

Requested by Representative GORSEK

**PROPOSED AMENDMENTS TO
HOUSE BILL 3242**

1 On page 1 of the printed bill, line 3, after “ORS” delete the rest of the
2 line and insert “133.400.”.

3 Delete lines 5 through 30 and delete pages 2 through 4 and insert:

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

5 “133.400. (1) A custodial interview conducted by a peace officer in a law
6 enforcement facility shall be electronically recorded if the interview is con-
7 ducted:

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

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

14 **“(2)(a)** Subsection (1) of this section does not apply to:

15 **“[(a)] (A)** A statement made before a grand jury;

16 **“[(b)] (B)** A statement made on the record in open court;

17 **“[(c)] (C)** A custodial interview conducted in another state in compliance
18 with the laws of that state;

19 **“[(d)] (D)** A custodial interview conducted by a federal law enforcement
20 officer in compliance with the laws of the United States;

21 **“[(e)] (E)** A statement that was spontaneously volunteered and did not

1 result from a custodial interview;

2 “[*f*] (F) A statement made during arrest processing in response to a
3 routine question;

4 “[*g*] *A law enforcement agency that employs five or fewer peace officers;*]

5 “[*h*] (G) A custodial interview conducted in connection with an inves-
6 tigation carried out by a corrections officer, a youth corrections officer or
7 a staff member of the Oregon State Hospital in the performance of the
8 officer’s or staff member’s official duties of treatment, custody, control or
9 supervision of individuals committed to or confined in a place of incarcer-
10 ation or detention; or

11 “[*i*] (H) A custodial interview for which the state demonstrates good
12 cause for the failure to electronically record the interview.

13 **“(b) Subsection (1)(a) of this section does not apply to a law
14 enforcement agency that employs five or fewer peace officers.**

15 “(3)(a) If the state offers an unrecorded statement made under the cir-
16 cumstances described in subsection (1)(a) of this section in a criminal pro-
17 ceeding alleging the commission of aggravated murder or a crime listed in
18 ORS 137.700 or 137.707, **or under the circumstances described in sub-**
19 **section (1)(b) of this section in a criminal proceeding alleging the**
20 **commission of a person felony**, and the state is unable to demonstrate,
21 by a preponderance of the evidence, that an exception described in subsection
22 (2) of this section applies, upon the request of the defendant, the court shall
23 instruct the jury regarding the legal requirement described in subsection (1)
24 of this section and the superior reliability of electronic recordings when
25 compared with testimony about what was said and done.

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

28 “(c) If each of the statements made by the defendant that the state offers
29 into evidence is recorded, the court may not give a cautionary jury instruc-
30 tion regarding the content of the defendant’s statements.

1 “(4) If the state offers an unrecorded statement made under the
2 circumstances described in subsection (1)(b) of this section in a juve-
3 nile delinquency proceeding alleging the commission of an act that, if
4 committed by an adult, would constitute a person felony, and the state
5 is unable to demonstrate, by a preponderance of the evidence, that an
6 exception described in subsection (2) of this section applies:

7 “(a) The court may consider a violation of this section when deter-
8 mining whether to admit the statement, or a part of the statement,
9 into evidence.

10 “(b) If the court admits the statement into evidence, the court shall
11 consider the superior reliability of electronic recordings when com-
12 pared with testimony about what was said and done when determining
13 the evidentiary value of the statement.

14 “[(4)] (5) A law enforcement agency that creates an electronic recording
15 of a custodial interview shall preserve the recording until the defendant’s
16 conviction **or youth’s adjudication** for the offense is final and all direct,
17 post-conviction relief and habeas corpus appeals are exhausted, or until the
18 prosecution of the offense is barred by law.

19 “[(5)] (6) The state shall provide an electronic copy of a defendant’s **or**
20 **youth’s** custodial interview to a defendant **or youth** in accordance with
21 ORS 135.805 to 135.873. Providing an electronic copy of the custodial inter-
22 view to the defendant **or youth** constitutes compliance with ORS 135.815
23 (1)(b), and the state is not required to provide the defendant **or youth** with
24 a transcript of the contents of the interview. Unless the court orders other-
25 wise, the defendant’s **or youth’s** attorney may not copy, disseminate or re-
26 publish the electronic copy of the custodial interview, except to provide a
27 copy to an agent of the defendant’s **or youth’s** attorney for the limited
28 purpose of case preparation.

29 “[(6)] (7) An electronic recording of a custodial interview, and any tran-
30 scription of the recording, that is certified as containing a complete record-

1 ing, or a complete transcription, of the entirety of the custodial interview,
2 from the advisement of constitutional rights to the conclusion of the custo-
3 dial interview, is admissible in any pretrial or post-trial hearing for the
4 purpose of establishing the contents of a statement made in the recording
5 and the identity of the person who made the statement, if the statement is
6 otherwise admissible. A certification that complies with this subsection sat-
7 isfies the requirements of ORS 40.505 and 132.320 for the recording or tran-
8 scription. This subsection does not prohibit a party from calling a witness
9 to testify regarding the custodial interview.

10 “[7] **(8)** As used in this section:

11 “(a) ‘Custodial interview’ means an interview in which the person ques-
12 tioned is in custody and is required to be advised of the person’s constitu-
13 tional rights.

14 “(b) ‘Good cause’ includes, but is not limited to, situations in which:

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

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

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

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

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

26 “(F) The peace officer conducting the custodial interview reasonably be-
27 lieved, at the time the custodial interview began, that the custodial
28 interview:

29 “(i) Was conducted in connection with a crime other than aggravated
30 murder as defined in ORS 163.095 or a crime listed in ORS 137.700 or

1 137.707; or

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

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

11 **“(d) ‘Person felony’ has the meaning given that term in the rules**
12 **of the Oregon Criminal Justice Commission.**

13 **“(e) ‘Youth’ means a person under 18 years of age who is suspected**
14 **or alleged to have committed an act that, if committed by an adult,**
15 **would constitute a person felony.**

16 **“SECTION 2. The amendments to ORS 133.400 by section 1 of this**
17 **2017 Act apply to interviews conducted on or after the effective date**
18 **of this 2017 Act.”.**

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