

SENATE BILL No. 92

By Committee on Judiciary

1-26

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to evidence; videotaping of certain felony, custodial interrogations.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) All law enforcement agencies in this state shall adopt a
6 detailed, written policy requiring electronic recording of any custodial
7 interrogation conducted at a place of detention.

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

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

14 (d) Policies adopted pursuant to this section shall be implemented by
15 all Kansas law enforcement agencies on or before July 1, 2018.

16 (e) Policies adopted pursuant to this section shall include the
17 following:

18 (1) A requirement that an electronic recording shall be made of an
19 entire custodial interrogation at a place in detention when the interrogation
20 concerns homicides and felony sex offenses;

21 (2) a requirement that if the defendant elects to make or sign a written
22 statement during the course of a custodial interrogation, the making and
23 signing of the statement shall be electronically recorded;

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

26 (A) An equipment malfunction preventing electronic recording of the
27 interrogation in its entirety, and replacement equipment is not immediately
28 available;

29 (B) the officer, in good faith, fails to record the interrogation because
30 the officer inadvertently fails to operate the recording equipment properly,
31 or without the officer's knowledge the recording equipment malfunctions
32 or stops recording;

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

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

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

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

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

7 (H) exigent circumstances make recording impractical;

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

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

12 (4) requirements pertaining to the retention and storage requirements
13 of the electronic recording.

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

17 (2) Lack of an electronic recording shall not be the sole basis for
18 suppression of the interrogation or confession.

19 (g) Every electronic recording of any statement as required by this
20 section shall be confidential and exempt from the Kansas open records act
21 in accordance with K.S.A. 45-229, and amendments thereto. The
22 provisions of this subsection shall expire on July 1, 2022, unless the
23 legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,
24 and amendments thereto, prior to July 1, 2022.

25 (h) The following words and phrases, as used in this section, are
26 defined as follows:

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

30 (2) "place of detention" means a fixed location under the control of a
31 Kansas law enforcement agency where individuals are questioned about
32 alleged crimes; and

33 (3) "electronic recording" means audio or audiovisual recording. An
34 audiovisual recording is preferred.

35 Sec. 2. This act shall take effect and be in force from and after its
36 publication in the statute book.