

Uniform Electronic Recordation of Custodial Interrogations Act

The Vermont Act requires a custodial interrogation that occurs in a place of detention concerning the investigation of a homicide or sexual assault to be electronically recorded in its entirety.

The Uniform Electronic Recordation of Custodial Interrogations Act requires that law enforcement electronically record the entirety of a custodial interrogation. The Act leaves it to the individual states to decide where and for what types of crimes this mandate applies, as well as the means by which recording must be done. The Act also includes a number of exceptions that excuse non-recording.

Submitted as:

Vermont

Bill/Act: [SB 184](#) (Subchapter 3) / [Uniform Act Text](#)

Status: Signed into law on July 17, 2014.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Electronic Recording of a Custodial Interrogation.*]
- 2 (a) As used in this section:
- 3 (1) “Custodial interrogation” means any interrogation:
- 4 (A) involving questioning by a law enforcement officer that is reasonably likely to elicit
- 5 an incriminating response from the subject; and
- 6 (B) in which a reasonable person in the subject’s position would consider himself or
- 7 herself to be in custody, starting from the moment a person should have been advised
- 8 of his or her Miranda rights and ending when the questioning has concluded.
- 9 (2) “Electronic recording” or “electronically recorded” means an audio and visual recording
- 10 that is an authentic, accurate, unaltered record of a custodial interrogation, or if law
- 11 enforcement does not have the current capacity to create a visual recording, an audio
- 12 recording of the interrogation.
- 13 (3) “Place of detention” means a building or a police station that is a place of operation for
- 14 the State police, a municipal police department, county sheriff department, or other law
- 15 enforcement agency that is owned or operated by a law enforcement agency at which
- 16 persons are or may be questioned in connection with criminal offenses or detained
- 17 temporarily in connection with criminal charges pending a potential arrest or citation.
- 18 (4) “Statement” means an oral, written, sign language, or nonverbal communication.
- 19 (b)
- 20 (1) A custodial interrogation that occurs in a place of detention concerning the investigation
- 21 of a felony violation of [Insert citation – homicide or sexual assault.] shall be
- 22 electronically recorded in its entirety.
- 23 (2) In consideration of best practices, law enforcement shall strive to record simultaneously
- 24 both the interrogator and the person being interrogated.

1 (c)

- 2 (1) The following are exceptions to the recording requirement in subsection (b) of this
3 section:
4 (A) exigent circumstances;
5 (B) a person's refusal to be electronically recorded;
6 (C) interrogations conducted by other jurisdictions;
7 (D) a reasonable belief that the person being interrogated did not commit a felony
8 violation of [Insert citation – homicide or sexual assault.] and, therefore, an electronic
9 recording of the interrogation was not required;
10 (E) the safety of a person or protection of his or her identity; and
11 (F) equipment malfunction.
12 (2) If law enforcement does not make an electronic recording of a custodial interrogation as
13 required by this section, the prosecution shall prove by a preponderance of the evidence
14 that one of the exceptions identified in subdivision (1) of this subsection applies. If the
15 prosecution does not meet the burden of proof, the evidence is still admissible, but the
16 Court shall provide cautionary instructions to the jury regarding the failure to record the
17 interrogation.
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19 Section 2. [*Law Enforcement Advisory Board.*]

- 20 (a) The Law Enforcement Advisory Board (LEAB) shall develop a plan for the
21 implementation of section 1 (electronic recording of a custodial interrogation).
22 (b) The LEAB, in consultation with practitioners and experts in recording interrogations,
23 including the Innocence Project, shall:
24 (1) assess the scope and location of the current inventory of recording equipment in
25 Vermont;
26 (2) develop recommendations, including funding options, regarding how to equip
27 adequately law enforcement with the recording devices necessary to carry out section
28 1 of this act; and
29 (3) develop recommendations for expansion of recordings to questioning by a law
30 enforcement officer that is reasonably likely to elicit an incriminating response from
31 the subject regarding any felony offense.