

SENATE BILL No. 426

By Committee on Judiciary

2-13

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to law enforcement policies; custodial interrogations; deception;
3 amending K.S.A. 2019 Supp. 22-4620 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2019 Supp. 22-4620 is hereby amended to read as
8 follows: 22-4620.(a) All law enforcement agencies in this state shall adopt
9 ~~a detailed, written policy requiring electronic recording of any policies~~
10 *relating to* custodial interrogation conducted at a place of detention,
11 *including:*

12 (1) *Requiring electronic recording of any such detention; and*

13 (2) *prohibiting the use of deception during any such detention.*

14 (b) All local law enforcement agencies in this state shall collaborate
15 with the county or district attorney in the appropriate jurisdiction regarding
16 the contents of written policies required by this section.

17 (c) Policies adopted pursuant to this section shall be made available
18 to all officers of such agency and shall be available for public inspection
19 during normal business hours.

20 (d) (1) Policies adopted pursuant to ~~this section~~ *subsection (a)(1)*
21 *shall be implemented by all Kansas law enforcement agencies on or before*
22 *July 1, 2018.*

23 (2) *Policies adopted pursuant to subsection (a)(2) shall be*
24 *implemented by all Kansas law enforcement agencies on or before July 1,*
25 *2021.*

26 (e) Policies adopted pursuant to this section shall include the
27 following:

28 (1) A requirement that an electronic recording shall be made of an
29 entire custodial interrogation at a place of detention when the interrogation
30 concerns a homicide or a felony sex offense;

31 (2) a requirement that if the ~~defendant~~ *suspect* elects to make or sign
32 a written statement during the course of a custodial interrogation
33 concerning a homicide or a felony sex offense, the making and signing of
34 the statement shall be electronically recorded;

35 (3) a statement of exceptions to the requirement to electronically
36 record custodial interrogations, including, but not limited to:

1 (A) An equipment malfunction preventing electronic recording of the
2 interrogation in its entirety, and replacement equipment is not immediately
3 available;

4 (B) the officer, in good faith, fails to record the interrogation because
5 the officer inadvertently fails to operate the recording equipment properly,
6 or without the officer's knowledge the recording equipment malfunctions
7 or stops recording;

8 (C) the suspect affirmatively asserts the desire to speak with officers
9 without being recorded;

10 (D) multiple interrogations are taking place, exceeding the available
11 electronic recording capacity;

12 (E) the statement is made spontaneously and not in response to an
13 interrogation question;

14 (F) the statement is made during questioning that is routinely asked
15 during the processing of an arrest of a suspect;

16 (G) the statement is made at a time when the officer is unaware of the
17 suspect's involvement in an offense covered by the policy;

18 (H) exigent circumstances make recording impractical;

19 (I) at the time of the interrogation, the officer, in good faith, is
20 unaware of the type of offense involved; and

21 (J) the recording is damaged or destroyed, without bad faith on the
22 part of any person or entity in control of the recording; ~~and~~

23 (4) requirements pertaining to the retention and storage requirements
24 of the electronic recording; *and*

25 (5) *a statement prohibiting the use of deception during a custodial*
26 *interrogation, including, but not limited to:*

27 (A) *False or misleading statements made verbally to a suspect, in the*
28 *presence of a suspect or with knowledge or reasonable anticipation that*
29 *the statement may be heard by a suspect;*

30 (B) *fabricated tangible evidence presented to a suspect or left in a*
31 *place with knowledge or reasonable anticipation that the evidence may be*
32 *seen by a suspect;*

33 (C) *misrepresentations of the suspect's legal rights; or*

34 (D) *false or misleading assurances related to criminal liability or*
35 *sentencing.*

36 (f) (1) During trial, the officer may be questioned pursuant to the
37 rules of evidence regarding any violation of the policies adopted pursuant
38 to this section.

39 (2) Lack of an electronic recording *or evidence of deception* shall not
40 be the sole basis for suppression of the interrogation or confession.

41 (g) Every electronic recording of any statement as required by this
42 section shall be confidential and exempt from the Kansas open records act
43 in accordance with K.S.A. 45-229, and amendments thereto. The

1 provisions of this subsection shall expire on July 1, 2022, unless the
2 legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,
3 and amendments thereto, prior to July 1, 2022.

4 ~~(h) The following words and phrases, As used in this section, are~~
5 ~~defined as follows:~~

6 (1) "Custodial interrogation" means questioning of a person to whom
7 warnings given pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), are
8 required to be given;

9 (2) *"deception" means knowingly creating or reinforcing a false*
10 *impression, including, but not limited to, false impressions as to law, fact,*
11 *value, intention or other state of mind;*

12 (3) *"electronic recording" means audio or audiovisual recording. An*
13 *audiovisual recording is preferred; and*

14 (4) "place of detention" means a fixed location under the control of a
15 Kansas law enforcement agency where individuals are questioned about
16 alleged crimes; ~~and~~

17 ~~(3) "electronic recording" means audio or audiovisual recording. An~~
18 ~~audiovisual recording is preferred.~~

19 ~~(i) This section shall take effect on and after July 1, 2017.~~

20 Sec. 2. K.S.A. 2019 Supp. 22-4620 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.