



Ohio Revised Code

Section 2933.81 Electronic recording during custodial interrogation.

Effective: August 15, 2021

Legislation: House Bill 8

(A) As used in this section:

(1) "Custodial interrogation" means any interrogation involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider self to be in custody, beginning when a person should have been advised of the person's right to counsel and right to remain silent and of the fact that anything the person says could be used against the person, as specified by the United States supreme court in *Miranda v. Arizona* (1966), 384 U.S. 436, and subsequent decisions, and ending when the questioning has completely finished.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Electronic recording" or "electronically recorded" means an audio or audiovisual recording that is an authentic, accurate, unaltered record of a custodial interrogation.

(4) "Law enforcement agency" has the same meaning as in section 109.573 of the Revised Code.

(5) "Law enforcement vehicle" means a vehicle primarily used by a law enforcement agency or by an employee of a law enforcement agency for official law enforcement purposes.

(6) "Local correctional facility" has the same meaning as in section 2903.13 of the Revised Code.

(7) "Place of detention" means a jail, police or sheriff's station, holding cell, state correctional institution, local correctional facility, detention facility, or department of youth services facility. "Place of detention" does not include a law enforcement vehicle.

(8) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.



(9) "Statement" means an oral, written, sign language, or nonverbal communication.

(B) Except as provided in division (C) of this section, all oral statements made by a person who is the suspect of a violation of or possible violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03, or an attempt to commit a violation of section 2907.02 of the Revised Code during a custodial interrogation in a place of detention shall be electronically recorded. A failure to electronically record a custodial interrogation does not create a private cause of action against any person or agency.

(C) Division (B) of this section does not apply in any of the following circumstances:

(1) The person subject to interrogation requests that the interrogation not be recorded, as long as this request is preserved by electronic recording or in writing.

(2) The recording equipment malfunctions.

(3) There are exigent circumstances related to public safety.

(4) The interrogation occurs outside of the state of Ohio.

(5) The statements are made during routine processing or booking.

(6) The statements are made spontaneously and not in response to interrogation.

(7) The interrogation occurs when no law enforcement officer conducting the interrogation has reason to believe that the individual attempted to commit, conspired to commit, was complicit in committing, or committed an offense listed in division (B) of this section.

(D) If a law enforcement agency fails to electronically record a custodial interrogation as required by division (B) of this section, the court shall do whichever of the following is applicable:

(1) If the prosecution establishes by a preponderance of the evidence that one or more of the



circumstances listed in division (C) of this section applies, the court shall admit the evidence without a cautionary instruction to the jury.

(2) If the prosecution does not establish by a preponderance of the evidence that one or more of the circumstances listed in division (C) of this section applies, the court shall provide a cautionary instruction to the jury that it may consider the failure to record the custodial interrogation in determining the reliability of the evidence.

(F)(1) Law enforcement personnel shall clearly identify and catalog every electronic recording of a custodial interrogation that is recorded pursuant to this section.

(2) If a criminal or delinquent child proceeding is brought against a person who was the subject of a custodial interrogation that was electronically recorded, law enforcement personnel shall preserve the recording until the later of when all appeals, post-conviction relief proceedings, and habeas corpus proceedings are final and concluded or the expiration of the period of time within which such appeals and proceedings must be brought.

(3) Upon motion by the defendant in a criminal proceeding or the alleged delinquent child in a delinquent child proceeding, the court may order that a copy of an electronic recording of a custodial interrogation of the person be preserved for any period beyond the expiration of all appeals, post-conviction relief proceedings, and habeas corpus proceedings.

(4) If no criminal or delinquent child proceeding is brought against a person who was the subject of a custodial interrogation that was electronically recorded pursuant to this section, law enforcement personnel are not required to preserve the related recording.