

1 S.285

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 17, 2024

5 Subject: Crimes; innocence protection; custodial interrogation; juveniles

6 Statement of purpose of bill as introduced: This bill proposes to prohibit the
7 use of threats, physical harm, or deception in the tactics employed by a law
8 enforcement officer or government agent during the custodial interrogation of
9 a person under 20 years of age. This bill also proposes that the Vermont
10 Criminal Justice Council creates a model interrogation policy for all law
11 enforcement agencies and constables with law enforcement powers to adopt
12 and incorporate into training that is provided.

13 An act relating to law enforcement interrogation policies

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

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

16 ~~§ 5585. ELECTRONIC RECORDING OF A CUSTODIAL~~

17 ~~INTERROGATION DEFINITIONS~~

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

19 ~~(1) "Custodial interrogation" means any interrogation.~~

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

3 ~~(B) in which a reasonable person in the subject's position would~~
4 ~~consider the person to be in custody, starting from the moment a person should~~
5 ~~have been advised of the person's Miranda rights and ending when the~~
6 ~~questioning has concluded.~~

7 ~~(2) "Deception" includes the knowing communication of false facts~~
8 ~~about evidence, the knowing misrepresentation of the accuracy of the facts, the~~
9 ~~knowing misrepresentation of the law, or the knowing communication of~~
10 ~~unauthorized statements regarding leniency.~~

11 ~~(2)(3) "Electronic recording" or "electronically recorded" means an~~
12 ~~audio and visual recording that is an authentic, accurate, unaltered record of a~~
13 ~~custodial interrogation, or if law enforcement does not have the current~~
14 ~~capacity to create a visual recording, an audio recording of the interrogation.~~

15 ~~(4) "Government agent" means:~~

16 ~~(A) a school resource or safety officer; or~~

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

19 ~~(5) "Law enforcement officer" has the same meaning as in 20 V.S.A.~~

20 ~~§ 2551a.~~

1 ~~(2)(6) “Place of detention” means a building or a police station that is a~~
2 place of operation for the State police, a municipal police department, county
3 sheriff department, or other law enforcement agency that is owned or operated
4 by a law enforcement agency at which persons are or may be questioned in
5 connection with criminal offenses or detained temporarily in connection with
6 criminal charges pending a potential arrest or citation.

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

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

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

17 ~~(e)(1) The following are exceptions to the recording requirement in~~
18 ~~subsection (b) of this section:~~

19 ~~(A) exigent circumstances;~~

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

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

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

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

5 ~~(F) equipment malfunction.~~

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

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

14 § 5586. ELECTRONIC RECORDING OF A CUSTODIAL

15 INTERROGATION

16 (a)(1) A custodial interrogation that occurs in a place of detention
17 concerning the investigation of a felony or misdemeanor violation of this title
18 shall be electronically recorded in its entirety. Unless impracticable, a
19 custodial interrogation occurring outside a place of detention concerning the
20 investigation of a felony or misdemeanor violation of this title shall be
21 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 ~~(b)(1) The following are exceptions to the recording requirement in~~
4 ~~subsection (a) 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 or misdemeanor violation of this title and, therefore, an~~
10 ~~electronic recording of the interrogation was not required;~~

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

12 ~~(F) equipment malfunction.~~

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

1 ~~Sec. 3-13 V.S.A. § 5587 is added to read:~~

2 § 5587. JUVENILES

3 (a) During a custodial interrogation of a person under 20 years of age
4 relating to the commission of a criminal offense or delinquent act, a law
5 enforcement officer or government agent shall not employ threats, physical
6 harm, or deception.

7 (b)(1) Any admission, confession, or statement, whether written or oral,
8 made by a person under 20 years of age and obtained in violation of subsection
9 (a) of this section shall be presumed to be involuntary and inadmissible in any
10 proceeding.

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

14 (A) the admission, confession, or statement was voluntary and not
15 induced by a law enforcement officer's or government agent's use of threats,
16 physical harm, or deception prohibited by subsection (a) of this section; and

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

1 ~~Sec. 4. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL~~

2 INTERROGATION POLICY

3 (a) On or before October 1, 2024, the Vermont Criminal Justice Council, in
4 consultation with the Office of the Attorney General, shall collaborate and
5 create a model interrogation policy that applies to all persons subject to various
6 forms of interrogation, including the following:

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

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

9 (3) interrogations that are not considered custodial, regardless of
10 location; and

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

13 (b) On or before January 1, 2025, the Vermont Criminal Justice Council, in
14 consultation with stakeholders, including the Agency of Human Services, the
15 Vermont League of Cities and Towns, the Vermont Human Rights
16 Commission, and the Innocence Project, shall update its model interrogation
17 policy to establish one cohesive model policy for law enforcement agencies
18 and constables to adopt, follow, and enforce as part of the agency's or
19 constable's own interrogation policy.

1 ~~Sec. 5-20 V.S.A. § 2359 is amended to read:~~

2 § 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

3 COMPLIANCE; GRANT ELIGIBILITY

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

10 § 7257a(b), or the requirement to adopt, follow, or enforce any policy required
11 under this chapter.

12 (b) On and after April 1, 2025, a law enforcement agency shall be
13 prohibited from receiving grants, or other forms of financial assistance, if the
14 agency is not in compliance with the requirement to adopt, follow, or enforce
15 the model interrogation policy established by the Council pursuant to section
16 2371 of this title.

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

1 ~~Sec. 6-20 V.S.A. § 2371 is added to read:~~

2 § 2371. STATEWIDE POLICY; INTERROGATION METHODS

3 (a) As used in this section:

4 (1) "Custodial interrogation" has the same meaning as in 13 V.S.A.

5 § 5585.

6 (2) "Place of detention" has the same meaning as in 13 V.S.A. § 5585.

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

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

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

11 (3) interrogations that are not considered custodial, regardless of

12 location; and

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

15 (c)(1) On or before April 1, 2025, each law enforcement agency and every
16 constable who exercises law enforcement authority pursuant to 24 V.S.A.

17 § 1936a and who is trained in compliance with section 2358 of this title shall
18 adopt, follow, and enforce an interrogation policy that includes each

19 component of the model interrogation policy established by the Council, and

20 each law enforcement officer or constable who exercises law enforcement

1 ~~authority shall comply with the provisions of an agency's or constable's~~
2 ~~policy.~~

3 (2) On or before October 1, 2025, and every even-numbered year
4 thereafter, the Vermont Criminal Justice Council, in consultation with others,
5 including the Office of the Attorney General, the Agency of Human Services,
6 and the Human Rights Commission, shall review and, if necessary, update the
7 model interrogation policy.

8 (d) To encourage fair and consistent interrogation methods statewide, the
9 Vermont Criminal Justice Council, in consultation with the Office of the
10 Attorney General, shall review the policies of law enforcement agencies and
11 constables required to adopt a policy pursuant to subsection (c) of this section
12 to ensure that those policies establish each component of the model policy on
13 or before April 15, 2025. If the Council finds that a policy does not meet each
14 component of the model policy, it shall work with the law enforcement agency
15 or constable to bring the policy into compliance. If, after consultation with its
16 attorney or with the Council, or with both, the law enforcement agency or
17 constable fails to adopt a policy that meets each component of the model
18 policy, that agency or constable shall be deemed to have adopted, and shall
19 follow and enforce, the model policy established by the Council.

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

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

10 (g) Annually, on or before July 1, the Vermont Criminal Justice Council
11 shall report to the House and Senate Committees on Judiciary regarding which
12 law enforcement agencies and officers have received training on interrogation
13 methods.

14 Sec. 7. EFFECTIVE DATES

15 This act shall take effect on July 1, 2024, except that Secs. 5 (council
16 services contingent on agency compliance; grant eligibility) and 6 (statewide
17 ~~policy, interrogation methods) shall take effect on April 1, 2025.~~

Sec. 1. LEGISLATIVE INTENT; LAW ENFORCEMENT INTERROGATION POLICIES

It is the intent of the General Assembly to prevent false confessions and wrongful convictions of individuals subject to law enforcement interrogation, to progress towards a total prohibition of the use of deception in all forms of interrogation, and to ultimately improve trust between Vermont's communities and law enforcement. To achieve these objectives, it is the further intent of the General Assembly to create a minimum set of law enforcement interrogation

standards that incorporate evidence-based best practices by:

(1) prohibiting law enforcement's use of threats, physical harm, and deception during interrogations of all persons; and

(2) mandating that the Vermont Criminal Justice Council develop, adopt, and enforce a statewide model interrogation policy that applies to all Vermont law enforcement agencies and constables exercising law enforcement authority pursuant to 24 V.S.A. § 1936a.

Sec. 2. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL INTERROGATION POLICY

(a) On or before October 1, 2024, the Law Enforcement Advisory Board, in consultation with the Office of the Attorney General, shall collaborate and create a model interrogation policy that applies to all persons subject to various forms of interrogation, including the following:

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

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

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

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

(b) The model interrogation policy shall prohibit the use of physical harm, threats, and deception during custodial interrogations of all persons.

(1) At a minimum, the model interrogation policy shall define "deception" as the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer to a subject of custodial interrogation.

(2) The model interrogation policy shall also address other forms of interrogation involving persons under 20 years of age wherein the use of deception is prohibited.

(c) The model interrogation policy shall prohibit any training of law enforcement officers that employs the use of deception, including the REID Technique of Investigative Interviewing and Advanced Interrogation Techniques.

(d)(1) On or before December 1, 2024, the Law Enforcement Advisory Board shall submit the model interrogation policy to the Joint Legislative Justice Oversight Committee and testify before the Committee.

(2) On or before January 1, 2025, the Vermont Criminal Justice

Council, in consultation with stakeholders, including the Agency of Human Services, the Vermont League of Cities and Towns, and the Vermont Human Rights Commission, shall update the Law Enforcement Advisory Board's model interrogation policy to establish one cohesive model policy for law enforcement agencies and constables to adopt, follow, and enforce as part of the agency's or constable's own interrogation policy.

Sec. 3. 20 V.S.A. § 2359 is amended to read:

§ 2359. COUNCIL SERVICES CONTINGENT ON AGENCY COMPLIANCE; GRANT ELIGIBILITY

(a) On and after January 1, 2022, a law enforcement agency shall be prohibited from having its law enforcement applicants or officers trained by the Police Academy or from otherwise using the services of the Council if the agency is not in compliance with the requirements for collecting roadside stop data under section 2366 of this chapter, the requirement to report to the Office of Attorney General death or serious bodily injuries under 18 V.S.A. § 7257a(b), or the requirement to adopt, follow, or enforce any policy required under this chapter.

(b) On and after April 1, 2025, a law enforcement agency shall be prohibited from receiving grants, or other forms of financial assistance, if the agency is not in compliance with the requirement to adopt, follow, or enforce the model interrogation policy established by the Council pursuant to section 2371 of this title.

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

Sec. 4. 20 V.S.A. § 2371 is added to read:

§ 2371. STATEWIDE POLICY; INTERROGATION METHODS

(a) Definitions. As used in this section:

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

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

(b) Model policy contents.

(1) The Vermont Criminal Justice Council shall establish a model interrogation policy that applies to all persons subject to various forms of interrogation, including the following:

(A) custodial interrogations occurring in a place of detention;

(B) custodial interrogations occurring outside a place of detention;

(C) interrogations that are not considered custodial, regardless of location; and

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

(2) The model interrogation policy shall prohibit the use of physical harm, threats, and deception during custodial interrogations of all persons.

(A) At a minimum, the model interrogation policy shall define “deception” as the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer to a subject of custodial interrogation.

(B) The model interrogation policy shall also address other forms of interrogation involving persons under 20 years of age wherein the use of deception is prohibited.

(3) The model interrogation policy shall prohibit any training of law enforcement officers that employs the use of deception, including the Reid Technique of Investigative Interviewing and Advanced Interrogation Techniques.

(c) Policy adoption and updates.

(1) On or before April 1, 2025, each law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall adopt, follow, and enforce an interrogation policy that includes each component of the model interrogation policy established by the Council, and each law enforcement officer or constable who exercises law enforcement authority shall comply with the provisions of an agency’s or a constable’s policy.

(2) On or before October 1, 2025, and every odd-numbered year thereafter, the Vermont Criminal Justice Council, in consultation with others, including the Office of the Attorney General, the Agency of Human Services, and the Human Rights Commission, shall review and, if necessary, update the model interrogation policy.

(d) Compliance. To encourage fair and consistent interrogation methods statewide, the Vermont Criminal Justice Council, in consultation with the Office of the Attorney General, shall review the policies of law enforcement agencies and constables required to adopt a policy pursuant to subsection (c) of this section to ensure that those policies establish each component of the model policy on or before April 15, 2025. If the Council finds that a policy

does not meet each component of the model policy, it shall work with the law enforcement agency or constable to bring the policy into compliance. If, after consultation with its attorney or with the Council, or with both, the law enforcement agency or constable fails to adopt a policy that meets each component of the model policy, that agency or constable shall be deemed to have adopted and shall follow and enforce the model policy established by the Council.

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

(f) Reporting.

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

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

Sec. 5. EFFECTIVE DATES

This act shall take effect on July 1, 2024, except that Secs. 3 (council services contingent on agency compliance; grant eligibility) and 4 (statewide policy; interrogation methods) shall take effect on April 1, 2025.