

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
11 and to improve trust between Vermont’s communities and law enforcement.
12 To 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 prohibiting law enforcement’s use of threats and
16 physical harm during all custodial interrogations;

17 (2) immediately restricting law enforcement’s use of deception during
18 the custodial interrogation of juveniles; and

19 (3) mandating that the Vermont Criminal Justice Council develop,
20 adopt, and enforce a statewide model interrogation policy that applies to all

1 Vermont law enforcement agencies and constables exercising law enforcement
2 authority pursuant to 24 V.S.A. § 1936.

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

4 § 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~

5 ~~INTERROGATION~~ DEFINITIONS

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

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

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

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

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

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

1 (4) “Law enforcement officer” has the same meaning as in 20 V.S.A.
2 § 2351a.

3 (5) “Government agent” means:

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

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

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

13 ~~(4)(7)~~ “Statement” means an oral, written, sign language, or nonverbal
14 communication.

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

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

21 § 5586. ELECTRONIC RECORDING OF A CUSTODIAL

1 INTERROGATION

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

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

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

12 (A) exigent circumstances;

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

14 (C) interrogations conducted by other jurisdictions;

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

18 (E) the safety of a person or protection of the person’s identity; and

19 (F) equipment malfunction.

20 (2) If law enforcement does not make an electronic recording of a
21 custodial interrogation as required by this section, the prosecution shall prove

1 by a preponderance of the evidence that one of the exceptions identified in
2 subdivision (1) of this subsection applies. If the prosecution does not meet the
3 burden of proof, the evidence is still admissible, but the court shall provide
4 cautionary instructions to the jury regarding the failure to record the
5 interrogation.

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

7 § 5587. RESTRICTIONS ON CUSTODIAL INTERROGATION

8 (a)(1) During a custodial interrogation of a person relating to the
9 commission of a criminal offense or delinquent act, a law enforcement officer
10 or government agent shall not employ threats or physical harm.

11 (2) Any admission, confession, or statement, whether written or oral,
12 obtained in violation of subdivision (1) of this subsection shall be involuntary
13 and inadmissible in any proceeding.

14 (b)(1) During a custodial interrogation of a person under 18 years of age
15 relating to the commission of a criminal offense or delinquent act, a law
16 enforcement officer or government agent shall not employ deception.

17 (2) Any admission, confession, or statement, whether written or oral,
18 obtained in violation of subdivision (1) of this subsection shall be involuntary
19 and inadmissible in any proceeding.

20 (c)(1) Any admission, confession, or statement, whether written or oral,
21 made by a person 18 through 21 years of age during a custodial interrogation

1 relating to the commission of a criminal offense or delinquent act in which a
2 law enforcement officer or government agent employed deception shall be
3 presumed to be involuntary and inadmissible in any proceeding.

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

7 (A) voluntary and not induced by a law enforcement officer's or
8 government agent's use of deception prohibited by subdivision (c)(1) of this
9 section; and

10 (B) any actions of a law enforcement officer or government agent in
11 violation of subsection (c)(1) of this section did not undermine the reliability of
12 the person's admission, confession, or statement and did not create a
13 substantial risk that the person might falsely incriminate themselves.

14 (d) Notwithstanding 20 V.S.A. chapter 151, subchapter 2, a noncriminal
15 violation of this section by a law enforcement officer or government agent that
16 is neither malicious nor willful shall not provide a basis for any sanctions
17 related to a law enforcement officer's certification.

18 Sec. 5. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL

19 INTERROGATION POLICY

20 (a) Intent. It is the intent of the General Assembly that the Vermont
21 Criminal Justice Council create a model interrogation policy that is grounded

1 in evidence-based best practices to limit and eventually eliminate the use of
2 deception in law enforcement interrogations.

3 (b) Policy development. On or before January 1, 2024, the Vermont
4 Criminal Justice Council, in consultation with the Office of the Attorney
5 General and stakeholders, including the Agency of Human Services, the
6 Vermont League of Cities and Towns, the Vermont Human Rights
7 Commission, and the Innocence Project, shall establish one cohesive evidence-
8 based model interrogation policy for law enforcement agencies and constables
9 to adopt, follow, and enforce as part of the agency’s or constable’s own
10 interrogation policy.

11 (c) Policy contents. The evidence-based model interrogation policy created
12 pursuant to this section shall apply to all persons subject to various forms of
13 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 disorders; and low literacy levels.

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

21 § 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

1 COMPLIANCE; GRANT ELIGIBILITY

2 (a) On and after January 1, 2022, a law enforcement agency shall be
3 prohibited from having its law enforcement applicants or officers trained by
4 the Police Academy or from otherwise using the services of the Council if the
5 agency is not in compliance with the requirements for collecting roadside stop
6 data under section 2366 of this chapter, the requirement to report to the Office
7 of Attorney General death or serious bodily injuries under 18 V.S.A.
8 § 7257a(b), or the requirement to adopt, follow, ~~or~~ and enforce any policy
9 required under this chapter.

10 (b) On and after April 1, 2024, a law enforcement agency shall be
11 prohibited from receiving grants, or other forms of financial assistance, if the
12 agency is not in compliance with the requirement to adopt, follow, and enforce
13 the model interrogation policy established by the Council pursuant to section
14 2371 of this title.

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

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

19 § 2371. STATEWIDE POLICY; INTERROGATION METHODS

20 (a) As used in this section:

1 (1) “Custodial interrogation” has the same meaning as in 13 V.S.A.
2 § 5585.

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

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

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

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

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

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

12 (c)(1) On or before April 1, 2024, each law enforcement agency and every
13 constable who exercises law enforcement authority pursuant to 24 V.S.A.
14 § 1936a and who is trained in compliance with section 2358 of this title shall
15 adopt, follow, and enforce an interrogation policy that includes each
16 component of the model interrogation policy established by the Council, and
17 each law enforcement officer or constable who exercises law enforcement
18 authority shall comply with the provisions of the agency’s or constable’s
19 policy.

20 (2) On or before October 1, 2024, and every even-numbered year
21 thereafter, the Vermont Criminal Justice Council, in consultation with others,

1 including the Office of the Attorney General, the Agency of Human Services,
2 and the Human Rights Commission, shall review and, if necessary, update the
3 model interrogation policy.

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

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

18 (f) Annually, as part of their annual training report to the Council, every
19 law enforcement agency and every constable who exercises law enforcement
20 authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with
21 section 2358 of this title shall report to the Council whether the agency or

1 constable has adopted an interrogation policy in accordance with subsections
2 (c) and (d) of this section. The Vermont Criminal Justice Council shall
3 determine, as part of the Council’s annual certification of training
4 requirements, whether current officers have received training on interrogation
5 methods as required by subsection (e) of this section.

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

10 Sec. 8. VERMONT CRIMINAL JUSTICE COUNCIL; POSITION;

11 APPROPRIATION

12 (a) On July 1, 2023, a new, permanent, classified Director of Policy
13 position is created in the Vermont Criminal Justice Council. In addition to any
14 other duties deemed appropriate by the Council, the Director of Policy shall
15 supervise the development, oversight, and compliance work related to the
16 Council’s internal, external, and State-mandated policies.

17 (b) The sum of \$150,000.00 is appropriated from the General Fund to the
18 Vermont Criminal Justice Council in fiscal year 2024 for the purpose of
19 creating and supporting the Director of Policy position.

20 Sec. 9. REPEAL

1 13 V.S.A. § 5587(d) (prohibiting sanctions related to a law enforcement
2 officer’s certification) is repealed on July 1, 2024.

3 Sec. 10. EFFECTIVE DATES

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

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12 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE