

1 S.153

2 Introduced by Senator Sears

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; innocence protection

6 Statement of purpose: This bill proposes to establish the following innocence
7 protection measures to protect against wrongful criminal convictions:

8 (1) The bill requires law enforcement agencies to make video or audio
9 recordings of custodial interrogations of criminal suspects. A recording is not
10 required if exigent public safety circumstances or any other good cause exists.
11 If a recording is required and not made, statements made during the
12 interrogation are inadmissible in court proceedings.

13 (2) The bill requires biological evidence secured in connection with a
14 criminal case to be retained by the government for the period of time that any
15 person remains incarcerated, on probation or parole, or subject to registration
16 as a sex offender in connection with the case.

17 (3) The bill creates a forensic laboratory oversight commission to oversee
18 and investigate independently the department of public safety's forensic
19 laboratory.

1 An act relating to preventing conviction of innocent persons

2 It is hereby enacted by the General Assembly of the State of Vermont:

3 Sec. 1. 13 V.S.A. § 5565 is added to read:

4 § 5565. PRESERVATION OF EVIDENCE

5 (a)(1) Notwithstanding any other provision of law, any item of physical
6 evidence containing biological material that is secured in connection with a
7 criminal case shall be retained by the government entity having custody of the
8 evidence for the period of time that any person remains incarcerated, on
9 probation or parole, or subject to registration as a sex offender in connection
10 with the case.

11 (2) This section shall apply whether or not a petition for postconviction
12 DNA testing is filed under this subchapter.

13 (3) If a petition is filed under this subchapter:

14 (A) this section shall apply until proceedings on the petition are
15 concluded;

16 (B) the state shall prepare an inventory of the evidence related to the
17 case and submit a copy of the inventory to the petitioner and the court.

18 (4) If evidence is intentionally destroyed after a petition is filed under
19 this subchapter, the court may impose on the responsible party any penalty
20 provided by law.

1 **(b) For purposes of this section, “biological evidence” means:**

2 **(1) a sexual assault forensic examination kit; or**

3 **(2) semen, blood, saliva, hair, skin tissue, or other identified biological**
4 **material.**

5 Sec. 2. 13 V.S.A. chapter 182, subchapter 3 is added to read:

6 **Subchapter 3. Prevention of Wrongful Convictions**

7 **§ 5581. DEFINITIONS**

8 **As used in this chapter:**

9 **(1) “Custodial interrogation” means an interrogation by a law**
10 **enforcement officer or an agent of a law enforcement agency of a person**
11 **suspected of committing a crime from the time the suspect is or should be**
12 **informed of his or her rights to counsel and to remain silent until the**
13 **questioning ends, during which the officer or agent asks a question that is**
14 **reasonably likely to elicit an incriminating response and during which a**
15 **reasonable person in the suspect’s position would believe that he or she is in**
16 **custody or otherwise deprived of his or her freedom of action in any significant**
17 **way.**

18 **(2) “Law enforcement agency” shall have the same meaning as in**
19 **subsection 3019(a) of this title.**

20 **(3) “Law enforcement officer” shall have the same meaning as in**
21 **subdivision 3501(a)(4) of this title.**

1 (4) “Statement” means an oral, written, sign language, or other
2 nonverbal communication.

3 § 5582. RECORDING CUSTODIAL INTERROGATIONS;

4 ADMISSIBILITY OF DEFENDANT’S STATEMENT

5 (a) Unless subsection (b) of this section applies:

6 (1) A law enforcement agency shall make an audio or an audio and
7 visual recording of any custodial interrogation related to the investigation or
8 prosecution of a felony; and

9 (2) A statement made during a custodial interrogation is not admissible
10 in any court proceeding against the person who made the statement unless an
11 audio or an audio and visual recording of the interrogation was made and is
12 available.

13 (b) An audio or an audio and visual recording of a custodial interrogation is
14 not required, and a statement made during a custodial interrogation shall not be
15 inadmissible, if any of the following apply:

16 (1) The person refused to respond or cooperate in the interrogation, and
17 a law enforcement officer or agent of a law enforcement agency made a
18 contemporaneous audio or audio and visual recording or written record of the
19 person’s refusal.

20 (2) The statement was made in response to a question asked as part of
21 the routine processing of the person.

1 (3) The law enforcement officer or agent of a law enforcement agency
2 conducting the interrogation in good faith failed to make an audio or an audio
3 and visual recording of the interrogation because the recording equipment did
4 not function, the officer or agent inadvertently failed to operate the equipment
5 properly, or, without the officer's or agent's knowledge, the equipment
6 malfunctioned or stopped operating.

7 (4) The statement was made spontaneously and not in response to a
8 question by a law enforcement officer or agent of a law enforcement agency.

9 (5) Exigent public safety circumstances existed that prevented the
10 making of an audio or an audio and visual recording or rendered the making of
11 such a recording impracticable.

12 (6) The law enforcement officer conducting the interrogation or the law
13 enforcement officer responsible for observing an interrogation conducted by an
14 agent of a law enforcement agency reasonably believed at the commencement
15 of the interrogation that the offense for which the person was taken into
16 custody or for which the person was being investigated was not a felony.

17 (7) Any other good cause exists for not requiring the recording or the
18 suppression of the statement.

19 (c) A law enforcement officer or agent of a law enforcement agency
20 conducting a custodial interrogation is not required to inform the subject of the

1 interrogation that the officer or agent is making an audio or an audio and visual
2 recording of the interrogation.

3 (d) A defendant's lack of consent to having an audio or an audio and visual
4 recording made of a custodial interrogation does not affect the admissibility in
5 evidence of the recording.

6 (e) An audio or an audio and visual recording of a custodial interrogation
7 shall not be open to public inspection before either of the following occurs:

8 (1) The person interrogated is convicted or acquitted of an offense that
9 is a subject of the interrogation.

10 (2) All criminal investigations and prosecutions to which the
11 interrogation relates are concluded.

12 (f)(1) The department of public safety shall award grants to law
13 enforcement agencies for the purchase, installation, or maintenance of digital
14 recording equipment for making audio or audio and visual recordings of
15 custodial interrogations or for training personnel to use such equipment. The
16 department shall develop criteria and procedures to administer this subsection
17 and may award more than one grant to a law enforcement agency.

18 (2) A law enforcement agency shall include the following information in
19 an application for a grant under this subsection:

20 (A) How the agency proposes to use the grant funds.

1 (B) Procedures to be followed when recording equipment fails to
2 operate correctly, including procedures for reporting failures, using alternative
3 recording equipment, and repairing or replacing the equipment.

4 (C) Procedures for storing recordings of custodial interrogations,
5 including storage format, storage location, and indexing of recordings for
6 retrieval.

7 (D) Measures to prevent or detect tampering with recordings of
8 custodial interrogations.

9 (E) Any other information required by the department.

10 Sec. 3. 20 V.S.A. § 1947 is added to read:

11 § 1947. FORENSIC LABORATORY OVERSIGHT COMMISSION

12 (a) There is created the forensic laboratory oversight commission. The
13 commission shall comprise the following members:

14 (1) one member appointed by the governor;

15 (2) one member of the senate appointed by the committee on
16 committees;

17 (3) one member of the house of representatives appointed by the speaker
18 of the house of representatives;

19 (4) one member who has expertise in the field of forensic science
20 appointed by the attorney general;

1 (5) one member appointed by the board of trustees of the University of
2 Vermont who is a faculty member of the medical school and who specializes in
3 clinical laboratory medicine;

4 (6) one member appointed by the dean of Vermont Law School who is a
5 faculty or staff member and who specializes in criminal justice;

6 (7) one member appointed by the executive director of the department of
7 state's attorneys and sheriffs; and

8 (8) one member appointed by the defender general.

9 (b) Each member of the commission shall serve for a two-year term. The
10 governor shall designate a member to serve as chair of the commission.

11 (c) The commission shall:

12 (1) develop and implement:

13 (A) an accreditation process for all laboratories, facilities, or entities
14 that conduct forensic analyses; and

15 (B) a reporting system through which accredited laboratories,
16 facilities, or entities report professional negligence or misconduct;

17 (2) require all laboratories, facilities, or entities that conduct forensic
18 analyses to:

19 (A) become accredited by the commission; and

20 (B) report professional negligence or misconduct to the commission;

21 and

1 (3) investigate, in a timely manner, any allegation of professional
2 negligence or misconduct that would substantially affect the integrity of the
3 results of a forensic analysis conducted by an accredited laboratory, facility, or
4 entity.

5 (d) An investigation under subdivision (c)(3) of this section:

6 (1) shall include the preparation of a written report that identifies and
7 describes the methods and procedures used to identify:

8 (A) the alleged negligence or misconduct;

9 (B) whether negligence or misconduct occurred;

10 (C) any corrective action required of the laboratory, facility, or entity;

11 and

12 (2) may include one or more of the following:

13 (A) retrospective reexaminations of other forensic analyses
14 conducted by the laboratory, facility, or entity that may involve the same kind
15 of negligence or misconduct; and

16 (B) follow-up evaluations of the laboratory, facility, or entity to
17 review:

18 (i) the implementation of any corrective action required under
19 subdivision (1)(C) of this subsection; or

20 (ii) the conclusion of any retrospective reexamination under
21 subdivision (A) of this subdivision (2).

1 (e) The commission by contract may delegate the duties described by
2 subdivisions (c)(1) and (3) of this section to any person the commission
3 determines to be qualified to assume those duties.

4 (f) As part of the accreditation process developed and implemented under
5 subdivision (c)(1) of this section, the commission may:

6 (1) establish minimum accreditation standards and mandatory training
7 requirements for individuals employed by a laboratory, a facility, or an entity
8 that conducts forensic analyses;

9 (2) validate or approve specific forensic methods or methodologies; and

10 (3) establish procedures, policies, and practices to improve the quality of
11 forensic analyses conducted in this state.

12 (g) The commission may require that a laboratory, a facility, or an entity
13 required to be accredited under this section pay any costs incurred to ensure
14 compliance with this section.

15 (h) The commission shall make all accreditation reviews conducted under
16 subdivision (c)(2) of this section and investigation reports completed under
17 subdivision (d)(1) available to the public. A report completed under
18 subdivision (d)(1) of this section, in a subsequent civil or criminal proceeding,
19 shall not be prima facie evidence of the information or findings contained in
20 the report.

1 (i) For attendance at meetings during adjournment of the general assembly,
2 legislative members of the committee shall be entitled to compensation and
3 reimbursement for expenses as provided in 2 V.S.A. § 406. Members of the
4 committee who are not employees of the state of Vermont shall be reimbursed
5 at the per diem rate set in 32 V.S.A. § 1010.

6 (j) The commission shall submit any report received under subdivision
7 (c)(2) of this section and any report prepared under subdivision (d)(1) to the
8 governor, clerk of the house of representatives, and secretary of the senate not
9 later than December 1 of each even-numbered year.

10 (k) In this section, “forensic analysis” means a medical, chemical,
11 toxicological, ballistic, or other expert examination or test performed on
12 physical evidence, including DNA evidence, for the purpose of determining
13 the connection of the evidence to a criminal action.