



NEW YORK
CITY BAR

JUVENILE JUSTICE COMMITTEE

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Sent via facsimile & e-mail

Honorable Andrew M. Cuomo
Governor of the State of New York
State Capitol
Executive Chamber
Albany, NY 12224

Re: A.7970 (AM Frontus) / S. 6533 (Montgomery)(OCA # 20-2019) -- A bill requiring the video recording of interrogations of juveniles in juvenile delinquency proceedings in family court

Dear Governor Cuomo,

On behalf of the New York City Bar Association’s Juvenile Justice Committee, we write to express our support for A.7970 (AM Frontus) / S.6533 (Sen. Montgomery) (“the Bill”).¹ Our Committee, which is comprised of members of the entire range of entities involved in juvenile justice—including judges, prosecutors/the presentment agency, defense lawyers, the Administration for Children’s Services and the NYPD—strives to respect all perspectives within the system. Members from across this spectrum agree, as a general matter, that juvenile interrogations should be recorded as called for in the Bill.

The justification for this consensus is as follows: regardless of his or her perspective within the juvenile justice system, our members believe it is crucial to have a clear record of juvenile interrogations to ensure that they are legally, morally and ethically sound. Our Committee members are steadfastly committed to seeing justice done for every youth that comes into contact with the criminal and juvenile justice systems, and want laws that protect these vulnerable members of our society. As well, the Committee evaluates all proposed legislation through a racial equity lens. The fact is that the youth affected by current interrogation practices are overwhelmingly Black or Hispanic.² Transparency in the investigation process is an especially

¹ The City Bar’s Council on Children (Dawne Mitchell, Chair) and Children and the Law Committee (Melissa J. Friedman, Chair) also voted to support passage of the Bill.

² In New York City, for example, “the juvenile arrest population is most frequently Black (60.0%) and Hispanic (32.0%). White arrestees (4.5%) and Asian/Pacific Islander arrestees (3.2%) account for the remaining significant

critical need in systems where disparate minority contact is so clear. Videotaping in the juvenile rooms is not an onerous or expensive process, and is conducted voluntarily in many parts of New York State. It can “yield a reliable, objective record of the police’s interview with the”³ youth, which aids both the prosecution/presentation agency and the defense. The benefits of video recording come with no downside; research illustrates that video recording does not reduce the amount of information suspects share with police.⁴ In an age of increasing accountability for police misconduct, the need for this law is clear to us.

Although we support the Bill, a few members did have some reservations regarding perceived insufficiency in the bill language, which we opted to include in this letter as a matter of public information and record.

The Bill, as written, would require video recording of interrogations of juveniles “at a facility designated by the chief administrator of the courts as a suitable place for questioning...”. The primary concern of several Committee members is that a plain reading of the Bill would not require the recording of interrogations anywhere other than in the locations “designated” as reflected above. The members expressing concern on this point believe that all juvenile interrogations should be recorded—regardless of where they occur. Further, these members believe that juvenile interrogations should not be conducted unless and until they can be recorded—beginning from the initial police contact with the family, through the provision of Miranda warnings and continuously throughout entirety of any interrogation that follows; and that no point of the police interaction with the juvenile, or the juvenile’s family, surrounding the interrogation should go unrecorded. Such an approach would ensure a complete record of the entire contact and subsequent interrogation thereby informing any future question as to whether any waiver of Miranda was knowing, voluntary and intelligent.

Some members expressed concern that by limiting the video requirement as described above, the Bill as written leaves a gap in its efficacy. A large body of social science research has consistently found that children and adolescents are at unique risk for waiving their Miranda rights without understanding what those rights mean.⁵ Video recording of interrogations—from the moment police first speak to a youth, through Miranda waiver and police questioning—provides important context about what a youth understood before waiving rights and what the circumstances of the interrogation were.⁶ Additionally, the very act of recording may encourage police to avoid

portions of the juvenile arrest population.” See “Crime and Enforcement Activity in New York City Jan 1-Dec 31, 2019,” Commissioner Dermott F. Shea, Police Commissioner p. 16 https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2019-enforcement-report.pdf (last visited Nov. 19, 2020).

³ *People v. Durant*, 26 N.Y.3d 341, 353-54, 44 N.E.3d 173, 182-83 (2015).

⁴ See generally Saul M. Kassin, Melissa B. Russano, Aria D. Amrom, Johanna Hellgren, Jeff Kulkucka, & Victoria Z. Lawson, Does Video Recording Inhibit Crime Suspects? Evidence from a Fully Randomized Field Experiment, 43 L. & HUM. BEHAV. 45 (2019).

⁵ See Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1155 (1980); Naomi E. Sevin Goldstein et al., *Juvenile Offenders’ Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003).

⁶ Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo, & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 25-27 (2010).

using overly coercive interrogation techniques with youth.⁷ This is especially important because children and adolescents who are questioned by police are at extremely heightened risk for giving a false confession, compared to adults who are questioned.⁸

In closing, while the Juvenile Justice Committee supports this Bill being signed into law, several of our members would urge the legislature to further amend the laws next session to reflect the priorities listed above, providing for complete recordings of the entirety of all juvenile interrogations, regardless of where they occur.

Respectfully,

Jennifer Gilroy Ruiz, Co-Chair
Juvenile Justice Committee

Maura Keating, Co-Chair
Juvenile Justice Committee

Cc: Hon. Mathylde Frontus
Hon. Velmanette Montgomery

⁷ *Id.* at 26.

⁸ See Emily Haney-Caron, Naomi E.S. Goldstein, & Constance Mesiarik, *Self-Perceived Likelihood of False Confession: A Comparison of Justice-Involved Juveniles and Adults*, 45 CRIM. JUST. & BEHAV. 1955 (2018); Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, 1 POL'Y INSIGHTS FROM BEHAV. & BRAIN SCI. 112 (2014).