

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 6
3 entitled “An act relating to custodial interrogation of juveniles” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

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

8 § 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~
9 INTERROGATION DEFINITIONS

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

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

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

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

18 (2) “Deception” includes the knowing communication of false facts
19 about evidence, the knowing misrepresentation of the accuracy of the facts, the
20 knowing misrepresentation of the law, or the knowing communication of
21 unauthorized statements regarding leniency.

1 ~~(2)~~(3) “Electronic recording” or “electronically recorded” means an
2 audio and visual recording that is an authentic, accurate, unaltered record of a
3 custodial interrogation, or if law enforcement does not have the current
4 capacity to create a visual recording, an audio recording of the interrogation.

5 (4) “Law enforcement officer” has the same meaning as in 20 V.S.A.
6 § 2351a.

7 (5) “Government agent” means:

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

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

11 ~~(3)~~(6) “Place of detention” means a building or a police station that is a
12 place of operation for the State police, a municipal police department, county
13 sheriff department, or other law enforcement agency that is owned or operated
14 by a law enforcement agency at which persons are or may be questioned in
15 connection with criminal offenses or detained temporarily in connection with
16 criminal charges pending a potential arrest or citation.

17 ~~(4)~~(7) “Statement” means an oral, written, sign language, or nonverbal
18 communication.

19 ~~(b)(1) A custodial interrogation that occurs in a place of detention~~
20 ~~concerning the investigation of a felony or misdemeanor violation of this title~~
21 ~~shall be electronically recorded in its entirety. Unless impracticable, a custodial~~

1 ~~interrogation occurring outside a place of detention concerning the~~
2 ~~investigation of a felony or misdemeanor violation of this title shall be~~
3 ~~electronically recorded in its entirety.~~

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

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

8 (A) ~~exigent circumstances;~~

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

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

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

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

15 (F) ~~equipment malfunction.~~

16 (2) ~~If law enforcement does not make an electronic recording of a~~
17 ~~eustodial interrogation as required by this section, the prosecution shall prove~~
18 ~~by a preponderance of the evidence that one of the exceptions identified in~~
19 ~~subdivision (1) of this subsection applies. If the prosecution does not meet the~~
20 ~~burden of proof, the evidence is still admissible, but the court shall provide~~

1 ~~cautionary instructions to the jury regarding the failure to record the~~
2 ~~interrogation.~~

3 Sec. 2. 13 V.S.A. § 5586 is added to read:

4 § 5586. ELECTRONIC RECORDING OF A CUSTODIAL

5 INTERROGATION

6 (a)(1) A custodial interrogation that occurs in a place of detention
7 concerning the investigation of a felony or misdemeanor violation of this title
8 shall be electronically recorded in its entirety. Unless impracticable, a
9 custodial interrogation occurring outside a place of detention concerning the
10 investigation of a felony or misdemeanor violation of this title shall be
11 electronically recorded in its entirety.

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

14 (b)(1) The following are exceptions to the recording requirement in
15 subsection (a) of this section:

16 (A) exigent circumstances;

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

18 (C) interrogations conducted by other jurisdictions;

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

1 (E) the safety of a person or protection of the person’s identity; and

2 (F) equipment malfunction.

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

10 Sec. 3. 13 V.S.A. § 5587 is added to read:

11 § 5587. JUVENILES

12 (a) During a custodial interrogation of a person under 22 years of age
13 relating to the commission of a criminal offense or delinquent act, a law
14 enforcement officer or government agent shall not employ threats, physical
15 harm, or deception.

16 (b)(1) Any admission, confession, or statement, whether written or oral,
17 made by a person under 22 years of age and obtained in violation of subsection
18 (a) of this section shall be presumed to be involuntary and inadmissible in any
19 proceeding.

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

4 (A) voluntary and not induced by a law enforcement officer's or
5 government agent's use of threats, physical harm, or deception prohibited by
6 subsection (a) of this section; and

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

11 Sec. 4. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL

12 INTERROGATION POLICY

13 (a) On or before October 1, 2023, the Vermont Criminal Justice Council, in
14 consultation with the Office of the Attorney General, shall collaborate and
15 create a model interrogation policy that applies to all persons subject to various
16 forms of interrogation, including the following:

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

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

19 (3) interrogations that are not considered custodial, regardless of
20 location; and

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

3 (b) On or before January 1, 2024, the Vermont Criminal Justice Council, in
4 consultation with stakeholders, including the Agency of Human Services, the
5 Vermont League of Cities and Towns, the Vermont Human Rights
6 Commission, and the Innocence Project, shall update its model interrogation
7 policy to establish one cohesive model policy for law enforcement agencies
8 and constables to adopt, follow, and enforce as part of the agency's or
9 constable's own interrogation policy.

10 Sec. 5. 20 V.S.A. § 2359 is amended to read:

11 § 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

12 COMPLIANCE; GRANT ELIGIBILITY

13 (a) On and after January 1, 2022, a law enforcement agency shall be
14 prohibited from having its law enforcement applicants or officers trained by
15 the Police Academy or from otherwise using the services of the Council if the
16 agency is not in compliance with the requirements for collecting roadside stop
17 data under section 2366 of this chapter, the requirement to report to the Office
18 of Attorney General death or serious bodily injuries under 18 V.S.A.

19 § 7257a(b), or the requirement to adopt, follow, or enforce any policy required
20 under this chapter.

1 (b) On and after April 1, 2024, a law enforcement agency shall be
2 prohibited from receiving grants, or other forms of financial assistance, if the
3 agency is not in compliance with the requirement to adopt, follow, or enforce
4 the model interrogation policy established by the Council pursuant to section
5 2371 of this title.

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

9 Sec. 6. 20 V.S.A. § 2371 is added to read:

10 § 2371. STATEWIDE POLICY; INTERROGATION METHODS

11 (a) As used in this section:

12 (1) “Custodial interrogation” has the same meaning as in 13 V.S.A.
13 § 5585.

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

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

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

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

19 (3) interrogations that are not considered custodial, regardless of
20 location; and

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

3 (c)(1) On or before April 1, 2024, each law enforcement agency and every
4 constable who exercises law enforcement authority pursuant to 24 V.S.A.
5 § 1936a and who is trained in compliance with section 2358 of this title shall
6 adopt, follow, and enforce an interrogation policy that includes each
7 component of the model interrogation policy established by the Council, and
8 each law enforcement officer or constable who exercises law enforcement
9 authority shall comply with the provisions of agency’s or constable’s policy.

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

15 (d) To encourage fair and consistent interrogation methods statewide, the
16 Vermont Criminal Justice Council, in consultation with the Office of the
17 Attorney General, shall review the policies of law enforcement agencies and
18 constables required to adopt a policy pursuant to subsection (c) of this section,
19 to ensure that those policies establish each component of the model policy on
20 or before April 15, 2024. If the Council finds that a policy does not meet each
21 component of the model policy, it shall work with the law enforcement agency

1 or constable to bring the policy into compliance. If, after consultation with its
2 attorney or with the Council, or with both, the law enforcement agency or
3 constable fails to adopt a policy that meets each component of the model
4 policy, that agency or constable shall be deemed to have adopted, and shall
5 follow and enforce, the model policy established by the Council.

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

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

17 (g) Annually, on or before July 1, the Vermont Criminal Justice Council
18 shall report to the **House and Senate Committees on Judiciary** regarding which
19 law enforcement agencies and officers have received training on interrogation
20 methods.

21 Sec. 7. APPROPRIATION

1 The sum of \$150,000.00 is appropriated from the General Fund to the
2 Vermont Criminal Justice Council in fiscal year 2024 for the purpose of
3 creating a Director of Policy position.

4 Sec. 8. EFFECTIVE DATES

5 This act shall take effect on July 1, 2023, except that Secs. 5 (council
6 services contingent on agency compliance; grant eligibility) and 6 (statewide
7 policy; interrogation methods) shall take effect on April 1, 2024.

8 and that after passage the title of the bill be amended to read: “An act
9 relating to law enforcement interrogation policies”

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14 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE