

Report of Committee of Conference

S.6

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon Senate Bill, entitled:

S.6. An act relating to law enforcement interrogation policies.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT; 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 and to improve trust between Vermont's communities and law enforcement. To achieve these objectives, it is the further intent of the General Assembly to create a minimum set of law enforcement interrogation standards that incorporate evidence-based best practices by mandating that the Vermont Criminal Justice Council develop, adopt, and enforce a statewide model interrogation policy that applies to all Vermont law enforcement agencies and constables exercising law enforcement authority pursuant to 24 V.S.A. § 1936.

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

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

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

(1) “Custodial interrogation” means any interrogation:

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

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

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

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

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

(5) “Government agent” means:

(A) a school resource or safety officer; or

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

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

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

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

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

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

~~(A) exigent circumstances;~~

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

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

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

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

~~(F) equipment malfunction.~~

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

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

§ 5586. ELECTRONIC RECORDING OF A CUSTODIAL
INTERROGATION

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

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

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

(A) exigent circumstances;

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

(C) interrogations conducted by other jurisdictions;

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

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

(F) equipment malfunction.

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

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

§ 5587. JUVENILES

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

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

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

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

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

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

Sec. 5. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL

INTERROGATION POLICY

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

(b) Policy development. On or before January 1, 2024, the Vermont Criminal Justice Council, in consultation with the Office of the Attorney General and stakeholders, including the Agency of Human Services, the Vermont League of Cities and Towns, the Vermont Human Rights

Commission, and the Innocence Project, shall establish one cohesive evidence-based model interrogation policy for law enforcement agencies and constables to adopt, follow, and enforce as part of the agency’s or constable’s own interrogation policy.

(c) Policy contents. The evidence-based model interrogation policy created pursuant to this section shall apply to all persons subject to various forms of interrogation, including the following:

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

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

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

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

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

§ 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

COMPLIANCE; GRANT ELIGIBILITY

(a) On and after January 1, 2022, a law enforcement agency shall be prohibited from having its law enforcement applicants or officers trained by the Police Academy or from otherwise using the services of the Council if the agency is not in compliance with the requirements for collecting roadside stop data under section 2366 of this chapter, the requirement to report to the Office

of Attorney General death or serious bodily injuries under 18 V.S.A.

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

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

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

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

§ 2371. STATEWIDE POLICY; INTERROGATION METHODS

(a) As used in this section:

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

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

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

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

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

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

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

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

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

(d) To encourage fair and consistent interrogation methods statewide, the Vermont Criminal Justice Council, in consultation with the Office of the Attorney General, shall review the policies of law enforcement agencies and constables required to adopt a policy pursuant to subsection (c) of this section,

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

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

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

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

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

Sec. 8. VERMONT CRIMINAL JUSTICE COUNCIL; POSITION;

APPROPRIATION

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

(b) The position of Director of Policy established in subsection (a) of this section shall be subject to a General Fund appropriation in FY 2024.

Sec. 9. REPEAL

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

Sec. 10. EFFECTIVE DATES

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

COMMITTEE ON THE PART OF
THE SENATE

SEN. RICHARD W. SEARS

SEN. NADER HASHIM

SEN. ROBERT W. NORRIS

COMMITTEE ON THE PART OF
THE HOUSE

REP. MARTIN J. LALONDE

REP. ELA CHAPIN

REP. KEVIN CHRISTIE