HOUSE DOCKET, NO. 3201 FILED ON: 1/20/2017

HOUSE . . . . . No. 3590

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:
David M. Rogers	*24th Middlesex*	*1/20/2017*
Byron Rushing	*9th Suffolk*	*1/20/2017*
Denise Provost	*27th Middlesex*	*1/20/2017*
Kenneth I. Gordon	*21st Middlesex*	*1/20/2017*
James B. Eldridge	*Middlesex and Worcester*	*1/20/2017*
Mike Connolly	*26th Middlesex*	*1/20/2017*
Marjorie C. Decker	*25th Middlesex*	*1/20/2017*
Patricia D. Jehlen	*Second Middlesex*	*1/20/2017*
Chris Walsh	*6th Middlesex*	*1/20/2017*
Paul Brodeur	*32nd Middlesex*	*1/20/2017*
Mary S. Keefe	*15th Worcester*	*1/20/2017*

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HOUSE . . . . . No. 3590

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 3590) of David M. Rogers and others relative to requiring audiovisual recordings of certain police interrogations. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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:

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

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

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

"Electronic recording", a time-stamped, audiovisual recording including a motion picture, videotape or digital recording.

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

"Place of detention", 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, , 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; provided, however, that place of detention shall not include a courthouse.

(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 place of detention that is not electronically recorded, or the electronic recording: (i) is not substantially accurate or was intentionally altered; or (ii) does not include 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 shall be presumed to be inadmissible for purposes of showing that the accused committed a major felony if there was a negligent disregard for standard police practice and procedure. 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; provided, however, that after such analysis, a judge may, in the judge's discretion, based on all factors present admit said evidence.

(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. A oral, written or sign language statement of an accused made as a result of an interrogation pursuant to this subsection shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding

if there was a negligent disregard for standard police practice and procedure. 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; provided, however, that after such analysis, a judge may, in the judge's discretion, based on all factors present admit said evidence.

(d) An electronic recording made pursuant 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 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 place of detention is admitted into evidence and the statement was not electronically recorded, or the electronic recording: (i) is not substantially accurate or was intentionally altered; or (ii) does not include 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, the court shall instruct the jurors to consider the statement with great caution and care.

(f) Nothing in this section shall preclude 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 shall preclude the admission of a statement, otherwise inadmissible under this section, that is used only for impeachment and not as substantive evidence.

(g) 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.

(h) 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.