



Ohio Revised Code

Section 2933.81 Electronic recording during custodial interrogation.

Effective: July 6, 2010

Legislation: Senate Bill 77 - 128th General Assembly

(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 and visual 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) All 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 are presumed to be voluntary if the statements made by the person are electronically recorded. The person making the statements during the electronic recording of the custodial interrogation has the burden of proving that the statements made during the custodial interrogation were not voluntary. There shall be no penalty against the law enforcement agency that employs a law enforcement officer if the law enforcement officer fails to electronically record as required by this division a custodial interrogation. A law enforcement officer's failure to electronically record a custodial interrogation does not create a private cause of action against that law enforcement officer.

(C) A failure to electronically record a statement as required by this section shall not provide the basis to exclude or suppress the statement in any criminal proceeding, delinquent child proceeding, or other legal proceeding.

(D)(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.