

1 the business permission to apply to participate in the START-UP NY  
2 program if the commissioner determines that the business has demon-  
3 strated that it will create net new jobs in the tax-free NY area and  
4 that it or any related person has not eliminated any jobs in the state  
5 in connection with this expansion.  
6 § 4. This act shall take effect immediately.

7 PART VVV

8 Section 1. Section 60.45 of the criminal procedure law is amended by  
9 adding a new subdivision 3 to read as follows:

10 3. (a) Where a person is subject to custodial interrogation by a  
11 public servant at a detention facility, the entire custodial interro-  
12 gation, including the giving of any required advice of the rights of the  
13 individual being questioned, and the waiver of any rights by the indi-  
14 vidual, shall be recorded by an appropriate video recording device if  
15 the interrogation involves a class A-1 felony, except one defined in  
16 article two hundred twenty of the penal law; felony offenses defined in  
17 section 130.95 and 130.96 of the penal law; or a felony offense defined  
18 in article one hundred twenty-five or one hundred thirty of such law  
19 that is defined as a class B violent felony offense in section 70.02 of  
20 the penal law. For purposes of this paragraph, the term "detention  
21 facility" shall mean a police station, correctional facility, holding  
22 facility for prisoners, prosecutor's office or other facility where  
23 persons are held in detention in connection with criminal charges that  
24 have been or may be filed against them.

25 (b) No confession, admission or other statement shall be subject to a  
26 motion to suppress pursuant to subdivision three of section 710.20 of  
27 this chapter based solely upon the failure to video record such interro-  
28 gation in a detention facility as defined in paragraph (a) of this  
29 subdivision. However, where the people offer into evidence a confession,  
30 admission or other statement made by a person in custody with respect to  
31 his or her participation or lack of participation in an offense speci-  
32 fied in paragraph (a) of this subdivision, that has not been video  
33 recorded, the court shall consider the failure to record as a factor,  
34 but not as the sole factor, in accordance with paragraph (c) of this  
35 subdivision in determining whether such confession, admission or other  
36 statement shall be admissible.

37 (c) Notwithstanding the requirement of paragraph (a) of this subdivi-  
38 sion, upon a showing of good cause by the prosecutor, the custodial  
39 interrogation need not be recorded. Good cause shall include, but not be  
40 limited to:

41 (i) If electronic recording equipment malfunctions.

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

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

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

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

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



1 (vii) If the statement is made after a suspect has refused to partic-  
2 ipate in the interrogation if it is recorded, and appropriate effort to  
3 document such refusal is made.

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

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

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

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

25 (e) Video recording as required by this section shall be conducted in  
26 accordance with standards established by rule of the division of crimi-  
27 nal justice services.

28 § 2. Subdivision 3 of section 344.2 of the family court act is renun-  
29 bered subdivision 4 and a new subdivision 3 is added to read as follows:

30 3. Where a respondent is subject to custodial interrogation by a  
31 public servant at a facility specified in subdivision four of section  
32 305.2 of this article, the entire custodial interrogation, including the  
33 giving of any required advice of the rights of the individual being  
34 questioned, and the waiver of any rights by the individual, shall be  
35 recorded and governed in accordance with the provisions of paragraphs  
36 (a), (b), (c), (d) and (e) of subdivision three of section 60.45 of the  
37 criminal procedure law.

38 § 3. Section 60.25 of the criminal procedure law, subparagraph (ii) of  
39 paragraph (a) of subdivision 1 as amended by chapter 479 of the laws of  
40 1977, is amended to read as follows:

41 § 60.25 Rules of evidence; identification by means of previous recogni-  
42 tion, in absence of present identification.

43 1. In any criminal proceeding in which the defendant's commission of  
44 an offense is in issue, testimony as provided in subdivision two may be  
45 given by a witness when:

46 (a) Such witness testifies that:

47 (i) He or she observed the person claimed by the people to be the  
48 defendant either at the time and place of the commission of the offense  
49 or upon some other occasion relevant to the case; and

50 (ii) On a subsequent occasion he or she observed, under circumstances  
51 consistent with such rights as an accused person may derive under the  
52 constitution of this state or of the United States, a person or, where  
53 the observation is made pursuant to a blind or blinded procedure as  
54 defined in paragraph (c) of this subdivision, a pictorial, photographic,  
55 electronic, filmed or video recorded reproduction of a person whom he or

1 she recognized as the same person whom he or she had observed on the  
2 first or incriminating occasion; and

3 (iii) He or she is unable at the proceeding to state, on the basis of  
4 present recollection, whether or not the defendant is the person in  
5 question; and

6 (b) It is established that the defendant is in fact the person whom  
7 the witness observed and recognized or whose pictorial, photographic,  
8 electronic, filmed or video recorded reproduction the witness observed  
9 and recognized on the second occasion. Such fact may be established by  
10 testimony of another person or persons to whom the witness promptly  
11 declared his or her recognition on such occasion and by such pictorial,  
12 photographic, electronic, filmed or video recorded reproduction.

13 (c) For purposes of this section, a "blind or blinded procedure" is  
14 one in which the witness identifies a person in an array of pictorial,  
15 photographic, electronic, filmed or video recorded reproductions under  
16 circumstances where, at the time the identification is made, the public  
17 servant administering such procedure; (i) does not know which person in  
18 the array is the suspect, or (ii) does not know where the suspect is in  
19 the array viewed by the witness. The failure of a public servant to  
20 follow such a procedure shall be assessed solely for purposes of this  
21 article and shall result in the preclusion of testimony regarding the  
22 identification procedure as evidence in chief, but shall not constitute  
23 a legal basis to suppress evidence made pursuant to subdivision six of  
24 section 710.20 of this chapter. This article neither limits nor expands  
25 subdivision six of section 710.20 of this chapter.

26 2. Under circumstances prescribed in subdivision one of this section,  
27 such witness may testify at the criminal proceeding that the person whom  
28 he or she observed and recognized or whose pictorial, photographic,  
29 electronic, filmed or video recorded reproduction he or she observed and  
30 recognized on the second occasion is the same person whom he or she  
31 observed on the first or incriminating occasion. Such testimony,  
32 together with the evidence that the defendant is in fact the person whom  
33 the witness observed and recognized or whose pictorial, photographic,  
34 electronic, filmed or video recorded reproduction he or she observed and  
35 recognized on the second occasion, constitutes evidence in chief.

36 § 4. Section 60.30 of the criminal procedure law, as amended by chap-  
37 ter 479 of the laws of 1977, is amended to read as follows:

38 § 60.30 Rules of evidence; identification by means of previous recogni-  
39 tion, in addition to present identification.

40 In any criminal proceeding in which the defendant's commission of an  
41 offense is in issue, a witness who testifies that (a) he or she observed  
42 the person claimed by the people to be the defendant either at the time  
43 and place of the commission of the offense or upon some other occasion  
44 relevant to the case, and (b) on the basis of present recollection, the  
45 defendant is the person in question and (c) on a subsequent occasion he  
46 or she observed the defendant, or where the observation is made pursuant  
47 to a blind or blinded procedure, as defined in paragraph (c) of subdivi-  
48 sion one of section 60.25 of this article, a pictorial, photographic,  
49 electronic, filmed or video recorded reproduction of the defendant,  
50 under circumstances consistent with such rights as an accused person may  
51 derive under the constitution of this state or of the United States, and  
52 then also recognized him or her or the pictorial, photographic, elec-  
53 tronic, filmed or video recorded reproduction of him or her as the same  
54 person whom he or she had observed on the first or incriminating occa-  
55 sion, may, in addition to making an identification of the defendant at  
56 the criminal proceeding on the basis of present recollection as the

1 person whom he or she observed on the first or incriminating occasion,  
2 also describe his or her previous recognition of the defendant and  
3 testify that the person whom he or she observed or whose pictorial,  
4 photographic, electronic, filmed or video recorded reproduction he or  
5 she observed on such second occasion is the same person whom he or she  
6 had observed on the first or incriminating occasion. Such testimony and  
7 such pictorial, photographic, electronic, filmed or video recorded  
8 reproduction constitutes evidence in chief.

9 § 5. Subdivision 6 of section 710.20 of the criminal procedure law, as  
10 amended by chapter 8 of the laws of 1976 and as renumbered by chapter  
11 481 of the laws of 1983, is amended to read as follows:

12 6. Consists of potential testimony regarding an observation of the  
13 defendant either at the time or place of the commission of the offense  
14 or upon some other occasion relevant to the case, which potential testi-  
15 mony would not be admissible upon the prospective trial of such charge  
16 owing to an improperly made previous identification of the defendant or  
17 of a pictorial, photographic, electronic, filmed or video recorded  
18 reproduction of the defendant by the prospective witness. A claim that  
19 the previous identification of the defendant or of a pictorial, photo-  
20 graphic, electronic, filmed or video recorded reproduction of the  
21 defendant by a prospective witness did not comply with paragraph (c) of  
22 subdivision one of section 60.25 of this chapter or with the protocol  
23 promulgated in accordance with subdivision twenty-one of section eight  
24 hundred thirty-seven of the executive law shall not constitute a legal  
25 basis to suppress evidence pursuant to this subdivision. A claim that a  
26 public servant failed to comply with paragraph (c) of subdivision one of  
27 section 60.25 of this chapter or of subdivision twenty-one of section  
28 eight hundred thirty-seven of the executive law shall neither expand nor  
29 limit the rights an accused person may derive under the constitution of  
30 this state or of the United States.

31 § 6. Subdivision 1 of section 710.30 of the criminal procedure law, as  
32 separately amended by chapters 8 and 194 of the laws of 1976, is amended  
33 to read as follows:

34 1. Whenever the people intend to offer at a trial (a) evidence of a  
35 statement made by a defendant to a public servant, which statement if  
36 involuntarily made would render the evidence thereof suppressible upon  
37 motion pursuant to subdivision three of section 710.20, or (b) testimony  
38 regarding an observation of the defendant either at the time or place of  
39 the commission of the offense or upon some other occasion relevant to  
40 the case, to be given by a witness who has previously identified him or  
41 her or a pictorial, photographic, electronic, filmed or video recorded  
42 reproduction of him or her as such, they must serve upon the defendant a  
43 notice of such intention, specifying the evidence intended to be  
44 offered.

45 § 7. Section 343.3 of the family court act, as added by chapter 920 of  
46 the laws of 1982, is amended to read as follows:

47 § 343.3. Rules of evidence; identification by means of previous recog-  
48 nition in absence of present identification. 1. In any juvenile delin-  
49 quency proceeding in which the respondent's commission of a crime is in  
50 issue, testimony as provided in subdivision two may be given by a  
51 witness when:

52 (a) such witness testifies that:

53 (i) he or she observed the person claimed by the presentment agency to  
54 be the respondent either at the time and place of the commission of the  
55 crime or upon some other occasion relevant to the case; and

1 (ii) on a subsequent occasion he or she observed, under circumstances  
2 consistent with such rights as an accused person may derive under the  
3 constitution of this state or of the United States, a person, or, where  
4 the observation is made pursuant to a blind or blinded procedure as  
5 defined herein, a pictorial, photographic, electronic, filmed or video  
6 recorded reproduction of a person whom he or she recognized as the same  
7 person whom he or she had observed on the first incriminating occasion;  
8 and

9 (iii) he or she is unable at the proceeding to state, on the basis of  
10 present recollection, whether or not the respondent is the person in  
11 question; and

12 (b) it is established that the respondent is in fact the person whom  
13 the witness observed and recognized or whose pictorial, photographic,  
14 electronic, filmed or video recorded reproduction the witness observed  
15 and recognized on the second occasion. Such fact may be established by  
16 testimony of another person or persons to whom the witness promptly  
17 declared his or her recognition on such occasion and by such pictorial,  
18 photographic, electronic, filmed or video recorded reproduction.

19 (c) For purposes of this section, a "blind or blinded procedure" is  
20 one in which the witness identifies a person in an array of pictorial,  
21 photographic, electronic, filmed or video recorded reproductions under  
22 circumstances where, at the time the identification is made, the public  
23 servant administering such procedure: (i) does not know which person in  
24 the array is the suspect, or (ii) does not know where the suspect is in  
25 the array viewed by the witness. The failure of a public servant to  
26 follow such a procedure shall be assessed solely for purposes of this  
27 article and shall result in the preclusion of testimony regarding the  
28 identification procedure as evidence in chief, but shall not constitute  
29 a legal basis to suppress evidence made pursuant to subdivision six of  
30 section 710.20 of the criminal procedure law. This article neither  
31 limits not expands subdivision six of section 710.20 of the criminal  
32 procedure law.

33 2. Under circumstances prescribed in subdivision one, such witness may  
34 testify at the proceeding that the person whom he or she observed and  
35 recognized or whose pictorial, photographic, electronic, filmed or video  
36 recorded reproduction he or she observed and recognized on the second  
37 occasion is the same person whom he or she observed on the first or  
38 incriminating occasion. Such testimony, together with the evidence that  
39 the respondent is in fact the person whom the witness observed and  
40 recognized or whose pictorial, photographic, electronic, filmed or video  
41 recorded reproduction he or she observed and recognized on the second  
42 occasion, constitutes evidence in chief.

43 § 8. Section 343.4 of the family court act, as added by chapter 920 of  
44 the laws of 1982, is amended to read as follows:

45 § 343.4. Rules of evidence; identification by means of previous recog-  
46 nition, in addition to present identification. In any juvenile delin-  
47 quency proceeding in which the respondent's commission of a crime is in  
48 issue, a witness who testifies that: (a) he or she observed the person  
49 claimed by the presentment agency to be the respondent either at the  
50 time and place of the commission of the crime or upon some other occa-  
51 sion relevant to the case, and (b) on the basis of present recollection,  
52 the respondent is the person in question, and (c) on a subsequent occa-  
53 sion he or she observed the respondent, or, where the observation is  
54 made pursuant to a blind or blinded procedure, a pictorial, photograph-  
55 ic, electronic, filmed or video recorded reproduction of the respondent  
56 under circumstances consistent with such rights as an accused person may



1 derive under the constitution of this state or of the United States, and  
2 then also recognized him or her or the pictorial, photographic, elec-  
3 tronic, filmed or video recorded reproduction of him or her as the same  
4 person whom he or she had observed on the first or incriminating occa-  
5 sion, may, in addition to making an identification of the respondent at  
6 the delinquency proceeding on the basis of present recollection as the  
7 person whom he or she observed on the first or incriminating occasion,  
8 also describe his or her previous recognition of the respondent and  
9 testify that the person whom he or she observed or whose pictorial,  
10 photographic, electronic, filmed or video recorded reproduction he or  
11 she observed on such second occasion is the same person whom he or she  
12 had observed on the first or incriminating occasion. Such testimony and  
13 such pictorial, photographic, electronic, filmed or video recorded  
14 reproduction constitutes evidence in chief. For purposes of this  
15 section, a "blind or blinded procedure" shall be as defined in paragraph  
16 (c) of subdivision one of section 343.3 of this part.

17 § 9. Section 837 of the executive law is amended by adding a new  
18 subdivision 21 to read as follows:

19 21. Promulgate a standardized and detailed written protocol that is  
20 grounded in evidence-based principles for the administration of photo-  
21 graphic array and live lineup identification procedures for police agen-  
22 cies and standardized forms for use by such agencies in the reporting  
23 and recording of such identification procedure. The protocol shall  
24 address the following topics:

25 (a) the selection of photographic array and live lineup filler photo-  
26 graphs or participants;

27 (b) instructions given to a witness before conducting a photographic  
28 array or live lineup identification procedure;

29 (c) the documentation and preservation of results of a photographic  
30 array or live lineup identification procedure;

31 (d) procedures for eliciting and documenting the witness's confidence  
32 in his or her identification following a photographic array or live  
33 lineup identification procedure, in the event that an identification is  
34 made; and

35 (e) procedures for administering a photographic array or live lineup  
36 identification procedure in a manner designed to prevent opportunities  
37 to influence the witness.

38 § 10. Subdivision 4 of section 840 of the executive law is amended by  
39 adding a new paragraph (c) to read as follows:

40 (c) Disseminate the written policies and procedures promulgated in  
41 accordance with subdivision twenty-one of section eight hundred thirty-  
42 seven of this article to all police departments in this state and imple-  
43 ment a training program for all current and new police officers regard-  
44 ing the policies and procedures established pursuant to such  
45 subdivision.

46 § 11. Section 722-e of the county law, as added by chapter 878 of the  
47 laws of 1965, is amended to read as follows:

48 § 722-e. Expenses. All expenses for providing counsel and services  
49 other than counsel hereunder shall be a county charge or in the case of  
50 a county wholly located within a city a city charge to be paid out of an  
51 appropriation for such purposes. Provided, however, that any such addi-  
52 tional expenses incurred for the provision of counsel and services as a  
53 result of the implementation of a plan established pursuant to subdivi-  
54 sion four of section eight hundred thirty-two of the executive law,  
55 including any interim steps taken to implement such plan, shall be reim-  
56 bursed by the state to the county or city providing such services. Such



1 plans shall be submitted by the office of indigent legal services to the  
2 director of the division of budget for review and approval. However, the  
3 director's approval shall be limited solely to the plan's projected  
4 fiscal impact of the required appropriation for the implementation of  
5 such plan, and his or her approval shall not be unreasonably withheld.  
6 The state shall appropriate funds sufficient to provide for the  
7 reimbursement required by this section.

8 § 12. Section 832 of the executive law is amended by adding a new  
9 subdivision 4 to read as follows:

10 4. Additional duties and responsibilities. The office shall, in  
11 consultation with the indigent legal services board established pursuant  
12 to section eight hundred thirty-three of this article, have the follow-  
13 ing duties and responsibilities, and any plan developed pursuant to this  
14 subdivision shall be submitted by the office to the director of the  
15 division of budget for review and approval, provided, however that the  
16 director's approval shall be limited solely to the plan's projected  
17 fiscal impact of the required appropriation for the implementation of  
18 such plan and his or her approval shall not be unreasonably withheld:

19 (a) Counsel at arraignment. Develop and implement a written plan to  
20 ensure that each criminal defendant who is eligible for publicly funded  
21 legal representation is represented by counsel in person at his or her  
22 arraignment; provided, however, that a timely arraignment with counsel  
23 shall not be delayed pending a determination of a defendant's eligibil-  
24 ity.

25 (i) For the purposes of the plan developed pursuant to this subdivi-  
26 sion, the term "arraignment" shall mean the first appearance by a person  
27 charged with a crime before a judge or magistrate, with the exception of  
28 an appearance where no prosecutor appears and no action occurs other  
29 than the adjournment of the criminal process and the unconditional  
30 release of the person charged (in which event "arraignment" shall mean  
31 the person's next appearance before a judge or magistrate).

32 (ii) The written plan developed pursuant to this subdivision shall be  
33 completed by December first, two thousand seventeen and shall include  
34 interim steps for each county and the city of New York for achieving  
35 compliance with the plan.

36 (iii) Each county and the city of New York shall, in consultation with  
37 the office, undertake good faith efforts to implement the plan and such  
38 plan shall be fully implemented and adhered to in each county and the  
39 city of New York by April first, two thousand twenty-three. Pursuant to  
40 section seven hundred twenty-two-e of the county law, the state shall  
41 reimburse each county and the city of New York for any costs incurred as  
42 a result of implementing such plan.

43 (iv) The office shall, on an ongoing basis, monitor and periodically  
44 report on the implementation of, and compliance with, the plan in each  
45 county and the city of New York.

46 (b) Caseload relief. Develop and implement a written plan that estab-  
47 lishes numerical caseload/workload standards for each provider of  
48 constitutionally mandated publicly funded representation in criminal  
49 cases for people who are unable to afford counsel.

50 (i) Such standards shall apply to all providers whether public defen-  
51 der, legal aid society, assigned counsel program or conflict defender in  
52 each county and the city of New York.

53 (ii) The written plan developed pursuant to this subdivision shall be  
54 completed by December first, two thousand seventeen and shall include  
55 interim steps for each county and the city of New York for achieving  
56 compliance with the plan. Such plan shall include the number of attor-



1 neys, investigators and other non-attorney staff and the amount of  
2 in-kind resources necessary for each provider of mandated representation  
3 to implement such plan.

4 (iii) Each county and the city of New York shall, in consultation  
5 with the office, undertake good faith efforts to implement the  
6 caseload/workload standards and such standards shall be fully imple-  
7 mented and adhered to in each county and the city of New York by April  
8 first, two thousand twenty-three. Pursuant to section seven hundred  
9 twenty-two-e of the county law, the state shall reimburse each county  
10 and the city of New York for any costs incurred as a result of imple-  
11 menting such plan.

12 (iv) The office shall, on an ongoing basis, monitor and periodically  
13 report on the implementation of, and compliance with, the plan in each  
14 county and the city of New York.

15 (c) Initiatives to improve the quality of indigent defense. (i) Devel-  
16 op and implement a written plan to improve the quality of constitu-  
17 tionally mandated publicly funded representation in criminal cases for  
18 people who are unable to afford counsel and ensure that attorneys  
19 providing such representation: (A) receive effective supervision and  
20 training; (B) have access to and appropriately utilize investigators,  
21 interpreters and expert witnesses on behalf of clients; (C) communicate  
22 effectively with their clients; (D) have the necessary qualifications  
23 and experience; and (E) in the case of assigned counsel attorneys, are  
24 assigned to cases in accordance with article eighteen-b of the county  
25 law and in a manner that accounts for the attorney's level of experience  
26 and caseload/workload.

27 (ii) The office shall, on an ongoing basis, monitor and periodically  
28 report on the implementation of, and compliance with, the plan in each  
29 county and the city of New York.

30 (iii) The written plan developed pursuant to this subdivision shall be  
31 completed by December first, two thousand seventeen and shall include  
32 interim steps for each county and the city of New York for achieving  
33 compliance with the plan.

34 (iv) Each county and the city of New York shall, in consultation with  
35 the office, undertake good faith efforts to implement the initiatives to  
36 improve the quality of indigent defense and such initiatives shall be  
37 fully implemented and adhered to in each county and the city of New York  
38 by April first, two thousand twenty-three. Pursuant to section seven  
39 hundred twenty-two-e of the county law, the state shall reimburse each  
40 county and the city of New York for any costs incurred as a result of  
41 implementing such plan.

42 (d) Appropriation of funds. In no event shall a county and a city of  
43 New York be obligated to undertake any steps to implement the written  
44 plans under paragraphs (a), (b) and (c) of this subdivision until funds  
45 have been appropriated by the state for such purpose.

46 § 13. This act shall take effect immediately; provided, however, that  
47 sections one and two of this act shall take effect April 1, 2018 and  
48 shall apply to confessions, admissions or statements made on or after  
49 such effective date; provided, further sections three through ten of  
50 this act shall take effect July 1, 2017.

51

## PART WWW

52 Section 1. Section 1.20 of the criminal procedure law is amended by  
53 adding a new subdivision 44 to read as follows: