> ] <u>(iii)</u> of the child's right to have an attorney present at such
17	questioning; and
18	[ <del>(d)</del> ] <u>(iv)</u> of the child's right to have an attorney provided for him
19	<u>or her</u> without charge if he <u>or she</u> is indigent <u>; and</u>
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
23	the reasonable period of time for questioning such a child, the child's
24	age, the presence or absence of his or her parents or other persons
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
28	for the questioning of juveniles, whether the interrogation was in
29	compliance with the video-recording and disclosure requirements of
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 state-
34	ment shall be suppressed: when the child has not consulted with legal
35	counsel as required by paragraph (b) of subdivision eight; or when a
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.
39	§ 8. Section 724 of the family court act, the section heading and
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
48	custody or on delivery by private person. (a) If a peace officer or a
49	police officer takes into custody or if a person is delivered to him $\underline{or}$
50	$\underline{her}$ under section seven hundred twenty-three, the officer shall imme-
51	diately, before transporting the child to any other location, notify the
52	parent or other person legally responsible for his <u>or her</u> 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	<b>graph</b> ] <b><u>subdivision</u></b> (a) of this section, the officer shall

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(i) when the officer reasonably believes such parent or other person 1 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 [legal-6 ly responsible for his or her care ] upon the written promise, without 7 security, of the person to whose custody the youth is released that he 8 or she will produce the youth before the lead agency designated pursuant 9 to section seven hundred thirty-five of this article in that county at a 10 time and place specified in writing; or (ii) when the officer does not reasonably believe such parent or other 11 12 person legally responsible for the child's care will appear for the 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 desig-15 nated lead agency located in the county in which the act occasioning the taking into custody allegedly was done [, unless the officer determines 16 17 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 18 the courts as a suitable place for the questioning of youth or, upon the 19 consent of a parent or other person legally responsible for the care of 20 21 the youth, to the youth's residence and there question him or her for a 22 reasonable period of time]; or 23 (iii) take a youth in need of crisis intervention or respite services 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, 28 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 29 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 the child in accord with paragraph [<del>(b)</del>] (i) <u>of subdivision (b) of this</u> 33 34 section. (d) If the officer determines that questioning of the child is neces-35 36 sary prior to taking action authorized by subdivision (b) of this 37 section, the officer may take the child to a facility designated by the chief administrator of the courts as a suitable place for the question-38 39 ing 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 40 there, subject to the requirements of subdivision (e) of this section, 41 question him or her for a reasonable period of time. 42 43 (e) In determining the suitability of questioning and determining what "reasonable period of time" for questioning a child, the child's 44 is a 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 subdivision (a) of this section shall be included among the relevant 47 48 considerations. 49 (f) No statement made to a peace officer or a police officer prior to 50 the commencement of a fact-finding hearing may be admitted into evidence at a fact-finding hearing. 51 52 § 9. Subdivision 6 of section 140.20 of the criminal procedure law, as 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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age without a warrant, the police officer shall immediately, before 1 transporting the child to the police station house, notify the parent or 2 other person legally responsible for his or her care or the person with 3 4 whom he or she is domiciled, that such <u>juvenile</u> offender or [person] 5 sixteen or seventeen year old has been arrested, and the location of the 6 facility where he or she [is being] will be 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, to his or her residence and there, subject to the requirements of para-13 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: (i) he or she and a person required to be notified pursuant to para-18 graph (a) of this subdivision, if present, have been advised: 19 20 [<del>(a)</del>] <u>(A)</u> of the juvenile offender's or [<del>such person's</del>] <u>sixteen or</u> 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; [<del>(C)</del>] <u>(C)</u> of 24 his or her right to have an attorney present at such 25 questioning; and  $\left[\frac{d}{d}\right]$  (D) of his or her right to have an attorney provided for him or 26 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 consulted with an attorney in person, by telephone, or by video confer-30 ence. This consultation may not be waived. 31 (d) In determining the suitability of questioning and determining the 32 reasonable period of time for questioning such a juvenile offender or 33 [person] <u>sixteen or seventeen year old</u>, his or her age, the presence or 34 absence of his or her parents or other persons legally responsible for his or her care and notification pursuant to paragraph (a) of this 35 36 subdivision shall be included among relevant considerations. 37 (e) In addition to statements that must be suppressed as involuntarily 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; or when a person notified pursuant to paragraph (a) of this subdi-41 42 vision, if present, has not been advised of and voluntarily waived the 43 rights delineated in paragraph (c) of this subdivision. 44 § 10. Subdivision 5 of section 140.27 of the criminal procedure law, 45 as amended by section 23 of part WWW of chapter 59 of the laws of 2017, 46 is amended to read as follows: 47 5. (a) Upon arresting a juvenile offender or a person sixteen or 48 [commencing October first, two thousand nineteen,] seventeen years of age without a warrant, the peace officer shall immediately, before 49 transporting the child to the police station house, notify the parent or 50 other person legally responsible for his or her care or the person with 51 52 whom he or she is domiciled, that such <u>juvenile</u> offender or [person] 53 sixteen or seventeen year old has been arrested, and the location of the 54 facility where he or she [is being] will be detained. 55 (b) If the officer determines that it is necessary to question a juve-56 nile offender or [such person] sixteen or seventeen year old, the offi-

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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
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   or, upon the consent of a parent or other person legally responsible for
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   the care of a juvenile offender or [such person] sixteen or seventeen
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   year old, to his or her residence and there, subject to the requirements
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   of paragraph (c) of this subdivision, question him or her for a reason-
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   able period of time.
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      (c) A juvenile offender or [such person] sixteen or seventeen year old
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   shall not be questioned pursuant to this section unless or until:
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      (i) the juvenile offender or [such person] sixteen or seventeen year
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   old and a person required to be notified pursuant to paragraph (a) of
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   this subdivision, if present, have been advised:
      [(a)] (A) of his or her right to remain silent;
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      [<del>(b)</del>] <u>(B)</u> that the statements made by the juvenile offender or [<del>such</del>
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   person] sixteen or seventeen year old may be used in a court of law;
      \left[\frac{(c)}{(c)}\right] of his or her right to have an attorney present at such
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   questioning; and
      [(d)] (D) of his or her right to have an attorney provided for him or
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   her without charge if he or she is unable to afford counsel[-]; and
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      (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-
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   ence. This consultation may not be waived.
      (d) In determining the suitability of questioning and determining the
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   reasonable period of time for questioning such a juvenile offender or
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   [such person] sixteen or seventeen year old his or her age, the presence
   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
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   subdivision shall be included among relevant considerations.
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      (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
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   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.
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        11. Subdivision 5 of section 140.40 of the criminal procedure law,
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   as amended by section 24 of part WWW of chapter 59 of the laws of 2017,
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   is amended to read as follows:
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         (a) If a police officer takes an arrested juvenile offender or a
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   person sixteen or [commencing October first, two thousand nineteen,]
   seventeen years of age into custody, the police officer shall immediate-
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   ly, before transporting the child to the police station house notify the
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   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
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    [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.
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      (b) If the officer determines that it is necessary to question a juve-
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   nile offender or [such person] sixteen or seventeen year old the officer
   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,
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   upon the consent of a parent or other person legally responsible for the
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   care of the juvenile offender or [such person] sixteen or seventeen year
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         to his or her residence and there, subject to the requirements of
   old,
   paragraph (c) of this subdivision, question him or her for a reasonable
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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	$\left[\frac{(a)}{(A)}\right]$ (A) 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	<b>person</b> ] <b>sixteen or seventeen year old</b> may be used in a court of law;
8	[ <del>(c)</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[-] <u>; and</u>
12	<u>(ii) the juvenile offender or sixteen or seventeen year old has</u>
13	<u>consulted with an attorney in person, by telephone, or by video confer-</u>
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	[ <del>such person</del> ] <u>sixteen or seventeen year old</u> , 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 <b><u>paragraph</u> (a) of</b>
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	<u>consulted with an attorney as required by paragraph (c) of this subdivi-</u>
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, 2025.