

1 TO THE HONORABLE SENATE:

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

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

8 § 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~
9 INTERROGATION DEFINITIONS

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

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

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

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

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

1 ~~(2)~~(3) “Electronic recording” or “electronically recorded” means an
2 audio and visual recording that is an authentic, accurate, unaltered record of a
3 custodial interrogation, or if law enforcement does not have the current
4 capacity to create a visual recording, an audio recording of the interrogation.

5 (4) “Law enforcement officer” means a person certified as a law
6 enforcement officer pursuant to 20 V.S.A. chapter 151 and a school resource or
7 safety officer.

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

14 ~~(4)~~(6) “Statement” means an oral, written, sign language, or nonverbal
15 communication.

16 ~~(b)(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 custodial~~
19 ~~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 ~~(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.~~

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 18 years of age
11 relating to the commission of a criminal offense or delinquent act, a law
12 enforcement officer shall not employ threats, physical harm, or deception.

13 (b)(1) Any admission, confession, or statement, whether written or oral,
14 made by a person under 18 years of age and obtained in violation of subsection
15 (a) of this section shall be presumed to be involuntary and inadmissible in any
16 proceeding.

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

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

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

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

9 § 2371. STATEWIDE POLICY; INTERROGATION METHODS

10 (a) As used in this section:

11 (1) “Custodial interrogation” has the same meaning as in 13 V.S.A.
12 § 5585.

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

14 (b) On and after January 1, 2025, each law enforcement agency shall adopt,
15 follow, and enforce a model interrogation policy established by the Council,
16 and each law enforcement officer shall comply with the provisions of that
17 policy.

18 (c) The Council shall establish a model interrogation policy that applies to
19 all persons subject to various forms of 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 (d) The Council shall incorporate the provisions of this section into training
6 it provides.

7 Sec. 5. EFFECTIVE DATE

8 This act shall take effect on July 1, 2024.

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE