

HOUSE AMENDMENTS TO HOUSE BILL 3261

By COMMITTEE ON JUDICIARY

April 19

1 On page 1 of the printed bill, line 3, after “133.400” delete the rest of the line and insert “,
2 165.540 and 419C.270.”

3 Delete lines 5 through 30.

4 On page 2, delete lines 1 through 37.

5 In line 38, delete “3” and insert “1”.

6 On page 4, after line 36, insert:

7 **“SECTION 2. (1)(a) A custodial interview inside a law enforcement facility that is con-**
8 **ducted by a peace officer, a school resource officer or a special campus security officer shall**
9 **be electronically recorded if the custodial interview is conducted with a person under 18**
10 **years of age in connection with an investigation into a misdemeanor or a felony, or an**
11 **allegation that the person being interviewed committed an act that, if committed by an adult,**
12 **would constitute a misdemeanor or a felony.**

13 **“(b) A custodial interview anywhere outside of a law enforcement facility that is con-**
14 **ducted by a peace officer, a school resource officer or a special campus security officer shall**
15 **be electronically recorded if:**

16 **“(A) The custodial interview is conducted with a person under 18 years of age in con-**
17 **nection with an investigation into a misdemeanor or a felony, or an allegation that the per-**
18 **son being interviewed committed an act that, if committed by an adult, would constitute a**
19 **misdemeanor or a felony; and**

20 **“(B) A video camera is worn upon the officer’s person.**

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

22 **“(a) A statement made before a grand jury;**

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

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

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

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

30 **“(f) A statement made during custody processing in response to a routine question;**

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

32 **“(h) A custodial interview conducted in connection with an investigation carried out by**
33 **a youth corrections officer or a staff member of the Oregon State Hospital in the perform-**
34 **ance of the officer’s or staff member’s official duties of treatment, custody, control or**
35 **supervision of individuals committed to or confined in a place of incarceration or detention;**

1 “(i) A custodial interview for which the state demonstrates good cause for the failure to
2 electronically record the custodial interview; or

3 “(j) A custodial interview if the defendant’s or youth’s age was unknown to the officer
4 or would not have been objectively apparent to a reasonable officer.

5 “(3)(a) If the state offers an unrecorded statement made under the circumstances de-
6 scribed in subsection (1) of this section in a criminal proceeding alleging the commission of
7 a misdemeanor or a felony, or an allegation that a person being interviewed committed an
8 act that, if committed by an adult, would constitute a misdemeanor or a felony, and the state
9 is unable to demonstrate, by a preponderance of the evidence, that an exception described
10 in subsection (2) of this section applies, upon the request of the defendant, the court shall
11 instruct the jury regarding the legal requirement described in subsection (1) of this section
12 and the superior reliability of electronic recordings when compared with testimony about
13 what was said and done.

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

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

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

26 “(5) A law enforcement agency that creates an electronic recording of a custodial inter-
27 view shall preserve the recording until the defendant’s conviction or youth’s adjudication for
28 the offense is final and all direct, post-conviction relief and habeas corpus appeals are ex-
29 hausted, or until the prosecution of the offense is barred by law.

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

38 “(7) An electronic recording of a custodial interview, and any transcription of the re-
39 cording, that is certified as containing a complete recording, or a complete transcription, of
40 the entirety of the custodial interview, from the advisement of constitutional rights to the
41 conclusion of the custodial interview, is admissible in any preadjudication or post-
42 adjudication hearing for the purpose of establishing the contents of a statement made in the
43 recording and the identity of the person who made the statement, if the statement is oth-
44 erwise admissible. A certification that complies with this subsection satisfies the require-
45 ments of ORS 40.505 and 132.320 for the recording or transcription. This subsection does not

1 prohibit a party from calling a witness to testify regarding the custodial interview.

2 “(8) As used in this section:

3 “(a) ‘Custodial interview’ means an interview in which the person questioned is in cus-
4 tody and is required to be advised of the person’s constitutional rights.

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

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

8 “(B) The failure to electronically record the custodial interview was the result of equip-
9 ment failure and a replacement device was not immediately available;

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

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

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

15 “(F) The person conducting the custodial interview did not possess a wearable video
16 camera to electronically record the custodial interview outside of a law enforcement facility.

17 “(c) ‘Law enforcement facility’ means a courthouse, building or premises that is a place
18 of operation for a municipal police department, county sheriff’s office or other law enforce-
19 ment agency at which persons may be detained in connection with a juvenile delinquency
20 petition or criminal charge.

21 “(d) ‘Peace officer’ has the meaning given that term in ORS 133.005.

22 “(e) ‘School resource officer’ means a peace officer who is assigned to a school.

23 “(f) ‘Special campus security officer’ means a special campus security officer described
24 in ORS 352.118.”.

25 In line 37, delete “4” and insert “3”.

26 On page 5, line 37, delete “1” and insert “2” and after “records” delete the rest of the line and
27 delete line 38 and insert “a custodial interview, as defined in section 2 of this 2019 Act;”.

28 On page 6, after line 31, insert:

29 “**SECTION 4.** ORS 419C.270 is amended to read:

30 “419C.270. In all proceedings brought under ORS 419C.005, the following rules of criminal pro-
31 cedure apply:

32 “(1) ORS 133.673, 133.693 and 133.703 **and section 2 of this 2019 Act;**

33 “(2) ORS 135.455, 135.465 and 135.470;

34 “(3) ORS 135.610, 135.630 (3) to (6), 135.640 and 135.670;

35 “(4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730, 135.733, 135.735,
36 135.737, 135.740 and 135.743;

37 “(5) ORS 135.805 and 135.815 (1)(a) to (e) and (g) and (3);

38 “(6) ORS 135.825, 135.835, 135.845 and 135.855 to 135.873; and

39 “(7) ORS 136.432.

40 “**SECTION 5.** Section 2 of this 2019 Act and the amendments to ORS 133.400, 165.540 and
41 419C.270 by sections 1, 3 and 4 of this 2019 Act apply to interviews conducted on or after the
42 effective date of this 2019 Act.”.