

HOUSE BILL 379

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Angelica Rubio

AN ACT

RELATING TO LAW ENFORCEMENT; LIMITING THE EXCEPTIONS TO THE
REQUIREMENT THAT CUSTODIAL INTERROGATIONS BE ELECTRONICALLY
RECORDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 29-1-16 NMSA 1978 (being Laws 2005,
Chapter 252, Section 1) is amended to read:

"29-1-16. ELECTRONIC RECORDINGS OF CUSTODIAL
INTERROGATIONS.--

A. A custodial interrogation is inadmissible in a
judicial proceeding unless a state or local law enforcement
officer [shall comply when reasonably able to do so] complies
with the following procedures when conducting [a] the custodial
interrogation:

(1) [~~the~~] every custodial interrogation shall

.206624.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 be electronically recorded in its entirety;

2 (2) if conducted in a police station, the
3 custodial interrogation shall be electronically recorded by a
4 method that includes audio or visual or both, if available; and

5 (3) the electronic recording shall include the
6 advice of constitutional rights required by law.

7 B. A law enforcement officer shall comply with the
8 provisions of this section unless the law enforcement officer
9 has good cause not to electronically record the entire
10 custodial interrogation and at the time of the custodial
11 interrogation, the officer makes a [~~contemporaneous~~] written or
12 electronic record of the reasons for not [~~doing so~~] recording
13 the entire custodial interrogation. Good cause includes:

14 (1) the electronic recording equipment was not
15 reasonably available; or

16 [~~(2) the electronic recording equipment failed~~
17 ~~and obtaining replacement equipment was not feasible;~~

18 [~~(3) the individual refused to be recorded; or~~

19 [~~(4)~~] (2) the statement was made in a court
20 proceeding or a grand jury proceeding.

21 C. Statements that are spontaneously volunteered
22 and not the result of custodial interrogation are not subject
23 to the provisions of this section.

24 D. The provisions of this section shall apply only
25 to custodial interrogations when, at the time of the

.206624.1

underscoring material = new
~~[bracketed material] = delete~~

1 interrogation, the person is suspected of committing a felony
2 offense.

3 E. The provisions of this section do not apply to
4 custodial interrogations conducted outside the state of New
5 Mexico.

6 F. The provisions of this section do not apply to
7 statements used for impeachment purposes.

8 G. The provisions of this section do not apply
9 within a correctional facility.

10 H. As used in this section:

11 (1) "custodial interrogation" means
12 questioning by law enforcement officers that requires the
13 advice of constitutional rights; and

14 (2) "electronic recording" means a complete
15 and authentic electronic recording created by visual or audio
16 media, including by motion picture, videotape, audio tape or
17 digital media.

18 I. This section shall not be construed to exclude
19 otherwise admissible evidence in any judicial proceeding."