

2009 -- S 0212 SUBSTITUTE A

LC00166/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO CRIMINAL PROCEDURE -- ARREST

Introduced By: Senator C Levesque

Date Introduced: February 04, 2009

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-7 of the General Laws entitled "Arrest" is hereby amended by
2 adding thereto the following section:

3 **12-7-22.1. Require the electronic recording of interrogations in their entirety in**
4 **capital cases. – (a) No statement made by an accused during custodial interrogation shall be**
5 **admissible in evidence against the accused in a criminal proceeding on a charge of murder,**
6 **manslaughter, first degree sexual assault, first degree child molestation, first degree robbery, first**
7 **degree arson, or any other charge where the potential sentence is one of life imprisonment,**
8 **unless:**

9 **(1) A complete and authentic electronic recording, which may include motion picture,**
10 **video tape, or other visual recording, or an audio tape recording, is made of the statement and the**
11 **interrogation in its entirety;**

12 **(2) Prior to the statement, but during the recording the accused is given the requisite**
13 **"Miranda" warnings, so called, and the accused knowingly, intelligently, and voluntarily waives**
14 **any rights set out in the warning;**

15 **(3) The recording device was capable of making an accurate recording, the operator was**
16 **competent, and the recording is accurate and has not been altered; and**

17 **(4) All voices on the recording that are material to the custodial interrogation are**
18 **identified.**

19 **(b) For the purpose of this section, the phrase "statement made by an accused as a result**

1 of custodial interrogation" shall be broadly construed in order to effectuate this section's
2 legislative purpose which is to enhance the quality of the prosecution of those who may be guilty
3 while affording protection to the innocent. It is intended to create a verbatim record of the entire
4 custodial interrogation for the purpose of eliminating disputes in court as to what factually
5 occurred during the interrogation.

6 (c) Nothing in this section precludes the admission of a statement made by the accused in
7 open court at his or her trial or other hearing in open court, before a grand jury, or of a statement
8 that is the "res gestae" of the arrest or of the offense, or of a statement that does not stem from
9 custodial interrogation.

10 (d) Notwithstanding any other provision of this section, a written, oral, or sign language
11 statement of an accused made as a result of a custodial interrogation is admissible against the
12 accused in a criminal proceeding in this state if:

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

15 (2) The statement was obtained by a federal law enforcement officer in this state or
16 another state and was obtained in compliance with the laws of the United States; or

17 (3) The custodial interrogation takes place somewhere other than a police station or office
18 of a law enforcement agency and the requisite recording equipment is not reasonably available at
19 that location.

20 (e) Good faith exceptions: Notwithstanding any other provisions of this section, the
21 failure to electronically record a custodial interrogation in its entirety shall not preclude its
22 admissibility in evidence at trial if the failure to record was due to:

23 (1) The refusal of the accused to be electronically recorded;

24 (2) Mechanical malfunction of the recording equipment;

25 (3) Good faith police error including, but not limited to, failure to turn on the recording
26 equipment or running out of tape;

27 (4) A spontaneous statement made by the accused not in response to a question;

28 (5) Electronic recording will jeopardize the safety of a law enforcement officer, the
29 accused, another person, or the identity of a confidential informant; or

30 (6) The statement produced as a result of custodial interrogation is admitted solely for the
31 purpose of impeachment of the accused.

32 (7) A custodial interrogation for an offense not enumerated in subsection (a) of this
33 section later becomes an enumerated offense as a result of further investigation or a change in
34 circumstances.

1 SECTION 2. This act shall take effect on January 1, 2010.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- ARREST

- 1 This act would require the electronic recording of custodial interrogations in their entirety
- 2 in cases where the potential sentence is one of life imprisonment.
- 3 This act would take effect on January 1, 2010.

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