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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. West and Plummer

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SUMMARY

- Except in limited circumstances, requires the recording of all statements made by a suspect of one of several specified criminal offenses during a custodial interrogation in a place of confinement.
- Allows a court to consider any failure to electronically record a statement in adjudicating motions to exclude or suppress the statement.
- Allows the court to admit evidence from an interrogation despite a violation of the bill's requirement, but, unless subject to an exception, requires the court to provide a cautionary instruction to the jury.

DETAILED ANALYSIS

Electronic recording of custodial interrogation

Required for certain suspects

Unless contained in one of the bill's exceptions (see "**Exceptions**," below), the bill requires every statement made in a custodial interrogation in a place of detention to be electronically recorded if the statement is made by a person who is suspected of any of the following offenses:

- Aggravated murder, murder, or voluntary manslaughter;
- A first or second degree felony violation of involuntary manslaughter or aggravated vehicular homicide;
- Rape, attempted rape, or sexual battery.

The bill replaces a provision of current law that does not require electronic recording of those statements *per se*, but appears to treat those electronic recordings favorably by placing the burden on the person making recorded statements to prove that the statements were not

voluntary. The bill also eliminates a prohibition against penalizing a law enforcement agency that employs a law enforcement officer who fails to electronically record statements made in a custodial interrogation in a place of detention by a person who is suspected of one of the above offenses.[1]

Exceptions

Electronic recording is not required in any of the following circumstances:[2]

1. The person subject to interrogation requests that the interrogation not be recorded, as long as this request is preserved by electronic recording or in writing.
2. The recording equipment malfunctions.
3. There are exigent circumstances related to public safety.
4. The interrogation occurs outside Ohio.
5. The statements are made during routine processing or booking.
6. The statements are made spontaneously and not in response to interrogation.
7. The interrogation occurs when no law enforcement officer conducting the interrogation has reason to believe that the individual attempted to commit, conspired to commit, was complicit in committing, or committed an offense specified above.

Consequences of failure to record

Failure to electronically record a statement as required by the bill may be considered in adjudicating motions to exclude or suppress the statement in any criminal proceeding, delinquent child proceeding, or other legal proceeding, but must not be the sole basis for excluding or suppressing those statements.[3] If a law enforcement agency fails to record a custodial interrogation as required by the bill, the court may still admit evidence from the interrogation. If the court admits evidence from the interrogation under this authority and the prosecution establishes, by a preponderance of the evidence, that one of the circumstances in "**Exceptions**," above applies, the court must admit the evidence without a cautionary instruction. If the court admits evidence from the interrogation under this authority and the prosecution *does not* meet the burden of proof, the court must provide a cautionary instruction to the jury that it may consider the failure to record the custodial interrogation in determining the reliability of the evidence.[4]

[1] R.C. 2933.81(B).

[2] R.C. 2933.81(C).

[3] R.C. 2933.81(D).

[4] R.C. 2933.81(E).

A failure to electronically record a custodial interrogation as required by the bill does not create a private cause of action against any person or agency. This expands the current law private liability exclusion that applies only to actions against a law enforcement officer.[5]

Definitions

The following terms are used in the bill, and are defined in continuing law, with any modifications noted below:[6]

A **custodial interrogation** is any interrogation involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider self to be in custody, beginning when a person should have been advised of the person's right to counsel and right to remain silent and of the fact that anything the person says could be used against the person, as specified in the landmark *Miranda v. Arizona*[7] Supreme Court case and subsequent decisions, and ending when the questioning has completely finished.

A **detention facility** is a public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under federal law.[8]

Electronic recording or **electronically recorded** means an audio or audiovisual recording that is an authentic, accurate, unaltered record of a custodial interrogation. The bill modifies the definition to apply to audio or audiovisual recordings, rather than to only "audio and visual" recordings under current law.

A **law enforcement agency** is a police department, the office of a sheriff, the state highway patrol, a county prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.[9]

A **place of detention** is a jail, police or sheriff's station, holding cell, state correctional institution, local correctional facility, detention facility, or Department of Youth Services facility, but a law enforcement vehicle is not a place of detention.

A **statement** is an oral, written, sign language, or nonverbal communication.

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[5] R.C. 2933.81(B).

[6] R.C. 2933.81(A).

[7] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[8] By reference to R.C. 2921.01, not in the bill.

[9] By reference to R.C. 109.573, not in the bill.

HISTORY

Action	Date
Introduced	02-03-21

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