

**HOUSE . . . . . No. 3449**

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**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. Balsler</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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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