

FINAL BILL REPORT

SHB 1223

C 329 L 21
Synopsis as Enacted

Brief Description: Enacting the uniform electronic recordation of custodial interrogations act.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Peterson, Simmons, Bateman, Sells, Davis, Lovick, Orwall, Ryu, Ortiz-Self, Senn, Dolan, Fitzgibbon, Ormsby, Gregerson, Hackney, Valdez, Macri and Frame; by request of Uniform Law Commission).

House Committee on Public Safety
House Committee on Transportation
Senate Committee on Law & Justice
Senate Committee on Transportation
Senate Committee on Ways & Means

Background:

The federal and state constitutions provide a series of protections for individuals when they interact with law enforcement officers. Those protections include the right to remain silent and the right to counsel during a custodial interrogation. A custodial interrogation generally means any nonroutine questioning, actions, or words by a law enforcement officer designed to elicit an incriminating response from a person after the person has been taken into custody or otherwise been deprived the freedom of action in any significant way.

Prior to engaging in a custodial interrogation of a person, an officer must provide a *Miranda* warning to advise the person of the person's constitutional rights and ability to invoke those rights at any time during the interrogation. A person may waive those rights, provided the waiver is voluntary, knowing, and intelligent. A waiver is voluntary if it is the product of a free and deliberate choice rather than intimidation, coercion, or deception. A waiver is knowing and intelligent if it is made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

If an officer fails to give a person an effective *Miranda* warning or fails to obtain a valid

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waiver prior to engaging in a custodial interrogation, a court may rule any incriminating statements made by the person during the interrogation inadmissible as evidence. Courts consider the totality of the circumstances in evaluating whether a waiver is valid.

The Uniform Law Commission (ULC) is a state-supported, nonpartisan, nonprofit organization that drafts and proposes specific statutory language that may be adopted by states. In 2010 the ULC drafted the Uniform Electronic Recordation of Custodial Interrogations Act, which requires law enforcement to electronically record the entirety of custodial interrogations.

Summary:

Requirements for Electronic Recordings of Custodial Interrogations.

Law enforcement officers must electronically record custodial interrogations if the interrogation is of a juvenile or related to a felony, unless an exception applies. Electronic recordings of qualifying interrogations that take place at a jail, police or sheriff's station, holding cell, or correctional or detention facility must include both audio and video. Electronic recordings of qualifying interrogations at any other place of detention must include audio, at minimum.

An officer who conducts a custodial interrogation of a person at a place of detention without electronically recording it must, as soon as practicable, prepare a written or electronic report that explains the reason for failing to record the interrogation and summarizes the interrogation process and the person's statements.

An officer who conducts a custodial interrogation of a person outside a place of detention must, as soon as practicable, prepare a written or electronic report that explains the decision to interrogate outside a place of detention and summarizes the interrogation process and the person's statements.

Law enforcement agencies must establish and enforce procedures to ensure electronic recordings of custodial interrogations are identifiable, accessible, and preserved throughout the duration of any related criminal cases through final discharge. Law enforcement agencies must adopt and enforce rules that address the following:

- standards for electronic recordings, including standards for the angle, focus, and field of vision for recording devices that reasonably promote accurate recordings and reliable assessment of accuracy and completeness;
- the collection and review of electronic recordings by supervisors;
- the assignment of supervisory responsibilities and a chain of command to promote internal accountability;
- a process for explaining noncompliance with procedures and imposing administrative sanctions for unjustified noncompliance;
- a supervisory system expressly imposing on individuals in specific positions a duty to ensure adequate staffing, education, training, and material resources; and

- a process for monitoring chain of custody.

Exceptions to Requirements for Electronic Recordings.

A prosecuting attorney may introduce a person's statement made during an unrecorded custodial interrogation of a juvenile or related to a felony if one of the following exceptions applies:

- *Exigent Circumstances.* If recording a custodial interrogation is not feasible due to exigent circumstances, the officer conducting the interrogation must electronically record an explanation of the exigent circumstances before conducting the interrogation or as soon as practicable after the interrogation is completed.
- *Refusal to be Recorded.* If a person subject to a custodial interrogation indicates at any point that the person will not participate in the interrogation if it is electronically recorded, the officer must electronically record the person's agreement to participate without further recording if feasible.
- *Interrogations Conducted by Another Jurisdiction.* If a custodial interrogation is conducted in another state in compliance with that state's law or conducted by a federal law enforcement agency in compliance with federal law, the interrogation does not need to be electronically recorded unless the interrogation is conducted with intent to avoid the electronic recording requirements.
- *Belief Recording not Required.* If an officer conducting a custodial interrogation does not have knowledge of facts and circumstances that would reasonably lead an officer to believe the interrogation is of a juvenile or related to a felony, the officer is not required to electronically record the interrogation. If the person being interrogated subsequently reveals facts and circumstances giving the officer reason to believe that the interrogation is of a juvenile or related to a felony, any further interrogation must be electronically recorded if feasible.
- *Safety and Protection.* If an officer conducting a custodial interrogation or the officer's superior reasonably believes that an electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the person being interrogated, or another individual, the officer is not required to electronically record the interrogation. The officer must electronically record an explanation of the belief that an electronic recording would disclose the informant's identity at the time of the interrogation or as soon as practicable after the interrogation is completed.
- *Equipment Malfunctions.* If the electronic recording equipment used during a custodial interrogation fails despite reasonable maintenance of the equipment, and timely repair of the equipment is not feasible, any affected part of the interrogation does not need to be electronically recorded. If technical problems only affect either the audio or video of a recording, the recording may be done by either audio or video alone.

The prosecuting attorney relying on an exception to introduce the person's unrecorded statement must: (1) prove the exception applies by a preponderance of the evidence; and (2) serve the person with written notice of the intent to introduce the statement and identify the exception the attorney intends to rely upon. Unless a court finds that an exception

applies, the court must consider the failure to electronically record all or part of a custodial interrogation in determining whether a statement is admissible. If the court admits an unrecorded statement made during a custodial interrogation into evidence, the court must afford the defendant the opportunity to present to the jury the fact that the statement was not electronically recorded.

Votes on Final Passage:

House	54	43	
Senate	28	20	(Senate amended)
House	56	41	(House concurred)

Effective: July 25, 2021
January 1, 2022 (Sections 1-20)