

**Senate Bill No. 440**

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(By Senators Palumbo, Cookman, Laird, Barnes, Unger, Kessler (Mr.  
President), Stollings, Wells, M. Hall and Chafin)

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[Introduced January 28, 2014; referred to the Committee on the  
Judiciary.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new article, designated §62-1G-1, §62-1G-2,  
13 §62-1G-3, §62-1G-4, §62-1G-5 and §62-1G-6, all relating to the  
14 requirement of the electronic audio and video or audio  
15 recording of all law-enforcement questioning of felony  
16 suspects; creating a presumption of inadmissability to  
17 statements taken which are not in compliance with the article;  
18 setting forth exceptions thereto; requiring preservation of  
19 electronic recordings; and establishing an effective date.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended  
22 by adding thereto a new article, designated §62-1G-1, §62-1G-2,  
23 §62-1G-3, §62-1G-4, §62-1G-5 and §62-1G-6, all to read as follows:

24 **ARTICLE 1G. THE O.C. SPAULDING ELECTRONIC RECORDING ACT.**

1 **§62-1G-1. Definitions**

2 For purposes of this article:

3 "Electronic recording" or "electronically recorded" means an  
4 audio and visual recording that is an authentic, accurate unaltered  
5 record of a police interview of the suspect.

6 "In its entirety" means an uninterrupted recording of the  
7 questions posed to the felony suspect and all of his or her answers  
8 to the questions. Brief periods of recess, upon request by the  
9 suspect or the law-enforcement officer, are not an interruption of  
10 the record. The recording must reflect the purpose of the recess,  
11 the starting time of the recess and the resumption of the  
12 questioning.

13 "Place of questioning" means a jail, police or sheriff's  
14 station, holding cell, correctional or detention facility or any  
15 similar location where persons are routinely questioned by law  
16 enforcement in connection with criminal investigations or charges.

17 "Statement" means an oral, written, sign language or nonverbal  
18 communication.

19 "Suspect" means a person who has either been charged with a  
20 felony offense or a person believed by law enforcement to be the  
21 possible perpetrator of a felony offense that is the subject of the  
22 questioning.

23 **§62-1G-2. Procedure.**

24 (a) Any questioning by the police of a felony suspect at a

1 place of questioning shall be electronically preserved in its  
2 entirety by video and audio recordation.

3 (b) Any questioning of a felony suspect taking place outside  
4 of a place of questioning, shall be electronically preserved in its  
5 entirety by video and audio recording or by audio recording alone.

6 (c) When questioning of a felony suspect occurs in a place of  
7 questioning, the camera shall be simultaneously focused upon both  
8 the questioner and the suspect.

9 **§62-1G-3. Remedies.**

10 Except as provided in section four of this article, all  
11 statements made by a felony suspect during questioning by law  
12 enforcement that are not electronically recorded, and all  
13 statements made after that by the person during questioning by law  
14 enforcement, including but not limited to, statements that are  
15 electronically recorded, are presumed to be inadmissible as  
16 evidence against the person in any criminal proceeding brought  
17 against him or her.

18 **§62-1G-4. Exceptions to the presumption of inadmissability.**

19 The presumption of inadmissability of statements provided in  
20 section three of this article may be overcome, and statements that  
21 were not electronically recorded may be admitted into evidence in  
22 a criminal proceeding brought against the person, if the court  
23 finds:

24 (1) That the statements are otherwise admissible under

1 applicable rules of evidence;

2       (2) That the statements are proven by clear and convincing  
3 evidence to have been made voluntarily, and are reliable;

4       (3) That, law-enforcement personnel made a contemporaneous  
5 written record of the reason for not making an electronic recording  
6 of the statements; and

7       (4) That it is proven by a preponderance of the evidence that  
8 one or more of the following circumstances existed at the time of  
9 the questioning by law enforcement:

10       (A) The questions put forth by law-enforcement personnel, and  
11 the person's responsive statements, were those necessary for the  
12 routine processing or "booking" of the person;

13       (B) Before or during a questioning of a felony suspect by law  
14 enforcement, after having consulted with his or her lawyer, the  
15 person unambiguously declared, while being recorded, that he or she  
16 would only respond to the officer's questions if the questioning  
17 was not electronically recorded;

18       (C) The questioning necessarily took place in another  
19 jurisdiction and was conducted by officials of that jurisdiction in  
20 compliance with the law of that jurisdiction;

21       (D) The electronic recording equipment failed for reasons  
22 other than operator error; or

23       (E) The statement was spontaneously volunteered and not in  
24 response to questioning by law enforcement.

1 **§62-1G-5. Providing a copy to defendant; preservation.**

2 (a) Any person subject to questioning by law enforcement shall  
3 be supplied a copy of the recording of the questioning if he or she  
4 is charged with any offense related to questioning by law  
5 enforcement.

6 (b) Copies of video and audio or audio recording of  
7 questioning by law enforcement required by the article shall be  
8 preserved by the law-enforcement agency conducting the questioning  
9 for five years after the law enforcement questioning or until final  
10 appellate resolution of any criminal matter related by subject or  
11 content to the law enforcement questioning, whichever is later.

12 **§62-1G-6. Effective date of article.**

13 The effective date of this article is ninety days from passage  
14 and the provisions of this article are applicable to questioning of  
15 felony suspects occurring after August 31, 2014.

NOTE: The purpose of this bill is to require of the electronic audio and video or audio recording of all law enforcement questioning of felony suspects. It would create a presumption of inadmissability for statements taken which are not in compliance with the law and includes exceptions.

This article is new; therefore, strike-throughs and underscoring have been omitted.