

H.258

Introduced by Representatives Arsenault of Williston and Rachelson of
Burlington

Referred to Committee on

Date:

Subject: Crimes; criminal procedure; law enforcement; interrogation; juveniles

Statement of purpose of bill as introduced: This bill proposes to prohibit law
enforcement's use of deception during the custodial interrogation of juveniles.

This bill also proposes to require the notification and contact with a juvenile's
parent, guardian, or legal custodian prior to any custodial interrogation.

Additionally, this bill proposes to mandate the Vermont Criminal Justice
Council to adopt a statewide policy implementing a minimum set of standards
for various forms of law enforcement interrogation, including the limitation
and eventual elimination of deception in all forms of interrogation.

An act relating to law enforcement interrogation policies

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

Sec. 1. LEGISLATIVE INTENT; JUVENILE INTERROGATION; 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

1 and to improve trust between Vermont's communities and law enforcement.

2 To achieve these objectives, it is the further intent of the General Assembly to
3 create a minimum set of law enforcement interrogation standards that
4 incorporate evidence-based best practices by:

5 (1) requiring that a juvenile's parent, guardian, or legal custodian obtain
6 notice and contact with the juvenile prior to any custodial interrogation;

7 (2) prohibiting law enforcement's use of threats, physical harm, and
8 deception during custodial interrogations of persons under 22 years of age; and

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

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

14 § 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~

15 INTERROGATION DEFINITIONS

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

17 (1) "Custodial interrogation" means any interrogation:

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

20 (B) in which a reasonable person in the subject's position would
21 consider the person to be in custody, starting from the moment a person should

1 have been advised of the person's Miranda rights and ending when the
2 questioning has concluded.

3 (2) "Deception" includes the knowing communication of false facts
4 about evidence, the knowing misrepresentation of the accuracy of the facts, the
5 knowing misrepresentation of the law, or the knowing communication of
6 unauthorized statements regarding leniency.

7 ~~(2)~~(3) "Electronic recording" or "electronically recorded" means an
8 audio and visual recording that is an authentic, accurate, unaltered record of a
9 custodial interrogation, or if law enforcement does not have the current
10 capacity to create a visual recording, an audio recording of the interrogation.

11 (4) "Government agent" means:

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

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

15 (5) "Interested adult" means a person who is 18 years of age or older
16 and genuinely interested in the welfare of a juvenile subject to custodial
17 interrogation but is completely independent from and dissociated with the
18 prosecution in accordance with *In re E.T.C.*, 141 Vt. 375, 378 (1982).

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

1 ~~(3)~~(7) “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)~~(8) “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. 3. 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. 4. 13 V.S.A. § 5587 is added to read:

2 § 5587. CUSTODIAL INTERROGATION; JUVENILES; INTERESTED

3 ADULT; NOTICE, CONSULTATION, AND PRESENCE

4 (a)(1) Prior to any custodial interrogation of a person under 18 years of age
5 by a law enforcement officer or government agent, the person's interested
6 adult shall be notified of the person's arrest.

7 (2) The interested adult shall have contact with the person's parent or
8 guardian prior to the commencement of any custodial interrogation, if the
9 interested adult is not the person's parent or guardian themselves.

10 (b) The interested adult shall be present during the entirety of any custodial
11 interrogation of a person under 18 years of age.

12 (c) The notification and contact required by subsection (a) of this section
13 shall be effectuated by an in-person meeting or by electronic, telephonic, or
14 videographic conference.

15 Sec. 5. 13 V.S.A. § 5588 is added to read:

16 § 5588. CUSTODIAL INTERROGATION; JUVENILES; PROHIBITIONS;

17 INADMISSIBILITY

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

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

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

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

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

15 Sec. 6. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL

16 INTERROGATION POLICY

17 (a) Intent. It is the intent of the General Assembly that the Vermont
18 Criminal Justice Council create a model interrogation policy that is grounded
19 in evidence-based best practices to limit and eventually eliminate the use of
20 deception in law enforcement interrogations.

1 (b) Policy development. On or before January 1, 2026, the Vermont
2 Criminal Justice Council, in consultation with the Office of the Attorney
3 General and stakeholders, including the Agency of Human Services, the
4 Vermont League of Cities and Towns, the Vermont Human Rights
5 Commission, and the Innocence Project, shall establish one cohesive evidence-
6 based model interrogation policy for law enforcement agencies and constables
7 to adopt, follow, and enforce as part of the agency's or constable's own
8 interrogation policy.

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

18 Sec. 7. 20 V.S.A. § 2359 is amended to read:

19 § 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

20 COMPLIANCE; GRANT ELIGIBILITY

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

9 (b) On and after April 1, 2026, a law enforcement agency shall be
10 prohibited from receiving grants, or other forms of financial assistance, if the
11 agency is not in compliance with the requirement to adopt, follow, and enforce
12 the model interrogation policy established by the Council pursuant to section
13 2372 of this title.

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

17 Sec. 8. 20 V.S.A. § 2372 is added to read:

18 § 2372. STATEWIDE POLICY; INTERROGATION METHODS

19 (a) As used in this section:

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

21 § 5585.

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

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

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

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

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

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

10 (c)(1) On or before April 1, 2026, each law enforcement agency and every
11 constable who exercises law enforcement authority pursuant to 24 V.S.A.
12 § 1936a and who is trained in compliance with section 2358 of this title shall
13 adopt, follow, and enforce an interrogation policy that includes each
14 component of the model interrogation policy established by the Council, and
15 each law enforcement officer or constable who exercises law enforcement
16 authority shall comply with the provisions of the agency’s or constable’s
17 policy.

18 (2) On or before October 1, 2026, and every even-numbered year
19 thereafter, the Vermont Criminal Justice Council, in consultation with others,
20 including the Office of the Attorney General, the Agency of Human Services,

1 and the Human Rights Commission, shall review and, if necessary, update the
2 model interrogation policy.

3 (d) To encourage fair and consistent interrogation methods statewide, the
4 Vermont Criminal Justice Council, in consultation with the Office of the
5 Attorney General, shall review the policies of law enforcement agencies and
6 constables required to adopt a policy pursuant to subsection (c) of this section,
7 to ensure that those policies establish each component of the model policy on
8 or before April 15, 2026. If the Council finds that a policy does not meet each
9 component of the model policy, it shall work with the law enforcement agency
10 or constable to bring the policy into compliance. If, after consultation with its
11 attorney or with the Council, or with both, the law enforcement agency or
12 constable fails to adopt a policy that meets each component of the model
13 policy, that agency or constable shall be deemed to have adopted, and shall
14 follow and enforce, the model policy established by the Council.

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

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

1 (c) and (d) of this section. The Vermont Criminal Justice Council shall
2 determine, as part of the Council's annual certification of training
3 requirements, whether current officers have received training on interrogation
4 methods as required by subsection (e) of this section.

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

9 Sec. 9. VERMONT CRIMINAL JUSTICE COUNCIL; POSITION;

10 APPROPRIATION

11 (a) On July 1, 2025, a new, permanent, classified Director of Policy
12 position is created in the Vermont Criminal Justice Council. In addition to any
13 other duties deemed appropriate by the Council, the Director of Policy shall
14 supervise the development, oversight, and compliance work related to the
15 Council's internal, external, and State-mandated policies.

16 (b) The position of Director of Policy established in subsection (a) of this
17 section shall be subject to a General Fund appropriation in fiscal year 2026.

18 Sec. 10. EFFECTIVE DATES

19 This act shall take effect on July 1, 2025, except that Secs. 4 (juvenile
20 custodial interrogation; notice and contact with parent, custodian, or legal
21 guardian), 5 (juvenile custodial interrogation; prohibitions; inadmissibility),

- 1 7 (council services contingent on Agency compliance; grant eligibility), and
- 2 8 (statewide policy; interrogation methods) shall take effect on April 1, 2026.