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HOUSE BILL NO. 1023

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 12, 2020)

(Patron Prior to Substitute—Delegate Adams, L.R.)

A BILL to amend the Code of Virginia by adding a section numbered 19.2-390.04, relating to custodial interrogations; recording.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-390.04 as follows:

§ 19.2-390.04. Custodial interrogations; recording.

A. For purposes of this section:

"Custodial interrogation" means any interview conducted by a law-enforcement officer in such circumstances that would lead a reasonable person to consider himself to be in custody associated with arrest and during which the law-enforcement officer takes actions or asks questions that are reasonably likely to elicit responses from the person that could incriminate him.

"Place of detention" means a police station, sheriff's office, jail, detention center, or other similar facility in which suspects may be detained.

B. A law-enforcement officer conducting a custodial interrogation of any person at a place of detention shall cause an audiovisual recording of the entirety of such custodial interrogation to be made. If such law-enforcement officer is unable to cause an audiovisual recording of such custodial interrogation to be made, the law-enforcement officer shall cause an audio recording of such custodial interrogation to be made.

This subsection shall not apply when a law-enforcement officer conducting a custodial interrogation has good cause not to record such custodial interrogation. Good cause shall include those circumstances where (i) the recording equipment fails, (ii) the recording equipment is unavailable, or (iii) exigent circumstances relating to public safety exist that prevent the recording of such custodial interrogation.

C. The failure of a law-enforcement officer to cause an audiovisual or audio recording to be made in accordance with subsection B shall not affect the admissibility of the statements made by the subject of the custodial interrogation, but such failure may be considered in determining the weight given to such evidence.

D. Any audiovisual or audio recording made pursuant to subsection B shall be preserved until such time as (i) the person is acquitted or the charges against the person are otherwise dismissed and further prosecution of such charges is prohibited by law or (ii) if convicted or adjudicated delinquent, the person has completed service of his sentence and any modification of sentence, including any period or condition of probation, parole, or suspension of sentence, and all appeals and habeas corpus proceedings have been completed or the time for filing such appeals or habeas corpus proceedings has expired.