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MODEL LEGISLATION, 2007 STATE LEGISLATIVE SESSIONS

**AN ACT DIRECTING THE ELECTRONIC RECORDING  
OF CUSTODIAL INTERROGATIONS**

SECTION 1. LEGISLATIVE INTENT

Because properly recorded interrogations provide the best evidence of the communications that occurred during an interrogation; prevent disputes about how an officer conducted himself or treated a suspect during the course of an interrogation; prevent a defendant from lying about his account of events originally provided to law enforcement; spare judges and jurors the time necessary and need to assess which account of an interrogation to believe; and enhance public confidence in the criminal investigation process, it is the legislature's intent to require the video and audio recording of all custodial interrogations in [State].

SECTION 2. DEFINITIONS

- A. "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention facility, or other place where persons are questioned in connection with juvenile or criminal charges.
- B. "Custodial interrogation" means an interview, beginning with a law enforcement officer's advice of the person's Miranda rights and ending when the interview has completely finished, which occurs while a person is in custody, involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses.
- C. "Electronic recording" or "electronically recorded" means an audio and visual recording that is an authentic, accurate, unaltered record of a custodial interrogation.



D. "Statement" means an oral, written, sign language or nonverbal communication.

### SECTION 3. ELECTRONIC RECORDING PROCEDURES

- A. All statements made by a person during a custodial interrogation relating to a crime described in the following sections of the [insert jurisdiction] Criminal and Juvenile Codes shall be electronically recorded: [insert section numbers].
- B. If any part of the interrogation necessarily takes place outside of a place of detention, audio recording is an acceptable alternative to audio and visual recording.
- C. In places of detention, the camera shall be focused upon both the interrogator and the suspect simultaneously.

### SECTION 4. PRESUMPTION OF INADMISSIBILITY

Except as provided in Sections 5 and 6, all statements made by a person during a custodial interrogation that are not electronically recorded, and all statements made thereafter by the person during the custodial interrogations, including but not limited to statements that are electronically recorded, shall be inadmissible as evidence against the person in any juvenile or criminal proceeding brought against the person.

### SECTION 5. OVERCOMING THE PRESUMPTION OF INADMISSIBILITY.

The presumption of inadmissibility of statements provided in Section 4 may be overcome, and statements that were not electronically recorded may be admitted into evidence in a juvenile or criminal proceeding brought against the person, if the court finds:

