

HB 3261-4
(LC 2859)
4/4/19 (LAS/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Chris Gorsek)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3261**

1 On page 1 of the printed bill, line 3, after “133.400” delete the rest of the
2 line and insert “, 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**
8 **facility that is conducted by a peace officer, a school resource officer**
9 **or a special campus security officer shall be electronically recorded if**
10 **the custodial interview is conducted with a person under 18 years of**
11 **age in connection with an investigation into a misdemeanor or a fel-**
12 **ony, or an allegation that the person being interviewed committed an**
13 **act that, if committed by an adult, would constitute a misdemeanor**
14 **or a felony.**

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

18 **“(A) The custodial interview is conducted with a person under 18**
19 **years of age in connection with an investigation into a misdemeanor**
20 **or a felony, or an allegation that the person being interviewed com-**
21 **mitted an act that, if committed by an adult, would constitute a**

1 **misdemeanor or a felony; and**

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

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

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

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

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

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

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

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

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

16 **“(h) A custodial interview conducted in connection with an inves-**
17 **tigation carried out by a youth corrections officer or a staff member**
18 **of the Oregon State Hospital in the performance of the officer’s or**
19 **staff member’s official duties of treatment, custody, control or super-**
20 **vision of individuals committed to or confined in a place of incarcer-**
21 **ation or detention;**

22 **“(i) A custodial interview for which the state demonstrates good**
23 **cause for the failure to electronically record the custodial interview;**

24 **or**

25 **“(j) A custodial interview if the defendant’s or youth’s age was un-**
26 **known to the officer or would not have been objectively apparent to**
27 **a reasonable officer.**

28 **“(3)(a) If the state offers an unrecorded statement made under the**
29 **circumstances described in subsection (1) of this section in a criminal**
30 **proceeding alleging the commission of a misdemeanor or a felony, or**

1 an allegation that a person being interviewed committed an act that,
2 if committed by an adult, would constitute a misdemeanor or a felony,
3 and the state is unable to demonstrate, by a preponderance of the ev-
4 idence, that an exception described in subsection (2) of this section
5 applies, upon the request of the defendant, the court shall instruct the
6 jury regarding the legal requirement described in subsection (1) of this
7 section and the superior reliability of electronic recordings when
8 compared with testimony about what was said and done.

9 “(b) The court may not exclude the defendant’s statement or dis-
10 miss criminal charges as a result of a violation of this section.

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

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

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

28 “(6) The state shall provide an electronic copy of a defendant’s or
29 youth’s custodial interview to a defendant or youth in accordance with
30 ORS 135.805 to 135.873. Providing an electronic copy of the custodial

1 interview to the defendant or youth constitutes compliance with ORS
2 135.815 (1)(b), and the state is not required to provide the defendant
3 or youth with a transcript of the contents of the custodial interview.
4 Unless the court orders otherwise, the defendant’s or youth’s attorney
5 may not copy, disseminate or republish the electronic copy of the
6 custodial interview, except to provide a copy to an agent of the
7 defendant’s or youth’s attorney for the limited purpose of case prepa-
8 ration.

9 “(7) An electronic recording of a custodial interview, and any tran-
10 scription of the recording, that is certified as containing a complete
11 recording, or a complete transcription, of the entirety of the custodial
12 interview, from the advisement of constitutional rights to the conclu-
13 sion of the custodial interview, is admissible in any preadjudication
14 or post-adjudication hearing for the purpose of establishing the con-
15 tents of a statement made in the recording and the identity of the
16 person who made the statement, if the statement is otherwise admis-
17 sible. A certification that complies with this subsection satisfies the
18 requirements of ORS 40.505 and 132.320 for the recording or tran-
19 scription. This subsection does not prohibit a party from calling a
20 witness to testify regarding the custodial interview.

21 “(8) As used in this section:

22 “(a) ‘Custodial interview’ means an interview in which the person
23 questioned is in custody and is required to be advised of the person’s
24 constitutional rights.

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

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

29 “(B) The failure to electronically record the custodial interview was
30 the result of equipment failure and a replacement device was not im-

1 **mediately available;**

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

4 **“(D) Electronically recording the custodial interview would jeop-**
5 **ardize the safety of any person or the identity of a confidential**
6 **informant;**

7 **“(E) Exigent circumstances prevented the recording of the custodial**
8 **interview; or**

9 **“(F) The person conducting the custodial interview did not possess**
10 **a wearable video camera to electronically record the custodial inter-**
11 **view outside of a law enforcement facility.**

12 **“(c) ‘Law enforcement facility’ means a courthouse, building or**
13 **premises that is a place of operation for a municipal police depart-**
14 **ment, county sheriff’s office or other law enforcement agency at which**
15 **persons may be detained in connection with a juvenile delinquency**
16 **petition or criminal charge.**

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

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

20 **“(f) ‘Special campus security officer’ means a special campus secu-**
21 **rity officer described in ORS 352.118.”.**

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

23 On page 5, line 37, delete “1” and insert “2” and after “records” delete the
24 rest of the line and delete line 38 and insert “a custodial interview, as de-
25 fined in section 2 of this 2019 Act;”.

26 On page 6, after line 31, insert:

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

28 **“419C.270. In all proceedings brought under ORS 419C.005, the following**
29 **rules of criminal procedure apply:**

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

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

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

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

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

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

7 “(7) ORS 136.432.

8 **“SECTION 5. Section 2 of this 2019 Act and the amendments to ORS**
9 **133.400, 165.540 and 419C.270 by sections 1, 3 and 4 of this 2019 Act apply**
10 **to interviews conducted on or after the effective date of this 2019**
11 **Act.”.**

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