

HB 1540-FN - AS AMENDED BY THE HOUSE

16Feb2022... 0616h
31Mar2022... 1095h

2022 SESSION

22-2712
04/08

HOUSE BILL ***1540-FN***

AN ACT relative to recording custodial interrogations.

SPONSORS: Rep. Welch, Rock. 13; Rep. Wall, Straf. 6; Rep. Burt, Hills. 39

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill requires the recording of custodial interrogations and specifies exceptions in certain circumstances.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1 VII. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
3 United States.

4 VIII. "Statement" means a communication whether oral, written, electronic, or nonverbal.

5 594-A:3 Electronic Recording Equipment.

6 I. Except as otherwise provided in RSA 594-A:4, a custodial interrogation, including the
7 giving of any required warning, advice regarding the rights of the individual being questioned, and
8 the waiver of any rights by the individual, shall be recorded electronically in its entirety. A custodial
9 interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility
10 shall be also recorded. A custodial interrogation at any other place of detention shall be recorded by
11 audio means at minimum.

12 II. This section shall not apply to an administrative disciplinary hearing in a state
13 correctional facility or to a parole violator not charged with a new offense.

14 594-A:4 Exceptions.

15 I. If a custodial interrogation occurs in another state in compliance with that state's law or
16 is conducted by a federal law enforcement agency in compliance with federal law, the interrogation
17 need not be recorded electronically unless the interrogation is conducted with intent to avoid the
18 requirement of electronic recording in RSA 594-A:3.

19 II. If an individual to be interrogated requests that the interrogation not be recorded, or if
20 the individual being interrogated indicates that the individual will not participate in further
21 interrogation unless electronic recording ceases, the interrogation need not be recorded electronically
22 provided that this request is preserved by electronic recording or in a written document that is
23 signed by the individual. A law enforcement officer, with intent to avoid the requirement of
24 electronic recording in RSA 594-A:3 shall not encourage an individual to request that a recording not
25 be made.

26 594-A:5 Presumption of Inadmissibility. Except as provided in RSA 594-A:4 and RSA 594-A:6,
27 all statements made by a person during a custodial interrogation that are not electronically
28 recorded, and all statements made thereafter by the person during the custodial interrogations,
29 including but not limited to statements that are electronically recorded, shall be inadmissible as
30 evidence against the person in any criminal or juvenile delinquency proceeding brought against the
31 person.

32 594-A:6 Overcoming the Presumption of Inadmissibility. The presumption of inadmissibility of
33 statements provided in 594-A:5 may be overcome, and statements that were not electronically
34 recorded may be admitted into evidence in a criminal or juvenile delinquency proceeding brought
35 against the person, if the court finds:

36 I. That the statements are admissible under applicable rules of evidence; and

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1 II. That the statements are proven by clear and convincing evidence to have been made
2 voluntarily, and are reliable; and

3 III. That law enforcement personnel provide a reasonable justification, including a summary
4 of the surrounding facts and circumstances, explaining the lack of recording, which may include
5 financial expense. For the purpose of this section, mere inconvenience shall not be considered a
6 reasonable justification.

7 2 Effective Date. This act shall take effect January 1, 2023.

HB 1540-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2202-1095h)

AN ACT relative to recording custodial interrogations.

FISCAL IMPACT: ☐ State ☒ County ☒ Local ☐ None

COUNTY:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill requires the recording of custodial interrogations and specifies exceptions in certain circumstances.

The New Hampshire Association of Counties indicates this bill would increase county expenditures for the purchase and maintenance of recording equipment for county facilities. Each county would likely need multiple devices to ensure availability at all locations, but the Association is not able to calculate how many devices each county would require.

The New Hampshire Municipal Association indicates this bill would require that, except as otherwise provided in RSA 594-A:4, a custodial interrogation, including the giving of any required warning, advice regarding the rights of the individual being questioned, and the waiver of any rights by the individual, shall be recorded by either audio or audio and video means in its entirety. The bill would also create a presumption of inadmissibility of statements obtained during custodial interrogations where recordings are not made and all statements made afterward, even if later recorded. The Association assumes, audio and video or audio recording equipment is not standard issue to law enforcement officers. Additionally, it is likely that the some facilities with audio and video recording equipment will need to obtain portable equipment for backup purposes to avert the possibility of fixed equipment malfunctioning during a custodial interrogation. The Association states it is not possible to calculate these additional costs with the information available at this time.

AGENCIES CONTACTED:

New Hampshire Municipal Association and New Hampshire Association of Counties