

**Enrolled**  
**House Bill 3242**

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

CHAPTER .....

AN ACT

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

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

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

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

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

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

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

(a) A statement made before a grand jury;

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

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

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

(e) A statement that was spontaneously volunteered and did not result from a custodial interview;

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

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

(h) A custodial interview conducted in connection with an investigation carried out by a corrections officer, a youth corrections officer or a staff member of the Oregon State Hospital in the performance of the officer's or staff member's official duties of treatment, custody, control or supervision of individuals committed to or confined in a place of incarceration or detention; or

(i) A custodial interview for which the state demonstrates good cause for the failure to electronically record the interview.

(3)(a) If the state offers an unrecorded statement made under the circumstances described in subsection (1)(a) of this section in a criminal proceeding alleging the commission of aggravated murder or a crime listed in ORS 137.700 or 137.707, **or under the circumstances described in subsection (1)(b) of this section in a criminal proceeding alleging the commission of a felony**, and the state is unable to demonstrate, by a preponderance of the evidence, that an exception described in subsection (2) of this section applies, upon the request of the defendant, the court shall instruct the jury regarding the legal requirement described in subsection (1) of this section and the

superior reliability of electronic recordings when compared with testimony about what was said and done.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by House May 2, 2017

Received by Governor:

Repassed by House June 12, 2017

.....M.,....., 2017

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 6, 2017

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2017

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Dennis Richardson, Secretary of State