**A** **BILL**

TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, RELATING TO LAW ENFORCEMENT AND PUBLIC SAFETY, BY ADDING SECTION 23-1-250, TO PROVIDE THAT CERTAIN STATEMENTS MADE DURING QUESTIONING OR INTERROGATION MUST BE AUDIO OR 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 RECORD A STATEMENT AS REQUIRED, TO PROVIDE THE CIRCUMSTANCES IN WHICH A PERSON’S STATEMENT MAY BE USED FOR IMPEACHMENT PURPOSES, TO PROVIDE THE CIRCUMSTANCES IN WHICH A STATEMENT OBTAINED IN ANOTHER STATE OR BY THE FEDERAL GOVERNMENT IS ADMISSIBLE IN THIS STATE, TO PROVIDE THAT AN INAUDIBLE PORTION OF A RECORDING DOES NOT RENDER IT INADMISSIBLE, AND TO DEFINE CERTAIN TERMS.

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 23‑1‑250. (A) For the purposes of this section:

(1) ‘Interrogation’ means any questioning by a law enforcement officer, in a place of detention, that is reasonably likely and intended to elicit incriminating responses, including circumstances in which a reasonable person in the subject’s or officer’s position would consider the subject to be a suspect or in custody. When the subject is in custody, recording must begin when the subject should have been advised of his Miranda rights and end when the questioning has completely finished.

(2) ‘Electronic recording’ means a video or audio recording, with a preference for video recording, where practicable, that is a complete and uninterrupted, accurate and unaltered record of an interrogation.

(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 county jail, building under the permanent control of a law enforcement agency at which a person is subjected to questioning or is in custody pursuant to the authority of a law enforcement officer, or police vehicle that is equipped with electronic recording equipment.

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

(a) a sworn affidavit was made that provides an explanation of why it was not practicable to electronically record the statement or why recording was not feasible because of exigent circumstances, to ensure the interrogating officer’s good faith adherence to the provisions required by this code section to the extent possible under the circumstances. The law enforcement officer conducting the questioning, interrogation, or custodial interrogation shall electronically, or in a sworn written affidavit, record an explanation of the exigent or impracticable circumstances before conducting the interrogation, if feasible, or as soon as practicable thereafter;

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

(c) a law enforcement officer who obtained the statement reasonably believed that the person being questioned or interrogated was not a suspect or the subject matter of questioning was not a crime;

(d) the equipment used to audio or video record the statement malfunctioned, despite reasonable maintenance of the equipment, and timely repair or replacement to accommodate recording was not feasible;

(e) the law enforcement officer who obtained the statement reasonably believed that the circumstances for which the person was being questioned or taken into custody was not a crime. However, a recording must be initiated immediately, if feasible, when the individual reveals facts and circumstances during the questioning, interrogation, or custodial interrogation that gives the officer conducting the questioning, interrogation, or custodial interrogation reason to believe that a crime has been committed;

(f) a law enforcement officer conducting the questioning, interrogation, or custodial interrogation; the officer’s superior; or the prosecutor subsequently and reasonably believes that the electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer or other individual. In this circumstance, the prosecuting agency may move for an order of redaction or an order excusing the prosecution from the requirements of this section, and no jury instruction in that event is required; or

(g) the questioning, interrogation, or custodial interrogation necessarily took place in a jurisdiction not subject to the laws of South Carolina or the statement was taken by law enforcement officers under circumstances in which it was not reasonably likely that the statements would be used in a prosecution for violations of the criminal laws of the State.

(B) Any law enforcement officer conducting a questioning, interrogation, or custodial interrogation of a criminal offense designated as a felony or a Class A misdemeanor shall be subject to the requirements contained in this section and shall make an electronic recording of the questioning, interrogation, or custodial interrogation in its entirety as practical, to include an explanation of constitutional rights and a waiver of those rights.

(C) All statements made by a person during a questioning, interrogation, or custodial interrogation must be presumed to fall within the electronic recording requirements of this section. The burden is upon the State to establish a reasonable explanation for noncompliance and to demonstrate the applicability of the enumerated exceptions or exigent circumstances.

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

(E) A non-electronically recorded statement made during a questioning, interrogation, or custodial interrogation may be used for the purpose of impeachment as long as it is shown that the statement was freely, knowingly, voluntarily, and intelligently made and that there was no applicable reasonable exception excusing the law enforcement officer’s failure to electronically record the statement.

(F) 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.

(G) Any statement made during a questioning, interrogation, or 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.

(H) The existence of inaudible portions of a video recording that 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), but this subsection shall not override the court’s discretion to admit or bar admission of such video recording for any other grounds.”

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

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