

FIRST REGULAR SESSION

# SENATE BILL NO. 304

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time January 26, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1716S.011

## AN ACT

To repeal section 590.700 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and to enact in lieu thereof one new section relating to custodial interrogations.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 590.700 as enacted by senate bill no. 491, ninety-  
2 seventh general assembly, second regular session, is repealed and one new section  
3 enacted in lieu thereof, to be known as sections 590.700:

590.700. 1. As used in this section, the following terms shall mean:

2 (1) "Custodial interrogation", the questioning of a person [under arrest,  
3 who] **suspected of committing a criminal offense who is in custody in a**  
4 **fixed place of detention and** is no longer at the scene of the crime[.]

5 by a member of a law enforcement agency along with the answers and other  
6 statements of the person questioned. "Custodial interrogation" shall not include:

7 (a) A situation in which a person voluntarily agrees to meet with a  
8 member of a law enforcement agency;

9 (b) [A detention by a law enforcement agency that has not risen to the  
10 level of an arrest;

11 (c)] Questioning that is routinely asked during the processing of the arrest  
12 of the suspect;

13 [(d)] (c) Questioning pursuant to an alcohol influence report;

14 [(e)] (d) Questioning during the transportation of a suspect;

15 (2) "Recorded" and "recording", any form of audiotape, videotape, motion  
16 picture, or digital recording.

17 2. All custodial interrogations of persons suspected of committing or

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 attempting to commit murder in the first degree, murder in the second degree,  
19 assault in the first degree, assault of a law enforcement officer in the first degree,  
20 domestic assault in the first degree, elder abuse in the first degree, robbery in the  
21 first degree, arson in the first degree, rape in the first degree, forcible rape,  
22 sodomy in the first degree, forcible sodomy, kidnapping, kidnapping in the first  
23 degree, statutory rape in the first degree, statutory sodomy in the first degree,  
24 child abuse, or child kidnapping shall be recorded when feasible. **The law  
25 enforcement agency shall document instances when recording a  
26 custodial interrogation is not feasible.**

27 3. Law enforcement agencies may record an interrogation in any  
28 circumstance with or without the knowledge or consent of a suspect, but they  
29 shall not be required to record an interrogation under subsection 2 of this section:

- 30 (1) If the suspect requests that the interrogation not be recorded;
- 31 (2) If the interrogation occurs outside the state of Missouri;
- 32 (3) If exigent public safety circumstances prevent recording; **or**
- 33 (4) To the extent the suspect makes spontaneous statements[;].

34 [(5)] 4. If the recording equipment fails[;] or

35 [(6) If recording equipment] is not available at the location where the  
36 interrogation takes place, **the law enforcement agency shall demonstrate  
37 a good faith effort to maintain recording equipment for interrogations  
38 in order to comply with this section. If the suspect requests that the  
39 interrogation not be recorded, the law enforcement agency shall make  
40 a video recording of the suspect's statement making the request and  
41 then turn off the recording equipment before beginning the  
42 interrogation. If the interrogation was not recorded due to exigent  
43 circumstances or because the suspect made spontaneous statements,  
44 the law enforcement agency shall make a contemporaneous written  
45 record detailing the circumstances surrounding the failure to record.**

46 [4.] 5. Each law enforcement agency shall adopt a written policy to record  
47 custodial interrogations of persons suspected of committing or attempting to  
48 commit the felony crimes described in subsection 2 of this section.

49 [5. If a law enforcement agency fails to comply with the provisions of this  
50 section, the governor may withhold any state funds appropriated to the  
51 noncompliant law enforcement agency if the governor finds that the agency did  
52 not act in good faith in attempting to comply with the provisions of this section.]

53 6. Nothing in this section shall be construed as a ground to exclude

54 evidence[, and a violation of this section shall not have impact other than that  
55 provided for in subsection 5 of this section. Compliance or noncompliance with  
56 this section shall not be admitted as evidence, argued, referenced, considered or  
57 questioned during a criminal trial]. **When evidence of compliance or  
58 noncompliance with the requirements of this section has been admitted  
59 and presented at trial, the jury shall be instructed that it may consider  
60 the evidence of compliance or noncompliance in assessing whether the  
61 defendant's statement was voluntary and reliable.**

62 7. Nothing contained in this section shall be construed to authorize,  
63 create, or imply a private cause of action.

64 8. **Every recording required under this section shall be preserved  
65 until judgment for any offense relating to the statement is final and all  
66 state and federal appeals, habeas corpus matters, and other post-  
67 conviction proceedings are exhausted, or the prosecution of the offense  
68 is barred by law.**

✓

Bill

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