

HOUSE BILL No. 1302

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-3.5.

Synopsis: Custodial interrogation recording. Provides that a statement made by a defendant during a custodial interrogation conducted by a state or local law enforcement agency is inadmissible as evidence (subject to certain exceptions) in a felony prosecution unless a video recording of the statement was made and other requirements are met. Requires law enforcement agencies to retain copies of custodial interrogation recordings for certain periods.

Effective: July 1, 2008.

Lawson L, Soliday

January 15, 2008, read first time and referred to Committee on Judiciary.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1302



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-33-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]:

4 **Chapter 3.5. Recording of Custodial Interrogations**

5 **Sec. 1. As used in this chapter, "audio recording" means a**
6 **recording of sounds by using electronic recording equipment.**

7 **Sec. 2. As used in this chapter, "custodial interrogation" means**
8 **an interrogation conducted by a law enforcement agency during**
9 **which:**

10 (1) **a reasonable person being interrogated would consider**
11 **himself or herself to be in custody; and**

12 (2) **a question is asked that is reasonably likely to elicit an**
13 **incriminating response from the person.**

14 **Sec. 3. As used in this chapter, "law enforcement agency" means**
15 **an agency or a department of any level of state or local government**
16 **whose principal function is the apprehension of criminal offenders.**

17 **Sec. 4. As used in this chapter, "place of detention" means:**



- 1 (1) a law enforcement agency station house; or
- 2 (2) any other building owned or operated by the law
- 3 enforcement agency;
- 4 at which persons are detained in connection with criminal
- 5 investigations.

6 Sec. 5. As used in this chapter, "video recording" means a
 7 recording of visual images and sounds by using electronic
 8 recording equipment.

9 Sec. 6. (a) Except as provided in subsection (b), a statement
 10 made by a defendant during a custodial interrogation is
 11 inadmissible as evidence against the defendant in a felony
 12 proceeding unless the following conditions are met:

- 13 (1) A complete video recording is made of the statement.
- 14 (2) The video recording of the defendant's statement discloses
- 15 that the defendant:
- 16 (A) was advised of; and
- 17 (B) knowingly, intelligently, and voluntarily waived;
- 18 the defendant's rights under *Miranda v. Arizona*, 384 U.S. 436
- 19 (1966), before the defendant made the statement.
- 20 (3) All of the following apply to the video recording:
- 21 (A) The device that made the video recording was capable
- 22 of making an accurate recording.
- 23 (B) The operator was competent.
- 24 (C) The recording is accurate and unaltered.
- 25 (D) The interrogator and the person being interrogated in
- 26 the video recording had a camera focused simultaneously
- 27 upon them during the recording.
- 28 (4) All voices on the video recording that are material to the
- 29 custodial interrogation can be identified.
- 30 (5) Not later than twenty (20) days before trial, the attorney
- 31 representing the defendant is provided with a true, complete,
- 32 and accurate copy of every video recording of the defendant.

33 (b) If any part of a custodial interrogation takes place outside a
 34 place of detention, a law enforcement agency shall make an audio
 35 recording of the custodial interrogation and shall state in the audio
 36 recording why a video recording cannot be made.

37 Sec. 7. A law enforcement agency shall retain a copy of a
 38 custodial interrogation of a person recorded under this chapter
 39 until:

- 40 (1) if the person is convicted of a felony, the:
- 41 (A) person's conviction is final; and
- 42 (B) person has exhausted all direct and habeas corpus

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1 appeals related to the conviction; or
 2 (2) a prosecution of the person for a crime or delinquent act
 3 for which the person was interrogated is barred by law.
 4 **Sec. 8. (a) A custodial interrogation recorded under this chapter**
 5 **is:**
 6 (1) confidential; and
 7 (2) exempt from disclosure under IC 5-14-3.
 8 **(b) This section does not preclude:**
 9 (1) the state or a defendant in a felony action from obtaining
 10 a copy of a custodial interrogation recorded under this
 11 chapter for use in:
 12 (A) a criminal action; or
 13 (B) an appeal related to the criminal action; or
 14 (2) a party in a civil suit from obtaining a copy of a custodial
 15 interrogation recorded under this chapter for use in:
 16 (A) a civil suit; or
 17 (B) an appeal related to a civil suit.
 18 **Sec. 9. (a) If a court finds by a preponderance of the evidence**
 19 **that a custodial interrogation of a suspect in a felony investigation**
 20 **did not meet the conditions set forth in section 6(a) of this chapter,**
 21 **any statements made by the suspect during or following the**
 22 **interrogation are inadmissible in a prosecution against the suspect.**
 23 **(b) This chapter does not preclude the admission into evidence**
 24 **in any action of the following:**
 25 (1) A statement made by a defendant:
 26 (A) in open court at the defendant's trial;
 27 (B) before a grand jury; or
 28 (C) at a preliminary hearing.
 29 (2) A statement made during a custodial interrogation that
 30 was not recorded as provided in section 6(a) of this chapter
 31 because video recording was not feasible.
 32 (3) A voluntary statement, whether or not the result of a
 33 custodial interrogation, that has a bearing on the credibility
 34 of a person as a witness.
 35 (4) A spontaneous statement that is not made in response to a
 36 question.
 37 (5) A statement made after questioning that is routinely asked
 38 during the processing of the arrest of a suspect.
 39 (6) A statement made during a custodial interrogation by a
 40 suspect who requests, before making the statement, that the
 41 statement not be recorded. However, the suspect's request
 42 under this subdivision must be recorded.

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- 1 **(7) A statement made during a custodial interrogation that is**
- 2 **conducted outside Indiana.**
- 3 **(8) A statement concerning a murder given at a time when the**
- 4 **interrogator is not aware that a murder has occurred.**
- 5 **(9) Any other statement that may be admissible under law.**
- 6 **The state has the burden of proving by a preponderance of the**
- 7 **evidence that a statement is admissible into evidence under this**
- 8 **subsection.**

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