

REFERENCE TITLE: **homicide interrogations; electronic recording**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

## **HB 2280**

Introduced by  
Representatives Sinema, Meza: Campbell CL, Gallardo, Lopes, Lujan,  
Prezelski, Rios P

**AN ACT**

**AMENDING SECTION 13-3988, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARTICLE 13, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3998.01; RELATING TO TRIALS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3988, Arizona Revised Statutes, is amended to  
3 read:

4 13-3988. Admissibility of confessions; definition

5 A. EXCEPT AS PROVIDED IN SECTION 13-3988.01, in any criminal  
6 prosecution brought by the state, a confession shall be admissible in  
7 evidence if it is voluntarily given. Before such confession is received in  
8 evidence, the trial judge ~~shall~~, out of the presence of the jury, SHALL  
9 determine any issue as to voluntariness. If the trial judge determines that  
10 the confession was voluntarily made it shall be admitted in evidence and the  
11 trial judge shall permit the jury to hear relevant evidence on the issue of  
12 voluntariness and shall instruct the jury to give such weight to the  
13 confession as the jury feels it deserves under all the circumstances.

14 B. The trial judge in determining the issue of voluntariness shall  
15 take into consideration all the circumstances surrounding the giving of the  
16 confession, including but not limited to the following:

17 1. The time elapsing between arrest and arraignment of the defendant  
18 making the confession, if it was made after arrest and before arraignment.

19 2. Whether ~~such~~ THE defendant knew the nature of the offense with  
20 which he was charged or of which he was suspected at the time of making the  
21 confession.

22 3. Whether or not ~~such~~ THE defendant was advised or knew that he was  
23 not required to make any statement and that any ~~such~~ statement could be used  
24 against him.

25 4. Whether or not ~~such~~ THE defendant had been advised ~~prior to~~ BEFORE  
26 questioning of his right to the assistance of counsel.

27 5. Whether or not ~~such~~ THE defendant was without the assistance of  
28 counsel when questioned and when giving ~~such~~ THE confession. The presence or  
29 absence of any of the factors indicated in paragraphs 1 through 5 of this  
30 subsection ~~which~~ THAT are taken into consideration by the judge need not be  
31 conclusive on the issue of voluntariness of the confession.

32 C. Nothing contained in this section shall bar the admission in  
33 evidence of any confession made or given voluntarily by any person to any  
34 other person without interrogation by anyone, or at any time at which the  
35 person who made or gave ~~such~~ THE confession was not under arrest or other  
36 detention.

37 D. ~~As used in~~ FOR THE PURPOSES OF this section, ~~the term~~ "confession"  
38 means any confession of guilt of any criminal offense or any  
39 self-incriminating statement made or given orally or in writing.

40 Sec. 2. Title 13, chapter 38, article 13, Arizona Revised Statutes, is  
41 amended by adding section 13-3988.01, to read:

42 13-3988.01. Custodial interrogations of homicide  
43 investigations; electronic recording; definitions

44 A. AN ORAL, WRITTEN OR SIGN LANGUAGE STATEMENT THAT IS MADE BY AN  
45 ACCUSED DURING ANY CUSTODIAL INTERROGATION AT A LAW ENFORCEMENT AGENCY OR

1 OTHER PLACE OF DETENTION IN ANY HOMICIDE INVESTIGATION SHALL BE  
2 ELECTRONICALLY RECORDED IN ITS ENTIRETY.

3 B. THIS SECTION DOES NOT APPLY TO A STATEMENT THAT IS ANY OF THE  
4 FOLLOWING:

5 1. MADE BY THE ACCUSED IN OPEN COURT, BEFORE A GRAND JURY OR AT A  
6 PRELIMINARY HEARING.

7 2. SPONTANEOUS AND NOT MADE IN RESPONSE TO A QUESTION.

8 3. MADE AFTER QUESTIONING THAT IS ROUTINELY ASKED DURING THE  
9 PROCESSING OF A SUSPECT.

10 4. MADE DURING A CUSTODIAL INTERROGATION THAT WAS CONDUCTED  
11 OUT-OF-STATE.

12 5. OBTAINED BY A FEDERAL LAW ENFORCEMENT OFFICER IN A FEDERAL PLACE OF  
13 DETENTION.

14 6. GIVEN AT A TIME WHEN THE INTERROGATORS WERE UNAWARE THAT A DEATH  
15 HAS IN FACT OCCURRED.

16 7. OTHERWISE INADMISSIBLE UNDER THIS SECTION BUT THAT IS USED ONLY FOR  
17 IMPEACHMENT AND NOT AS SUBSTANTIVE EVIDENCE.

18 C. ANY STATEMENT THAT IS MADE BY AN ACCUSED AND THAT IS ELECTRONICALLY  
19 RECORDED PURSUANT TO THIS SECTION IS CONFIDENTIAL.

20 D. THE STATE SHALL PRESERVE ANY ELECTRONIC RECORDING THAT IS MADE OF A  
21 CUSTODIAL INTERROGATION UNTIL THE DEFENDANT'S CONVICTION FOR ANY OFFENSE  
22 RELATING TO THE STATEMENT IS FINAL AND ALL DIRECT AND HABEAS CORPUS APPEALS  
23 ARE EXHAUSTED OR THE PROSECUTION OF THE OFFENSE OR OFFENSES IS BARRED BY LAW.

24 E. FOR THE PURPOSES OF THIS SECTION:

25 1. "CUSTODIAL INTERROGATION" MEANS ANY INTERROGATION TO WHICH BOTH OF  
26 THE FOLLOWING APPLY:

27 (a) A REASONABLE PERSON IN THE SUBJECT'S POSITION WOULD CONSIDER  
28 HIMSELF TO BE IN CUSTODY.

29 (b) A QUESTION IS ASKED THAT IS REASONABLY LIKELY TO ELICIT AN  
30 INCRIMINATING RESPONSE.

31 2. "ELECTRONIC RECORDING" INCLUDES A MOTION PICTURE, AUDIOTAPE,  
32 VIDEOTAPE OR DIGITAL RECORDING.

33 3. "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL FACILITY,  
34 HOLDING FACILITY FOR PRISONERS OR OTHER GOVERNMENT FACILITY WHERE PERSONS ARE  
35 HELD IN DETENTION IN CONNECTION WITH CRIMINAL CHARGES THAT HAVE BEEN OR MAY  
36 BE FILED AGAINST THEM. PLACE OF DETENTION DOES NOT INCLUDE A COURTHOUSE.