

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 6
3 entitled “An act relating to law enforcement interrogation policies” respectfully
4 reports that it has considered the same and recommends that the House propose
5 to the Senate that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 **Sec. 1. LEGISLATIVE INTENT; JUVENILE INTERROGATION; LAW**
8 **ENFORCEMENT INTERROGATION POLICIES**

9 It is the intent of the General Assembly to prevent false confessions and
10 wrongful convictions of individuals subject to law enforcement interrogation to
11 improve trust between Vermont’ communities and law enforcement. To
12 achieve these objectives, it is the further intent of the General Assembly to
13 create a minimum set of law enforcement interrogation standards that
14 incorporate evidence-based best practices by:

15 (1) immediately restricting law enforcement’s use of threats, physical
16 harm, and deception during the custodial interrogation of juveniles; and
17 (2) mandating that the Vermont Criminal Justice Council develop,
18 adopt, and enforce a statewide model interrogation policy that applies to all
19 Vermont law enforcement agencies and constables exercising law enforcement
20 authority pursuant to 24 V.S.A. § 1936.

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

1 § 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~
2 ~~INTERROGATION DEFINITIONS~~

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

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

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

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

11 (2) “Deception” includes the knowing communication of false facts
12 about evidence, the knowing misrepresentation of the accuracy of the facts, the
13 knowing misrepresentation of the law, or the knowing communication of
14 unauthorized statements regarding leniency.

15 ~~(2)~~(3) “Electronic recording” or “electronically recorded” means an
16 audio and visual recording that is an authentic, accurate, unaltered record of a
17 custodial interrogation, or if law enforcement does not have the current
18 capacity to create a visual recording, an audio recording of the interrogation.

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

21 (5) “Government agent” means:

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

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

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

10 ~~(4)~~(7) “Statement” means an oral, written, sign language, or nonverbal
11 communication.

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

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

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

- 1 ~~(A) exigent circumstances;~~
2 ~~(B) a person’s refusal to be electronically recorded;~~
3 ~~(C) interrogations conducted by other jurisdictions;~~
4 ~~(D) a reasonable belief that the person being interrogated did not~~
5 ~~commit a felony or misdemeanor violation of this title and, therefore, an~~
6 ~~electronic recording of the interrogation was not required;~~
7 ~~(E) the safety of a person or protection of the person’s identity; and~~
8 ~~(F) equipment malfunction.~~

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

16 **Sec. 3.** 13 V.S.A. § 5586 is added to read:

17 § 5586. ELECTRONIC RECORDING OF A CUSTODIAL

18 INTERROGATION

19 (a)(1) A custodial interrogation that occurs in a place of detention
20 concerning the investigation of a felony or misdemeanor violation of this title
21 shall be electronically recorded in its entirety. Unless impracticable, a

1 custodial interrogation occurring outside a place of detention concerning the
2 investigation of a felony or misdemeanor violation of this title shall be
3 electronically recorded in its entirety.

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

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

8 (A) exigent circumstances;

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

10 (C) interrogations conducted by other jurisdictions;

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

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

15 (F) equipment malfunction.

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

1 cautionary instructions to the jury regarding the failure to record the
2 interrogation.

3 **Sec. 4.** 13 V.S.A. § 5587 is added to read:

4 § 5587. JUVENILES

5 (a) During a custodial interrogation of a person under ~~22~~ 18 years of age
6 relating to the commission of a criminal offense or delinquent act, a law
7 enforcement officer or government agent shall not employ threats, physical
8 harm, or deception.

9 (b)(1) Any admission, confession, or statement, whether written or oral,
10 made by a person under 22 years of age and obtained ~~in violation of subsection~~
11 ~~(a) of this section~~ by threats, physical harm, or deception shall be presumed to
12 be involuntary and inadmissible in any proceeding.

13 (2) The presumption that any such admission, confession, or statement
14 is involuntary and inadmissible may be overcome if the State proves that the
15 admission, confession, or statement was:

16 (A) voluntary by clear and convincing evidence;

17 (B) ~~and~~ not induced by a law enforcement officer's or government
18 agent's use of threats, physical harm, or deception prohibited by ~~subsection (a)~~
19 ~~of this section~~ by a preponderance of evidence; and

20 (C) any actions of a law enforcement officer or government agent in
21 violation of subsection (a) of this section did not undermine the reliability of

1 the person's admission, confession, or statement and did not create a
2 substantial risk that the person might falsely incriminate themselves reliable by
3 a preponderance of evidence.

4 (c) Notwithstanding 20 V.S.A. chapter 151, subchapter 2, a violation of this
5 section by a law enforcement officer or government agent shall not provide a
6 basis for any sanctions related to a law enforcement officer's certification.

7 **Sec. 5. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL**
8 **INTERROGATION POLICY**

9 (a) On or before ~~October 1, 2023~~ January 1, 2024, the Vermont Criminal
10 Justice Council, in consultation with the Office of the Attorney General and
11 stakeholders, including the Agency of Human Services, the Vermont League
12 of Cities and Towns, the Vermont Human Rights Commission, and the
13 Innocence Project, shall establish one cohesive evidence-based model
14 interrogation policy for law enforcement agencies and constables to adopt,
15 follow, and enforce as part of the agency's or constable's own interrogation
16 policy.

17 (b) The evidence-based model interrogation policy created pursuant to
18 subsection (a) shall apply to all persons subject to various forms of
19 interrogation, including the following:

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

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

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

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

5 ~~(b) On or before January 1, 2024, the Vermont Criminal Justice Council, in~~
6 ~~consultation with stakeholders, including the Agency of Human Services, the~~
7 ~~Vermont League of Cities and Towns, the Vermont Human Rights~~
8 ~~Commission, and the Innocence Project, shall update its model interrogation~~
9 ~~policy to establish one cohesive model policy for law enforcement agencies~~
10 ~~and constables to adopt, follow, and enforce as part of the agency's or~~
11 ~~constable's own interrogation policy.~~

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

13 § 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

14 COMPLIANCE; GRANT ELIGIBILITY

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

1 § 7257a(b), or the requirement to adopt, follow, or enforce any policy required
2 under this chapter.

3 (b) On and after April 1, 2024, a law enforcement agency shall be
4 prohibited from receiving grants, or other forms of financial assistance, if the
5 agency is not in compliance with the requirement to adopt, follow, or enforce
6 the model interrogation policy established by the Council pursuant to section
7 2371 of this title.

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

11 **Sec. 7.** 20 V.S.A. § 2371 is added to read:

12 § 2371. STATEWIDE POLICY; INTERROGATION METHODS

13 (a) As used in this section:

14 (1) “Custodial interrogation” has the same meaning as in 13 V.S.A.
15 § 5585.

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

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

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

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

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

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

5 (c)(1) On or before April 1, 2024, each law enforcement agency and every
6 constable who exercises law enforcement authority pursuant to 24 V.S.A.
7 § 1936a and who is trained in compliance with section 2358 of this title shall
8 adopt, follow, and enforce an interrogation policy that includes each
9 component of the model interrogation policy established by the Council, and
10 each law enforcement officer or constable who exercises law enforcement
11 authority shall comply with the provisions of agency’s or constable’s policy.

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

17 (d) To encourage fair and consistent interrogation methods statewide, the
18 Vermont Criminal Justice Council, in consultation with the Office of the
19 Attorney General, shall review the policies of law enforcement agencies and
20 constables required to adopt a policy pursuant to subsection (c) of this section,
21 to ensure that those policies establish each component of the model policy on

1 or before April 15, 2024. If the Council finds that a policy does not meet each
2 component of the model policy, it shall work with the law enforcement agency
3 or constable to bring the policy into compliance. If, after consultation with its
4 attorney or with the Council, or with both, the law enforcement agency or
5 constable fails to adopt a policy that meets each component of the model
6 policy, that agency or constable shall be deemed to have adopted, and shall
7 follow and enforce, the model policy established by the Council.

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

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

19 (g) Annually, on or before July 1, the Vermont Criminal Justice Council
20 shall report to the House and Senate Committees on Judiciary regarding which

1 law enforcement agencies and officers have received training on interrogation
2 methods.

3 **Sec. 8. APPROPRIATION**

4 The sum of \$150,000.00 is appropriated from the General Fund to the
5 Vermont Criminal Justice Council in fiscal year 2024 for the purpose of
6 creating a Director of Policy position.

7 **Sec. 9. REPEAL**

8 13 V.S.A. § 5587(c) (prohibiting sanctions related to a law enforcement
9 officer's certification) is repealed on July 1, 2024.

10 **Sec. 10. EFFECTIVE DATES**

11 This act shall take effect on July 1, 2023, except that Secs. 6 (council
12 services contingent on agency compliance; grant eligibility) and 7 (statewide
13 policy; interrogation methods) shall take effect on April 1, 2024.

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19 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE