

BILL AS INTRODUCED S.297
S.297

Introduced by Senators Sears, Ashe, and Benning

Subject: Crimes and criminal procedure; innocence protection

Statement of purpose of bill as introduced: This bill proposes to require the recording of custodial interrogations in cases of homicide or sexual assault and to establish a task force for making recommendations on how to equip law enforcement for the purpose of compliance with the new recording requirement.

An act relating to the recording of custodial interrogations in homicide and sexual assault cases

It is hereby enacted by the General Assembly of the State of Vermont:
Sec. 1. 13 V.S.A. chapter 182, subchapter 3 of is added to read:

Subchapter 3. Law Enforcement Practices

§ 5581. ELECTRONIC RECORDING OF A CUSTODIAL INTERROGATION

(a) As used in this section:

(1) "Custodial interrogation" means any interrogation:

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

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

(2) "Electronic recording" or "electronically recorded" means an audio and visual recording that is an authentic, accurate, unaltered record of a custodial interrogation. A law enforcement unit that does not have the capacity to create audiovisual recordings of custodial interrogations shall make an audio recording of a custodial interrogation of a criminal suspect.

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

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

(b) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony violation of chapter 53 (homicide) or 72 (sexual assault) of this title shall be electronically recorded in its entirety. The recording shall simultaneously record both the interrogator and the person being interrogated.

(c) Exceptions to the recording requirement shall include: exigent circumstances, an individual's refusal to be electronically recorded, interrogations conducted by other jurisdictions, the belief that recording is not required based on the belief that the individual being interrogated did not commit a felony violation of chapter 53 (homicide) or 72 (sexual assault) of this title, the safety of individual or protection of identity, and equipment malfunction. If the prosecution relies on one of these exceptions to justify a failure to make an electronic recording of a custodial interrogation, the prosecution must prove by a preponderance of the evidence that the exception applies.

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

Sec. 2. TASK FORCE

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

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

- (1) the Commissioner of Public Safety or his or her designee;
- (2) the Director of the Criminal Justice Training Council or his or her designee;
- (3) a Sheriff appointed by the Vermont Sheriffs' Association;
- (4) a Chief of Police appointed by the Vermont Association of Chiefs of Police;
- (5) the Attorney General or his or her designee;
- (6) The Defender General or his or her designee;
- (7) a representative appointed by The Innocence Project; and

(8) a representative appointed by the Vermont Department of State's Attorneys and Sheriffs.

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

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

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

~~(f) Meetings.~~

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

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

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

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

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

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

Sec. 3. EFFECTIVE DATES

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