

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2947

BY DELEGATES HIGGINBOTHAM AND STEELE

[Introduced March 05, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7, and
 3 §62-16-8, all relating to electronic recording of interrogations regarding criminal
 4 investigations; stating the purpose and application; providing definitions; when electronic
 5 recording required and admissibility of recordings; remedies for compliance and
 6 noncompliance; and providing that recordings not be destroyed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. ELECTRONIC RECORDING OF INTERROGATIONS.

§62-16-1. Purpose

1 The purpose of this article is to require the creation of an electronic record of an entire
 2 custodial interrogation in order to eliminate disputes about interrogations, thereby improving
 3 prosecution of the guilty while affording protection to the innocent and increasing court efficiency.

§62-16-2. Application.

1 The provisions of this article shall apply to all custodial interrogations of juveniles in
 2 criminal investigations conducted at any place of detention. The provisions of this article shall also
 3 apply to any custodial interrogation of any person in a criminal investigation conducted at any
 4 place of detention if the investigation is related to any of the following crimes: any felony, and any
 5 felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious
 6 injury.

§62-16-3.. Definitions.

1 The following definitions apply in this article:
 2 “Electronic recording” means an audio recording that is an authentic, accurate, unaltered
 3 record; or a visual recording that is an authentic, accurate, unaltered record. A visual and audio
 4 recording shall be simultaneously produced whenever reasonably feasible: *Provided*, That a
 5 defendant may not raise this as grounds for suppression of evidence, if there is not a
 6 simultaneously produced visual and audio recording.

7 “In its entirety” means an uninterrupted record that begins with and includes a law-
8 enforcement officer’s advice to the person in custody of that person’s constitutional rights, ends
9 when the interview has completely finished, and clearly shows both the interrogator and the
10 person in custody throughout. If the record is a visual recording, the camera recording the
11 custodial interrogation shall be placed so that the camera films both the interrogator and the
12 suspect. Brief periods of recess, upon request by the person in custody or the law enforcement
13 officer, do not constitute an “interruption” of the record. The record shall reflect the starting time
14 of the recess and the resumption of the interrogation.

15 “Place of detention” means a jail, police, or sheriff’s station, correctional or detention
16 facility, holding facility for prisoners, or other facility where persons are held in custody in
17 connection with criminal charges.

§62-16-4. Electronic recording of Interrogations required.

1 Any law-enforcement officer conducting a custodial interrogation in an investigation of a
2 juvenile shall make an electronic recording of the interrogation in its entirety.

3 Any law-enforcement officer conducting a custodial interrogation in an investigation
4 relating to any of the following crimes shall make an electronic recording of the interrogation in its
5 entirety: any felony; and any felony of rape, sex offense, or assault with a deadly weapon with
6 intent to kill inflicting serious injury.

§62-16-5. Admissibility of electronic recordings.

1 During the prosecution of any offense to which this article applies, an oral, written,
2 nonverbal, or sign language statement of a defendant made in the course of a custodial
3 interrogation may be presented as evidence against the defendant if an electronic recording was
4 made of the custodial interrogation in its entirety and the statement is otherwise admissible. If the
5 court finds that the defendant was subjected to a custodial interrogation that was not electronically
6 recorded in its entirety, any statements made by the defendant after that nonelectronically
7 recorded custodial interrogation, even if made during an interrogation that is otherwise in

8 compliance with this section, may be questioned with regard to the voluntariness and reliability of
 9 the statement. The state may establish through clear and convincing evidence that the statement
 10 was both voluntary and reliable and that law-enforcement officers had good cause for failing to
 11 electronically record the interrogation in its entirety. Good cause shall include, but not be limited
 12 to, the following:

13 (1) The accused refused to have the interrogation electronically recorded, and the
 14 refusal itself was electronically recorded.

15 (2) The failure to electronically record an interrogation in its entirety was the result of
 16 unforeseeable equipment failure, and obtaining replacement equipment was not feasible.

§62-16-6. Remedies for compliance or noncompliance.

1 All of the following remedies shall be granted as relief for compliance or noncompliance
 2 with the requirements of this section:

3 (1) Failure to comply with any of the requirements of this section shall be considered by
 4 the court in adjudicating motions to suppress a statement of the defendant made during or after
 5 a custodial interrogation.

6 (2) Failure to comply with any of the requirements of this section shall be admissible in
 7 support of claims that the defendant’s statement was involuntary or is unreliable, provided the
 8 evidence is otherwise admissible.

9 (3) When evidence of compliance or noncompliance with the requirements of this section
 10 has been presented at trial, the jury shall be instructed that it may consider credible evidence of
 11 compliance or noncompliance to determine whether the defendant’s statement was voluntary and
 12 reliable.

§62-16-7. Article does not preclude admission of certain statements.

1 Nothing in this article precludes the admission of any of the following:

2 (1) A statement made by the accused in open court during trial, before a grand jury, or at
 3 a preliminary hearing.

- 4 (2) A spontaneous statement that is not made in response to a question.
- 5 (3) A statement made during arrest processing in response to a routine question.
- 6 (4) A statement made during a custodial interrogation that is conducted in another state
7 by law-enforcement officers of that state.
- 8 (5) A statement obtained by a federal law-enforcement officer.
- 9 (6) A statement given at a time when the interrogators are unaware that the person is
10 suspected of an offense to which this article applies.
- 11 (7) A statement used only for impeachment purposes and not as substantive evidence.

§62-16-8. Destruction or modification of recording after appeals exhausted.

1 The state may not destroy or alter any electronic recording of a custodial interrogation of
2 a defendant convicted of any offense related to the interrogation until one year after the
3 completion of all state and federal appeals of the conviction, including the exhaustion of any
4 appeal of any motion for appropriate relief or habeas corpus proceedings. Every electronic
5 recording should be clearly identified and catalogued by law enforcement personnel.

NOTE: The purpose of this bill is to relating creation of an electronic record of an entire custodial interrogation regarding criminal investigations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.