

HOUSE No. 3449**The Commonwealth of Massachusetts**

PRESENTED BY:

David M. Rogers

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act requiring audiovisual recordings of certain police interrogations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/14/2015</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>12/30/2019</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/30/2015</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	<i>1/30/2015</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2015</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>2/2/2015</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>5/15/2015</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/1/2015</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/4/2015</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/2/2015</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/29/2015</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/4/2015</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/29/2015</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/3/2015</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>2/2/2015</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>1/29/2015</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/28/2015</i>

HOUSE No. 3449

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 3449) of David M. Rogers and others for legislation to require that certain interrogations be electronically recorded to be admissible in court. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act requiring audiovisual recordings of certain police interrogations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 263 is hereby amended by adding the following section:-

2 Section 10. (a) For the purposes of this section, the following words shall have the
3 following meanings:-

4 “Custodial interrogation”, any interrogation during which (i) a reasonable person in the
5 subject's position would consider himself or herself to be in custody and (ii) during which a
6 question is asked that is reasonably likely to elicit an incriminating response.

7 “Electronic recording”, a time-stamped, audiovisual recording including a motion picture,
8 videotape or digital recording.

9 “Major felony”, a felony punishable by imprisonment in the state prison for life or a
10 violation of section 13, 13b, 13b ½, 16 or 24 of chapter 265.

“Place of detention” means a building or a police station that is a place of operation for a police department or county sheriff department or other law enforcement agency, not a courthouse, that is owned or operated by a law enforcement agency at which persons are or may be held in detention in connection with criminal charges against those persons.

(b) An oral, written or sign language statement of a person accused of the commission of a major felony made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible for purposes of showing that the accused committed a major felony unless:

(1) an electronic recording is made of the custodial interrogation;

(2) the recording is substantially accurate and not intentionally altered; and

(3) the recording includes an audible instruction directed at and made in the presence of the accused that the custodial interrogation is being recording by an audiovisual recording device.

(c) If, during the course of an electronically recorded custodial interrogation conducted pursuant to this section, the accused makes a statement that creates a reasonable suspicion to believe the accused has committed an offense other than the commission of a major felony, the interrogators may, without the accused's consent, continue to record the interrogation as it relates to the other offense notwithstanding any provision of law to the contrary. Any oral, written or sign language statement of an accused made as a result of an interrogation under this subsection shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding, unless the recording is substantially accurate and not intentionally altered.

(d) Every electronic recording made under this section shall be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all appeals are exhausted, or the prosecution of such offenses is barred by law. Prior to conviction or acquittal, a statement recorded pursuant to this section shall be exempt from disclosure as a public record within the meaning of chapter 66.

(e) If the court finds, by a preponderance of the evidence, that the defendant in a criminal proceeding for the commission of a major felony was subjected to a custodial interrogation for which an electronic recording was not made, any statements made by the defendant during or following that non-recorded custodial interrogation are presumed to be inadmissible for purposes of showing that the accused committed a major felony. The presumption of inadmissibility may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.

(f) Nothing in this section precludes the admission of a statement made: (i) by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing; (ii) voluntarily, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused as a witness; (iii) spontaneously and not in response to a question; (iv) after questioning that is routinely asked during the processing of the arrest of the suspect; (v) during a custodial interrogation by a suspect who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made of the statement, provided that an electronic recording is made of the statement of agreeing to respond to the interrogator's question, only if a recording is not made of the statement; (vi) during a custodial interrogation that is conducted out-of-state; or (vii) at a time when the interrogators are unaware of facts and circumstances that would create probable cause to believe that the accused

committed a major felony required to be recorded pursuant to this section. The commonwealth shall bear the burden of proving, by a preponderance of the evidence, that 1 of the exceptions described in this subsection is applicable. Nothing in this section precludes the admission of a statement, otherwise inadmissible under this section, that is used only for impeachment and not as substantive evidence.

(e) Pursuant to any request of discovery, the prosecutor shall provide a copy or transcript of any electronic recording to the defense counsel of record or to the defendant if the defendant is not represented by defense counsel.

(g) The attorney general shall promulgate rules and regulations regarding technical requirements of electronic recording. Such rules and regulations shall require the use of two cameras, featuring both the suspect as well as the officer, in such recordings. Such rules and regulations shall ensure that an electronic recording is produced using equipment and procedures that are designed to prevent alteration of the recording's audio or visual record.

SECTION 2. Section 99 of chapter 272 of the General Laws is hereby amended by inserting after the word “herein”, in line 55, the following words:- ; and provided further that it shall not constitute an interception for an investigative or law enforcement officer, as defined in this section, to record a custodial interrogation for purposes of and in accordance with section 10 of chapter 263.

SECTION 3. Nothing in section 10 of chapter 263 of the General Law, inserted by section 1, shall preclude the admission of a statement made in a custodial interrogation taking place on or before the effective date of this act.