

HOUSE No. 3922

The Commonwealth of Massachusetts

PRESENTED BY:

Kate Lipper-Garabedian

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 preventing false confessions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>1/20/2023</i>

HOUSE No. 3922

By Representative Lipper-Garabedian of Melrose, a petition (accompanied by bill, House, No. 3922) of Kate Lipper-Garabedian relative to preventing false confessions. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act preventing false confessions.

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 119 of the General Laws is hereby amended by inserting after
2 section 89 the following sections:

3 Section 90. Prohibition on use of deception during juvenile interrogations

4 (a) As used in this section the following words shall, unless the context clearly requires
5 otherwise, have the following meanings:

6 "Deception", communicating, or relaying in any way, false or misleading facts, false or
7 misleading information, false or misleading evidence, unauthorized implicit or explicit offers of
8 leniency or any other circumstance found by a court to mislead the person being questioned.

9 "Interrogation", any questioning by law enforcement officers, or persons acting on behalf
10 of a law enforcement officer, in relation to an investigation of a misdemeanor or felony.

11 “Statement”, an oral assertion, written assertion or nonverbal conduct if intended as an
12 assertion.

13 (b) Any statement made by a juvenile during an interrogation shall be presumed to be
14 involuntary in any juvenile or criminal court where such statement is offered as evidence if
15 during the interrogation a law enforcement officer, or person acting on behalf of a law
16 enforcement officer, knowingly or recklessly engages in deception. Any such statement and any
17 evidence that flows from that statement shall be presumed inadmissible.

18 (c) The presumption that a statement, evidence or both, as described in subsection (b), is
19 inadmissible, may be overcome if the commonwealth proves, beyond a reasonable doubt, that the
20 statement was voluntary reliable, and not a byproduct of any deception. A failure to
21 electronically record a statement shall be a factor for the court to consider in determining
22 whether the commonwealth can meet its burden.

23 (d) Nothing in this section shall abrogate the commonwealth’s burden to prove a
24 statement is voluntary and reliable prior to introducing that statement into evidence.

25 (e) Subsections (b) through (d), inclusive, shall apply to all statements made on or after
26 the effective date of this statute.

27 Section 91. Recording of Juvenile Interrogations

28 (a) As used in this section, the following words shall, unless the context clearly requires
29 otherwise, have the following meanings:

30 “Custodial Interrogation”, an interview that occurs while a person is in custody involving
31 a law enforcement officer’s questioning, or questioning by a person acting on behalf of a law
32 enforcement officer, that is reasonably likely to elicit incriminating responses.

33 “Interrogation”, any questioning by law enforcement officers, or persons acting on behalf
34 of a law enforcement officer, in relation to an investigation.

35 “Place of Detention”, a jail, police or sheriff’s station, holding cell, correctional or
36 detention facility or other place where persons are held in connection with delinquency or
37 criminal charges.

38 “Recording”, an audio and visual that creates an authentic, accurate, unaltered record of
39 what transpired during an interrogation, capturing all parties involved in a custodial
40 interrogation, beginning with any information by law enforcement about the purpose of the
41 questioning or state of the investigation, including law enforcement officer’s recitation of the
42 person’s constitutional rights, and ending when the interview is completed.

43 (b) All statements made by a person during a custodial interrogation in a place of
44 detention or during protective custody relating to a delinquency proceeding or crime shall be
45 electronically recorded. Failure to electronically record shall make any statement made during
46 such custodial interrogation or any evidence resulting from the statement inadmissible.

47 (c) All statements made by a person during an interrogation should be recorded when
48 feasible.

49 (d) The presumption that such statement, as described in subsection (b), is inadmissible,
50 may be overcome if the commonwealth proves that recording was not possible under the
51 circumstances.

52 (e) Lack of economic resources relative to the implementation of recording shall not be
53 considered grounds to conclude that recording was not possible under section (d).

54 SECTION 2. Chapter 233 of the General Laws is hereby amended by adding the
55 following section:

56 Section 84. (a) As used in this section the following words shall, unless the context
57 clearly requires otherwise, have the following meanings:

58 "Deception", communicating, or relaying in any way, false or misleading facts, false or
59 misleading information, false or misleading evidence, unauthorized implicit or explicit offers of
60 leniency or any other circumstance found by a court to mislead the person being questioned.

61 "Interrogation", any questioning by law enforcement officers, or persons acting on behalf
62 of a law enforcement officer, in relation to an investigation of a misdemeanor or felony.

63 "Statement", an oral assertion, written assertion or nonverbal conduct if intended as an
64 assertion.

65 (b) Any statement made during an interrogation shall be presumed to be involuntary in
66 any court where such statement is offered as evidence in a criminal proceeding if during the
67 interrogation a law enforcement officer, or person acting on behalf of a law enforcement officer,
68 knowingly or recklessly engages in deception. Any such statement and any evidence that flows
69 from that statement shall be presumed inadmissible.

70 (c) The presumption that such statement and/or evidence, as described in subsection (b),
71 is inadmissible, may be overcome if the commonwealth proves, beyond a reasonable doubt, that
72 the statement was voluntary, reliable and not a byproduct of any deception. A failure to
73 electronically record a statement shall be a factor for the court to consider in determining
74 whether the commonwealth can meet its burden.

75 (d) Nothing in this section shall abrogate the commonwealth's burden to prove a
76 statement is voluntary and reliable prior to introducing that statement into evidence.

77 (e) Subsections (b) through (d), inclusive, shall apply to all statements made on or after
78 the effective date of this statute.

79 SECTION 3. Chapter 263 of the General Laws is hereby amended by inserting after
80 section 1A the following section:

81 Section 1B. (a) As used in this section, the following words shall, unless the context
82 clearly requires otherwise, have the following meanings:

83 "Custodial Interrogation", an interview that occurs while a person is in custody involving
84 a law enforcement officer's questioning, or questioning by a person acting

85 on behalf of a law enforcement officer, that is reasonably likely to elicit incriminating
86 responses.

87 "Interrogation", any questioning by law enforcement officers, or persons acting on behalf
88 of a law enforcement officer, in relation to an investigation.

89 "Place of Detention", a jail, police or sheriff's station, holding cell, correctional or
90 detention facility or other place where persons are held in connection with criminal charges.

91 “Recording”, an audio and visual that creates an authentic, accurate, unaltered record of
92 what transpired during an interrogation, capturing all parties involved in a custodial
93 interrogation, beginning with any information by law enforcement about the purpose of the
94 questioning or state of the investigation, including law enforcement officer’s recitation of the
95 person’s constitutional rights, and ending when the interview is completed.

96 (b) All statements made by a person during a custodial interrogation in a place of
97 detention or during protective custody relating to a crime shall be electronically recorded. Failure
98 to electronically record shall make any statement made during such custodial interrogation or
99 any evidence resulting from the statement inadmissible.

100 (c) All statements made by a person during an interrogation should be recorded when
101 feasible.

102 (d) The presumption that such statement, as described in subsection (b), is inadmissible,
103 may be overcome if the commonwealth proves that recording was not possible under the
104 circumstances.

105 (e) Lack of economic resources relative to the implementation of recording shall not be
106 considered grounds to conclude that recording was not possible under section (d).

107 SECTION 4.

108 Nothing in this Act shall conflict with or abrogate the rights afforded to a minor child
109 under any other law.

110 SECTION 5. This act shall take effect as of July 31, 2025, and shall apply to all
111 statements made on or after that effective date.