

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 277

Representatives Plummer, West

Cosponsors: Representatives Carruthers, Seitz, Lang, Crossman, Cross, Miller, A.

A BILL

To amend section 2933.81 of the Revised Code to 1
revise the law governing the electronic 2
recording of custodial interrogations. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2933.81 of the Revised Code be 4
amended to read as follows: 5

Sec. 2933.81. (A) As used in this section: 6

(1) "Custodial interrogation" means any interrogation 7
involving a law enforcement officer's questioning that is 8
reasonably likely to elicit incriminating responses and in which 9
a reasonable person in the subject's position would consider 10
self to be in custody, beginning when a person should have been 11
advised of the person's right to counsel and right to remain 12
silent and of the fact that anything the person says could be 13
used against the person, as specified by the United States 14
supreme court in *Miranda v. Arizona* (1966), 384 U.S. 436, and 15
subsequent decisions, and ending when the questioning has 16
completely finished. 17

(2) "Detention facility" has the same meaning as in 18

section 2921.01 of the Revised Code.	19
(3) "Electronic recording" or "electronically recorded"	20
means an audio and visual <u>or audiovisual</u> recording that is an	21
authentic, accurate, unaltered record of a custodial	22
interrogation.	23
(4) "Law enforcement agency" has the same meaning as in	24
section 109.573 of the Revised Code.	25
(5) "Law enforcement vehicle" means a vehicle primarily	26
used by a law enforcement agency or by an employee of a law	27
enforcement agency for official law enforcement purposes.	28
(6) "Local correctional facility" has the same meaning as	29
in section 2903.13 of the Revised Code.	30
(7) "Place of detention" means a jail, police or sheriff's	31
station, holding cell, state correctional institution, local	32
correctional facility, detention facility, or department of	33
youth services facility. "Place of detention" does not include a	34
law enforcement vehicle.	35
(8) "State correctional institution" has the same meaning	36
as in section 2967.01 of the Revised Code.	37
(9) "Statement" means an oral, written, sign language, or	38
nonverbal communication.	39
(B) All <u>Except as provided in division (C) of this</u>	40
<u>section, all</u> statements made by a person who is the suspect of a	41
violation of or possible violation of section 2903.01, 2903.02,	42
or 2903.03, a violation of section 2903.04 or 2903.06 that is a	43
felony of the first or second degree, a violation of section	44
2907.02 or 2907.03, or an attempt to commit a violation of	45
section 2907.02 of the Revised Code during a custodial	46

interrogation in a place of detention ~~are presumed to shall be~~ 47
~~voluntary if the statements made by the person are~~ 48
~~electronically recorded. The person making the statements during~~ 49
~~the electronic recording of the custodial interrogation has the~~ 50
~~burden of proving that the statements made during the custodial~~ 51
~~interrogation were not voluntary. There shall be no penalty~~ 52
~~against the law enforcement agency that employs a law~~ 53
~~enforcement officer if the law enforcement officer fails to~~ 54
~~electronically record as required by this division a custodial~~ 55
~~interrogation.~~ A law enforcement officer's failure to 56
electronically record a custodial interrogation does not create 57
a private cause of action against that law enforcement officer. 58

(C) Division (B) of this section does not apply in any of 59
the following circumstances: 60

(1) The person subject to interrogation requests that the 61
interrogation not be recorded, as long as this request is 62
preserved by electronic recording or in writing. 63

(2) The recording equipment malfunctions. 64

(3) There are exigent circumstances related to public 65
safety. 66

(4) The interrogation occurs outside of the state of Ohio. 67

(5) The statements are made during routine processing or 68
booking. 69

(6) The interrogation occurs when no law enforcement 70
officer conducting the interrogation has any knowledge that 71
would lead an officer to reasonably believe that the individual 72
committed an offense listed in division (B) of this section. If, 73
during a custodial interrogation, the individual reveals 74
information that gives a law enforcement officer reason to 75

believe that such an offense has been committed, continued 76
custodial interrogation concerning that offense shall be 77
electronically recorded, unless any other circumstance listed in 78
division (C) of this section applies. 79

(D) A failure to electronically record a statement as 80
required by this section shall not provide the basis be 81
considered in adjudicating motions to exclude or suppress the 82
statement in any criminal proceeding, delinquent child 83
proceeding, or other legal proceeding. 84

~~(D)~~ (E) If a law enforcement agency fails to electronically 85
record a custodial interrogation as required by division (B) of 86
this section, the court may still admit evidence from the 87
interrogation. If the prosecution establishes by a preponderance 88
of the evidence that one of the circumstances listed in division 89
(C) of this section applies, the court may admit the evidence 90
without a cautionary instruction. If the prosecution does not 91
meet this burden of proof, the court shall provide a cautionary 92
instruction to the jury that the failure to record the 93
interrogation is a violation of state law. 94

(F)(1) Law enforcement personnel shall clearly identify 95
and catalog every electronic recording of a custodial 96
interrogation that is recorded pursuant to this section. 97

(2) If a criminal or delinquent child proceeding is 98
brought against a person who was the subject of a custodial 99
interrogation that was electronically recorded, law enforcement 100
personnel shall preserve the recording until the later of when 101
all appeals, post-conviction relief proceedings, and habeas 102
corpus proceedings are final and concluded or the expiration of 103
the period of time within which such appeals and proceedings 104
must be brought. 105

(3) Upon motion by the defendant in a criminal proceeding 106
or the alleged delinquent child in a delinquent child 107
proceeding, the court may order that a copy of an electronic 108
recording of a custodial interrogation of the person be 109
preserved for any period beyond the expiration of all appeals, 110
post-conviction relief proceedings, and habeas corpus 111
proceedings. 112

(4) If no criminal or delinquent child proceeding is 113
brought against a person who was the subject of a custodial 114
interrogation that was electronically recorded pursuant to this 115
section, law enforcement personnel are not required to preserve 116
the related recording. 117

Section 2. That existing section 2933.81 of the Revised 118
Code is hereby repealed. 119