



North Dakota Legislative Council

Prepared for the Judiciary Committee
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UNIFORM ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS ACT - BACKGROUND MEMORANDUM

Section 1 of Senate Bill No. 2376 ([Appendix A](#)) directs the Legislative Management to study the recording practices of local and state law enforcement during custodial interrogations to determine the feasibility and desirability for uniform implementation of recording practices. The study may include the assistance of the North Dakota Commission on Uniform State Laws in the development of recommended policies and procedures and must include the number of law enforcement agencies currently recording custodial interrogations and the following information:

- Any policies regarding how the recording of interrogations is conducted;
- The storage and retention practices associated with recording interrogations;
- The types of equipment used to record interrogations;
- The types of locations at which interrogations are recorded;
- The types of criminal investigations in which interrogations are recorded and the frequency those interrogations are recorded;
- The current disclosure of recorded interrogations in criminal discovery;
- Best practices and current requirements for the recording of interrogations, including adoption of the Uniform Electronic Recordation of Custodial Interrogations Act;
- The financial costs associated with the recording of custodial interrogations and implementation of uniform practices; and
- Any barriers to uniform implementation of the recording of custodial interrogations.

UNIFORM ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS ACT OF 2010

History

In 2010, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission, approved and recommended the Uniform Electronic Recording of Custodial Interrogations Act (Act) for enactment in all states. This Act addresses issues that accompany interrogations conducted by law enforcement officials. The Act, which requires law enforcement to electronically record custodial interrogations, is intended to promote truth finding and judicial efficiency and to further protect the rights of law enforcement and those under investigation.

Summary

According to the Uniform Law Commission, in the past 2 decades numerous cases of wrongful convictions have garnered the attention of the media, prosecutors, defense counsel, legislators, and law reformers. While much of this attention is focused on the faulty use of DNA evidence, wrongful convictions are prevalent in many cases in which DNA evidence was not used. The Uniform Law Commission indicates one important contributing factor to a large percentage of the mistakes made in many criminal cases is the admissibility at trial of a false confession.

In summarizing the Act, the Uniform Law Commission notes false confessions may occur no matter how well-meaning the interrogating officer or how strong the officer's belief in the suspect's guilt. Conflicting testimony sometimes results in judges or jurors believing the wrong tale, and other times allows for frivolous suppression motions wasting the court's time and impugning careful, professional, and honest police officers. A wrongful conviction or acquittal means an innocent person may be sent to prison and the guilty offender may go free, perhaps to offend again.

The Uniform Law Commission's primary justification for recommending the Act is to promote truth finding. The Act promotes truth finding by:

- Reducing lying, because neither an alleged offender nor police are likely to lie about what happened when a recording can expose the truth;
- Compensating for a witness's bad memories;
- Detering risky interrogation methods, because law enforcement is less likely to use risky interrogation techniques that could elicit a false confession when the method is open for public scrutiny;
- Enabling supervisors to review, monitor, and give constructive feedback on detectives' interrogation techniques;
- Filtering out weak cases, because police and prosecutors are able to review recordings in detail before prosecution of the alleged offender is undertaken to reduce the risk of convicting an innocent person;
- Aiding in a factfinder's assessment, because judges and juries can easily and more accurately assess credibility and determine whether a particular confession is voluntary or untrue; and
- Improving detective focus.

The Uniform Law Commission indicated that as a result of the impact of flawed confessions on the integrity of the criminal justice system, legislators, courts, and police departments have begun requiring recordation of interrogations. Several states have mandated interrogations be recorded through statutory changes. Others have imposed conditions for recordation through court rule. In states without statutory or judicial-imposed mandates, a significant number of police departments have voluntarily adopted policies requiring interrogations to be recorded under a variety of circumstances on the theory that recordation both protects the officers involved and improves the factfinding process.

According to the Uniform Law Commission, there are wide variations among state provisions and voluntarily adopted programs which mandate electronic recordation of custodial interrogations. Some approaches promise to be more effective in protecting the innocent, convicting the guilty, minimizing coercion, and avoiding frivolous suppression motions than other approaches. The Uniform Law Commission indicated the Act resolves the differences found throughout the nation and helps improve the fairness and professionalism associated with electronic recordings.

The Act mandates the electronic recording of the entire custodial interrogation process by law enforcement. However, the Act provides individual states discretion regarding the locations and the types of crimes to which the mandate applies, as well as the means by which the interrogation must be recorded. The Act allows states to vary the scope of the mandate based upon local variations in cost, perceived degree of need for different categories of criminal or delinquent wrongdoing, or other pressing local considerations. The Uniform Law Commission contends combined audio and video recording remains the ideal, and the advantages of recording exist wherever custodial interrogation occurs and for whatever criminal or delinquent wrong is involved.

2011 Legislative Session

The North Dakota Commission on Uniform State Laws consists of 11 members. The primary function of the commission is to represent North Dakota in the Uniform Law Commission. The Uniform Law Commission consists of representatives of all states, and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Management for its review and recommendation during the interim between legislative sessions.

The Uniform Electronic Recording of Custodial Interrogations Act was among the 2010 recommendations of the North Dakota Commission on Uniform State Laws for introduction in the 2011 legislative session. The Act was introduced as Senate Bill No. 2125 (2011) ([Appendix B](#)).

Testimony in support of Senate Bill No. 2125 from a member of the North Dakota Commission on Uniform State Laws indicated a movement is underway throughout the country to adopt a readily available and inexpensive method of electronically recording interrogations in an effort to end disputes about what occurs in an interrogation. Testimony indicated as recordings of custodial interviews become more common, law enforcement gains experience with the process and its results. Law enforcement indicates recordings yield a far better record of what occurred than the participants' testimony. Recordings of custodial interrogations almost always yield an

incontestable record of what was said and done. An increasing number of state legislatures have enacted laws and state supreme courts have issued rulings that either require or strongly urge electronic recordings be made of custodial interviews in major felony investigations.

Testimony from a district judge and a member of the North Dakota Commission on Uniform State Laws in support of Senate Bill No. 2125 indicated a study of the Act would allow law enforcement agencies to fully consider the Act and receive information from jurisdictions in which interrogations are recorded.

Testimony from the chiefs of police from Bismarck and Wahpeton in opposition to Senate Bill No. 2125 expressed concerns that the quantity of interviews the bill would require to be recorded would require the installation of recording equipment in additional interview rooms and would involve substantial logistical issues of indexing, storing, and retrieving of the recordings in order to establish an appropriate chain of custody as required for use in court proceedings. The Bismarck Chief of Police estimated a potential fiscal impact of up to \$14,000 for additional recording equipment in addition to the storage requirements for the recordings. Testimony indicated concerns regarding the establishment of specific procedural requirements and whether those requirements would lead to additional legal challenges concerning statements made by the person who is interrogated which in turn would make it more difficult and time consuming for law enforcement officers to do their jobs. Testimony also indicated a lack of awareness of any significant issues in North Dakota regarding the current law enforcement practices of conducting custodial interviews or interrogations of a person suspected of committing crimes. Testimony indicated the bill appeared to be implementing specific, stringent, and expensive requirements to address a problem that does not appear to exist. It also was noted the bill called into question the honesty, integrity, and ethics of the law enforcement officers of the state and is not warranted.

Testimony from the North Dakota Association of Counties indicated there were mixed opinions on the bill from sheriffs, state's attorneys, and trial lawyers. According to the testimony, experienced trial lawyers were comfortable with the bill because it would reduce the amount of litigation on the issue of whether the interview was conducted properly.

Analysis of Senate Bill No. 2125 (2011)

Senate Bill No. 2125, as introduced, consisted of 18 sections.

- Section 1 provides defined terms such as custodial interrogation, electronic recording, law enforcement agency, and law enforcement officer.
- Section 2 mandates the electronic recording of the entire custodial interrogation process by law enforcement.
- Section 3 exempts a law enforcement officer from informing the individual being interrogated that the interrogation is being recorded; however, a law enforcement officer or agency may not record a private communication between an individual and the individual's lawyer.
- Sections 4 through 9 outline a variety of exceptions from the recording mandate.

Section 4 creates an exception for exigent circumstances.

Section 5 creates an exception for if the individual interrogated refuses to participate if the interrogation is electronically recorded, though section 5 does, if feasible, require the electronic recording of the interrogatee's refusal to speak if his statements are electronically recorded.

Section 6 excepts custodial interrogations conducted in other jurisdictions in compliance with their law.

Section 7 excepts custodial interrogations conducted when the interrogator reasonably believes the offense involved is not one the statute mandates must be recorded.

Section 8 excepts custodial interrogations from electronic recording if the law enforcement officer or the law enforcement's superior reasonably believes electronic recording would reveal a confidential informant's identity or jeopardize the safety of the officer, the person interrogated, or another individual.

Section 9 creates an exception for equipment malfunctions occurring despite the existence of reasonable maintenance efforts and if timely repair or replacement is not feasible.

- Section 10 places the burden of persuasion as to the application of an exception on the prosecution by a preponderance of the evidence.
- Section 11 requires the state to notify the defense of an intention to rely on an exception if the state intends to do so in its case-in-chief.

- Section 12 outlines procedural remedies for a violation of the Act's requirement that the entire custodial interrogation process be electronically recorded, remedies that come into play only if no exceptions apply. The section provides the court shall consider failure to comply with the Act in ruling on a motion to suppress a confession as involuntary. The section does not mandate suppression for violation of the Act but merely mandates consideration of the relevance and weight of the failure to record by the trial judge in deciding whether to suppress on grounds of the involuntariness of the statement. If the judge admits the Act-violative confession, the section mandates the trial judge provide a cautionary instruction to the jury.
- Section 13 mandates electronic recordings of custodial interrogations be identified, accessible, and preserved.
- Section 14 requires the Attorney General to adopt and enforce rules to implement the Act.
- Section 15 concerns limitation of liability. The section declares a law enforcement agency in the state that has implemented procedures reasonably designed to enforce the rules adopted pursuant to section 14 is not subject to civil liability for damages arising from a violation of the Act.
- Section 16 makes electronic recordings of custodial interrogations presumptively self-authenticating in any pretrial or post-trial proceeding if accompanied by a certificate of authenticity by an appropriate law enforcement officer sworn under oath.
- Sections 17 and 18 address technical matters. Section 17 declares the Act does not create a right to electronic recording of a custodial interrogation, nor does the Act require preparation of a transcript of such an interrogation. Section 18 addresses the Act's relationship to the Electronic Signatures in Global and National Commerce Act.

Outcome of Senate Bill No. 2125 (2011)

In response to the testimony received for Senate Bill No. 2125 during the 2011 legislative session, an amendment was adopted to conduct a study of the Uniform Electronic Recording of Custodial Interrogations Act during the 2011-12 interim. The study was assigned to the Interim Judiciary Committee.

The committee received information from the Attorney General regarding the projected costs of implementing the Act. According to the information received, the estimated cost of implementing the Act on a statewide basis would be about \$7.5 million, plus maintenance and updating costs. The cost estimate was based on the assumption that no law enforcement agency has any of the required equipment. It was noted in addition to the cost of equipment, law enforcement agencies may not have sufficient physical space to meet the requirements of the Act.

Testimony in support of adopting the Act noted:

- The Act would promote fundamental fairness in the criminal justice system and would make the criminal justice system better.
- The Act is not unfair to law enforcement if a recording is not made. The Act does not punish officers for equipment failures or if officers believed the Act did not apply at the time. Violations of the Act do not automatically result in excluded evidence but merely become a factor for the court to consider.
- The Act promotes cost-savings to the state. When an interview is recorded, prosecutors and defense attorneys can accurately access the facts of the case and give their clients the best advice based on accurate information. The number of pretrial motions and trials before the court will be reduced and amount to a cost-savings.

Testimony in opposition to the adoption of the Act noted:

- The Act raises the issue of whether there is trust and respect for law enforcement in the state.
- The Act requires the recording take place at the police station; however, a custodial interrogation often takes place in the field. It was noted there also are concerns about the costs of audio and video equipment, the quality of the recordings, the consequences of having equipment fail, and the verification of whether a duplicate copy of a recording is an exact duplicate.
- The Act would have a detrimental impact on law enforcement, as well as the court system, it would be more beneficial to allow the individual agencies and departments the ability to implement policies and procedures to address the issue, and it was widely perceived the Act would eliminate the discretion of law enforcement officers and law enforcement agencies.

- The lack of space to add interrogation rooms, the failure of recording equipment in the field, and concerns regarding storage of recordings, including the need for additional servers.

The Interim Judiciary Committee made no recommendation to the 63rd Legislative Assembly regarding the adoption of the Uniform Electronic Recording of Custodial Interrogations Act.

Status of the Uniform Electronic Recording of Custodial Interrogations Act

As of January 2018, over 50 percent of the country has passed legislation or voluntarily committed to recording custodial police interviews; however, when and why the recordings are made varies significantly by state. Of the 27 states that record, only 4 (Alaska, Arkansas, Minnesota, and Montana) require all interviews for all offenses be recorded, while Indiana, New Mexico, Utah, and Wisconsin require recording only for felony charges. The majority of the remaining states (Colorado, Connecticut, Illinois, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Texas, Vermont, and Washington, D.C.) reserve recording requirements for specific, major offenses, such as capital murder and rape charges, as well as certain other sex crimes, aggravated crimes, and other serious or violent offenses. California and Oregon have limited their legal requirements with extreme specificity. California mandates recording only if a juvenile is suspected of murder. Oregon mandates recording only when an individual is suspected of aggravated murder, is facing a mandatory minimum offense, or is a juvenile who will be processed in adult criminal court.

In states that have voluntarily committed to recording, Rhode Island records for all capital offenses and Hawaii records for all serious crimes. Idaho, which has no formal statewide recording commitment, reports 22 percent of its law enforcement agencies record. A Supreme Court ruling in Massachusetts, expressing a preference for all interrogations to be recorded, has led to an unofficial statewide mandate. As of 2014, the United States Department of Justice requires interview recording by many of its law enforcement agencies.

SUGGESTED STUDY APPROACH

The committee, in its study of the feasibility and desirability of adopting the Uniform Electronic Recording of Custodial Interrogations Act, may wish to:

- Receive information from the Uniform Law Commission and the North Dakota Commission on Uniform State Laws regarding the adoption of the Uniform Electronic Recording of Custodial Interrogations Act; and
- Seek information and recommendations from the Attorney General, the North Dakota Association of Counties, the North Dakota Peace Officers Association, the North Dakota State's Attorneys' Association, the North Dakota Association for Justice, the State Bar Association of North Dakota, and other interested parties regarding the adoption of the Uniform Electronic Recording of Custodial Interrogations Act.

ATTACH: 2

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - RECORDING OF CUSTODIAL INTERROGATIONS.

1. During the 2023-24 interim, the legislative management shall study, with the assistance of the North Dakota commission on uniform state laws, the recording practices of local and state law enforcement during custodial interrogations to determine the feasibility and desirability for uniform implementation of recording practices. The study must include the number of law enforcement agencies currently recording custodial interrogations and the following information:
 - a. Any policies regarding how the recording of interrogations is conducted;
 - b. The storage and retention practices associated with recording interrogations;
 - c. The types of equipment used to record interrogations;
 - d. The types of locations at which interrogations are recorded;
 - e. The types of criminal investigations in which interrogations are recorded and the frequency those interrogations are recorded;
 - f. The current disclosure of recorded interrogations in criminal discovery;
 - g. Best practices and current requirements for the recording of interrogations, including adoption of the Uniform Electronic Recordation of Custodial Interrogations Act;
 - h. The financial costs associated with the recording of custodial interrogations and implementation of uniform practices; and
 - i. Any barriers to uniform implementation of the recording of custodial interrogations.
2. The legislative management may seek the assistance of the North Dakota commission on uniform state laws in the development of recommended policies and procedures.
3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

11.0168.01000

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2125

Introduced by

Government and Veterans Affairs Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to adopt the Uniform Electronic Record of Custodial Interrogations Act.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1.**

4 **Definitions.**

5 In this Act:

- 6 1. "Custodial interrogation" means questioning or other conduct by a law enforcement
 7 officer which is reasonably likely to elicit an incriminating response from an individual
 8 and occurs when reasonable individuals in the same circumstances would consider
 9 themselves in custody.
- 10 2. "Electronic recording" means an audio recording or an audio and video recording that
 11 accurately records a custodial interrogation.
- 12 3. "Law enforcement agency" means a governmental entity or person authorized by a
 13 governmental entity or by state law to enforce criminal laws or investigate suspected
 14 criminal activity. The term includes a nongovernmental entity that has been delegated
 15 the authority to enforce criminal laws or investigate suspected criminal activity.
- 16 4. "Law enforcement officer" means:
- 17 a. An individual:
- 18 (1) Employed by a law enforcement agency; and
- 19 (2) Whose responsibilities include enforcing criminal laws or investigating
 20 criminal activity; or
- 21 b. An individual acting at the request or direction of an individual described in
 22 subdivision a.
- 23 5. "Place of detention" means a fixed location under the control of a law enforcement
 24 agency where individuals are questioned about an alleged crime or delinquent act.

1 The term includes a jail, police or sheriff's station, holding cell, and correctional or
2 detention facility.

3 6. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
4 United States Virgin Islands, or any territory or insular possession subject to the
5 jurisdiction of the United States.

6 7. "Statement" means a communication whether it is oral, written, electronic, nonverbal,
7 or in sign language.

8 **SECTION 2.**

9 **Electronic recording requirement.**

10 1. Except as otherwise provided by sections 4 through 9 of this Act, a custodial
11 interrogation, including the giving of any required warning, advice of the rights of the
12 individual being questioned, and the waiver of any rights by the individual, must be
13 electronically recorded in its entirety if the interrogation relates to a felony or relates to
14 a delinquent act as defined in section 27-20-02. A custodial interrogation at a place of
15 detention must be recorded by both audio and video means.

16 2. If a law enforcement officer conducts a custodial interrogation to which subsection 1
17 applies without electronic recording, the officer shall prepare a written report
18 explaining the reason for not complying with this section and summarizing the
19 custodial interrogation process and the individual's statements.

20 3. A law enforcement officer shall prepare the report required by subsection 2 as soon as
21 practicable after completing the interrogation.

22 4. As soon as practicable, a law enforcement officer conducting a custodial interrogation
23 outside a place of detention shall prepare a written report explaining the decision to
24 interrogate outside a place of detention and summarizing the custodial interrogation
25 process and the individual's statements made outside a place of detention.

26 5. This section does not apply to a spontaneous statement made outside the course of a
27 custodial interrogation or a statement made in response to questions asked routinely
28 during the processing of the arrest of an individual.

29 **SECTION 3.**

1 **Notice and consent not required.**

2 Notwithstanding any other provision of law, a law enforcement officer conducting a custodial
3 interrogation is not required to obtain the individual's consent to the recording nor to inform the
4 individual being interrogated that an electronic recording is being made of the interrogation. This
5 Act does not permit a law enforcement officer or a law enforcement agency to record a private
6 communication between an individual and the individual's legal counsel.

7 **SECTION 4.**

8 **Exception for exigent circumstances.**

9 A custodial interrogation to which section 2 of this Act otherwise applies need not be
10 electronically recorded if recording is not feasible because of exigent circumstances. The law
11 enforcement officer conducting the interrogation shall electronically record an explanation of the
12 exigent circumstances before conducting the interrogation, if feasible, or as soon as practicable
13 thereafter.

14 **SECTION 5.**

15 **Exception for individual's refusal to be electronically recorded.**

- 16 1. A custodial interrogation to which section 2 of this Act otherwise applies need not be
17 electronically recorded if the individual to be interrogated indicates that the individual
18 will not participate in the interrogation if it is electronically recorded. If feasible, the
19 agreement to participate without recording must be electronically recorded.
- 20 2. If, during a custodial interrogation to which section 2 of this Act otherwise would apply,
21 the individual being interrogated indicates that the individual will not participate in
22 further interrogation unless electronic recording ceases, the remainder of the custodial
23 interrogation need not be electronically recorded. If feasible, the individual's
24 agreement to participate without further recording must be electronically recorded.
- 25 3. A law enforcement officer may not encourage, with intent to avoid the requirement of
26 electronic recording, an individual to request that a recording not be made.

27 **SECTION 6.**

28 **Exception for interrogation conducted by other jurisdictions.**

29 If a custodial interrogation occurs in another state in compliance with that state's law or is
30 conducted by a federal law enforcement agency in compliance with federal law, the

1 interrogation need not be electronically recorded unless the interrogation is conducted with
2 intent to avoid the requirement of electronic recording in section 2 of this Act.

3 **SECTION 7.**

4 **Exception based on belief that recording is not required.**

- 5 1. A custodial interrogation to which section 2 of this Act otherwise applies need not be
6 electronically recorded if the interrogation occurs when no law enforcement officer
7 conducting the interrogation has knowledge of facts in circumstances that would lead
8 an officer reasonably to believe that the individual being interrogated may have
9 committed a felony or delinquent act for which section 2 of this Act requires that a
10 custodial interrogation be recorded.
- 11 2. If, during a custodial interrogation, the individual reveals facts and circumstances
12 giving a law enforcement officer conducting the interrogation reason to believe that a
13 felony or delinquent act has been committed for which section 2 of this Act requires
14 that a custodial interrogation be electronically recorded, continued custodial
15 interrogation concerning that felony or delinquent act must be electronically recorded,
16 if feasible.

17 **SECTION 8.**

18 **Exception for safety of individual or protection of identity.**

19 A custodial interrogation to which section 2 of this Act otherwise applies need not be
20 electronically recorded if a law enforcement officer conducting the interrogation or the officer's
21 superior reasonably believes that electronic recording would disclose the identity of a
22 confidential informant or jeopardize the safety of an officer, the individual being interrogated, or
23 another individual. If feasible and consistent with the safety of a confidential informant, an
24 explanation of the basis for the belief that electronic recording would disclose the informant's
25 identity must be electronically recorded at the time of the interrogation. If contemporaneous
26 recording of the basis for the belief is not feasible, the recording must be made as soon as
27 practicable after the interrogation is completed.

28 **SECTION 9.**

29 **Exception for equipment malfunction.**

- 30 1. All or part of a custodial interrogation to which section 2 of this Act otherwise applies
31 need not be electronically recorded to the extent that recording is not feasible because

1 the available electronic recording equipment fails, despite reasonable maintenance of
2 the equipment, and timely repair or replacement is not feasible.

3 2. If both audio and video recording of a custodial interrogation are otherwise required by
4 section 2 of this Act, recording may be by audio alone if a technical problem in video
5 recording equipment prevents video recording, despite reasonable maintenance of the
6 equipment, and timely repair or replacement is not feasible.

7 3. If both audio and video recording of a custodial interrogation are otherwise required by
8 section 2 of this Act, recording may be by video alone if a technical problem in the
9 audio recording equipment prevents audio recording, despite reasonable maintenance
10 of the equipment, and timely repair or replacement is not feasible.

11 **SECTION 10.**

12 **Burden of persuasion.**

13 If the prosecution relies on an exception in sections 4 through 9 of this Act to justify a failure
14 to make an electronic recording of a custodial interrogation, the prosecution must prove by a
15 preponderance of the evidence that the exception applies.

16 **SECTION 11.**

17 **Notice of intent to introduce unrecorded statement.**

18 If the prosecution intends to introduce in its case in chief a statement made during a
19 custodial interrogation to which subsection 1 of section 2 of this Act applies which was not
20 electronically recorded, the prosecution, not later than the time specified by the North Dakota
21 Rules of Criminal Procedure, shall serve the defendant with written notice of that intent and of
22 any exception on which the prosecution intends to rely.

23 **SECTION 12.**

24 **Procedural remedies.**

25 1. Unless the court finds that an exception in sections 4 through 9 of this Act applies, the
26 court shall consider the failure to make an electronic recording of all or part of a
27 custodial interrogation to which section 2 of this Act applies as a factor in determining
28 whether a statement made during the interrogation is admissible, including whether it
29 was voluntarily made or is reliable.

- 1 2. If the court admits into evidence a statement made during a custodial interrogation that
2 was not electronically recorded in compliance with section 2 of this Act, the court, upon
3 request of the defendant, shall give cautionary instructions to the jury.

4 **SECTION 13.**

5 **Handling and preservation of electronic recording.**

6 Each law enforcement agency shall establish and enforce procedures to ensure that the
7 electronic recording of any or all of a custodial interrogation is identified, accessible, and
8 preserved in the manner required by state law and rules of court.

9 **SECTION 14.**

10 **Rules relating to electronic recording.**

- 11 1. The attorney general shall adopt and enforce rules to implement this Act.
- 12 2. The rules adopted under subsection 1 must address the following topics:
- 13 a. The manner in which an electronic recording of a custodial interrogation must be
14 made;
- 15 b. The collection and review of electronic recording data, or the absence thereof, by
16 superiors within the law enforcement agency;
- 17 c. The assignment of supervisory responsibilities and a chain of command to
18 promote internal accountability;
- 19 d. A process for explaining noncompliance with procedures and imposing
20 administrative sanctions for failures to comply that are not justified;
- 21 e. A supervisory system expressly imposing on specific individuals a duty to ensure
22 adequate staffing, education, training, and material resources to implement this
23 Act; and
- 24 f. A process for monitoring the chain of custody of electronic recordings of custodial
25 interrogations.
- 26 3. The rules adopted under subsection 1 for video recording must contain standards for
27 the angle, focus, and field of vision of a recording device which reasonably promote
28 accurate recording of a custodial interrogation at a place of detention and reliable
29 assessment of its accuracy and completeness.
- 30 4. Each law enforcement agency shall adopt and enforce rules providing for
31 administrative discipline of a law enforcement officer found by a court or a supervisor

1 of the agency to have violated the terms of this Act. The rules must provide a range of
2 disciplinary sanctions reasonably designed to promote compliance with this Act.

3 **SECTION 15.**

4 **Limitation of liability.**

5 1. A law enforcement agency that has enforced rules adopted pursuant to section 14 of
6 this Act which are reasonably designed to ensure compliance with the terms of this Act
7 is not subject to civil liability for damages arising from a violation of this Act.

8 2. This Act does not create a cause of action against a law enforcement officer.

9 **SECTION 16.**

10 **Self-authentication.**

11 1. In any pretrial or posttrial proceeding, an electronic recording of a custodial
12 interrogation is self-authenticating if it is accompanied by a certificate of authenticity
13 sworn under oath or affirmation by an appropriate law enforcement officer.

14 2. This Act does not limit the right of a defendant under law other than this Act to
15 challenge the authenticity of an electronic recording of a custodial interrogation.

16 **SECTION 17.**

17 **No right to electronic recording and transcript.**

18 1. This Act does not create a right of an individual to require a custodial interrogation to
19 be electronically recorded.

20 2. This Act does not require preparation of a transcript of an electronic recording of a
21 custodial interrogation.

22 **SECTION 18.**

23 **Relation to Electronic Signatures in Global and National Commerce Act.**

24 This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and
25 National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede
26 section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the
27 notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].