

1 **SECTION 2. DEFINITIONS.** In this [act]:

2

3 (1) “Custodial interrogation” means conduct or questioning of a detainee or other

4 ~~conduct~~ by a law enforcement officer which is reasonably likely to elicit an incriminating

5 response from an individual and occurs when a reasonable ~~person~~ individual in the

6 position of the ~~individual~~ detainee would consider that the ~~person~~ individual is in custody, ~~and any~~

7 ~~The term includes a~~ statement made by the ~~individual~~ detainee in response to the

8 ~~questioning or~~ conduct or questioning, from the time the ~~individual~~ detainee should have

9 been advised of ~~the individual’s~~ Miranda rights until the conduct or questioning ~~or~~

10 ~~conduct~~ and responses terminate.

11 (2) “Electronic recording” means an audio or an audio and video recording that

12 accurately records a custodial interrogation.

13 (3) “Law enforcement agency” means a governmental entity of this state or of a

14 political subdivision of this state ~~whose responsibilities include~~ responsible for

15 enforcement of criminal laws or the investigation of suspected criminal activity.

16 (4) “Law enforcement officer” means:

17 (A) an individual employed by a law enforcement agency and, or someone

18 acting at that individual’s behest, where that individual’s whose responsibilities include

19 enforcement of criminal laws or the investigation of suspected criminal activity; or

20 (B) someone acting at the direction of that individual.

21 (5) “Place of detention” means a fixed location under the control of a law

22 enforcement agency where an individual may be questioned about a criminal charge or

allegation of [insert the state’s term for juvenile delinquency]. The term includes a jail, police or sheriff’s station, holding cell, and correctional or detention facility.

(6) “Record” used as a noun means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(67) “Statement” means a communication, whether ~~it is oral, in a record, written, including, but not limited to, e-mail or other electronically transmitted verbal communications;~~ nonverbal, or in sign language.

(7) “Qualified immunity” means immunity from civil suit because of the status of the entity or individual, as determined by the facts and law applicable to the circumstances of the case.

SECTION 3. WHEN ELECTRONIC RECORDING REQUIREMENTD.

[(a)] Except as otherwise provided in ~~Sections 4 through 9~~Sections 5 through 10, a custodial interrogation conducted at a place of detention, including administration of any Miranda warnings to and waiver of Miranda rights by the ~~individual being questioned~~detainee, must be electronically recorded in its entirety by both audio and visual means if the interrogation relates to a [felony][crime][delinquent act][offense] described in 1.

[(b) A custodial interrogation or part of a custodial interrogation that relates to a[an] [felony][crime][delinquent act][offense] described in subsection (a) and takes place outside a place of detention must be electronically recorded.]

1 **SECTION 4. DISCLOSURE NOT REQUIRED.**

2 ~~_____ (ea)~~ A law enforcement officer conducting a custodial interrogation is not
3 required to inform the ~~individual being interrogated~~detainee that an electronic recording
4 is being made of the interrogation.

5 ~~(be)~~ An electronic recording of a custodial interrogation is exempt from:

6 (1) requirements under [~~insert title and section numbers~~cite statute] that
7 ~~otherwise requires~~ that an individual be informed of, or consent to, the recording of the
8 individual's conversations; and

9 (2) disclosure under [~~insert section numbers of~~cite the state's public
10 records disclosure act.]

11 **SECTION 45. EXCEPTION FOR EXIGENT CIRCUMSTANCES.** A

12 custodial interrogation to which Section 3 ~~otherwise applies would apply~~ need not be
13 electronically recorded if recording is not feasible because of exigent circumstances and a
14 law enforcement officer conducting the interrogation electronically records an
15 explanation of the exigent circumstances before conducting the interrogation, if feasible,
16 or as soon as practicable thereafter.

17 **SECTION 56. EXCEPTION ~~FOR SPONTANEOUS OR~~ FOR RESPONSE**

18 ~~TO— ROUTINE BOOKING QUESTIONING STATEMENT.~~ A statement made
19 by an individual need not be electronically recorded if:

20 ~~_____ (1) it is a spontaneous statement made outside the course of a custodial~~
21 ~~interrogation; or~~

1 ~~_____ (2) the statement it~~ is made in response to questioning that is asked
2 routinely during the processing of the arrest of the ~~individual~~detainee and is not expected
3 or intended to elicit an incriminating response.

4 **SECTION 67. EXCEPTION FOR ~~INDIVIDUAL'S~~ REFUSAL TO BE**
5 **ELECTRONICALLY RECORDED.** A custodial interrogation to which Section 3
6 ~~otherwise would apply~~ apply need not be electronically recorded to the extent that if,
7 ~~before the interrogation the individual to be interrogated~~detainee indicates that the
8 ~~individual~~detainee will not participate in the interrogation or a portion of the interrogation
9 ~~only if it is not~~ electronically recorded. ~~and, if feasible, the agreement~~refusal to
10 participate ~~without recording is~~must be electronically recorded. If at any time during the
11 interrogation the detainee indicates that electronic recordation is permissible, recording
12 must begin or resume.

13 ~~_____ SECTION 7. EXCEPTION FOR INTERROGATIONS CONDUCTED BY~~
14 ~~OTHER JURISDICTIONS~~ |

15 ~~[SECTION 8. EXCEPTION BASED ON ACTUAL OR REASONABLE~~
16 **BELIEF OF LAW ENFORCEMENT OFFICER.** A custodial interrogation to which

17 Section 3 ~~applies~~otherwise would apply need not be electronically recorded if:

18 (1) the interrogation occurs when ~~the~~a individual being
19 ~~interrogated~~detainee who is suspected only of ~~a crime~~conduct that does not give rise to a
20 requirement for ~~which an~~ electronic recording ingation is not required, but the individual
21 reveals facts giving a law enforcement officer conducting the interrogation reason to
22 believe that the detainee may have committed a [felony][crime][delinquent act][~~offense~~]
23 ~~has been committed~~ for which Section 3 requires that a custodial interrogation be

1 recorded; however, if feasible, continued custodial interrogation concerning the

2 [felony][crime]~~[delinquent act][offense]~~ revealed must be electronically recorded; ~~or~~

3 (2) the interrogation occurs when no law enforcement officer conducting
4 the interrogation has ~~actual~~ knowledge of facts and circumstances suggesting that the
5 detainee may have committed a [felony][crime]~~[delinquent act][offense]~~ ~~has been~~
6 ~~committed~~ for which Section 3 requires that a custodial interrogation be recorded. ~~]; or~~

7 **SECTION 9. EXCEPTION FOR SAFETY OF INDIVIDUAL OR**
8 **PROTECTION OF IDENTITY.** A custodial interrogation to which Section 3

9 ~~otherwise would apply need not be recorded if (3)-~~ the officer conducting the
10 interrogation or the officer's superior reasonably believes that ~~making an~~ electronic
11 ~~recording~~ might disclose the identity of a confidential informant or will jeopardize
12 the safety of an officer, the ~~individual being interrogated~~ detainee, or another
13 ~~person~~ individual, or risk disclosure of the identity of a confidential informant, and, if
14 feasible, an explanation of the basis ~~offor~~ that belief ~~is~~ must be electronically recorded at
15 the time of the interrogation. If contemporaneous recording of the basis for the belief is
16 not feasible, the recording must be made as soon as practicable after the interrogation is
17 completed.

18 **SECTION 910. EXCEPTION FOR EQUIPMENT MALFUNCTION.**

19 (a) If both audio and video recording ~~ingation~~ of a custodial interrogation are
20 ~~otherwise~~ required by Section 3, recording ~~ingation~~ may be by audio alone ~~is acceptable~~ if a
21 technical problem in video recording ~~ingation~~ occurs which prevents video recodation
22 despite reasonable maintenance efforts on the available recording equipment, and timely
23 repair or replacement is not feasible.

1 [(b) If both audio and video recording of a custodial interrogation are
2 ~~otherwise~~ required by Section 3, recording may be by video alone ~~is acceptable~~ if a
3 technical problem in audio recording occurs which prevents video recording
4 despite reasonable maintenance efforts on the available recording equipment, and timely
5 repair or replacement is not feasible.]

6 ([b][c]) All or part of a custodial interrogation to which Section 3 otherwise
7 would apply need not be recorded to the extent that if recording is not possible
8 because the available electronic recording equipment fails, despite reasonable
9 maintenance efforts, on the available recording equipment and timely repair or
10 replacement is not feasible.

11 **SECTION 101. BURDEN OF PERSUASION.** If the ~~[state]~~prosecuting
12 ~~attorney]~~government relies on an exception in ~~Sections 4 through 9~~Sections 5 through 10
13 to justify a failure to make an electronic recording of a custodial interrogation, the
14 ~~[state]~~prosecuting attorney]government must prove by a preponderance of the evidence
15 that the exception applies.

16 **SECTION 142. OFFICER'S REPORT.**

17 (a) When a law enforcement officer conducts a custodial interrogation [at a place
18 of detention] without complying with Section 3 on the basis that an exception under
19 Sections 4 through 9 applies, the officer shall prepare a ~~[written report]~~electronic
20 ~~record]~~report in a record explaining the reasons for the ~~decision~~noncompliance.

21 (b) A law enforcement officer shall prepare the ~~[report]~~record] required by
22 subsection (a) as soon as practicable after completing the interrogation, even if the officer

1 has made a contemporaneous electronic recording explaining the reasons for not
2 complying with Section 3.

3 (c) The only sanction that may be imposed on a law enforcement officer for
4 failure to comply with subsection (a) or (b) is administrative discipline.

5 **SECTION 1~~2~~3. NOTICE OF INTENT TO ~~RELY ON~~**
6 **~~EXCEPTION~~INTRODUCE UNRECORDED STATEMENT.**

7 (a) If the ~~[state][prosecuting attorney]~~government intends to introduce in its
8 case-in-chief a statement made during a custodial interrogation that does not comply with
9 Section 3, and to rely on an exception in Sections 4 through 9 to justify a failure to make
10 an electronic recording of the interrogation, the ~~[state][prosecuting attorney]~~government
11 shall serve on the defendant written notice of that intent and of any exception upon which
12 the government intends to rely not later than the time specified by [insert cite to
13 appropriate law or rules of procedure other than this [act].

14 **SECTION 1~~4~~3. REMEDIES**

15 (a) Unless the ~~[appropriate court]~~court finds that an exception in Sections 4
16 thorough 9 applies, the court shall consider the failure to make an electronic recording of
17 all or part of a custodial interrogation to which Section 3 applies in determining whether
18 a statement made during the interrogation is inadmissible because it was not voluntarily
19 made [or was not reliable].

20
21 (b) Unless the ~~[appropriate court]~~court finds that an exception in ~~Sections 4~~
22 ~~through 9~~Sections 5 through 10 applies, if the court admits into evidence a statement
23 made during a custodial interrogation that was not electronically recorded in compliance

1 with Section 3, the court shall, upon request of the defendant, give appropriate
2 instructions to the jury: explaining that, although the law required the law enforcement
3 officers to—Those instruction must, at a minimum, explain to the jury that the police did
4 not electronically record the entire interrogation process, though the law required them
5 to they did not do so, and, as a result, that the jury is therefore deprived of the most
6 reliable and complete evidence of what was said and done by each of the participants
7 during the interrogation.

8
9 ~~[(e) Unless the [appropriate court] finds that an exception in Sections 4 through 9~~
10 ~~applies, if the court admits into evidence a statement made during a custodial~~
11 ~~interrogation that was not electronically recorded in compliance with Section 3, the court,~~
12 ~~in an appropriate case, shall admit testimony about factors that may affect the~~
13 ~~voluntariness and reliability of a statement made during a custodial interrogation, if the~~
14 ~~defendant first offers evidence sufficient to permit a finding by a preponderance of the~~
15 ~~evidence of facts relevant to the weight of the statement the full significance of which~~
16 ~~may not be readily apparent to a layperson. In deciding whether to admit expert~~
17 ~~testimony, the court may consider: the vulnerability to suggestion of the individual who~~
18 ~~made the statement; the individual's youth, low intelligence, poor memory, or mental~~
19 ~~retardation; use by a law enforcement officer of sleep deprivation, fatigue, or drug or~~
20 ~~alcohol withdrawal as in interrogation technique; the failure of the statement to lead to~~
21 ~~the discovery of evidence previously unknown to a law enforcement agency or to include~~
22 ~~unusual elements of a crime that have not been made public previously or details of the~~
23 ~~crime not easily guessed and not made public previously; inconsistency between the~~

1 ~~statement and the facts of the crime whether an officer conducting the interrogation~~
2 ~~educated the individual about the facts of the crime rather than eliciting them or~~
3 ~~suggested to the individual that the individual had no choice except to confess; promises~~
4 ~~of leniency; and the absence of corroboration of the statement by objective evidence.~~
5 ~~The court shall permit appropriate expert testimony offered by the prosecution to rebut~~
6 ~~expert testimony introduced by the defendant. Noting in this subsection prohibits the~~
7 ~~court from admitting under law other than this [act] expert testimony about the~~
8 ~~voluntariness or reliability of the statement whether the testimony is offered by the~~
9 ~~defense or the prosecution.]~~

10
11 _____ [(c) Unless the court finds that an exception in Sections 5 through 10 applies, if a
12 statement made during a custodial interrogation that was not electronically recorded as
13 required by Section 3 is admitted into evidence in the prosecution's case-in-chief, upon
14 motion by the defendant and an offer of proof sufficient to permit a finding by a
15 preponderance of the evidence of facts relevant to the weight of the statement, the full
16 significance of which may not be readily apparent to a layperson, the court shall permit
17 the defense to introduce expert testimony regarding factors that may affect the
18 voluntariness and reliability of statements made during custodial interrogation. In
19 deciding whether to admit expert testimony, the court shall consider whether evidence
20 supports the existence in the case of factors that may affect voluntariness and reliability
21 of statements, such as:

22 _____ (1) the detainee's vulnerability to suggestion because of factors such as
23 age, low intelligence, poor memory, or mental retardation;

1 (2) use by a law enforcement officer of interrogation techniques designed
2 to weaken the detainee's ability to resist coercion, such as sleep deprivation, fatigue,
3 [drug or alcohol withdrawal,] suggestion that the detainee had no choice except to
4 confess, or promises of leniency;

5 (3) the absence of facts disclosed in the detainee's statement that indicate
6 knowledge of the crime, such as evidence previously unknown to a law enforcement
7 agency or details or unusual elements of the crime that had not been made public, were
8 not suggested to the detainee by a law enforcement officer involved in the interrogation,
9 and were not easily guessed;

10 (4) any inconsistency between the statement and facts of the crime
11 derived from other sources; or

12 (5) the absence of corroboration of the statement by objective evidence.

13 (d) The court shall permit appropriate expert testimony offered by the
14 prosecution to rebut expert testimony introduced by the defendant under subsection (c).]

15 [(c)[e)] Nothing in this section affects the admissibility of testimony about the
16 voluntariness or reliability of a statement under law of this state other than this [act].

17 [(d)[f)] A law enforcement agency that has adopted and enforced rules
18 reasonably designed to ensure compliance with ~~the terms of~~ this [act] and a law
19 enforcement officer of the agency who has complied with ~~those~~such rules have qualified
20 immunity from ~~any~~ civil ~~suit~~liability for damages allegedly arising from a violation of
21 this ~~Act~~[act].

22 [(e)[g)] ~~A~~Each law enforcement agency in this state shall adopt and enforce
23 regulations providing for administrative discipline of a law enforcement officer found by

1 a court or by a supervisory official of the agency to have violated this [act]. [The rules
2 must provide a range of disciplinary sanctions reasonably designed to promote
3 compliance with this [act].]

4 **[SECTION 154. MONITORING REQUIREMENT.** The [appropriate state
5 agency] shall monitor compliance with ~~the requirement under~~ Section 3 of ~~electronic~~
6 ~~recording of custodial interrogations]~~ this [act]].

7 **SECTION 165. HANDLING AND PRESERVATION OF ELECTRONIC**
8 **RECORDING.** An electronic recording of a custodial interrogation must be identified,
9 accessed, and preserved in compliance with law of this state other than this [act].

10 **SECTION 176. RULES GOVERNING MANNER OF ELECTRONIC**
11 **RECORDING**.

12 (a) ~~[Each]~~law enforcement ~~agencies~~agency in this state~~]~~~~[t]~~The state agency
13 charged with monitoring ~~law enforcement's~~ compliance with this [act] by law
14 enforcement agencies and officers] shall adopt and enforce rules governing the manner in
15 which electronic recordings of custodial interrogations are to be made.

16 (b) The rules adopted under subsection (a) must:

17 (1) encourage law enforcement officers investigating ~~a~~
18 ~~[felon~~iesy][~~crimes~~][delinquent acts][~~offenses~~s] designated in Section 3[(a)] to conduct ~~a~~
19 ~~custodial interrogations~~s only at ~~a~~ places of detention unless it is ~~necessary to do~~
20 ~~otherwise~~not feasible to do so;

21 (2) establish standards for the angle, focus, and field of vision of a camera
22 which reasonably promote accurate recording of a custodial interrogation at a place of
23 detention and reliable assessment of its accuracy and completeness; and

(3) provide, when a custodial interrogation occurs outside a place of detention:

(A) for electronic recording~~ing~~ation at a place of detention of a statement from the ~~individual who was interrogated~~detainee; and

(B) that, as soon as practicable, a law enforcement officer conducting the interrogation shall prepare a written record explaining the decision to interrogate outside a place of detention and summarizing the custodial interrogation process.

SECTION 187. IMPLEMENTING RULES. ~~Each~~Each law enforcement agency ~~subject to his [act] in this state~~]~~]The state agency charged with monitoring compliance with this [act] by law enforcement agencies and officers]~~law enforcement's compliance with this act]~~ shall adopt and enforce rules that implement this [act]. ~~The rules must provide for]~~~~

[SECTION 189. SELF-AUTHENTICATION. Unless the defendant offers evidence sufficient to permit a finding that the recording is not authentic. ~~]~~In any pretrial or post-trial proceeding, an electronic recording of a custodial interrogations~~s~~ is self-authenticating if it is accompanied by a certificate of authenticity by an appropriate law enforcement officer sworn under oath~~, unless the defendant offers evidence sufficient to permit a finding that the recording is not authentic.]~~

SECTION 2019. NO RIGHT TO ELECTRONIC RECORDING~~ING~~ATION
CREATED. This [act] does not create a right of a detainee~~an individual being~~
~~interrogated~~ to ~~require~~ electronic recording~~ing~~ation of a custodial interrogation.

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[No change in boilerplate provisions.]