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H.593

Introduced by Representative Rachelson of Burlington

Referred to Committee on

Date:

Subject: Criminal procedure; law enforcement practices; minors

Statement of purpose of bill as introduced: This bill proposes to require law enforcement to ensure that minors in law enforcement custody consult with legal counsel prior to waiving their right to legal counsel and require all custodial interrogation of minors to be electronically recorded.

An act relating to rights of minors in law enforcement custody

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

Sec. 1. 13 V.S.A. § 5582 is added to read:

§ 5582. CONSULTATION WITH LEGAL COUNSEL FOR MINORS

(a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, law enforcement shall ensure that a minor 17 years of age or younger:

(1) consults with legal counsel in person, by telephone, or by video conference; and

(2) for unemancipated minors, contacts a parent or legal guardian in person, by telephone, or by video conference.

1 (b) After the consultation with legal counsel and contact with a parent or
2 legal guardian, the minor may waive his or her rights and be subject to a
3 custodial interrogation.

4 (c) The court shall treat, except as allowed under subsection (d) of this
5 section, any statements of a minor 17 years of age or younger made during or
6 after a custodial interrogation that does not comply with subsection (a) of this
7 section as inadmissible.

8 (d) This section shall not apply to the admissibility of statements of a minor
9 17 years of age or younger if both of the following criteria are met:

10 (1) The law enforcement officer who questioned the youth reasonably
11 believed the information he or she sought was necessary to protect life or
12 property from an imminent threat.

13 (2) The law enforcement officer's questions were limited to those
14 questions that were reasonably necessary to obtain that information.

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

16 § 5585. ELECTRONIC RECORDING OF A CUSTODIAL
17 INTERROGATION

18 (a) As used in this section:

19 (1) "Custodial interrogation" means any interrogation:

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

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

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

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

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

17 (b)(1) A custodial interrogation that occurs in a place of detention
18 concerning the investigation of a felony violation of chapter 53 (homicide) or
19 72 (sexual assault) of this title, or a custodial interrogation of a minor 17 years
20 of age or younger shall be electronically recorded in its entirety.

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

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

5 (A) exigent circumstances;

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

7 (C) interrogations conducted by other jurisdictions;

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

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

13 (F) equipment malfunction.

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

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on July 1, 2020.