

SENATE FLOOR VERSION

February 19, 2019

SENATE BILL NO. 636

By: Daniels and Floyd of the
Senate

and

Kannady of the House

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

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

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

A. As used in this section:

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

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

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

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

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

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

22 3. Requirements pertaining to the retention and storage of the
23 electronic recording; and
24

1 4. A statement of exceptions to the requirement for
2 electronically recording custodial interrogations under this
3 section, including, but not limited to:

- 4 a. an equipment malfunction preventing electronic
5 recording of the interrogation in its entirety, and
6 replacement equipment is not immediately available,
- 7 b. the officer, in good faith, fails to record the
8 interrogation because the officer inadvertently fails
9 to operate the recording equipment properly, or
10 without the officer's knowledge the recording
11 equipment malfunctions or stops recording,
- 12 c. the suspect affirmatively asserts the desire to speak
13 with officers without being recorded,
- 14 d. multiple interrogations are taking place
15 simultaneously, exceeding the available electronic
16 recording capacity,
- 17 e. the statement is made spontaneously and not in
18 response to an interrogation question,
- 19 f. the statement is made during questioning that is
20 routinely asked during the processing of an arrest of
21 a suspect,
- 22 g. the statement is made at a time when the officer is
23 unaware of the suspect's involvement in an offense
24 covered by the policy,

- 1 h. exigent circumstances make recording impractical,
2 i. at the time of the interrogation, the officer, in good
3 faith, is unaware of the type of offense involved, and
4 j. the recording is damaged or destroyed, without bad
5 faith on the part of any person or entity in control
6 of the recording.

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

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
9 February 19, 2019 - DO PASS
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