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IN ASSEMBLY

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Introduced by M. of A. HEVESI, CLARK, RAGA, SIMON, KELLES, DINOWITZ, ROSENTHAL, ZACCARO, R. CARROLL, LAVINE, GLICK, GONZALEZ-ROJAS, BRONSON, CUNNINGHAM, MEEKS, ALVAREZ, PAULIN, DE LOS SANTOS, BORES, SIMONE, GALLAGHER, WALKER, GIBBS, LUNSFORD, TAPIA, WOERNER, BICHOTTE HERMELYN, CRUZ, SHRESTHA, SEAWRIGHT, DAVILA, HYNDMAN, STECK, ZINERMAN, O'PHARROW, SCHIAVONI, LEVENBERG, P. CARROLL, TAYLOR, BURDICK, WEPRIN, OTIS, FORREST, VANEL, LUPARDO, REYES, SEPTIMO, MITAYNES, BURROUGHS, SOLAGES, DAIS, SHIMSKY, ANDERSON, KIM, VALDEZ, McMAHON, LASHER, DILAN, WRIGHT -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Children and Families -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 delivered to [~~him~~] **an officer** under section 305.1, [~~he~~] **the officer** shall immediately**, before transporting the child to the police station house, make every reasonable effort to** notify the parent or other person legally responsible for the child's care, or if such legally responsible person is unavailable the person with whom the child resides, that the child has been taken into custody.

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

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§ 2. Paragraph (a) of subdivision 4 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:

(a) when the officer reasonably believes such parent or other person legally responsible for the child's care will appear, take the child to the child's 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 care~~] such person upon the issuance in accordance with section 307.1 of a family court appearance ticket to the child and the person to whose custody the child is released; or

§ 3. Paragraph (b) of subdivision 4 of section 305.2 of the family court act, as amended by section 63 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

(b) when the officer does not reasonably believe the parent or other person legally responsible for the child's care will appear for the child, forthwith and with all reasonable speed take the child directly, and without [~~his~~] the child first being taken to the police station house, to the family court located in the county in which the act occasioning the taking into custody allegedly was committed, or, when the family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department 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 case he or she may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning 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 there question him or her for a reasonable period of time~~]; or

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

(c) when the officer does not release the child pursuant to paragraph (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 to a place certified by the office of children and family services as a juvenile detention facility for the reception of children; or

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

5. If such child has allegedly committed a designated felony act as 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 directly to such family court[~~, unless the officer takes the child to a facility for questioning in accordance with paragraph (b) of subdivision four. If such child has not allegedly committed a designated felony act and such family court is in session, the officer shall either forthwith take the child directly to such family court, unless the officer takes the child to a facility for questioning in accordance with paragraph (b) of subdivision four or release the child in accordance with paragraph (a) of subdivision four~~] or, when the family court is not in session, to the most accessible magistrate, if any, designated by the appellate division of the supreme court in the applicable department to conduct a hearing under section 307.4.

§ 6. Subdivision 5-a of section 305.2 of the family court act, as added by chapter 299 of the laws of 2020, is amended to read as follows:

5-a. Where 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~~] **seven** of this section, the entire interrogation, including the giving of any required notice to the child as to [~~his or her~~] **their** 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) 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 and the speech is intelligible. A copy of the recording shall be subject to discovery pursuant to section 331.2 of this article.

§ 7. Subdivision 6 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:

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

§ 8. Subdivisions 7 and 8 of section 305.2 of the family court act, 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 new subdivision 10 is added to read as follows:

7. **If the officer determines that questioning of the child is necessary prior to taking action authorized by subdivision four or five, the officer may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning 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 there, subject to the requirements of subdivision eight, question the child for a reasonable period of time.**

8. A child shall not be questioned pursuant to this section unless [~~he~~] **or until:**

(a) the child and a person required to be notified pursuant to subdivision three if present, have been advised:

[~~(a)~~] **(i)** of the child's right to remain silent;

[~~(b)~~] **(ii)** that the statements made by the child may be used in a court of law;

[~~(c)~~] **(iii)** of the child's right to have an attorney present at such questioning; and

[~~(d)~~] **(iv)** of the child's right to have an attorney provided for [~~him~~] **them** without charge if [~~he is~~] **they are** indigent**; and**

(b) the child has consulted with legal counsel in person, by telephone, or by video conference. This consultation may not be waived.

[~~8.~~] **9.** 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~~] **the child's** parents or other persons legally responsible for [~~his or her~~] **the child's** care, notification pursuant to subdivision three 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.

10. In addition to statements that must be suppressed as involuntarily made within the definition in subdivision two of section 344.2, a statement shall be suppressed: when the child has not consulted with legal counsel as required by paragraph (b) of subdivision eight; or when a person notified pursuant to subdivision three, if present, has not been advised of and voluntarily waived the rights delineated in paragraph (a) of subdivision eight.

§ 9. Section 724 of the family court act, the section heading and subdivisions (b) and (c) as amended by chapter 843 of the laws of 1980, subdivision (a) as amended by chapter 920 of the laws of 1982, paragraphs (i) and (ii) as amended and paragraph (iv) of subdivision (b) as added by section 4 of part E of chapter 57 of the laws of 2005, paragraph (iii) of subdivision (b) as amended by section 7 of part M of chapter 56 of the laws of 2017, and subdivision (d) as added by chapter 809 of the laws of 1963, is amended to read as follows:

§ 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 police officer takes into custody or if a person is delivered to [~~him~~] **the officer** under section seven hundred twenty-three, the officer shall immediately**, before transporting the child to any other location, make every reasonable effort to** notify the parent or other person legally responsible for [~~his~~] **the person's** care, or the person with whom [~~he~~] **the person** is domiciled, that [~~he~~] **the person** has been taken into custody.

(b) After making every reasonable effort to give notice under [~~paragraph~~] **subdivision** (a) **of this section**, the officer shall

(i) **when the officer reasonably believes such parent or other person legally responsible for the child's care will appear, take the child to the child's home, the police station house, or another location agreed upon with the parent or person legally responsible, and** release the 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 security, of the person to whose custody the youth is released that [~~he or she~~] **such person** will produce the youth before the lead agency designated pursuant to section seven hundred thirty-five of this article in that county at a time and place specified in writing; or

(ii) **when the officer does not reasonably believe such parent or other person legally responsible for the child's care will appear for the child,** forthwith and with all reasonable speed take the youth directly, 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 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 take the youth to a facility designated by the chief administrator of the courts as a suitable place for the questioning of youth or, upon the consent of a parent or other person legally responsible for the care of the youth, to the youth's residence and there question him or her for a reasonable period of time~~]; or

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

(iv) take the youth directly to the family court located in the county in which the act occasioning the taking into custody was allegedly done, provided that the officer affirms on the record that [~~he or she~~] **the officer** attempted to exercise the options identified in paragraphs (i),

(ii) and (iii) of this subdivision, was unable to exercise these options, and the reasons therefor.

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

(d) **If the officer determines that questioning of the child is necessary prior to taking action authorized by subdivision (b) of this section, the officer may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning 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 there, subject to the requirements of subdivision (e) of this section, question the child for a reasonable period of time.**

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

(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 at a fact-finding hearing.

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

6. **(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 police officer shall immediately**, before transporting the child to the police station house, make every reasonable effort to** notify the parent or other person legally responsible for [~~his or her~~] **the child's** care or the person with whom [~~he or she~~] **the child** is domiciled, that such **juvenile** offender or [~~person~~] **sixteen or seventeen year old** has been arrested, and the location of the facility where [~~he or she is being~~] **the child will be** detained.

(b) If the officer determines that it is necessary to question a juvenile offender or [~~such person~~] **sixteen or seventeen year old**, the officer must take [~~him or her~~] **the juvenile offender or sixteen or seventeen year old** to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the juvenile or [~~such person~~] **sixteen or seventeen year old**, to [~~his or her~~] **the juvenile offender or sixteen or seventeen year old's** residence and there**, subject to the requirements of paragraph (c) of this subdivision,** question [~~him or her~~] **the juvenile offender or sixteen or seventeen year old** for a reasonable period of time.

(c) A juvenile **offender** or [~~such person~~] **sixteen or seventeen year old** shall not be questioned pursuant to this section unless [~~he or she~~] **or until:**

(i) the juvenile offender or sixteen or seventeen year old and a person required to be notified pursuant to **paragraph (a) of** this subdivision, if present, have been advised:

[~~(a)~~] **(A)** of the juvenile offender's or [~~such person's~~] **sixteen or seventeen year old's** right to remain silent;

[~~(b)~~] **(B)** that the statements made by [~~him or her~~] **the juvenile offender or sixteen or seventeen year old** may be used in a court of law;

[~~(c)~~] (C) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to have an attorney present at such questioning; and

[~~(d)~~] (D) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to have an attorney provided for [~~him or her~~] them without charge if [~~he or she is~~] they are unable to afford counsel[~~.~~];

(ii) the juvenile offender or sixteen or seventeen year old has consulted with an attorney in person, by telephone, or by video conference. 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~~] the juvenile offender or sixteen or seventeen year old's age, the presence or absence of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's parents or other persons legally responsible for [~~his or her~~] the juvenile offender or sixteen or seventeen year old's 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.

§ 11. 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, make every reasonable effort to notify the parent or other person legally responsible for [~~his or her~~] the juvenile offender or sixteen or seventeen year old's care or the person with whom [~~he or she~~] the juvenile offender or sixteen or seventeen year old is domiciled, that such juvenile offender or [~~person~~] sixteen or seventeen year old has been arrested, and the location of the facility where [~~he or she is being~~] the juvenile offender or sixteen or seventeen year old will be detained.

(b) If the officer determines that it is necessary to question a juvenile offender or [~~such person~~] sixteen or seventeen year old, the officer must take [~~him or her~~] the juvenile offender or sixteen or seventeen year old to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of a juvenile offender or [~~such person~~] sixteen or seventeen year old, to [~~his or her~~] the juvenile offender or sixteen or seventeen year old's residence and there, subject to the requirements of paragraph (c) of this subdivision, question [~~him or her~~] the juvenile offender or sixteen or seventeen year old for a reasonable period of time.

(c) A juvenile offender or [~~such person~~] sixteen or seventeen year old shall not be questioned pursuant to this section unless or until:

(i) the juvenile offender or [~~such person~~] sixteen or seventeen year old and a person required to be notified pursuant to paragraph (a) of this subdivision, if present, have been advised:

[~~(a)~~] (A) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to remain silent;

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

[~~(c)~~] (C) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to have an attorney present at such questioning; and

[~~(d)~~] (D) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to have an attorney provided for [~~him or her~~] the juvenile offender or sixteen or seventeen year old without charge if [~~he or she~~] the juvenile offender or sixteen or seventeen year old is unable to afford counsel[~~.~~]; and

(ii) the juvenile offender or sixteen or seventeen year old has consulted with an attorney in person, by telephone or by video conference. 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 [~~such person his or her~~] sixteen or seventeen year old, the juvenile offender or sixteen or seventeen year old's age, the presence or absence of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's parents or other persons legally responsible for [~~his or her~~] the juvenile offender or sixteen or seventeen year old's 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.

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

5. (a) If a police officer takes an arrested juvenile offender or a person sixteen or [~~commencing October first, two thousand nineteen,~~] seventeen years of age into custody, the police officer shall immediately, before transporting the child to the police station house, make every reasonable effort to notify the parent or other person legally responsible for [~~his or her~~] the juvenile offender or sixteen or seventeen year old's care or the person with whom [~~he or she~~] the juvenile offender or sixteen or seventeen year old is domiciled, that such juvenile offender or [~~person~~] sixteen or seventeen year old has been arrested, and the location of the facility where [~~he or she is being~~] the juvenile offender or sixteen or seventeen year old will be detained.

(b) If the officer determines that it is necessary to question a juvenile offender or [~~such person~~] sixteen or seventeen year old the officer must take [~~him or her~~] the juvenile offender or sixteen or seventeen year old to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children or, upon the consent of a parent or other person legally responsible for the care of the juvenile offender or [~~such person~~] sixteen or seventeen year old, to [~~his or her~~] the juvenile offender or sixteen or seventeen year old's residence and there, subject to the requirements of paragraph (c) of this subdivision, question [~~him or her~~] the juvenile offender or sixteen or seventeen year old for a reasonable period of time.

(c) A juvenile offender or [~~such person~~] sixteen or seventeen year old shall not be questioned pursuant to this section unless [~~he or she~~] or until:

(i) the juvenile offender or sixteen or seventeen year old and a person required to be notified pursuant to paragraph (a) of this subdivision, if present, have been advised:

[~~(a)~~] (A) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to remain silent;

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

[~~(c)~~] (C) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to have an attorney present at such questioning; and

[~~(d)~~] (D) of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's right to have an attorney provided for [~~him or her~~] them without charge if [~~he or she is~~] they are unable to afford counsel[~~.~~]; and

(ii) the juvenile offender or sixteen or seventeen year old has consulted with an attorney in person, by telephone, or by video conference. 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 [~~such person~~] sixteen or seventeen year old, [~~his or her~~] the juvenile offender or sixteen or seventeen year old's age, the presence or absence of [~~his or her~~] the juvenile offender or sixteen or seventeen year old's parents or other persons legally responsible for [~~his or her~~] the juvenile offender or sixteen or seventeen year old's 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.

§ 13. This act shall take effect on the one hundred eightieth day after it shall have become a law.