

1 SENATE BILL 468

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Richard C. Martinez

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9  
10 AN ACT

11 RELATING TO CRIMINAL LAW; LIMITING THE EXCEPTIONS TO THE  
12 REQUIREMENT THAT CUSTODIAL INTERROGATIONS BE ELECTRONICALLY  
13 RECORDED.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "29-1-16. ELECTRONIC RECORDINGS OF CUSTODIAL  
19 INTERROGATIONS.--

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

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

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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

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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."