



Legislative Council Staff

Research Note

Version: House Judiciary
Date: 2/10/2016

Bill Number

House Bill 16-1117

Sponsors

*Representatives Kagan and
Saine
Senators Aguilar and Cooke*

Short Title

Record Custodial Interrogations

Research Analyst

Jessika Shipley (x3528)

Status

The bill is currently pending before the House Judiciary Committee. This research note reflects the introduced version of the bill.

Summary

This bill requires law enforcement officials who are investigating a class 1 or 2 felony or a felony sexual assault to make an audio-video recording of custodial interrogations occurring in a permanent detention facility. A permanent detention facility is any building, structure, or place where persons are or may lawfully be held in custody or confinement under the jurisdiction of the state or any political subdivision, including a building housing the offices of a law enforcement agency.

By January 1, 2017, all law enforcement agencies in the state are required to have equipment available for making such audio-visual recordings, as well as policies and procedures for preservation of the recordings.

Recordings of custodial interrogations are not required under the following circumstances:

- the defendant requests, in writing or via electronic recording, that the interrogation not be recorded;
- the recording equipment fails;
- recording equipment is unavailable, either through damage or extraordinary circumstances;
- exigent circumstances relating to public safety prevent recording; or

This research note was prepared by Legislative Council Staff, the nonpartisan research staff for the Colorado General Assembly. The research note is provided for informational purposes only and should not be relied upon as an official record of action by the General Assembly. Legislative Council Staff are not attorneys, and the research note is not a legal opinion. If you have legal questions about the bill, including questions about the meaning of the bill language or amendments, please contact the drafter.

- the interrogation is conducted outside of the state of Colorado.

A court is permitted to admit evidence from an interrogation that was not recorded. Such evidence will be admitted with a cautionary jury instruction in situations where the prosecution cannot prove by a preponderance of the evidence that one of the above circumstances prevented the recording of the interrogation.

Background

Seventeen states currently require or recommend by law that audio and visual recordings be made of statements made by people in police custody whenever practicable. Several others have a court rule regarding the inadmissibility of nonrecorded statements. Proponents of recording interrogations believe it provides the best evidence of what occurred during police questioning, prevents disputes about an officer's conduct or treatment of a suspect, and enhances public confidence in the criminal process. The laws specify for which crimes the recordings must or should be made, under which circumstances a statement made in violation of these laws is inadmissible in court, and what exceptions exist for unrecorded statements to be admitted as evidence. The exceptions generally include exigent circumstances, a person's refusal to be electronically recorded, protecting the identity of the person making the statement, and an equipment malfunction.