

HOUSE BILL No. 2593

By Committee on Corrections and Juvenile Justice

2-2

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to evidence; videotaping of certain felony interrogations.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) As used in this section:

6 (1) "Custodial interrogation" means questioning or other conduct by a
7 law enforcement officer which is reasonably likely to elicit an
8 incriminating response from an individual and occurs when reasonable
9 individuals in the same circumstances would consider themselves in
10 custody.

11 (2) "Place of detention" means a fixed location under the control of a
12 law enforcement agency where individuals are questioned about an alleged
13 crime or offense, including, but not limited to, a police or sheriff's station,
14 a courthouse holding facility for defendants in the custody of a jail or
15 prison, a city or county jail or work release facility, a state prison or a state
16 security hospital or a facility operated by the department for aging and
17 disability services for the purposes provided for under K.S.A. 59-29a02 et
18 seq., and amendments thereto.

19 (3) "Video recording" means an audio and video recording that
20 accurately records a custodial interrogation.

21 (b) (1) Except as provided in subsection (c), a video recording shall
22 be made of a custodial interrogation conducted in any place of detention
23 when the interrogation concerns a capital murder, as defined in K.S.A.
24 2015 Supp. 21-5401, and amendments thereto, murder in the first degree,
25 as defined in K.S.A. 2015 Supp. 21-5402, and amendments thereto,
26 murder in the second degree, as defined in K.S.A. 2015 Supp. 21-5403,
27 and amendments thereto, or rape, as defined in K.S.A. 2015 Supp. 21-
28 5503, and amendments thereto. The recording shall include the giving of
29 any required warning, advice of the rights of the individual being
30 questioned and the waiver of any rights by the individual. If the defendant
31 elects to make or sign a written statement during the course of a custodial
32 interrogation, the making and signing of the writing shall be recorded. The
33 recording shall not end until the interrogation is concluded.

34 (c) A video recording of a statement under subsection (b) is not
35 required if the oral, written or sign language statement was made:

36 (1) During an interrogation that was not recorded as required by

- 1 subsection (b) because video recording was not feasible;
- 2 (2) spontaneously and not in response to a question;
- 3 (3) voluntarily, whether or not the result of an interrogation, and the
- 4 statement has a bearing on the credibility of the accused as a witness;
- 5 (4) after questions which are routinely asked during the processing of
- 6 the arrest of a suspect;
- 7 (5) in an interrogation outside the state of Kansas;
- 8 (6) at a time when the interrogators are unaware that an offense
- 9 covered by subsection (b) has occurred; or
- 10 (7) at a time when the person being interrogated is not a suspect for
- 11 the offense to which the statement relates while the person is being
- 12 interrogated for an offense other than an offense specified in subsection
- 13 (b).
- 14 (d) If the court finds by a preponderance of the evidence that the
- 15 defendant was subjected to an interrogation in violation of this section, the
- 16 defendant shall be entitled to a jury instruction on the failure to record the
- 17 interrogation. If the defendant requests such an instruction, the court shall
- 18 instruct the jury that it is the law of Kansas to make a video recording of a
- 19 custodial interrogation of a person suspected of committing the offense
- 20 charged.
- 21 (e) Every video recording required under this section shall be
- 22 preserved until the defendant's conviction for an offense relating to the
- 23 statement is final and all direct appeals are exhausted, or until the
- 24 prosecution of offenses related to the recorded statement is barred by law,
- 25 whichever occurs later.
- 26 (f) Every video recording of any statement as required by this section
- 27 shall be confidential and exempt from the Kansas open records act in
- 28 accordance with K.S.A. 45-221, and amendments thereto. The provisions
- 29 of this subsection shall expire on July 1, 2021, unless the legislature
- 30 reviews and reenacts this provision pursuant to K.S.A. 45-229, and
- 31 amendments thereto, prior to July 1, 2021.
- 32 Sec. 2. This act shall take effect and be in force from and after its
- 33 publication in the statute book.