

## SENATE BILL No. 221

By Senator Haley

1-30

---

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to evidence and videotaping of felony interrogations.

11

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

13 Section 1. (a) An oral, written or sign language statement of a de-  
14 fendant made as a result of an interrogation relating to an alleged felony,  
15 as defined by K.S.A. 21-3105, and amendments thereto, shall be pre-  
16 sumed to be inadmissible as evidence against the defendant in any crim-  
17 inal proceeding brought against a defendant unless:

18 (1) A video recording is made of the felony interrogation; and

19 (2) the recording is substantially accurate and not intentionally  
20 altered.

21 (b) Every video recording required under this section must be pre-  
22 served until the defendant's conviction for an offense relating to the state-  
23 ment is final and all direct and habeas corpus appeals are exhausted or  
24 until the prosecution of offenses related to the recorded statement is  
25 barred by law, whichever occurs later.

26 (c) If the court finds by a preponderance of the evidence that the  
27 defendant was subjected to a felony interrogation in violation of this sec-  
28 tion, any statement made by the defendant during or following that in-  
29 terrogation in violation of this section, even if otherwise in compliance  
30 with this section, is presumed to be inadmissible in any criminal pro-  
31 ceeding against the defendant except for the purpose of impeachment.

32 (d) Nothing in this section precludes the admission of a:

33 (1) Statement made by the defendant in open court at the defendant's  
34 trial, before a grand jury or at a preliminary hearing;

35 (2) statement made during a felony interrogation that was not re-  
36 corded as required by this section because video recording was not  
37 feasible;

38 (3) voluntary statement, whether or not the result of felony interro-  
39 gation, that has a bearing on the credibility of the accused as a witness;

40 (4) spontaneous statement that is not made in response to a question;

41 (5) statement made after questioning that is routinely asked during  
42 the processing of the arrest of a suspect;

43 (6) statement made during a felony interrogation that is conducted

1 out-of-state; or

2 (7) statement given at a time when the interrogators are unaware that  
3 an alleged felony has occurred.

4 (e) The state shall bear the burden of proving by a preponderance of  
5 the evidence that one of the exceptions described in subsection (d) is  
6 applicable. Nothing in this section precludes the admission of a statement,  
7 otherwise inadmissible under this section, that is used only for impeach-  
8 ment and not as substantive evidence.

9 (f) The presumption of inadmissibility of a statement made by a sus-  
10 pect at a felony interrogation at a police station or other place of detention  
11 may be overcome by a preponderance of the evidence that the statement  
12 was voluntarily given and is reliable based on the totality of the  
13 circumstances.

14 (g) Any video recording of any statement made by a defendant during  
15 a felony interrogation that is compiled by any law enforcement agency as  
16 required by this section shall be confidential and exempt from the Kansas  
17 open records act in accordance with K.S.A. 45-221, and amendments  
18 thereto.

19 (h) As used in this section, “video recording” means to capture the  
20 visual and audio components of an event in a manner that allows the  
21 event to be observed through that medium.

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