

9 AUG 11 P2:46

SENATE
S.B. No. 3378

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

False confessions have led to the conviction of many innocent persons. Research done by the Innocence Project, an organization based in the Benjamin N. Cardozo School of Law at Yeshiva University in New York revealed that 25 percent of the over 220 wrongful convictions overturned by DNA evidence in the U.S. have involved some form of a false confession. Researchers who studied this phenomenon have determined that the following factors contribute to or cause false confessions:

- Real or perceived intimidation of the suspect by law enforcement;
- Use of force by law enforcement during the interrogation, or perceived threat of force;
- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations, or limited education;
- Devious interrogation techniques, such as untrue statements about the presence of incriminating evidence; and
- Fear, on the part of the suspect, that failure to confess will yield a harsher punishment.

The Philippines has laws which outline the rights of the accused in custodial investigations; however, a practical and effective means to ensure that these rights will be upheld and protected should be established.

One such method to prevent the occurrence of "false confessions" that would lead to wrongful convictions is to make an electronic recording of the entire interrogation process. The Innocence Project has recommended specific changes in the practice of suspect interrogations in the U.S., including the mandatory electronic recording of interrogations, which has been shown to decrease the number of false confessions and increase the reliability of confessions as

evidence. To date, approximately 500 jurisdictions in the U.S. have voluntarily adopted recording policies.

An electronic recording of interrogations helps the innocent by creating a record of the entire interrogation, including the interaction leading up to the confession and creating a deterrent against improper or coercive techniques that might be employed absent the presence of a recording device. On the other hand, the recording also assists law enforcement, by preventing disputes about how an officer conducted himself or treated a suspect, and capturing subtle details that may be lost if unrecorded which helps law enforcement better investigate the crime.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

SENATE
S. B. No. 3378

Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 DIRECTING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS
3 TO PREVENT THE USE OF FALSE CONFESSIONS

4 *Be it enacted by the Senate and the House of Representatives of the Philippines in*
5 *Congress assembled:*

6 SECTION 1. *Short Title.* – This Act shall be known as the “Preventing False Confessions
7 Act.”

8 SECTION 2. *Declaration of Policy.* – It is the policy of the State to protect the rights of
9 the accused during custodial investigations. To prevent “false confessions” from leading to
10 wrongful convictions, it shall establish an objective record of what transpired during the course
11 of the interrogation process.

12 SECTION 3. *Definitions.* – For purposes of this Act, the term:

13 A. “Place of detention” means a jail, police station, holding cell, correctional or detention
14 facility, or other place where persons are questioned in connection with criminal charges or
15 juvenile delinquency proceedings.

16 B. “Custodial interrogation” means any questioning done during custodial investigation,
17 involving a law enforcement officer’s questioning that is reasonably likely to elicit incriminating
18 responses and in which a reasonable person in the subject’s position would consider himself to
19 be in custody, beginning when a person should have been advised of his rights as an accused and
20 ending when the questioning has completely finished.

1 C. "Custodial investigation" is any inquiry initiated by law enforcement officers after a
2 person has been taken into custody or otherwise deprived of his freedom of action in any
3 significant way. It shall include the practice of issuing an "invitation" to a person who is
4 investigated in connection with an offense he is suspected to have committed, without prejudice
5 to the liability of the "inviting" officer for any violation of law.

6 D. "Electronic recording" or "electronically recorded" means an audio and visual
7 recording that is an authentic, accurate, unaltered record of a custodial interrogation.

8 E. "Statement" means an oral, written, sign language or nonverbal communication.

9 SECTION 4. *Electronic Recording Procedures.* –

10 A. All statements made by a person during a custodial interrogation shall be
11 electronically recorded.

12 B. If any part of the interrogation necessarily takes place outside of a place of detention,
13 audio recording is an acceptable alternative to audio and visual recording.

14 C. In places of detention, the camera shall be simultaneously focused upon both the
15 interrogator and the suspect.

16 SECTION 5. *Presumption of Inadmissibility.* – Except as provided in Sections 6 of this
17 Act, all statements made by a person during a custodial interrogation that are not electronically
18 recorded, and all statements made thereafter by the person during the custodial interrogations,
19 including but not limited to statements that are electronically recorded, shall be inadmissible as
20 evidence against the person in any criminal or juvenile delinquency proceeding brought against
21 the person.

22 SECTION 6. *Overcoming the Presumption Of Inadmissibility.* – The presumption of
23 inadmissibility of statements provided in Section 5 of this Act may be overcome, and statements
24 that were not electronically recorded may be admitted into evidence in a criminal or juvenile
25 delinquency proceeding brought against the person, if the court finds:

26 A. That the statements are admissible under applicable rules of evidence;

1 B. Before or during a custodial interrogation, after having consulted with his or her
2 lawyer, the person unambiguously declared on videotape that he or she would only respond to
3 the officer's questions if his or her statements were not electronically recorded;

4 C. Exigent circumstances existed which prevented the making of, or rendered it not
5 feasible to make, an electronic recording of the custodial interrogation.

6 SECTION 7. *Monitoring Requirement.* –

7 A. Compliance with the electronic recording requirement shall be monitored by the Dept.
8 of Justice (DOJ) through the submission of forms developed by the DOJ to survey recorded
9 interrogations and outcomes and identify any patterns of noncompliance. These forms shall be
10 submitted by the trial judge and the prosecutor for:

- 11 1. cases in which recorded interrogations were introduced as evidence in a criminal
12 case;
- 13 2. cases in which interrogations were not recorded but were nonetheless introduced as
14 evidence in a criminal case;
- 15 3. cases in which interrogations were recorded and a plea of guilty to felony charges was
16 entered and accepted by the court; and
- 17 4. cases in which interrogations were not recorded and a plea of guilty to felony charges
18 was entered and accepted by the court.

19 B. Compliance with the electronic recording requirement shall be monitored by the
20 Philippine National Police (PNP) through the submission of forms by the interrogating officer(s)
21 in each case of recorded and unrecorded interrogation. These forms shall be developed by the
22 PNP, with the expectation that the reporting forms shall identify any patterns of noncompliance.

23 SECTION 9. *Handling and Preservation of Electronic Recordings.*—

24 A. Every electronic recording of a custodial interrogation shall be clearly identified and
25 catalogued by law enforcement personnel.

26 B. If a criminal or juvenile delinquency proceeding is brought against a person who was
27 the subject of an electronically recorded custodial interrogation, the electronic recording shall be

1 preserved by law enforcement personnel until all appeals, post-conviction and habeas corpus
2 proceedings are final and concluded, or the time within which such proceedings must be brought
3 has expired.

4 C. Upon motion by the defendant, the court may order that a copy of the recording be
5 preserved for any period beyond the expiration of all appeals.

6 D. If no criminal or juvenile delinquency proceeding is brought against a person who has
7 been the subject of an electronically recorded custodial interrogation, the related electronic
8 recording shall be preserved by law enforcement personnel until all applicable state and federal
9 statutes of limitations bar prosecution of the person.

10 SECTION 10. *Appropriation.* — To carry out the provisions of this Act, such amount as
11 may be necessary is hereby authorized to be appropriated from the National Treasury.
12 Thereafter, the amount necessary for the continuous monitoring, handling and preservation of
13 electronic recordings shall be included in the annual appropriation of the DOJ and the PNP.

14 SECTION 11. *Separability Clause.* — If any provision or part hereof, is held invalid or
15 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
16 valid and subsisting.

17 SECTION 12. *Repealing Clause.* — Any law, presidential decree or issuance, executive
18 order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent
19 with the provision of this Act is hereby repealed, modified, or amended accordingly.

20 SECTION 13. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its
21 publication in at least two (2) newspapers of general circulation.

Approved,

/acs