**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23‑1‑240 SO AS TO PROVIDE DEFINITIONS OF TERMS RELATING TO THE VIDEO RECORDING OF STATEMENTS MADE DURING A CUSTODIAL INTERROGATION, TO PROVIDE THAT CERTAIN STATEMENTS MADE DURING A CUSTODIAL INTERROGATION MUST BE VIDEO RECORDED, TO PROVIDE THAT A COURT MUST INSTRUCT A JURY THAT IT MAY DRAW AN ADVERSE INFERENCE FOR A LAW ENFORCEMENT OFFICER WHO FAILS TO VIDEO RECORD A STATEMENT RELATING TO A CRIME, TO PROVIDE THE CIRCUMSTANCE IN WHICH A PERSON’S STATEMENT MAY BE USED FOR IMPEACHMENT PURPOSES, TO PROVIDE THE CIRCUMSTANCES WHEN A STATEMENT OBTAINED IN ANOTHER STATE OR BY THE FEDERAL GOVERNMENT IS ADMISSIBLE IN THIS STATE AND TO PROVIDE THE CIRCUMSTANCES WHEN AN INAUDIBLE PORTION OF A VIDEO RECORDING DOES NOT RENDER IT INADMISSIBLE IN A JUDICIAL PRECEDING.

Whereas, the General Assembly finds that to video record statements made during a custodial interrogation is an effective way to document a free, knowing, voluntary, and intelligent waiver of a person’s right to remain silent, to agree to answer questions, to decide to have an attorney present during questioning, and to decide to have an attorney provided to a person if he cannot afford an attorney, as provided by the Constitution of the United States and the Constitution of South Carolina; and

Whereas, providing a record of the statement made during a custodial interrogation and any waiver of constitutional rights will reduce speculation and claims that may arise as to the content of the statement; and

Whereas, a record of the content of the statement will aid law enforcement officers in analyzing and rejecting untruthful statements and will aid the factfinder in determining whether a statement was freely, knowingly, voluntarily, and intelligently made. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-240. As contained in this section:

(1) ‘Custodial interrogation’ has the meaning prescribed to it under the Fourth and Fifth Amendments to the Constitution of the United States;

(2) ‘video record’ means to record an event by using a video recording device;

(3) ‘place of detention’ means a police station, sheriff’s office, courthouse, solicitor’s office, juvenile or adult correctional or holding facility, regional correctional center, or a building under the permanent control of a law enforcement agency at which a person is in custody pursuant to the authority of a law enforcement officer; and

(4) ‘reasonable exception’ means circumstances in which:

(a) a sworn affidavit was made when it was not practicable to video record the statement;

(b) equipment to video record the statement could not be reasonably obtained;

(c) the person in custody refused to have the statement video recorded;

(d) the equipment used to video record the statement malfunctioned; or

(e) the law enforcement officer who obtained the statement reasonably believed that the crime for which the person was taken into custody was not a crime.

(B) All statements relating to a crime and statements regarding rights contained in the United States Constitution and the South Carolina Constitution or the waiver of these rights made during a custodial interrogation at a place of detention must be video recorded.

(C) Except as provided in subsections (D), (E), and (F), if a law enforcement officer fails to comply with subsection (B), a court shall instruct the jury that it may draw an adverse inference for the law enforcement officer’s failure to comply with subsection (B).

(D) If a defendant testifies contrary to his statement made during a custodial interrogation at a place of detention which was not video recorded, the statement may be used for the purpose of impeachment if it is shown that the statement was freely, knowingly, voluntarily, and intelligently made. A jury instruction is not required if the prosecution proves, by a preponderance of the evidence, that there is a reasonable exception for there not being an video recording.

(E) If a law enforcement officer fails to comply with the provisions contained in subsection (B), this failure does not bar the use of any evidence derived from a statement if the court determines that the evidence is otherwise admissible.

(F) Any statement made during a custodial interrogation is admissible against a person in a criminal proceeding in this state if:

(1) the statement was obtained in another state and was obtained in compliance with the laws of that state; or

(2) the statement was obtained by a federal law enforcement officer in this state or another state, was obtained in compliance with the laws of the United States, and was not taken by a federal law enforcement officer in an attempt to circumvent this section.

(G) The existence of inaudible portions of a video recording, which are not the result of bad faith by a law enforcement officer to produce an inaudible result, standing alone, shall not render a statement out of compliance with subsection (B).”

SECTION 2. This act takes effect upon approval by the Governor.

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