

1 S.6

2 Introduced by Senators Sears, Baruth and Lyons

3 Referred to Committee on Judiciary

4 Date: January 6, 2023

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~~

An act relating to law enforcement interrogation policies

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 ~~(C) Using or threatening to use unwarranted enhanced penalties upon~~
2 ~~the person being interrogated or another person or using or threatening to use~~
3 ~~the unwarranted criminalization of another person.~~

4 ~~(D) Providing key incriminating facts about evidence presumed only~~
5 ~~to be known to law enforcement and the perpetrator of the crime that were not~~
6 ~~previously articulated by the person being interrogated, inducing the person to~~
7 ~~adopt these facts.~~

8 ~~(6) "Statement" means an oral, written, sign language, or nonverbal~~
9 ~~communication.~~

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

11 § ~~5585~~ 5586. ELECTRONIC RECORDING OF A CUSTODIAL
12 INTERROGATION

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

14 (1) ~~"Custodial interrogation" means any interrogation:~~

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

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

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 offense, 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 ~~(c)(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.~~

Sec. 1. 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. 2. 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. 3. 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.

Sec. 4. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL
INTERROGATION POLICY

(a) On or before October 1, 2023, the Vermont Criminal Justice Council, in consultation with the Office of the Attorney General, shall collaborate and

create 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 disorder; and low literacy levels.

(b) On or before January 1, 2024, the Vermont Criminal Justice Council, in consultation with stakeholders, including the Agency of Human Services, the Vermont League of Cities and Towns, the Vermont Human Rights Commission, and the Innocence Project, shall update its model interrogation policy to establish one cohesive model policy for law enforcement agencies and constables to adopt, follow, and enforce as part of the agency's or constable's own interrogation policy.

Sec. 5. 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 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, or 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. 6. 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 disorder; 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 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. 7. APPROPRIATION~~

~~The sum of \$150,000.00 is appropriated from the General Fund to the Vermont Criminal Justice Council in fiscal year 2024 for the purpose of creating a Director of Policy position.~~

Sec. 7. [Deleted.]

Sec. 8. 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.