

B-Engrossed
House Bill 3242

Ordered by the Senate June 2
Including House Amendments dated April 21 and Senate Amendments
dated June 2

Sponsored by Representatives GORSEK, PILUSO, BYNUM; Senator MANNING JR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires peace officer to electronically record custodial interview with person under 18 years of age when investigating *[person]* felony, or allegation that person under 18 years of age committed act that if committed by adult would constitute *[person]* felony. Requires jury instruction on, or court consideration of, superior reliability of recorded statements if state offers testimony concerning unrecorded statement as evidence in certain proceedings. Requires law enforcement agency to store copy of interview for specified length of time. Requires district attorney to provide copy of recording of interview as discovery.

A BILL FOR AN ACT

1
2 Relating to law enforcement interviews of persons under 18 years of age; creating new provisions;
3 and amending ORS 133.400.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 133.400 is amended to read:

6 133.400. (1) A custodial interview conducted by a peace officer in a law enforcement facility
7 shall be electronically recorded if the interview is conducted:

8 (a) In connection with an investigation into aggravated murder as defined in ORS 163.095 or a
9 crime listed in ORS 137.700 or 137.707[.]; or

10 (b) **With a person under 18 years of age in connection with an investigation into a felony,**
11 **or an allegation that the person being interviewed committed an act that, if committed by**
12 **an adult, would constitute a felony.**

13 (2) Subsection (1) of this section does not apply to:

14 (a) A statement made before a grand jury;

15 (b) A statement made on the record in open court;

16 (c) A custodial interview conducted in another state in compliance with the laws of that state;

17 (d) A custodial interview conducted by a federal law enforcement officer in compliance with the
18 laws of the United States;

19 (e) A statement that was spontaneously volunteered and did not result from a custodial inter-
20 view;

21 (f) A statement made during arrest processing in response to a routine question;

22 (g) A law enforcement agency that employs five or fewer peace officers;

23 (h) A custodial interview conducted in connection with an investigation carried out by a cor-
24 rections officer, a youth corrections officer or a staff member of the Oregon State Hospital in the
25 performance of the officer's or staff member's official duties of treatment, custody, control or

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 supervision of individuals committed to or confined in a place of incarceration or detention; or

2 (i) A custodial interview for which the state demonstrates good cause for the failure to elec-
3 tronically record the interview.

4 (3)(a) If the state offers an unrecorded statement made under the circumstances described in
5 subsection (1)(a) of this section in a criminal proceeding alleging the commission of aggravated
6 murder or a crime listed in ORS 137.700 or 137.707, **or under the circumstances described in**
7 **subsection (1)(b) of this section in a criminal proceeding alleging the commission of a felony,**
8 and the state is unable to demonstrate, by a preponderance of the evidence, that an exception de-
9 scribed in subsection (2) of this section applies, upon the request of the defendant, the court shall
10 instruct the jury regarding the legal requirement described in subsection (1) of this section and the
11 superior reliability of electronic recordings when compared with testimony about what was said and
12 done.

13 (b) The court may not exclude the defendant's statement or dismiss criminal charges as a result
14 of a violation of this section.

15 (c) If each of the statements made by the defendant that the state offers into evidence is re-
16 corded, the court may not give a cautionary jury instruction regarding the content of the
17 defendant's statements.

18 (4) **If the state offers an unrecorded statement made under the circumstances described**
19 **in subsection (1)(b) of this section in a juvenile delinquency proceeding alleging the commis-**
20 **sion of an act that, if committed by an adult, would constitute a felony, and the state is**
21 **unable to demonstrate, by a preponderance of the evidence, that an exception described in**
22 **subsection (2) of this section applies, the court shall consider the superior reliability of**
23 **electronic recordings when compared with testimony about what was said and done when**
24 **determining the evidentiary value of the statement.**

25 [(4)] (5) A law enforcement agency that creates an electronic recording of a custodial interview
26 shall preserve the recording until the defendant's conviction **or youth's adjudication** for the offense
27 is final and all direct, post-conviction relief and habeas corpus appeals are exhausted, or until the
28 prosecution of the offense is barred by law.

29 [(5)] (6) The state shall provide an electronic copy of a defendant's **or youth's** custodial inter-
30 view to a defendant **or youth** in accordance with ORS 135.805 to 135.873. Providing an electronic
31 copy of the custodial interview to the defendant **or youth** constitutes compliance with ORS 135.815
32 (1)(b), and the state is not required to provide the defendant **or youth** with a transcript of the
33 contents of the interview. Unless the court orders otherwise, the defendant's **or youth's** attorney
34 may not copy, disseminate or republish the electronic copy of the custodial interview, except to
35 provide a copy to an agent of the defendant's **or youth's** attorney for the limited purpose of case
36 preparation.

37 [(6)] (7) An electronic recording of a custodial interview, and any transcription of the recording,
38 that is certified as containing a complete recording, or a complete transcription, of the entirety of
39 the custodial interview, from the advisement of constitutional rights to the conclusion of the custo-
40 dial interview, is admissible in any pretrial or post-trial hearing for the purpose of establishing the
41 contents of a statement made in the recording and the identity of the person who made the state-
42 ment, if the statement is otherwise admissible. A certification that complies with this subsection
43 satisfies the requirements of ORS 40.505 and 132.320 for the recording or transcription. This sub-
44 section does not prohibit a party from calling a witness to testify regarding the custodial interview.

45 [(7)] (8) As used in this section:

1 (a) "Custodial interview" means an interview in which the person questioned is in custody and
2 is required to be advised of the person's constitutional rights.

3 (b) "Good cause" includes, but is not limited to, situations in which:

4 (A) The defendant **or youth** refused, or expressed an unwillingness, to have the custodial
5 interview electronically recorded;

6 (B) The failure to electronically record the custodial interview was the result of equipment
7 failure and a replacement device was not immediately available;

8 (C) The person operating the recording equipment believed, in good faith, that the equipment
9 was recording the custodial interview;

10 (D) Electronically recording the custodial interview would jeopardize the safety of any person
11 or the identity of a confidential informant;

12 (E) Exigent circumstances prevented the recording of the custodial interview; or

13 (F) The peace officer conducting the custodial interview reasonably believed, at the time the
14 custodial interview began, that the custodial interview:

15 (i) Was conducted in connection with a crime other than aggravated murder as defined in ORS
16 163.095 or a crime listed in ORS 137.700 or 137.707; **or**

17 (ii) **Was conducted in connection with a crime other than a felony, or an allegation that**
18 **the person being interviewed committed an act that, if committed by an adult, would con-**
19 **stitute a felony, if the person is under 18 years of age.**

20 (c) "Law enforcement facility" means a courthouse, building or premises that is a place of op-
21 eration for a municipal police department, county sheriff's office or other law enforcement agency
22 at which persons may be detained in connection with a juvenile delinquency petition or criminal
23 charge.

24 (d) **"Youth" means a person under 18 years of age who is suspected or alleged to have**
25 **committed an act that, if committed by an adult, would constitute a felony.**

26 **SECTION 2. The amendments to ORS 133.400 by section 1 of this 2017 Act apply to**
27 **interviews conducted on or after the effective date of this 2017 Act.**

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