

SENATE BILL No. 429

By Senator Haley

2-9

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to evidence; videotaping of 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 Kansas department for aging
17 and disability services for the purposes provided for under K.S.A. 59-
18 29a01 et seq., and amendments thereto.

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

21 (b) (1) Effective July 1, 2016, except as provided in subsection (c), if
22 a place of detention is equipped with one or more rooms capable of
23 making a video recording, a video recording shall be made of a custodial
24 interrogation conducted in such place of detention when the interrogation
25 concerns an off-grid felony, a nondrug severity level 1 through 5 felony or
26 a drug severity level 1 felony crime. The recording shall include the giving
27 of any required warning, advice of the rights of the individual being
28 questioned and the waiver of any rights by the individual. If the defendant
29 elects to make or sign a written statement during the course of a custodial
30 interrogation, the making and signing of the writing shall be recorded. The
31 recording shall not end until the interrogation is concluded.

32 (2) Effective July 1, 2017, except as provided in subsection (c), a
33 video recording shall be made of a custodial interrogation conducted in
34 any place of detention when the interrogation concerns an off-grid felony,
35 a nondrug severity level 1 through 5 felony or a drug severity level 1
36 felony crime. The recording shall include the giving of any required

1 warning, advice of the rights of the individual being questioned and the
2 waiver of any rights by the individual. If the defendant elects to make or
3 sign a written statement during the course of a custodial interrogation, the
4 making and signing of the writing shall be recorded. The recording shall
5 not end until the interrogation is concluded.

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

8 (1) During an interrogation that was not recorded as required by
9 subsection (b) because video recording was not feasible;

10 (2) spontaneously and not in response to a question;

11 (3) voluntarily, whether or not the result of an interrogation, and the
12 statement has a bearing on the credibility of the accused as a witness;

13 (4) after questioning that is routinely asked during the processing of
14 the arrest of a suspect;

15 (5) in an interrogation outside the state of Kansas;

16 (6) at a time when the interrogators are unaware that an offense
17 covered by subsection (b) has occurred; or

18 (7) at a time when the person being interrogated is not a suspect for
19 the offense to which the statement relates while the person is being
20 interrogated for an offense other than an offense specified in subsection
21 (b).

22 (d) If the court finds by a preponderance of the evidence that the
23 defendant was subjected to an interrogation in violation of this section, the
24 defendant shall be entitled to a jury instruction on the failure to record the
25 interrogation. If the defendant requests such an instruction, the court shall
26 instruct the jury that it is the law of Kansas to make a video recording of a
27 custodial interrogation of a person suspected of committing the offense
28 charged.

29 (e) Every video recording required under this section shall be
30 preserved until the defendant's conviction for an offense relating to the
31 statement is final and all direct appeals are exhausted, or until the
32 prosecution of offenses related to the recorded statement is barred by law,
33 whichever occurs later.

34 (f) Every video recording of any statement as required by this section
35 shall be confidential and exempt from the Kansas open records act in
36 accordance with K.S.A. 45-221, and amendments thereto. The provisions
37 of this subsection shall expire on July 1, 2021, unless the legislature
38 reviews and reenacts this provision pursuant to K.S.A. 45-229, and
39 amendments thereto, prior to July 1, 2021.

40 Sec. 2. This act shall take effect and be in force from and after its
41 publication in the statute book.