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Representatives Plummer, West

Cosponsors: Representatives Carruthers, Seitz, Lang, Crossman, Cross, Miller, A., Leland, Galonski, Rogers, Abrams, Boyd, Brown, Crawley, Denson, Ghanbari, Ginter, Green, Hicks-Hudson, Hillyer, Holmes, A., Howse, Ingram, Lanese, Lepore-Hagan, Liston, Manning, D., Miller, J., Miranda, O'Brien, Patterson, Perales, Robinson, Russo, Sheehy, Smith, K., Smith, T., Sobecki, Stein, Swearingen, Sykes, Upchurch, Weinstein, Wilkin

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~~ or audiovisual 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-Except as provided in division (C) of this~~ 40
section, all 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
any person or agency. 59

(C) Division (B) of this section does not apply in any of 60
the following circumstances: 61

(1) The person subject to interrogation requests that the 62
interrogation not be recorded, as long as this request is 63
preserved by electronic recording or in writing. 64

(2) The recording equipment malfunctions. 65

(3) There are exigent circumstances related to public 66
safety. 67

(4) The interrogation occurs outside of the state of Ohio. 68

(5) The statements are made during routine processing or 69
booking. 70

(6) The interrogation occurs when no law enforcement 71

officer conducting the interrogation has reason to believe that 72
the individual attempted to commit, conspired to commit, was 73
complicit in committing, or committed an offense listed in 74
division (B) of this section. 75

(D) A failure to electronically record a statement as 76
required by this section shall not provide the basis may be 77
considered in adjudicating motions to exclude or suppress the 78
statement in any criminal proceeding, delinquent child 79
proceeding, or other legal proceeding. A failure to 80
electronically record a statement as required by this section 81
shall not be the sole basis for excluding or suppressing the 82
statement in any such proceeding. 83

~~(D) (1)~~ (E) If a law enforcement agency fails to 84
electronically record a custodial interrogation as required by 85
division (B) of this section, the court may, but is not required 86
to, still admit evidence from the interrogation. If the court 87
admits evidence from the interrogation under this authority, the 88
court shall do whichever of the following is applicable: 89

(1) If the prosecution establishes by a preponderance of 90
the evidence that one or more of the circumstances listed in 91
division (C) of this section applies, the court shall admit the 92
evidence without a cautionary instruction to the jury. 93

(2) If the prosecution does not establish by a 94
preponderance of the evidence that one or more of the 95
circumstances listed in division (C) of this section applies, 96
the court shall provide a cautionary instruction to the jury 97
that it may consider the failure to record the custodial 98
interrogation in determining the reliability of the evidence. 99

(F) (1) Law enforcement personnel shall clearly identify 100

and catalog every electronic recording of a custodial 101
interrogation that is recorded pursuant to this section. 102

(2) If a criminal or delinquent child proceeding is 103
brought against a person who was the subject of a custodial 104
interrogation that was electronically recorded, law enforcement 105
personnel shall preserve the recording until the later of when 106
all appeals, post-conviction relief proceedings, and habeas 107
corpus proceedings are final and concluded or the expiration of 108
the period of time within which such appeals and proceedings 109
must be brought. 110

(3) Upon motion by the defendant in a criminal proceeding 111
or the alleged delinquent child in a delinquent child 112
proceeding, the court may order that a copy of an electronic 113
recording of a custodial interrogation of the person be 114
preserved for any period beyond the expiration of all appeals, 115
post-conviction relief proceedings, and habeas corpus 116
proceedings. 117

(4) If no criminal or delinquent child proceeding is 118
brought against a person who was the subject of a custodial 119
interrogation that was electronically recorded pursuant to this 120
section, law enforcement personnel are not required to preserve 121
the related recording. 122

Section 2. That existing section 2933.81 of the Revised 123
Code is hereby repealed. 124