

1 ENGROSSED SENATE  
2 BILL NO. 636

By: Daniels and Floyd of the  
Senate

3 and

4 Kannady of the House  
5

6 An Act relating to criminal procedure; defining  
7 terms; requiring law enforcement agencies to adopt  
8 policies related to electronic recording of custodial  
9 interrogations; requiring policies to be made public;  
10 requiring inclusion of certain information in  
11 policies; providing exceptions; providing for  
12 codification; and providing an effective date.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 22 of Title 22, unless there is  
16 created a duplication in numbering, reads as follows:

17 A. As used in this section:

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

20 2. "Electronic recording" means audio or audiovisual recording;  
21 provided, an audiovisual recording shall be used when feasible; and

22 3. "Place of detention" means a fixed location under the  
23 control of a law enforcement agency of this state where individuals  
24 are questioned about alleged crimes.

1       B. All law enforcement agencies in this state, in collaboration  
2 with the county or district attorney in the appropriate  
3 jurisdiction, shall adopt a detailed written policy requiring  
4 electronic recording of a custodial interrogation of an individual  
5 suspected of homicide or a felony sex offense that is conducted at a  
6 place of detention. A policy adopted pursuant to this section shall  
7 be made available to all officers of the law enforcement agency and  
8 shall be available for public inspection during normal business  
9 hours. A policy adopted pursuant to this section shall include the  
10 following:

11       1. A requirement that an electronic recording shall be made of  
12 an entire custodial interrogation of an individual suspected of  
13 homicide or a felony sex offense that is conducted at a place of  
14 detention;

15       2. A requirement that if the defendant elects to make or sign a  
16 written statement during the course of a custodial interrogation  
17 concerning a homicide or a felony sex offense, the making and  
18 signing of the statement shall be electronically recorded;

19       3. Requirements pertaining to the retention and storage of the  
20 electronic recording; and

21       4. A statement of exceptions to the requirement for  
22 electronically recording custodial interrogations under this  
23 section, including, but not limited to:  
24

- a. an equipment malfunction preventing electronic recording of the interrogation in its entirety, and replacement equipment is not immediately available,
- b. the officer, in good faith, fails to record the interrogation because the officer inadvertently fails to operate the recording equipment properly, or without the officer's knowledge the recording equipment malfunctions or stops recording,
- c. the suspect affirmatively asserts the desire to speak with officers without being recorded,
- d. multiple interrogations are taking place simultaneously, exceeding the available electronic recording capacity,
- e. the statement is made spontaneously and not in response to an interrogation question,
- f. the statement is made during questioning that is routinely asked during the processing of an arrest of a suspect,
- g. the statement is made at a time when the officer is unaware of the suspect's involvement in an offense covered by the policy,
- h. exigent circumstances make recording impractical,
- i. at the time of the interrogation, the officer, in good faith, is unaware of the type of offense involved, and

j. the recording is damaged or destroyed, without bad faith on the part of any person or entity in control of the recording.

SECTION 2. This act shall become effective November 1, 2019.

Passed the Senate the 25th day of February, 2019.

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Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2019.

Presiding Officer of the House  
of Representatives