

1 S.6

2 Introduced by Senators Sears, Baruth and Lyons

3 Referred to Committee on

4 Date:

5 Subject: Crimes; innocence protection; custodial interrogation; juveniles

6 Statement of purpose of bill as introduced: This bill proposes to prohibit the
7 use of threats, physical harm, deception, or psychologically manipulative
8 interrogation tactics by a law enforcement officer during a custodial
9 interrogation of a person under 18 years of age.

10 An act relating to custodial interrogation of juveniles

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

12 Sec. 1. 13 V.S.A. § 5585a is added to read:

13 § 5585a. DEFINITIONS

14 As used in this subchapter:

15 (1) “Custodial interrogation” means any interrogation:

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

18 (B) in which a reasonable person in the subject’s position would
19 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, misrepresenting the accuracy of the facts, misrepresentation of
5 the law, or unauthorized statements regarding leniency.

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

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

16 (5) “Psychologically manipulative interrogation tactics” include the
17 following:

18 (A) Depriving the person being interrogated of physical or mental
19 health needs, including food, sleep, or use of the restroom.

20 (B) Making direct or indirect promises of leniency, such as indicating
21 the person will be released if the person cooperates.

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

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

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

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

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

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

3 (A) exigent circumstances;

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

5 (C) interrogations conducted by other jurisdictions;

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

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

10 (F) equipment malfunction.

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

18 Sec. 3. 13 V.S.A. § 5587 is added to read:

19 § 5587. JUVENILES

20 (a) During a custodial interrogation of a person under 18 years of age
21 relating to the commission of a criminal offense or delinquent act, a law

1 enforcement officer shall not employ threats, physical harm, deception, or
2 psychologically manipulative interrogation tactics.

3 (b)(1) Any admission, confession, or statement, whether written or oral,
4 made by a person under 18 years of age and obtained in violation of subsection
5 (a) of this section shall be presumed to be involuntary and inadmissible in any
6 proceeding.

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

10 (A) voluntary and not induced by a law enforcement officer's use of
11 threats, physical harm, deception, or psychologically manipulative
12 interrogation tactics prohibited by subsection (a) of this section; and

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

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on July 1, 2024.