

Amendment No. 416

Assembly Amendment to Assembly Bill No. 414

(BDR 14-600)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to A.B. 414 (§ 1).

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double-strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DP/BAW



Date: 4/21/2017

A.B. No. 414—Requires the electronic recording of interrogations under certain circumstances. (BDR 14-600)



ASSEMBLY BILL NO. 414—COMMITTEE ON JUDICIARY

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Requires the electronic recording of interrogations under certain circumstances. (BDR 14-600)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ 1)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; requiring the electronic recording of interrogations of persons in custody under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill requires, with certain specified exceptions, that a law enforcement agency make an electronic recording of a custodial interrogation of a person who is suspected of committing homicide or sexual assault. This bill also provides that evidence from an interrogation may be admitted by a court even in the absence of an electronic recording of the interrogation and sets forth the conditions under which a jury must be provided with a cautionary instruction. Finally, this bill requires each law enforcement agency to adopt policies and procedures governing the electronic recording of custodial interrogations.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 171 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, each law enforcement agency shall require a law enforcement officer to make an electronic recording of a custodial interrogation which is conducted in a place of detention of a person who is suspected of committing homicide as described in NRS 200.010 to 200.260, inclusive, or sexual assault as defined in NRS 200.366.

2. An electronic recording which is made pursuant to this section must:

(a) Begin recording not later than the time when the person who is being interrogated is advised of his or her rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966); and

(b) End recording not sooner than the time when the questioning has concluded.

3. An electronic recording is not required to be made pursuant to this section if:

(a) The person to be interrogated requests that the custodial interrogation not be recorded and that request is recorded or in writing;

(b) The custodial interrogation occurs when no law enforcement officer who is conducting the interrogation has knowledge of facts and circumstances which would lead an officer to reasonably believe that the person who is being interrogated may have committed homicide as described in NRS 200.010 to 200.260, inclusive, or sexual assault as defined in NRS 200.366;

(c) The questions which are presented by a law enforcement officer and the responsive statements by the person who is being interrogated are part of a routine processing or booking of that person;

(d) The recording equipment fails or there is an inadvertent error by the operator of the equipment;

(e) Exigent circumstances relating to public safety preclude the recording and are documented; ~~for~~

(f) The custodial interrogation is conducted outside this State ~~for~~ or

(g) The simultaneous conduct of multiple custodial interrogations exceeds the available capacity of recording equipment.

4. The lack of an electronic recording of a custodial interrogation must not be the sole basis for the exclusion of evidence from the interrogation or a confession that is made pursuant thereto. If a law enforcement agency does not make an electronic recording of a custodial interrogation as required by this section, the court may nonetheless admit evidence from the interrogation. If, when offering the evidence from the interrogation, the prosecuting attorney establishes by a preponderance of the evidence that one of the exceptions set forth in subsection 3 applies, the court may admit the evidence without providing the jury with a cautionary instruction. If the prosecuting attorney does not meet this burden of proof, the court shall, after admitting the evidence, provide the jury with a cautionary instruction regarding the failure to record the interrogation as required by law.

5. Each law enforcement agency shall adopt policies and procedures governing the electronic recording of custodial interrogations in accordance with this section.

6. As used in this section:

(a) "Custodial interrogation" means any interrogation of a person while the person is in custody.

(b) "Custody" means the circumstance when:

(1) A person is under formal arrest; or

(2) There is a restraint on a person's freedom of movement of the degree associated with a formal arrest and a reasonable person, in view of all the circumstances, would have believed that he or she was not free to leave.

(c) "Electronic recording" means:

(1) If audiovisual recording is feasible, an audiovisual recording; or

(2) If audiovisual recording is not feasible, an audio-only recording.

(d) "Interrogation" means questioning which is initiated by a law enforcement officer or any words or actions on the part of a law enforcement officer, other than those which are ordinarily attendant to arrest and custody, that the officer should know are reasonably likely to elicit an incriminating response from the person who is being questioned.

~~(e) "Place of detention" means any building, structure or place where persons are or may be lawfully held in custody or confinement under the jurisdiction of this State or any political subdivision of this State, including,~~

~~without limitation, a building which houses the offices of~~ a fixed location under the control of a law enforcement agency ~~of~~ of this State where persons are questioned about alleged crimes.

Sec. 2. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.