### 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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

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22-2712 04/08

### STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to recording custodial interrogations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Recording of Custodial Interrogations. Amend RSA by inserting after chapter 594 the following new chapter:

3 CHAPTER 594-A

## RECORDING OF CUSTODIAL INTERROGATIONS

- 594-A:1 Short Title. This chapter may be known and cited as the uniform electronic recordation of custodial interrogations act.
  - 594-A:2 Definitions. In this chapter:
- I. "Custodial interrogation" means express questioning associated with a formal arrest or a restraint on freedom that is the functional equivalent of an arrest, or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody.
- II. "Electronic recording" means an audio recording or audio and video recording that accurately records a custodial interrogation. "Record electronically" and "recorded electronically" shall have the same meaning.
- III. "Law enforcement agency" means any entity or part of an entity that employs a law enforcement officer.
- IV. "Law enforcement officer" means a sheriff or deputy sheriff of any county, a state police trooper, constable or police officer of any city or town, a conservation officer, a probation officer, a parole officer, a corrections officer, or a security officer employed by an educational institution who has the power to detain an individual.
- V. "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, or government; political subdivision, agency, or instrumentality; or any other legal or commercial entity.
- VI. "Place of detention" means a fixed location under the control of a law enforcement agency where individuals are questioned about alleged crimes or status offenses. The term includes a jail, police or sheriff's station, holding cell, correctional or detention facility, police vehicle, and a school in the case of a juvenile.

## HB 1540-FN - AS AMENDED BY THE HOUSE - Page 2 -

- VII. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- VIII. "Statement" means a communication whether oral, written, electronic, or nonverbal.

  5 94-A:3 Electronic Recording Equipment.
  - I. 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 electronically in its entirety. A custodial interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility shall be also recorded. A custodial interrogation at any other place of detention shall be recorded by audio means at minimum.
  - II. This section shall not apply to an administrative disciplinary hearing in a state correctional facility or to a parole violator not charged with a new offense.
    - 594-A:4 Exceptions.

- I. If a custodial interrogation occurs in another state in compliance with that state's law or is conducted by a federal law enforcement agency in compliance with federal law, the interrogation need not be recorded electronically unless the interrogation is conducted with intent to avoid the requirement of electronic recording in RSA 594-A:3.
- II. If an individual to be interrogated requests that the interrogation not be recorded, or if the individual being interrogated indicates that the individual will not participate in further interrogation unless electronic recording ceases, the interrogation need not be recorded electronically provided that this request is preserved by electronic recording or in a written document that is signed by the individual. A law enforcement officer, with intent to avoid the requirement of electronic recording in RSA 594-A:3 shall not encourage an individual to request that a recording not be made.
- 594-A:5 Presumption of Inadmissibility. Except as provided in RSA 594-A:4 and RSA 594-A:6, all statements made by a person during a custodial interrogation that are not electronically recorded, and all statements made thereafter by the person during the custodial interrogations, including but not limited to statements that are electronically recorded, shall be inadmissible as evidence against the person in any criminal or juvenile delinquency proceeding brought against the person.
- 594-A:6 Overcoming the Presumption of Inadmissibility. The presumption of inadmissibility of statements provided in 594-A:5 may be overcome, and statements that were not electronically recorded may be admitted into evidence in a criminal or juvenile delinquency proceeding brought against the person, if the court finds:
  - I. That the statements are admissible under applicable rules of evidence; and

# HB 1540-FN - AS AMENDED BY THE HOUSE - Page 3 -

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 [X] County [X] Local [ ] None

		<b>Estimated Incre</b>	ase / (Decrease)	
COUNTY:	FY 2022	FY 2023	FY 2024	FY 2025
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures		Increase	Increase	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