

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0499.01 Michael Dohr x4347

HOUSE BILL 16-1117

HOUSE SPONSORSHIP

Kagan and Saine, Carver, Lundeen, Court, Becker K., Coram, Dore, Lawrence, Rosenthal,
Salazar

SENATE SPONSORSHIP

Aguilar and Cooke, Marble

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT CUSTODIAL INTERROGATIONS**
102 **RELATED TO INVESTIGATIONS FOR CERTAIN SERIOUS FELONIES**
103 **BE ELECTRONICALLY RECORDED.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

The bill requires all law enforcement agencies to have audio-visual recording equipment available and policies and procedures in place for preserving custodial interrogations by January 1, 2017. A peace officer must record custodial interrogations occurring in a permanent detention facility if the peace officer is investigating a class 1 or 2 felony or a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

felony sexual assault. A peace officer does not have to record the interrogation if:

- ! The defendant requests that the interrogation not be recorded and the defendant's request is preserved by electronic recording or in writing;
- ! The recording equipment fails;
- ! The recording equipment is unavailable, either through damage or extraordinary circumstances;
- ! Exigent circumstances related to public safety prevent recording; or
- ! The interrogation takes place outside of Colorado.

The court may admit evidence from a custodial interrogation that is not recorded. When offering evidence from an unrecorded interrogation, if the prosecution shows by a preponderance of the evidence that one of the exceptions apply or that the evidence is offered as rebuttal or impeachment evidence, the court may admit the evidence without a cautionary instruction. If the prosecution does not meet that burden, the court shall issue a cautionary instruction to the jury after admitting the evidence.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 6 to article
3 3 of title 16 as follows:

4 **PART 6**

5 **RECORDING CUSTODIAL INTERROGATIONS**

6 **16-3-601. Recording custodial interrogations - definitions.**

7 (1) ON AND AFTER JULY 1, 2017, EXCEPT AS PROVIDED FOR IN
8 SUBSECTION (2) OF THIS SECTION, WHEN A PEACE OFFICER REASONABLY
9 BELIEVES HE OR SHE IS INVESTIGATING A CLASS 1 OR CLASS 2 FELONY OR
10 A FELONY SEXUAL ASSAULT DESCRIBED IN SECTION 18-3-402, 18-3-404,
11 18-3-405, OR 18-3-405.5, C.R.S., THE PEACE OFFICER SHALL
12 ELECTRONICALLY RECORD A CUSTODIAL INTERROGATION OCCURRING IN
13 A PERMANENT DETENTION FACILITY OF ANY PERSON SUSPECTED OF SUCH
14 AN OFFENSE.

1 (2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY IF:

2 (a) THE DEFENDANT REQUESTS THE INTERROGATION NOT BE
3 RECORDED, AS LONG AS THIS REQUEST IS PRESERVED BY ELECTRONIC
4 RECORDING OR IN WRITING;

5 (b) THE RECORDING EQUIPMENT FAILS;

6 (c) RECORDING EQUIPMENT IS UNAVAILABLE, EITHER THROUGH
7 DAMAGE OR EXTRAORDINARY CIRCUMSTANCES;

8 (d) EXIGENT CIRCUMSTANCES RELATING TO PUBLIC SAFETY
9 PREVENT THE PRESERVATION BY ELECTRONIC RECORDING; OR

10 (e) THE INTERROGATION IS CONDUCTED OUTSIDE THE STATE OF
11 COLORADO.

12 (3) NOTHING IN THIS SECTION PREVENTS A COURT FROM
13 ADMITTING A STATEMENT MADE IN A CUSTODIAL INTERROGATION IN A
14 PERMANENT DETENTION FACILITY AS REBUTTAL OR IMPEACHMENT
15 TESTIMONY OF THE DEFENDANT.

16 (4) IF A LAW ENFORCEMENT AGENCY DOES NOT MAKE AN
17 ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION AS REQUIRED
18 BY THIS SECTION, THE COURT MAY STILL ADMIT EVIDENCE FROM THE
19 INTERROGATION. IF THE PROSECUTION WHEN OFFERING THE EVIDENCE
20 FROM THE INTERROGATION ESTABLISHES BY A PREPONDERANCE OF THE
21 EVIDENCE THAT ONE OF THE EXCEPTIONS IDENTIFIED IN SUBSECTION (2)
22 APPLIES OR THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (3) APPLY,
23 THE COURT MAY ADMIT THE EVIDENCE WITHOUT A CAUTIONARY
24 INSTRUCTION. IF THE PROSECUTION DOES NOT MEET THIS BURDEN OF
25 PROOF, THE COURT SHALL PROVIDE A CAUTIONARY INSTRUCTION TO THE
26 JURY REGARDING THE FAILURE TO RECORD THE INTERROGATION AFTER
27 ADMITTING THE EVIDENCE. THE COURT SHALL INSTRUCT THE JURY THAT

1 THE FAILURE TO RECORD THE INTERROGATION IS A VIOLATION OF THE LAW
2 ENFORCEMENT AGENCY'S POLICY AND STATE LAW AND THAT THE
3 VIOLATION MAY BE CONSIDERED BY THE JURY IN DETERMINING THE
4 WEIGHT THAT IS GIVEN TO ANY STATEMENT OF THE DEFENDANT IN
5 VIOLATION OF THIS POLICY IN THE COURSE OF THE JURY'S DELIBERATIONS.

6 (5) By JULY 1, 2017, ALL LAW ENFORCEMENT AGENCIES SHALL
7 HAVE AVAILABLE EQUIPMENT FOR MAKING ELECTRONIC RECORDINGS AND
8 HAVE IN PLACE POLICIES AND PROCEDURES FOR THE PRESERVATION OF
9 CUSTODIAL INTERROGATIONS CONSISTENT WITH THIS SECTION.

10 (6) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING
11 DEFINITIONS APPLY:

12 (a) "CUSTODIAL INTERROGATION" MEANS ANY INTERROGATION OF
13 A PERSON WHILE SUCH PERSON IS IN CUSTODY.

14 (b) "CUSTODY" MEANS RESTRAINT ON A PERSON'S FREEDOM SUCH
15 THAT A REASONABLE PERSON WOULD BELIEVE HE OR SHE IS IN POLICE
16 CUSTODY TO THE DEGREE ASSOCIATED WITH A FORMAL ARREST.

17 (c) "ELECTRONIC RECORDING" MEANS AN AUDIO-VISUAL
18 RECORDING THAT ACCURATELY PRESERVES THE STATEMENTS OF ALL
19 PARTIES TO A CUSTODIAL INTERROGATION.

20 (d) "INTERROGATION" MEANS WORDS OR CONDUCT INITIATED BY
21 A LAW ENFORCEMENT OFFICER THAT THE OFFICER SHOULD KNOW ARE
22 REASONABLY LIKELY TO ELICIT AN INCRIMINATING RESPONSE FROM THE
23 SUSPECT.

24 (e) "PERMANENT DETENTION FACILITY" MEANS ANY BUILDING,
25 STRUCTURE, OR PLACE WHERE PERSONS ARE OR MAY LAWFULLY BE HELD
26 IN CUSTODY OR CONFINEMENT UNDER THE JURISDICTION OF THE STATE OF
27 COLORADO OR ANY POLITICAL SUBDIVISION OF THE STATE OF COLORADO,

1 INCLUDING A BUILDING HOUSING THE OFFICES OF A LAW ENFORCEMENT
2 AGENCY. "PERMANENT DETENTION FACILITY" DOES NOT INCLUDE A
3 VEHICLE, TRAILER, MOBILE OFFICE, OR TEMPORARY STRUCTURE.

4 **SECTION 2. Applicability.** This act applies to custodial
5 interrogations conducted on or after July 1, 2017.

6 **SECTION 3. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.