

1 S.6

2 An act relating to law enforcement interrogation policies

3 The House proposes to the Senate to amend the bill by striking out all after
4 the enacting clause and inserting in lieu thereof the following:

5 Sec. 1. LEGISLATIVE INTENT; JUVENILE INTERROGATION; LAW
6 ENFORCEMENT INTERROGATION POLICIES

7 It is the intent of the General Assembly to prevent false confessions and
8 wrongful convictions of individuals subject to law enforcement interrogation
9 and to improve trust between Vermont's communities and law enforcement.
10 To achieve these objectives, it is the further intent of the General Assembly to
11 create a minimum set of law enforcement interrogation standards that
12 incorporate evidence-based best practices by:

13 (1) immediately prohibiting law enforcement's use of threats and
14 physical harm during all custodial interrogations;

15 (2) immediately restricting law enforcement's use of deception during
16 the custodial interrogation of juveniles; and

17 (3) mandating that the Vermont Criminal Justice Council develop,
18 adopt, and enforce a statewide model interrogation policy that applies to all
19 Vermont law enforcement agencies and constables exercising law enforcement
20 authority pursuant to 24 V.S.A. § 1936.

1 Sec. 2. 13 V.S.A. § 5585 is amended to read:

2 § 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~

3 INTERROGATION DEFINITIONS

4 (a) As used in this ~~section~~ subchapter:

5 (1) “Custodial interrogation” means any interrogation:

6 (A) involving questioning by a law enforcement officer that is
7 reasonably likely to elicit an incriminating response from the subject; and

8 (B) in which a reasonable person in the subject’s position would
9 consider the person to be in custody, starting from the moment a person should
10 have been advised of the person’s Miranda rights and ending when the
11 questioning has concluded.

12 (2) “Deception” includes the knowing communication of false facts
13 about evidence, the knowing misrepresentation of the accuracy of the facts, the
14 knowing misrepresentation of the law, or the knowing communication of
15 unauthorized statements regarding leniency.

16 ~~(2)~~(3) “Electronic recording” or “electronically recorded” means an
17 audio and visual recording that is an authentic, accurate, unaltered record of a
18 custodial interrogation, or if law enforcement does not have the current
19 capacity to create a visual recording, an audio recording of the interrogation.

20 (4) “Law enforcement officer” has the same meaning as in 20 V.S.A.
21 § 2351a.

1 (5) “Government agent” means:

2 (A) a school resource or safety officer; or

3 (B) an individual acting at the request or direction of a school
4 resource or safety officer or a law enforcement officer.

5 ~~(3)~~(6) “Place of detention” means a building or a police station that is a
6 place of operation for the State police, a municipal police department, county
7 sheriff department, or other law enforcement agency that is owned or operated
8 by a law enforcement agency at which persons are or may be questioned in
9 connection with criminal offenses or detained temporarily in connection with
10 criminal charges pending a potential arrest or citation.

11 ~~(4)~~(7) “Statement” means an oral, written, sign language, or nonverbal
12 communication.

13 ~~(b)(1) A custodial interrogation that occurs in a place of detention~~
14 ~~concerning the investigation of a felony or misdemeanor violation of this title~~
15 ~~shall be electronically recorded in its entirety. Unless impracticable, a custodial~~
16 ~~interrogation occurring outside a place of detention concerning the~~
17 ~~investigation of a felony or misdemeanor violation of this title shall be~~
18 ~~electronically recorded in its entirety.~~

19 ~~(2) In consideration of best practices, law enforcement shall strive to~~
20 ~~record simultaneously both the interrogator and the person being interrogated.~~

1 ~~(c)(1) The following are exceptions to the recording requirement in~~
2 ~~subsection (b) of this section:~~

3 ~~(A) exigent circumstances;~~

4 ~~(B) a person's refusal to be electronically recorded;~~

5 ~~(C) interrogations conducted by other jurisdictions;~~

6 ~~(D) a reasonable belief that the person being interrogated did not~~
7 ~~commit a felony or misdemeanor violation of this title and, therefore, an~~
8 ~~electronic recording of the interrogation was not required;~~

9 ~~(E) the safety of a person or protection of the person's identity; and~~

10 ~~(F) equipment malfunction.~~

11 ~~(2) If law enforcement does not make an electronic recording of a~~
12 ~~eustodial interrogation as required by this section, the prosecution shall prove~~
13 ~~by a preponderance of the evidence that one of the exceptions identified in~~
14 ~~subdivision (1) of this subsection applies. If the prosecution does not meet the~~
15 ~~burden of proof, the evidence is still admissible, but the court shall provide~~
16 ~~cautionary instructions to the jury regarding the failure to record the~~
17 ~~interrogation.~~

1 Sec. 3. 13 V.S.A. § 5586 is added to read:

2 § 5586. ELECTRONIC RECORDING OF A CUSTODIAL

3 INTERROGATION

4 (a)(1) A custodial interrogation that occurs in a place of detention

5 concerning the investigation of a felony or misdemeanor violation of this title

6 shall be electronically recorded in its entirety. Unless impracticable, a

7 custodial interrogation occurring outside a place of detention concerning the

8 investigation of a felony or misdemeanor violation of this title shall be

9 electronically recorded in its entirety.

10 (2) In consideration of best practices, law enforcement shall strive to

11 record simultaneously both the interrogator and the person being interrogated.

12 (b)(1) The following are exceptions to the recording requirement in

13 subsection (a) of this section:

14 (A) exigent circumstances;

15 (B) a person's refusal to be electronically recorded;

16 (C) interrogations conducted by other jurisdictions;

17 (D) a reasonable belief that the person being interrogated did not

18 commit a felony or misdemeanor violation of this title and, therefore, an

19 electronic recording of the interrogation was not required;

20 (E) the safety of a person or protection of the person's identity; and

21 (F) equipment malfunction.

1 (2) If law enforcement does not make an electronic recording of a
2 custodial interrogation as required by this section, the prosecution shall prove
3 by a preponderance of the evidence that one of the exceptions identified in
4 subdivision (1) of this subsection applies. If the prosecution does not meet the
5 burden of proof, the evidence is still admissible, but the court shall provide
6 cautionary instructions to the jury regarding the failure to record the
7 interrogation.

8 Sec. 4. 13 V.S.A. § 5587 is added to read:

9 § 5587. RESTRICTIONS ON CUSTODIAL INTERROGATION

10 (a)(1) During a custodial interrogation of a person relating to the
11 commission of a criminal offense or delinquent act, a law enforcement officer
12 or government agent shall not employ threats or physical harm.

13 (2) Any admission, confession, or statement, whether written or oral,
14 obtained in violation of subdivision (1) of this subsection shall be involuntary
15 and inadmissible in any proceeding.

16 (b)(1) During a custodial interrogation of a person under 18 years of age
17 relating to the commission of a criminal offense or delinquent act, a law
18 enforcement officer or government agent shall not employ deception.

19 (2) Any admission, confession, or statement, whether written or oral,
20 obtained in violation of subdivision (1) of this subsection shall be involuntary
21 and inadmissible in any proceeding.

1 (c)(1) Any admission, confession, or statement, whether written or oral,
2 made by a person 18 through 21 years of age during a custodial interrogation
3 relating to the commission of a criminal offense or delinquent act in which a
4 law enforcement officer or government agent employed deception shall be
5 presumed to be involuntary and inadmissible in any proceeding.

6 (2) The presumption that any such admission, confession, or statement
7 is involuntary and inadmissible may be overcome if the State proves by clear
8 and convincing evidence that the admission, confession, or statement was:

9 (A) voluntary and not induced by a law enforcement officer's or
10 government agent's use of deception prohibited by subdivision (c)(1) of this
11 section; and

12 (B) any actions of a law enforcement officer or government agent in
13 violation of subsection (c)(1) of this section did not undermine the reliability of
14 the person's admission, confession, or statement and did not create a
15 substantial risk that the person might falsely incriminate themselves.

16 (d) Notwithstanding 20 V.S.A. chapter 151, subchapter 2, a noncriminal
17 violation of this section by a law enforcement officer or government agent that
18 is neither malicious nor willful shall not provide a basis for any sanctions
19 related to a law enforcement officer's certification.

1 Sec. 5. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL
2 INTERROGATION POLICY

3 (a) Intent. It is the intent of the General Assembly that the Vermont
4 Criminal Justice Council create a model interrogation policy that is grounded
5 in evidence-based best practices to limit and eventually eliminate the use of
6 deception in law enforcement interrogations.

7 (b) Policy development. On or before January 1, 2024, the Vermont
8 Criminal Justice Council, in consultation with the Office of the Attorney
9 General and stakeholders, including the Agency of Human Services, the
10 Vermont League of Cities and Towns, the Vermont Human Rights
11 Commission, and the Innocence Project, shall establish one cohesive evidence-
12 based model interrogation policy for law enforcement agencies and constables
13 to adopt, follow, and enforce as part of the agency's or constable's own
14 interrogation policy.

15 (c) Policy contents. The evidence-based model interrogation policy created
16 pursuant to this section shall apply to all persons subject to various forms of
17 interrogation, including the following:

- 18 (1) custodial interrogations occurring in a place of detention;
19 (2) custodial interrogations occurring outside a place of detention;
20 (3) interrogations that are not considered custodial, regardless of
21 location; and

1 (4) the interrogation of individuals with developmental, intellectual, and
2 psychiatric disabilities; substance use disorders; and low literacy levels.

3 Sec. 6. 20 V.S.A. § 2359 is amended to read:

4 § 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

5 COMPLIANCE; GRANT ELIGIBILITY

6 (a) On and after January 1, 2022, a law enforcement agency shall be
7 prohibited from having its law enforcement applicants or officers trained by
8 the Police Academy or from otherwise using the services of the Council if the
9 agency is not in compliance with the requirements for collecting roadside stop
10 data under section 2366 of this chapter, the requirement to report to the Office
11 of Attorney General death or serious bodily injuries under 18 V.S.A.
12 § 7257a(b), or the requirement to adopt, follow, ~~or~~ and enforce any policy
13 required under this chapter.

14 (b) On and after April 1, 2024, a law enforcement agency shall be
15 prohibited from receiving grants, or other forms of financial assistance, if the
16 agency is not in compliance with the requirement to adopt, follow, and enforce
17 the model interrogation policy established by the Council pursuant to section
18 2371 of this title.

19 (c) The Council shall adopt procedures to enforce the requirements of this
20 section, which may allow for waivers for agencies under a plan to obtain
21 compliance with this section.

1 Sec. 7. 20 V.S.A. § 2371 is added to read:

2 § 2371. STATEWIDE POLICY; INTERROGATION METHODS

3 (a) As used in this section:

4 (1) “Custodial interrogation” has the same meaning as in 13 V.S.A.

5 § 5585.

6 (2) “Place of detention” has the same meaning as in 13 V.S.A. § 5585.

7 (b) The Council shall establish a model interrogation policy that applies to
8 all persons subject to various forms of interrogation, including the following:

9 (1) custodial interrogations occurring in a place of detention;

10 (2) custodial interrogations occurring outside a place of detention;

11 (3) interrogations that are not considered custodial, regardless of
12 location; and

13 (4) the interrogation of individuals with developmental, intellectual, and
14 psychiatric disabilities; substance use disorders; and low literacy levels.

15 (c)(1) On or before April 1, 2024, each law enforcement agency and every
16 constable who exercises law enforcement authority pursuant to 24 V.S.A.
17 § 1936a and who is trained in compliance with section 2358 of this title shall
18 adopt, follow, and enforce an interrogation policy that includes each
19 component of the model interrogation policy established by the Council, and
20 each law enforcement officer or constable who exercises law enforcement

1 authority shall comply with the provisions of the agency's or constable's
2 policy.

3 (2) On or before October 1, 2024, and every even-numbered year
4 thereafter, the Vermont Criminal Justice Council, in consultation with others,
5 including the Office of the Attorney General, the Agency of Human Services,
6 and the Human Rights Commission, shall review and, if necessary, update the
7 model interrogation policy.

8 (d) To encourage fair and consistent interrogation methods statewide, the
9 Vermont Criminal Justice Council, in consultation with the Office of the
10 Attorney General, shall review the policies of law enforcement agencies and
11 constables required to adopt a policy pursuant to subsection (c) of this section,
12 to ensure that those policies establish each component of the model policy on
13 or before April 15, 2024. If the Council finds that a policy does not meet each
14 component of the model policy, it shall work with the law enforcement agency
15 or constable to bring the policy into compliance. If, after consultation with its
16 attorney or with the Council, or with both, the law enforcement agency or
17 constable fails to adopt a policy that meets each component of the model
18 policy, that agency or constable shall be deemed to have adopted, and shall
19 follow and enforce, the model policy established by the Council.

20 (e) The Council shall incorporate the provisions of this section into the
21 training it provides.

1 (f) Annually, as part of their annual training report to the Council, every
2 law enforcement agency and every constable who exercises law enforcement
3 authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with
4 section 2358 of this title shall report to the Council whether the agency or
5 constable has adopted an interrogation policy in accordance with subsections
6 (c) and (d) of this section. The Vermont Criminal Justice Council shall
7 determine, as part of the Council’s annual certification of training
8 requirements, whether current officers have received training on interrogation
9 methods as required by subsection (e) of this section.

10 (g) Annually, on or before July 1, the Vermont Criminal Justice Council
11 shall report to the House and Senate Committees on Judiciary regarding which
12 law enforcement agencies and officers have received training on interrogation
13 methods.

14 Sec. 8. VERMONT CRIMINAL JUSTICE COUNCIL; POSITION;

15 APPROPRIATION

16 (a) On July 1, 2023, a new, permanent, classified Director of Policy
17 position is created in the Vermont Criminal Justice Council. In addition to any
18 other duties deemed appropriate by the Council, the Director of Policy shall
19 supervise the development, oversight, and compliance work related to the
20 Council’s internal, external, and State-mandated policies.

1 (b) The position of Director of Policy established in subsection (a) of this
2 section shall be subject to a general fund appropriation in FY 2024.

3 Sec. 9. REPEAL

4 13 V.S.A. § 5587(d) (prohibiting sanctions related to a law enforcement
5 officer's certification) is repealed on July 1, 2024.

6 Sec. 10. EFFECTIVE DATES

7 This act shall take effect on July 1, 2023, except that Secs. 6 (council
8 services contingent on agency compliance; grant eligibility) and 7 (statewide
9 policy; interrogation methods) shall take effect on April 1, 2024.