

**2009 -- H 5134 SUBSTITUTE A**

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LC00312/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2009**

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- ARREST

Introduced By: Representatives Walsh, Almeida, Ajello, Williams, and Handy

Date Introduced: January 22, 2009

Referred To: House 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           **12-7-20.1. 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 (i) the refusal of the accused to be electronically recorded;

24 (ii) mechanical malfunction of the recording equipment;

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

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

28 (v) 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 (vi) the statement produced as a result of custodial interrogation is admitted solely for the  
31 purpose of impeachment of the accused.

32 (vii) 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

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- 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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