

1 S.6

2 An act relating to law enforcement interrogation policies

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

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

5 § 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~

6 ~~INTERROGATION~~ DEFINITIONS

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

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

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

11 (B) in which a reasonable person in the subject’s position would
12 consider the person to be in custody, starting from the moment a person should
13 have been advised of the person’s Miranda rights and ending when the
14 questioning has concluded.

15 (2) “Deception” includes the knowing communication of false facts
16 about evidence, the knowing misrepresentation of the accuracy of the facts, the
17 knowing misrepresentation of the law, or the knowing communication of
18 unauthorized statements regarding leniency.

19 ~~(2)~~(3) “Electronic recording” or “electronically recorded” means an
20 audio and visual recording that is an authentic, accurate, unaltered record of a

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

3 (4) “Law enforcement officer” has the same meaning as in 20 V.S.A.
4 § 2351a.

5 (5) “Government agent” means:

6 (A) a school resource or safety officer; or

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

9 ~~(3)(6)~~ “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)(7)~~ “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 or misdemeanor violation of this title~~
19 ~~shall be electronically recorded in its entirety. Unless impracticable, a custodial~~
20 ~~interrogation occurring outside a place of detention concerning the~~

1 ~~investigation of a felony or misdemeanor violation of this title shall be~~
2 ~~electronically recorded in its entirety.~~

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

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

7 ~~(A) exigent circumstances;~~

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

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

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

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

14 ~~(F) equipment malfunction.~~

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

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

2 § 5586. ELECTRONIC RECORDING OF A CUSTODIAL
3 INTERROGATION

4 (a)(1) A custodial interrogation that occurs in a place of detention
5 concerning the investigation of a felony or misdemeanor violation of this title
6 shall be electronically recorded in its entirety. Unless impracticable, a
7 custodial interrogation occurring outside a place of detention concerning the
8 investigation of a felony or misdemeanor violation of this title shall be
9 electronically recorded in its entirety.

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

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

14 (A) exigent circumstances;

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

16 (C) interrogations conducted by other jurisdictions;

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

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

21 (F) equipment malfunction.

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

8 Sec. 3. 13 V.S.A. § 5587 is added to read:

9 § 5587. JUVENILES

10 (a) During a custodial interrogation of a person under 22 years of age
11 relating to the commission of a criminal offense or delinquent act, a law
12 enforcement officer or government agent shall not employ threats, physical
13 harm, or deception.

14 (b)(1) Any admission, confession, or statement, whether written or oral,
15 made by a person under 22 years of age and obtained in violation of subsection
16 (a) of this section shall be presumed to be involuntary and inadmissible in any
17 proceeding.

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

1 (A) voluntary and not induced by a law enforcement officer's or
2 government agent's use of threats, physical harm, or deception prohibited by
3 subsection (a) of this section; and

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

8 Sec. 4. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL

9 INTERROGATION POLICY

10 (a) On or before October 1, 2023, the Vermont Criminal Justice Council, in
11 consultation with the Office of the Attorney General, shall collaborate and
12 create a model interrogation policy that applies to all persons subject to various
13 forms of interrogation, including the following:

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

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

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

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

20 (b) On or before January 1, 2024, the Vermont Criminal Justice Council, in
21 consultation with stakeholders, including the Agency of Human Services, the

1 Vermont League of Cities and Towns, the Vermont Human Rights
2 Commission, and the Innocence Project, shall update its model interrogation
3 policy to establish one cohesive model policy for law enforcement agencies
4 and constables to adopt, follow, and enforce as part of the agency's or
5 constable's own interrogation policy.

6 Sec. 5. 20 V.S.A. § 2359 is amended to read:

7 § 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

8 COMPLIANCE; GRANT ELIGIBILITY

9 (a) On and after January 1, 2022, a law enforcement agency shall be
10 prohibited from having its law enforcement applicants or officers trained by
11 the Police Academy or from otherwise using the services of the Council if the
12 agency is not in compliance with the requirements for collecting roadside stop
13 data under section 2366 of this chapter, the requirement to report to the Office
14 of Attorney General death or serious bodily injuries under 18 V.S.A.
15 § 7257a(b), or the requirement to adopt, follow, or enforce any policy required
16 under this chapter.

17 (b) On and after April 1, 2024, a law enforcement agency shall be
18 prohibited from receiving grants, or other forms of financial assistance, if the
19 agency is not in compliance with the requirement to adopt, follow, or enforce
20 the model interrogation policy established by the Council pursuant to section
21 2371 of this title.

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

4 Sec. 6. 20 V.S.A. § 2371 is added to read:

5 § 2371. STATEWIDE POLICY; INTERROGATION METHODS

6 (a) As used in this section:

7 (1) “Custodial interrogation” has the same meaning as in 13 V.S.A.
8 § 5585.

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

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

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

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

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

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

18 (c)(1) On or before April 1, 2024, each law enforcement agency and every
19 constable who exercises law enforcement authority pursuant to 24 V.S.A.
20 § 1936a and who is trained in compliance with section 2358 of this title shall
21 adopt, follow, and enforce an interrogation policy that includes each

1 component of the model interrogation policy established by the Council, and
2 each law enforcement officer or constable who exercises law enforcement
3 authority shall comply with the provisions of agency's or constable's policy.

4 (2) On or before October 1, 2024, and every even-numbered year
5 thereafter, the Vermont Criminal Justice Council, in consultation with others,
6 including the Office of the Attorney General, the Agency of Human Services,
7 and the Human Rights Commission, shall review and, if necessary, update the
8 model interrogation policy.

9 (d) To encourage fair and consistent interrogation methods statewide, the
10 Vermont Criminal Justice Council, in consultation with the Office of the
11 Attorney General, shall review the policies of law enforcement agencies and
12 constables required to adopt a policy pursuant to subsection (c) of this section,
13 to ensure that those policies establish each component of the model policy on
14 or before April 15, 2024. If the Council finds that a policy does not meet each
15 component of the model policy, it shall work with the law enforcement agency
16 or constable to bring the policy into compliance. If, after consultation with its
17 attorney or with the Council, or with both, the law enforcement agency or
18 constable fails to adopt a policy that meets each component of the model
19 policy, that agency or constable shall be deemed to have adopted, and shall
20 follow and enforce, the model policy established by the Council.

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

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

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

16 Sec. 7. [Deleted.]

17 Sec. 8. EFFECTIVE DATES

18 This act shall take effect on July 1, 2023, except that Secs. 5 (council
19 services contingent on agency compliance; grant eligibility) and 6 (statewide
20 policy; interrogation methods) shall take effect on April 1, 2024.