

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)



Senate
Office of the Secretary

'16 JAN 25 P5:17

SENATE
S. No. 3123

RECEIVED BY: *J*

Introduced by Senator Miriam Defensor Santiago

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

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 United States 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 United States, 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.

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. The recording also assists law enforcement by preventing disputes about how an officer conducted himself or treated a suspect and by capturing subtle details that may be lost if unrecorded which helps law enforcement better investigate the crime.¹


MIRIAM DEFENSOR SANTIAGO
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¹ This bill was originally filed during the Fourteenth Congress, Second Regular Session.

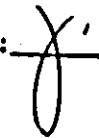
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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

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

3 SECTION 2. *Declaration of Policy.* – It is the policy of the State to protect the
4 rights of the accused during custodial investigations. To prevent false confessions from
5 leading to wrongful convictions, the State shall establish an objective record of what
6 transpired during the course of the interrogation process.

7 SECTION 3. *Definition of Terms.* – For the purposes of this Act, the term:

8 A. “Custodial interrogation” refers to any questioning done during custodial
9 investigation, involving a law enforcement officer’s questioning that is reasonably likely
10 to elicit incriminating responses and in which a reasonable person in the subject’s
11 position would consider himself to be in custody, beginning when a person should have
12 been advised of his rights as an accused and ending when the questioning has completely
13 finished;

14 B. “Custodial investigation” refers to any inquiry initiated by law enforcement
15 officers after a person has been taken into custody or otherwise deprived of his freedom
16 of action in any significant way. It shall include the practice of issuing an invitation to a

1 person who is investigated in connection with an offense he is suspected to have
2 committed, without prejudice to the liability of the inviting officer for any violation of
3 law;

4 C. "Electronic recording" or "electronically recorded" refers to an audio and
5 visual recording that is an authentic, accurate, unaltered record of a custodial
6 interrogation;

7 D. "Place of detention" refers to a jail, police station, holding cell, correctional or
8 detention facility, or other place where persons are questioned in connection with
9 criminal charges or juvenile delinquency proceedings; and

10 E. "Statement" refers to an oral, written, sign language or nonverbal
11 communication.

12 SECTION 4. *Electronic Recording Procedures.* –

13 A. All statements made by a person during a custodial interrogation shall be
14 electronically recorded.

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

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

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

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

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

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

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

12 **SECTION 7. *Monitoring Requirement.*** –

13 **A.** Compliance with the electronic recording requirement shall be monitored by
14 the Department of Justice (DOJ) through the submission of forms developed by the DOJ
15 to survey recorded interrogations and outcomes and identify any patterns of
16 noncompliance. These forms shall be submitted by the trial judge and the prosecutor for:

17 1. cases in which recorded interrogations were introduced as evidence in a
18 criminal case;

19 2. cases in which interrogations were not recorded but were nonetheless
20 introduced as evidence in a criminal case;

21 3. cases in which interrogations were recorded and a plea of guilty to felony
22 charges was entered and accepted by the court; and

23 4. cases in which interrogations were not recorded and a plea of guilty to felony
24 charges was entered and accepted by the court.

1 B. Compliance with the electronic recording requirement shall be monitored by
2 the Philippine National Police (PNP) through the submission of forms by the
3 interrogating officers in each case of recorded and unrecorded interrogation. These forms
4 shall be developed by the PNP, with the expectation that the reporting forms shall
5 identify any patterns of noncompliance.

6 **SECTION 8. *Handling and Preservation of Electronic Recordings.* –**

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

9 B. If a criminal or juvenile delinquency proceeding is brought against a person
10 who was the subject of an electronically recorded custodial interrogation, the electronic
11 recording shall be preserved by law enforcement personnel until all appeals, post-
12 conviction and habeas corpus proceedings are final and concluded, or the time within
13 which such proceedings must be brought has expired.

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

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

20 **SECTION 9. *Appropriations.* –** To carry out the provisions of this Act, such
21 amount as may be necessary is hereby authorized to be appropriated from the National
22 Treasury. Thereafter, the amount necessary for the continuous monitoring, handling and
23 preservation of electronic recordings shall be included in the annual appropriation of the
24 DOJ and the PNP.

1 SECTION 10. *Separability Clause.* – If any provision of this Act is held invalid or
2 unconstitutional, the same shall not affect the validity and effectivity of the other
3 provisions hereof.

4 SECTION 12. *Repealing Clause.* – All laws, decrees, orders, and issuances, or
5 portions thereof, which are inconsistent with the provisions of this Act, are hereby
6 repealed, amended or modified accordingly.

7 SECTION 13. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
8 after its publication in the *Official Gazette* or in two (2) newspapers of general
9 circulation.

Approved,

/ml4Dec2015