

**A-Engrossed**  
**House Bill 3261**

Ordered by the House April 19  
Including House Amendments dated April 19

Sponsored by Representatives GORSEK, PILUSO; Representatives BYNUM, GREENLICK, POWER, SANCHEZ,  
Senators DEMBROW, GELSER, MONNES ANDERSON

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies requirement to record [*peace officer's*] interview with person under 18 years of age to include **custodial interviews conducted inside law enforcement facility by peace officer, school resource officer or special campus security officer** of investigations into misdemeanors, felonies and acts that, if committed by adult, would constitute [*crimes and require recorded interviews whenever person under 18 years of age would reasonably believe person is in custody*] **misdemeanors or felonies.**

**Requires recording of custodial interviews with person under 18 years of age conducted outside of law enforcement facility if officer is wearing video camera.**  
**Creates exceptions.**

**A BILL FOR AN ACT**

1  
2 Relating to law enforcement interviews of persons under 18 years of age; creating new provisions;  
3 and amending ORS 133.400, 165.540 and 419C.270.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 133.400 is amended to read:

6 133.400. (1) A custodial interview conducted by a peace officer in a law enforcement facility  
7 shall be electronically recorded if the interview is conducted[:]

8 [(a)] in connection with an investigation into aggravated murder as defined in ORS 163.095 or  
9 a crime listed in ORS 137.700 or 137.707[; or].

10 [(b) *With a person under 18 years of age in connection with an investigation into a felony, or an*  
11 *allegation that the person being interviewed committed an act that, if committed by an adult, would*  
12 *constitute a felony.*]

13 (2) Subsection (1) of this section does not apply to:

14 (a) A statement made before a grand jury;

15 (b) A statement made on the record in open court;

16 (c) A custodial interview conducted in another state in compliance with the laws of that state;

17 (d) A custodial interview conducted by a federal law enforcement officer in compliance with the  
18 laws of the United States;

19 (e) A statement that was spontaneously volunteered and did not result from a custodial inter-  
20 view;

21 (f) A statement made during arrest processing in response to a routine question;

22 (g) A law enforcement agency that employs five or fewer peace officers;

23 (h) A custodial interview conducted in connection with an investigation carried out by a cor-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 rections officer, a youth corrections officer or a staff member of the Oregon State Hospital in the  
2 performance of the officer's or staff member's official duties of treatment, custody, control or  
3 supervision of individuals committed to or confined in a place of incarceration or detention; or

4 (i) A custodial interview for which the state demonstrates good cause for the failure to elec-  
5 tronically record the interview.

6 (3)(a) If the state offers an unrecorded statement made under the circumstances described in  
7 subsection [(1)(a)] (1) of this section in a criminal proceeding alleging the commission of aggravated  
8 murder or a crime listed in ORS 137.700 or 137.707[, *or under the circumstances described in sub-*  
9 *section (1)(b) of this section in a criminal proceeding alleging the commission of a felony,*] and the state  
10 is unable to demonstrate, by a preponderance of the evidence, that an exception described in sub-  
11 section (2) of this section applies, upon the request of the defendant, the court shall instruct the jury  
12 regarding the legal requirement described in subsection (1) of this section and the superior reli-  
13 ability of electronic recordings when compared with testimony about what was said and done.

14 (b) The court may not exclude the defendant's statement or dismiss criminal charges as a result  
15 of a violation of this section.

16 (c) If each of the statements made by the defendant that the state offers into evidence is re-  
17 corded, the court may not give a cautionary jury instruction regarding the content of the  
18 defendant's statements.

19 [(4) *If the state offers an unrecorded statement made under the circumstances described in sub-*  
20 *section (1)(b) of this section in a juvenile delinquency proceeding alleging the commission of an act that,*  
21 *if committed by an adult, would constitute a felony, and the state is unable to demonstrate, by a pre-*  
22 *ponderance of the evidence, that an exception described in subsection (2) of this section applies, the*  
23 *court shall consider the superior reliability of electronic recordings when compared with testimony*  
24 *about what was said and done when determining the evidentiary value of the statement.*]

25 [(5)] (4) A law enforcement agency that creates an electronic recording of a custodial interview  
26 shall preserve the recording until the defendant's conviction [*or youth's adjudication*] for the offense  
27 is final and all direct, post-conviction relief and habeas corpus appeals are exhausted, or until the  
28 prosecution of the offense is barred by law.

29 [(6)] (5) The state shall provide an electronic copy of a defendant's [*or youth's*] custodial inter-  
30 view to a defendant [*or youth*] in accordance with ORS 135.805 to 135.873. Providing an electronic  
31 copy of the custodial interview to the defendant [*or youth*] constitutes compliance with ORS 135.815  
32 (1)(b), and the state is not required to provide the defendant [*or youth*] with a transcript of the  
33 contents of the interview. Unless the court orders otherwise, the defendant's [*or youth's*] attorney  
34 may not copy, disseminate or republish the electronic copy of the custodial interview, except to  
35 provide a copy to an agent of the defendant's [*or youth's*] attorney for the limited purpose of case  
36 preparation.

37 [(7)] (6) An electronic recording of a custodial interview, and any transcription of the recording,  
38 that is certified as containing a complete recording, or a complete transcription, of the entirety of  
39 the custodial interview, from the advisement of constitutional rights to the conclusion of the custo-  
40 dial interview, is admissible in any pretrial or post-trial hearing for the purpose of establishing the  
41 contents of a statement made in the recording and the identity of the person who made the state-  
42 ment, if the statement is otherwise admissible. A certification that complies with this subsection  
43 satisfies the requirements of ORS 40.505 and 132.320 for the recording or transcription. This sub-  
44 section does not prohibit a party from calling a witness to testify regarding the custodial interview.

45 [(8)] (7) As used in this section:

1 (a) "Custodial interview" means an interview in which the person questioned is in custody and  
2 is required to be advised of the person's constitutional rights.

3 (b) "Good cause" includes, but is not limited to, situations in which:

4 (A) The defendant [*or youth*] refused, or expressed an unwillingness, to have the custodial  
5 interview electronically recorded;

6 (B) The failure to electronically record the custodial interview was the result of equipment  
7 failure and a replacement device was not immediately available;

8 (C) The person operating the recording equipment believed, in good faith, that the equipment  
9 was recording the custodial interview;

10 (D) Electronically recording the custodial interview would jeopardize the safety of any person  
11 or the identity of a confidential informant;

12 (E) Exigent circumstances prevented the recording of the custodial interview; or

13 (F) The peace officer conducting the custodial interview reasonably believed, at the time the  
14 custodial interview began, that the custodial interview[.]

15 [(i)] was conducted in connection with a crime other than aggravated murder as defined in ORS  
16 163.095 or a crime listed in ORS 137.700 or 137.707[; or].

17 [(ii)] *Was conducted in connection with a crime other than a felony, or an allegation that the person*  
18 *being interviewed committed an act that, if committed by an adult, would constitute a felony, if the*  
19 *person is under 18 years of age.*

20 (c) "Law enforcement facility" means a courthouse, building or premises that is a place of op-  
21 eration for a municipal police department, county sheriff's office or other law enforcement agency  
22 at which persons may be detained in connection with a juvenile delinquency petition or criminal  
23 charge.

24 [(d)] *"Youth" means a person under 18 years of age who is suspected or alleged to have committed*  
25 *an act that, if committed by an adult, would constitute a felony.*

26 **SECTION 2. (1)(a) A custodial interview inside a law enforcement facility that is con-**  
27 **ducted by a peace officer, a school resource officer or a special campus security officer shall**  
28 **be electronically recorded if the custodial interview is conducted with a person under 18**  
29 **years of age in connection with an investigation into a misdemeanor or a felony, or an**  
30 **allegation that the person being interviewed committed an act that, if committed by an adult,**  
31 **would constitute a misdemeanor or a felony.**

32 (b) A custodial interview anywhere outside of a law enforcement facility that is con-  
33 ducted by a peace officer, a school resource officer or a special campus security officer shall  
34 be electronically recorded if:

35 (A) The custodial interview is conducted with a person under 18 years of age in con-  
36 nection with an investigation into a misdemeanor or a felony, or an allegation that the per-  
37 son being interviewed committed an act that, if committed by an adult, would constitute a  
38 misdemeanor or a felony; and

39 (B) A video camera is worn upon the officer's person.

40 (2) Subsection (1) of this section does not apply to:

41 (a) A statement made before a grand jury;

42 (b) A statement made on the record in open court;

43 (c) A custodial interview conducted in another state in compliance with the laws of that  
44 state;

45 (d) A custodial interview conducted by a federal law enforcement officer in compliance

1 with the laws of the United States;

2 (e) A statement that was spontaneously volunteered and did not result from a custodial  
3 interview;

4 (f) A statement made during custody processing in response to a routine question;

5 (g) A law enforcement agency that employs five or fewer peace officers;

6 (h) A custodial interview conducted in connection with an investigation carried out by a  
7 youth corrections officer or a staff member of the Oregon State Hospital in the performance  
8 of the officer's or staff member's official duties of treatment, custody, control or supervision  
9 of individuals committed to or confined in a place of incarceration or detention;

10 (i) A custodial interview for which the state demonstrates good cause for the failure to  
11 electronically record the custodial interview; or

12 (j) A custodial interview if the defendant's or youth's age was unknown to the officer or  
13 would not have been objectively apparent to a reasonable officer.

14 (3)(a) If the state offers an unrecorded statement made under the circumstances de-  
15 scribed in subsection (1) of this section in a criminal proceeding alleging the commission of  
16 a misdemeanor or a felony, or an allegation that a person being interviewed committed an  
17 act that, if committed by an adult, would constitute a misdemeanor or a felony, and the state  
18 is unable to demonstrate, by a preponderance of the evidence, that an exception described  
19 in subsection (2) of this section applies, upon the request of the defendant, the court shall  
20 instruct the jury regarding the legal requirement described in subsection (1) of this section  
21 and the superior reliability of electronic recordings when compared with testimony about  
22 what was said and done.

23 (b) The court may not exclude the defendant's statement or dismiss criminal charges as  
24 a result of a violation of this section.

25 (c) If each of the statements made by the defendant that the state offers into evidence  
26 is recorded, the court may not give a cautionary jury instruction regarding the content of  
27 the defendant's statements.

28 (4) If the state offers an unrecorded statement made under the circumstances described  
29 in subsection (1) of this section in a juvenile delinquency proceeding alleging the commission  
30 of an act that, if committed by an adult would constitute a misdemeanor or a felony, and the  
31 state is unable to demonstrate, by a preponderance of the evidence, that an exception de-  
32 scribed in subsection (2) of this section applies, the court shall consider the superior reli-  
33 ability of electronic recordings when compared with testimony about what was said and done  
34 when determining the evidentiary value of the statement.

35 (5) A law enforcement agency that creates an electronic recording of a custodial inter-  
36 view shall preserve the recording until the defendant's conviction or youth's adjudication for  
37 the offense is final and all direct, post-conviction relief and habeas corpus appeals are ex-  
38 hausted, or until the prosecution of the offense is barred by law.

39 (6) The state shall provide an electronic copy of a defendant's or youth's custodial  
40 interview to a defendant or youth in accordance with ORS 135.805 to 135.873. Providing an  
41 electronic copy of the custodial interview to the defendant or youth constitutes compliance  
42 with ORS 135.815 (1)(b), and the state is not required to provide the defendant or youth with  
43 a transcript of the contents of the custodial interview. Unless the court orders otherwise,  
44 the defendant's or youth's attorney may not copy, disseminate or republish the electronic  
45 copy of the custodial interview, except to provide a copy to an agent of the defendant's or

1 youth's attorney for the limited purpose of case preparation.

2 (7) An electronic recording of a custodial interview, and any transcription of the record-  
3 ing, that is certified as containing a complete recording, or a complete transcription, of the  
4 entirety of the custodial interview, from the advisement of constitutional rights to the con-  
5 clusion of the custodial interview, is admissible in any preadjudication or post-adjudication  
6 hearing for the purpose of establishing the contents of a statement made in the recording  
7 and the identity of the person who made the statement, if the statement is otherwise ad-  
8 missible. A certification that complies with this subsection satisfies the requirements of ORS  
9 40.505 and 132.320 for the recording or transcription. This subsection does not prohibit a  
10 party from calling a witness to testify regarding the custodial interview.

11 (8) As used in this section:

12 (a) "Custodial interview" means an interview in which the person questioned is in cus-  
13 tody and is required to be advised of the person's constitutional rights.

14 (b) "Good cause" includes, but is not limited to, situations in which:

15 (A) The defendant or youth refused, or expressed an unwillingness, to have the custodial  
16 interview electronically recorded;

17 (B) The failure to electronically record the custodial interview was the result of equip-  
18 ment failure and a replacement device was not immediately available;

19 (C) The person operating the recording equipment believed, in good faith, that the  
20 equipment was recording the custodial interview;

21 (D) Electronically recording the custodial interview would jeopardize the safety of any  
22 person or the identity of a confidential informant;

23 (E) Exigent circumstances prevented the recording of the custodial interview; or

24 (F) The person conducting the custodial interview did not possess a wearable video cam-  
25 era to electronically record the custodial interview outside of a law enforcement facility.

26 (c) "Law enforcement facility" means a courthouse, building or premises that is a place  
27 of operation for a municipal police department, county sheriff's office or other law enforce-  
28 ment agency at which persons may be detained in connection with a juvenile delinquency  
29 petition or criminal charge.

30 (d) "Peace officer" has the meaning given that term in ORS 133.005.

31 (e) "School resource officer" means a peace officer who is assigned to a school.

32 (f) "Special campus security officer" means a special campus security officer described  
33 in ORS 352.118.

34 **SECTION 3.** ORS 165.540 is amended to read:

35 165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of  
36 this section, a person may not:

37 (a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio com-  
38 munication to which the person is not a participant, by means of any device, contrivance, machine  
39 or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at  
40 least one participant.

41 (b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or  
42 facilities of a telecommunication or radio communication company over which messages are trans-  
43 mitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communi-  
44 cation to which the person is not a participant.

45 (c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device,

1 contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all  
2 participants in the conversation are specifically informed that their conversation is being obtained.

3 (d) Obtain the whole or any part of a conversation, telecommunication or radio communication  
4 from any person, while knowing or having good reason to believe that the conversation, telecom-  
5 munication or radio communication was initially obtained in a manner prohibited by this section.

6 (e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio  
7 communication obtained by any means prohibited by this section.

8 (2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

9 (A) Officers, employees or agents of a telecommunication or radio communication company who  
10 perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of con-  
11 struction, maintenance or conducting of their telecommunication or radio communication service,  
12 facilities or equipment.

13 (B) Public officials in charge of and at jails, police premises, sheriffs' offices, Department of  
14 Corrections institutions and other penal or correctional institutions, except as to communications  
15 or conversations between an attorney and the client of the attorney.

16 (b) Officers, employees or agents of a telecommunication or radio communication company who  
17 obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge  
18 to others, the information except for the purpose of construction, maintenance, or conducting of  
19 their telecommunication or radio communication service, facilities or equipment.

20 (3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or  
21 members of their family who perform the acts prohibited in subsection (1) of this section in their  
22 homes.

23 (4) The prohibitions in subsection (1)(a) of this section do not apply to the receiving or obtaining  
24 of the contents of any radio or television broadcast transmitted for the use of the general public.

25 (5) The prohibitions in subsection (1)(c) of this section do not apply to:

26 (a) A person who records a conversation during a felony that endangers human life;

27 (b) A person who records a conversation in which a law enforcement officer is a participant, if:

28 (A) The recording is made while the officer is performing official duties;

29 (B) The recording is made openly and in plain view of the participants in the conversation;

30 (C) The conversation being recorded is audible to the person by normal unaided hearing; and

31 (D) The person is in a place where the person lawfully may be;

32 (c)(A) A person who, pursuant to ORS 133.400, records an interview conducted by a peace offi-  
33 cer in a law enforcement facility; **or**

34 **(B) A person who, pursuant to section 2 of this 2019 Act, records a custodial interview,**  
35 **as defined in section 2 of this 2019 Act;**

36 (d) A law enforcement officer who is in uniform and displaying a badge and who is operating:

37 (A) A vehicle-mounted video camera that records the scene in front of, within or surrounding  
38 a police vehicle, unless the officer has reasonable opportunity to inform participants in the conver-  
39 sation that the conversation is being obtained; or

40 (B) A video camera worn upon the officer's person that records the officer's interactions with  
41 members of the public while the officer is on duty, unless:

42 (i) The officer has an opportunity to announce at the beginning of the interaction that the con-  
43 versation is being obtained; and

44 (ii) The announcement can be accomplished without causing jeopardy to the officer or any other  
45 person and without unreasonably impairing a criminal investigation; or

1 (e) A law enforcement officer who, acting in the officer's official capacity, deploys an Electro-  
2 Muscular Disruption Technology device that contains a built-in monitoring system capable of re-  
3 cording audio or video, for the duration of that deployment.

4 (6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept  
5 or attempt to intercept with an unconcealed recording device the oral communications that are part  
6 of any of the following proceedings:

7 (a) Public or semipublic meetings such as hearings before governmental or quasi-governmental  
8 bodies, trials, press conferences, public speeches, rallies and sporting or other events;

9 (b) Regularly scheduled classes or similar educational activities in public or private institutions;  
10 or

11 (c) Private meetings or conferences if all others involved knew or reasonably should have known  
12 that the recording was being made.

13 (7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

14 (a) Radio communication that is transmitted by a station operating on an authorized frequency  
15 within the amateur or citizens bands; or

16 (b) Person who intercepts a radio communication that is transmitted by any governmental, law  
17 enforcement, civil defense or public safety communications system, including police and fire, readily  
18 accessible to the general public provided that the interception is not for purposes of illegal activity.

19 (8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

20 (9) The exception described in subsection (5)(b) of this section does not authorize the person  
21 recording the law enforcement officer to engage in criminal trespass as described in ORS 164.243,  
22 164.245, 164.255, 164.265 or 164.278 or to interfere with a peace officer as described in ORS 162.247.

23 (10) As used in this section:

24 (a) "Electro-Muscular Disruption Technology device" means a device that uses a high-voltage,  
25 low power charge of electricity to induce involuntary muscle contractions intended to cause tem-  
26 porary incapacitation. "Electro-Muscular Disruption Technology device" includes devices commonly  
27 known as tasers.

28 (b) "Law enforcement officer" has the meaning given that term in ORS 133.726.

29 **SECTION 4.** ORS 419C.270 is amended to read:

30 419C.270. In all proceedings brought under ORS 419C.005, the following rules of criminal pro-  
31 cedure apply:

32 (1) ORS 133.673, 133.693 and 133.703 **and section 2 of this 2019 Act;**

33 (2) ORS 135.455, 135.465 and 135.470;

34 (3) ORS 135.610, 135.630 (3) to (6), 135.640 and 135.670;

35 (4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730, 135.733, 135.735,  
36 135.737, 135.740 and 135.743;

37 (5) ORS 135.805 and 135.815 (1)(a) to (e) and (g) and (3);

38 (6) ORS 135.825, 135.835, 135.845 and 135.855 to 135.873; and

39 (7) ORS 136.432.

40 **SECTION 5. Section 2 of this 2019 Act and the amendments to ORS 133.400, 165.540 and**  
41 **419C.270 by sections 1, 3 and 4 of this 2019 Act apply to interviews conducted on or after the**  
42 **effective date of this 2019 Act.**