

Senate File 44 - Introduced

SENATE FILE 44
BY BOLKCOM

A BILL FOR

1 An Act relating to recording custodial interrogations in a
2 criminal or juvenile case.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 823.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Custodial interrogation*" means questioning or other
5 conduct by a law enforcement officer which is reasonably likely
6 to elicit an incriminating response from an individual and
7 occurs when reasonable individuals in the same circumstances
8 would consider themselves in custody.

9 2. "*Electronic recording*" means an audio and video
10 recording that accurately records a custodial interrogation.
11 "Record electronically" and "recorded electronically" have a
12 corresponding meaning.

13 3. "*Law enforcement agency*" means a governmental entity
14 or other entity authorized by a governmental entity or state
15 law to enforce criminal laws or investigate suspected criminal
16 activity. The term does not include a law enforcement officer.

17 4. "*Law enforcement officer*" means an individual employed
18 by a law enforcement agency whose responsibilities include
19 enforcing criminal laws or investigating suspected criminal
20 activity, including but not limited to a peace officer as
21 defined in section 801.4 and a reserve officer as defined in
22 section 80D.1A.

23 5. "*Place of detention*" means a fixed location under the
24 control of a law enforcement agency where individuals are
25 questioned about alleged crimes or delinquent acts. The term
26 includes a jail, police or sheriff's station, a law enforcement
27 officer's vehicle, holding cell, and correctional or detention
28 facility.

29 6. "*Statement*" means a communication whether oral, written,
30 electronic, or nonverbal.

31 Sec. 2. NEW SECTION. 823.2 Electronic recording
32 requirement.

33 1. Except as provided in sections 823.4 through 823.9,
34 a custodial interrogation at a place of detention, including
35 the giving of any required warning, advice of the rights of

1 the individual being questioned, and the waiver of any rights
2 by the individual, shall be recorded electronically in its
3 entirety by both audio and video means if the interrogation
4 relates to any crime or delinquent act.

5 2. If subsection 1 applies and a law enforcement officer
6 conducts a custodial interrogation without electronically
7 recording the interrogation in its entirety, the officer
8 shall prepare a written or electronic report explaining the
9 reason for not complying with this section and summarizing
10 the custodial interrogation process and the individual's
11 statements.

12 3. A law enforcement officer shall prepare the report
13 required by subsection 2 as soon as practicable after
14 completing the custodial interrogation.

15 **Sec. 3. NEW SECTION. 823.3 Notice and consent not required.**

16 A law enforcement officer conducting a custodial
17 interrogation is not required to obtain consent to electronic
18 recording from the individual being interrogated or to
19 inform the individual that an electronic recording is being
20 made of the interrogation. This chapter does not permit
21 a law enforcement officer or a law enforcement agency to
22 record a private communication between an individual and the
23 individual's lawyer.

24 **Sec. 4. NEW SECTION. 823.4 Feasibility of recording —**
25 **spontaneous statement exceptions.**

26 1. A custodial interrogation is not required to be recorded
27 electronically pursuant to section 823.2 if the recording is
28 not reasonably feasible under the circumstances. The law
29 enforcement officer conducting the custodial interrogation
30 shall record electronically an explanation of the exigent
31 circumstances before conducting the custodial interrogation,
32 if feasible, or as soon as practicable after the custodial
33 interrogation is completed.

34 2. An electronic recording is not required for a spontaneous
35 statement made outside the course of a custodial interrogation

1 or a statement made in response to a question asked routinely
2 during the processing of an individual following an arrest.

3 Sec. 5. NEW SECTION. 823.5 Refusal to be electronically
4 recorded — exception.

5 1. A custodial interrogation is not required to be recorded
6 electronically pursuant to section 823.2 if the individual
7 to be interrogated indicates that the individual will not
8 participate in the interrogation if the interrogation is
9 recorded electronically. If feasible, the agreement to
10 participate without recording must be recorded electronically.

11 2. If, during a custodial interrogation that applies under
12 section 823.2, the individual being interrogated indicates that
13 the individual will not participate in further interrogation
14 unless electronic recording ceases, the remainder of the
15 custodial interrogation is not required to be recorded
16 electronically. If feasible, the individual's agreement
17 to participate without further recording must be recorded
18 electronically.

19 3. A law enforcement officer, with the intent to avoid the
20 requirement of electronic recording in section 823.2, shall
21 not encourage an individual to request that a recording not be
22 made.

23 Sec. 6. NEW SECTION. 823.6 Interrogation conducted by other
24 jurisdiction — exception.

25 If a custodial interrogation occurs in another state
26 in compliance with that state's law or is conducted by a
27 federal law enforcement agency in compliance with federal law,
28 the custodial interrogation is not required to be recorded
29 electronically unless the custodial interrogation is conducted
30 on behalf of an Iowa law enforcement agency with the specific
31 intent to avoid the requirement of electronic recording in
32 section 823.2.

33 Sec. 7. NEW SECTION. 823.7 Belief — exception.

34 1. A custodial interrogation is not required to be
35 recorded electronically pursuant to section 823.2 if the

1 custodial interrogation occurs when no law enforcement officer
2 conducting the custodial interrogation has knowledge of facts
3 and circumstances that would lead a law enforcement officer
4 reasonably to believe that the individual being interrogated
5 may have committed an act which requires that a custodial
6 interrogation be recorded electronically under section 823.2.

7 2. If, during such a custodial interrogation, the
8 individual being interrogated reveals facts and circumstances
9 giving a law enforcement officer conducting the custodial
10 interrogation reason to believe that an act has been
11 committed which requires that a custodial interrogation
12 be recorded electronically under section 823.2, continued
13 custodial interrogation concerning that act must be recorded
14 electronically, if feasible.

15 Sec. 8. NEW SECTION. 823.8 Safety — exception.

16 A custodial interrogation is not required to be recorded
17 electronically pursuant to section 823.2 if a law enforcement
18 officer conducting the custodial interrogation or the officer's
19 superior reasonably believes that electronic recording
20 would disclose the identity of a confidential informant
21 or jeopardize the safety of a law enforcement officer, the
22 individual being interrogated, or another individual. If
23 feasible and consistent with the safety of a confidential
24 informant, an explanation of the basis for the belief that
25 electronic recording would disclose the informant's identity
26 must be recorded electronically at the time of the custodial
27 interrogation. If contemporaneous recording of the basis for
28 the belief is not feasible, the recording must be made as soon
29 as practicable after the custodial interrogation is completed.

30 Sec. 9. NEW SECTION. 823.9 Equipment malfunction —
31 exception.

32 All or part of a custodial interrogation is not required to
33 be recorded electronically pursuant to section 823.2 to the
34 extent that recording is not feasible because the available
35 electronic recording equipment fails, despite reasonable

1 maintenance of the equipment, and timely repair or replacement
2 is not feasible.

3 Sec. 10. NEW SECTION. 823.10 **Burden of proof.**

4 If the prosecution relies on an exception described in
5 sections 823.4 through 823.9 to justify a failure to record
6 electronically a custodial interrogation, the prosecution must
7 prove by a preponderance of the evidence that the exception
8 applies.

9 Sec. 11. NEW SECTION. 823.11 **Notice of intent to introduce
10 unrecorded statement.**

11 If the prosecution intends to introduce in its case in chief
12 a statement made during a custodial interrogation which was
13 not recorded electronically and section 823.2 applies to that
14 statement, the prosecution, not later than the time specified
15 by rule of criminal procedure 2.11(4), Iowa court rules, shall
16 serve the defendant with written notice of that intent and of
17 any exception on which the prosecution intends to rely.

18 Sec. 12. NEW SECTION. 823.12 **Procedural remedies.**

19 1. Unless the court finds that an exception in sections
20 823.4 through 823.9 applies, the court shall consider the
21 failure to record electronically all or part of a custodial
22 interrogation in compliance with section 823.2 as a factor
23 in determining whether a statement made during the custodial
24 interrogation is admissible, including whether it was
25 voluntarily made.

26 2. If the court admits into evidence a statement made during
27 a custodial interrogation that was not recorded electronically
28 in compliance with section 823.2, the court, on request of the
29 defendant, shall give a cautionary instruction to the jury,
30 unless such an instruction would be confusing or not beneficial
31 to the jury.

32 Sec. 13. NEW SECTION. 823.13 **Handling and preserving
33 electronic recording — spoliation.**

34 Each law enforcement agency in this state shall establish
35 and enforce procedures to ensure that the electronic recording

1 of all or part of a custodial interrogation is identifiable,
2 accessible, and preserved for a period of three years after
3 the date of the limitation for the commencement of a criminal
4 action as set forth in chapter 802.

5 Sec. 14. NEW SECTION. 823.14 Rules relating to electronic
6 recording.

7 1. Each law enforcement agency that is a governmental entity
8 of this state shall adopt and enforce rules to administer this
9 chapter.

10 2. The rules adopted under subsection 1 shall address the
11 following:

12 a. The manner in which an electronic recording is made.

13 b. The collection and supervisory review of an electronic
14 recording.

15 c. Supervisory responsibilities imposed on individuals
16 in specific positions in order to ensure adequate staffing,
17 education, training, material resources, and a chain of command
18 to promote internal accountability.

19 d. A process that details when noncompliance with procedures
20 occurs.

21 e. The imposition of administrative sanctions for a failure
22 to comply with procedures that is not justified.

23 f. A process for monitoring the chain of custody of an
24 electronic recording.

25 3. The rules adopted under subsection 2, paragraph "a", for
26 video recordings must contain standards for the angle, focus,
27 and field of vision of a recording device which reasonably
28 promote accurate recording of a custodial interrogation at a
29 place of detention and reliable assessment of its accuracy and
30 completeness.

31 Sec. 15. NEW SECTION. 823.15 Self-authentication.

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

1 officer.

2 2. This chapter does not limit the right of an individual
3 to challenge the authenticity of an electronic recording of a
4 custodial interrogation under the laws of this state other than
5 this chapter.

6 Sec. 16. NEW SECTION. 823.16 Right to electronic recording
7 or transcript.

8 1. This chapter does not create a right of an individual
9 to require a custodial interrogation to be recorded
10 electronically.

11 2. This chapter does not require preparation of a transcript
12 of an electronic recording of a custodial interrogation.

13 Sec. 17. NEW SECTION. 823.17 Relation to Electronic
14 Signatures in Global and National Commerce Act.

15 This chapter modifies, limits, and supersedes the federal
16 Electronic Signatures in Global and National Commerce Act, 15
17 U.S.C. §7001 et seq., but does not modify, limit, or supersede
18 section 101(a) of that Act, 15 U.S.C. §7001(a), or authorize
19 electronic delivery of any of the notices described in section
20 103(b) of that Act, 15 U.S.C. §7003(b).

21 Sec. 18. IMPLEMENTATION OF ACT. Section 25B.2, subsection
22 3, shall not apply to this Act.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to electronic recordings of custodial
27 interrogations in criminal or juvenile cases.

28 Under the bill, a custodial interrogation at a place of
29 detention, including the giving of any required warning,
30 advice of the rights of the individual being questioned, and
31 the waiver of any rights by the individual, must be recorded
32 electronically in its entirety by both audio and video means if
33 the interrogation relates to any crime or delinquent act.

34 The bill defines "custodial interrogation" to mean
35 questioning or other conduct by a law enforcement officer which

1 is reasonably likely to elicit an incriminating response from
2 an individual and occurs when reasonable individuals in the
3 same circumstances would consider themselves in custody.

4 The bill defines "place of detention" to mean a fixed
5 location under the control of a law enforcement agency where
6 individuals are questioned about alleged crimes or delinquent
7 acts. The term includes a jail, police or sheriff's station,
8 a law enforcement officer's vehicle, holding cell, and
9 correctional or detention facility.

10 The bill does not require a law enforcement officer to
11 obtain consent or inform the person being interrogated that the
12 interrogation is being electronically recorded.

13 The bill does not apply to a spontaneous statement made
14 outside the course of the custodial interrogation or a
15 statement made in response to a question asked routinely during
16 the processing of the arrest of an individual.

17 The requirements of the bill also do not apply to
18 the following situations: the electronic recording is
19 not reasonably feasible under the circumstances, the
20 individual refuses to participate in the interrogation
21 if the interrogation is being recorded, the interrogation
22 occurs in another jurisdiction in compliance with the other
23 jurisdiction's laws or by federal law enforcement in compliance
24 with federal law, the law enforcement officer has no knowledge
25 of the facts that would lead the officer to reasonably believe
26 that the individual being interrogated committed an act which
27 would require the interrogation to be electronically recorded,
28 the law enforcement officer conducting the interrogation
29 reasonably believes the electronic recording would disclose
30 the identity of a confidential informant or jeopardize the
31 safety of an officer or another individual, or the electronic
32 recording equipment fails.

33 If feasible under the circumstances, the bill requires the
34 reason for not electronically recording an interrogation to be
35 contemporaneously electronically recorded.

1 The bill prohibits a law enforcement officer from
2 encouraging an individual to request an interrogation not be
3 electronically recorded.

4 If the prosecution relies on an exception to not
5 electronically record an interrogation, the bill specifies that
6 the burden is on the prosecution to prove by a preponderance of
7 the evidence that an exception does apply.

8 The bill requires the prosecution to provide written notice
9 to a defendant of the intent to rely upon a statement made in a
10 custodial interrogation which was not electronically recorded
11 within 40 days of arraignment.

12 The bill specifies that the court shall consider the
13 failure to electronically record all or part of a custodial
14 interrogation, unless an exception applies, as a factor in
15 determining whether a statement made during the interrogation
16 is admissible, including whether the statement was voluntarily
17 made.

18 The bill requires each law enforcement agency to establish
19 and enforce procedures to ensure that the electronic recording
20 is identifiable, accessible, and preserved for a period
21 of three years after the date of the limitation for the
22 commencement of a criminal action as set forth in Code chapter
23 802.

24 The bill requires each law enforcement agency to establish
25 rules relating to the following: the manner in which an
26 electronic recording is made including the angle and focus
27 of the camera, supervisory responsibilities, a process
28 that details when noncompliance with procedures occurs, the
29 imposition of administrative sanctions for a failure to comply
30 with the procedures, and a process for monitoring the chain of
31 custody of an electronic recording.

32 The bill does not create a right to require a custodial
33 interrogation to be recorded electronically or require a
34 transcript of an electronically recorded interrogation to be
35 prepared.

1 The bill may include a state mandate as defined in Code
2 section 25B.3. The bill makes inapplicable Code section 25B.2,
3 subsection 3, which would relieve a political subdivision from
4 complying with a state mandate if funding for the cost of
5 the state mandate is not provided or specified. Therefore,
6 political subdivisions are required to comply with any state
7 mandate included in the bill.