

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:

- 1 Section 1. Subdivisions 1 and 2 of section 60.45 of the criminal
2 procedure law are amended and a new subdivision 4 is added to read as
3 follows:
4 1. Evidence of a written or oral confession, admission, or other
5 statement made by a defendant with respect to his or her participation
6 or lack of participation in the offense charged, may not be received in
7 evidence against him or her in a criminal proceeding if such statement
8 was involuntarily made.
9 2. A confession, admission or other statement is "involuntarily made"
10 by a defendant when it is obtained from him or her:
11 (a) By any person by the use or threatened use of physical force upon
12 the defendant or another person, or by means of any other improper
13 conduct or undue pressure which impaired the defendant's physical or

14 mental condition to the extent of undermining his or her ability to make
15 a choice whether or not to make a statement; or
16 (b) By a public servant engaged in law enforcement activity or by a
17 person then acting under his or her direction or in cooperation with him
18 or her:

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

LBD02415-02-1

S. 324--A

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

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

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

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

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

17 (b) The disaggregate data for each case involving a custodial interro-
18 gation of a person suspected of committing a crime that occurred in a
19 detention facility, including:

20 (i) Whether the interrogation was recorded.

21 (ii) If the interrogation was not recorded, whether there was a show-
22 ing of good cause pursuant to paragraph (c) of subdivision three of this
23 section.

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

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

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

32 (iv) Whether the suspect confessed to the crime during the interro-
33 gation.

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

36 § 2. Subparagraph (iii) of paragraph (b) of subdivision 2 of section
37 344.2 of the family court act, as added by chapter 920 of the laws of
38 1982, is amended to read as follows:

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

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

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