

SENATE No. 833

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the recording of custodial interrogations.

PETITION OF:

NAME:

Joseph A. Boncore

DISTRICT/ADDRESS:

First Suffolk and Middlesex

SENATE No. 833

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 833) of Joseph A. Boncore for legislation relative to the recording of custodial interrogations. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the recording of custodial interrogations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 263 the General Laws is here by amended by inserting after
2 Section 1a, the following section:-

3 Section 1b. Recording of Custodial Interrogations.

4 (a) Definitions.

5 (1) “Custodial Interrogation” shall mean an interview, which occurs while a person is in
6 custody in a place of detention, involving a law enforcement officer’s questioning that is
7 reasonably likely to elicit incriminating responses.

8 (2) “Place of Detention” shall mean a jail, police or sheriff’s station, holding cell,
9 correctional or detention facility, or other place where persons are held in connection with
10 juvenile or criminal charges.

11 (3) “Electronic Recording” or “Electronically Recorded” shall mean an audio, video, or
12 digital recording that is an authentic, accurate, unaltered record of a custodial interrogation,
13 beginning with a law enforcement officer’s advice of the person’s constitutional rights and
14 ending when the interview is completed.

15 (4) “Statement” shall mean an oral, written, sign language or nonverbal communication.

16 (b) Recordings Required. All statements made by a person during a custodial
17 interrogation relating to a crime shall be electronically recorded.

18 (c) Presumption of Inadmissibility. Except as provided in Sections 4 and 5, all statements
19 made by a person during a custodial interrogation that is not electronically recorded and all
20 statements made thereafter by the person during custodial interrogations, including but not
21 limited to statements that are electronically recorded, shall be presumed inadmissible as evidence
22 against the person in any juvenile or criminal proceeding brought against the person.

23 (d) Overcoming the Presumption of Inadmissibility. The presumption of inadmissibility
24 of statements provided in subsection (c) may be overcome and statements that were not
25 electronically recorded may be admitted into evidence in a juvenile or criminal proceeding
26 brought against the person, if the court finds that:

27 (i) the statements are admissible under applicable rules of evidence; and

28 (ii) the statements are proven by clear and convincing evidence to have been made
29 voluntarily, and are reliable; and

30 (iii) if feasible, law enforcement personnel made a contemporaneous record of the reason
31 for not making an electronic recording of the statements; and

32 (iv) It is proven by clear and convincing evidence that one or more of the following
33 circumstances existed at the time of the Custodial Interrogation:

34 (A) the questions put by law enforcement personnel and the person's responsive
35 statements were a part of the routine processing or "booking" of the person; or

36 (B) before or during a custodial interrogation, the person agreed to respond to the
37 officer's questions, only if his or her statements were not electronically recorded; or

38 (C) the law enforcement officers, in good faith, failed to make an electronic recording of
39 the custodial interrogation because the officers inadvertently failed to operate the recording
40 equipment properly, or without the officers' knowledge the recording equipment malfunctioned
41 or stopped operating; or

42 (D) the custodial interrogation occurred in another jurisdiction and was conducted by
43 officials of that jurisdiction in compliance with the law of that jurisdiction; or

44 (E) the law enforcement officers conducting or observing the custodial interrogation
45 reasonably believed that the making of an electronic recording would jeopardize the safety of the
46 person, a law enforcement officer, another person, or the identity of a confidential informant; or

47 (F) exigent circumstances existed, which prevented the making of, or rendered it not
48 feasible to make, an electronic recording of the custodial interrogation.

49 (e) Exceptions. Statements, whether or not electronically recorded, which are admissible
50 under applicable rules of evidence and are proven by clear and convincing evidence to have been
51 made by the person voluntarily and are reliable may be admitted into evidence in a juvenile or
52 criminal proceeding brought against the person if the court finds:

53 (i) the statements are offered as evidence solely to impeach or rebut the person's
54 testimony and not as substantive evidence; or

55 (ii) the custodial interrogation occurred before a grand jury or court; or

56 (iii) the person agreed to participate in a custodial interrogation after having consulted
57 with his or her lawyer.

58 (f) Handling and Preservation of Electronic Recordings.

59 (i) every electronic recording of a custodial interrogation shall be clearly identified and
60 catalogued by law enforcement personnel.

61 (ii) if a juvenile or criminal proceeding is brought against a person who was the subject of
62 an electronically recorded custodial interrogation, the electronic recording shall be preserved by
63 law enforcement personnel until all appeals, post-conviction, and habeas corpus proceedings are
64 final and concluded or the time within which they must be brought has expired.

65 (iii) if no juvenile or criminal proceeding is brought against a person who has been the
66 subject of an electronically recorded custodial interrogation, the related electronic recording shall
67 be preserved by law enforcement personnel until all applicable statutes of limitations bar
68 prosecution of the person.