

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 297
3 entitled “An act relating to the recording of custodial interrogations in
4 homicide and sexual assault cases” respectfully reports that it has considered
5 the same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 13 V.S.A. chapter 182, subchapter 3 is added to read:

8 Subchapter 3. Law Enforcement Practices

9 § 5581. ELECTRONIC RECORDING OF A CUSTODIAL

10 INTERROGATION

11 (a) As used in this section:

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

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

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

19 (2) “Electronic recording” or “electronically recorded” means an audio
20 and visual recording that is an authentic, accurate, unaltered record of a

1 custodial interrogation, or if law enforcement does not have the capacity to
2 create a visual recording, an audio recording of the interrogation.

3 (3) “Place of detention” means a law enforcement, correctional, or
4 detention facility, or other place where a person is questioned in connection
5 with a criminal charge or delinquent act.

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

8 (b)(1) A custodial interrogation that occurs in a place of detention
9 concerning the investigation of a felony violation of chapter 53 (homicide) or
10 72 (sexual assault) of this title shall be electronically recorded in its entirety.

11 (2) Any electronic recording under this section shall simultaneously
12 record both the interrogator and the person being interrogated.

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

15 (A) exigent circumstances;

16 (B) a person’s refusal to be recorded electronically;

17 (C) interrogations conducted by other jurisdictions;

18 (D) a reasonable belief that the person being interrogated did not
19 commit a felony violation of chapter 53 (homicide) or 72 (sexual assault) of
20 this title and, therefore, an electronic recording of the interrogation was not
21 required;

1 (E) the safety of a person or protection of his or her identity; and

2 (F) equipment malfunction.

3 (2) If the prosecution relies on an exception identified in subdivision (1)
4 of this subsection to justify a failure to make an electronic recording of a
5 custodial interrogation, the prosecution shall prove by a preponderance of the
6 evidence that the exception applies.

7 (d) If the Court admits into evidence a statement made during a custodial
8 interrogation that should have been, but was not, electronically recorded, the
9 Court, upon request of the defendant, shall provide cautionary instructions to
10 the jury.

11 Sec. 2. TASK FORCE

12 (a) Creation. There is created an Interrogation Practices Task Force to plan
13 for the implementation of Sec. 1 of this act, 13 V.S.A. § 5581 (electronic
14 recording of a custodial interrogation).

15 (b) Membership. The Task Force shall be composed of the following eight
16 members:

17 (1) the Commissioner of Public Safety or his or her designee;

18 (2) the Director of the Criminal Justice Training Council or his or her
19 designee;

20 (3) a sheriff appointed by the Vermont Sheriffs' Association;

1 (4) a Chief of Police appointed by the Vermont Association of Chiefs of
2 Police;

3 (5) the Attorney General or his or her designee;

4 (6) the Defender General or his or her designee;

5 (7) the Executive Director of the Department of State's Attorneys and
6 Sheriffs or his or her designee;

7 (8) a representative appointed by The Innocence Project.

8 (c) Powers and duties. The Task Force, in consultation with practitioners
9 and experts in recording interrogations, shall assess the scope and location of
10 the current inventory of recording equipment in Vermont. The Task Force
11 shall develop recommendations, including funding options, regarding how to
12 equip adequately law enforcement with the recording devices necessary to
13 carry out Sec. 1 of this act, 13 V.S.A. § 5581 (electronic recording of a
14 custodial interrogation).

15 (d) Assistance. The Task Force shall have the administrative, technical,
16 and legal assistance of the Department of Public Safety.

17 (e) Report. On or before October 1, 2014, the Task Force shall submit a
18 written report to the Senate and House Committees on Judiciary with its
19 recommendations for implementation of Sec. 1. of this act, 13 V.S.A. § 5581
20 (electronic recording of a custodial interrogation).

1 (f) Meetings.

2 (1) The Commissioner of the Department of Public Safety shall call the
3 first meeting of the Task Force to occur on or before June 1, 2014.

4 (2) The Committee shall select a chair from among its members at the
5 first meeting.

6 (3)(A) A majority of the members of the Task Force shall be physically
7 present at the same location to constitute a quorum.

8 (B) A member may vote only if physically present at the meeting
9 location.

10 (C) Action shall be taken only if there is both a quorum and a
11 majority vote of all members of the Task Force.

12 (4) The Task Force shall cease to exist on December 31, 2014.

13 Sec. 3. EFFECTIVE DATES

14 Sec. 1 shall take effect on July 1, 2015 and the remaining sections shall take
15 effect on passage.

16

17 (Committee vote: _____)

18

19

Senator [surname]

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FOR THE COMMITTEE