

ASSEMBLY BILL NO. 107—COMMITTEE ON JUDICIARY

PREFILED JANUARY 29, 2019

Referred to Committee on Judiciary

SUMMARY—Establishes provisions relating to the electronic recording of certain custodial interrogations. (BDR 14-588)

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; establishing provisions relating to the electronic recording of certain custodial interrogations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill requires certain law enforcement agencies in this State to adopt detailed, written policies regarding the electronic recording of custodial interrogations that are conducted in a place of detention and to make such policies available: (1) to all law enforcement officers employed by such a law enforcement agency; and (2) for public inspection during normal business hours. **Section 1** also sets forth the provisions that must be included in any such policies adopted by a law enforcement agency, including the circumstances in which all or a portion of a custodial interrogation is not required to be electronically recorded. Additionally, **section 1** requires each law enforcement agency in this State that is required to adopt such policies to collaborate with the district attorney of the county in which the law enforcement agency is located regarding the contents of the policies.

Section 2 of this bill provides that each law enforcement agency in this State that is required to adopt policies pursuant to **section 1** must implement any adopted policies not later than April 1, 2020.



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

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

3 1. *Each law enforcement agency in this State shall adopt*
4 *detailed, written policies regarding the electronic recording of*
5 *custodial interrogations that are conducted in a place of detention.*

6 2. *Any policies adopted by a law enforcement agency*
7 *pursuant to this section must be made available:*

8 (a) *To all law enforcement officers employed by the law*
9 *enforcement agency; and*

10 (b) *For public inspection during normal business hours.*

11 3. *Any policies adopted by a law enforcement agency*
12 *pursuant to this section must include, without limitation:*

13 (a) *A requirement that, except as otherwise provided in any*
14 *policy adopted pursuant to paragraph (c), an electronic recording*
15 *must be made of an entire custodial interrogation which is*
16 *conducted in a place of detention if the person being interrogated*
17 *is suspected of committing homicide as described in NRS 200.010*
18 *to 200.260, inclusive, or sexual assault as defined in NRS 200.366.*

19 (b) *A requirement that, except as otherwise provided in any*
20 *policy adopted pursuant to paragraph (c), if a person being*
21 *interrogated chooses to make or sign a written statement during*
22 *the course of a custodial interrogation concerning a homicide as*
23 *described in NRS 200.010 to 200.260, inclusive, or sexual assault*
24 *as defined in NRS 200.366, the making and signing of the*
25 *statement must be electronically recorded.*

26 (c) *The circumstances in which all or a portion of a custodial*
27 *interrogation is not required to be electronically recorded,*
28 *including, without limitation, when:*

29 (1) *An equipment malfunction prevents the electronic*
30 *recording of the custodial interrogation in its entirety and*
31 *replacement equipment is not immediately available.*

32 (2) *The law enforcement officer conducting the custodial*
33 *interrogation fails, in good faith, to record the interrogation*
34 *because:*

35 (I) *He or she inadvertently fails to operate the recording*
36 *equipment properly; or*

37 (II) *The recording equipment malfunctions or stops*
38 *recording without the law enforcement officer's knowledge.*

39 (3) *More than one custodial interrogation is being*
40 *conducted simultaneously, thereby exceeding the available*
41 *electronic recording capacity of the recording equipment.*

42 (4) *The person who is being or will be interrogated:*



(I) Affirmatively asserts his or her desire to speak with law enforcement officers without being recorded;

(II) Makes a statement spontaneously and not in response to a question asked during the custodial interrogation;

(III) Makes a statement during routine questioning during the process of his or her arrest; or

(IV) Makes a statement at a time when the law enforcement officer conducting the interrogation is, in good faith, unaware of the person's involvement in a homicide as described in NRS 200.010 to 200.060, inclusive, a sexual assault as defined in NRS 200.366 or an offense for which a custodial interrogation is otherwise required to be electronically recorded in accordance with the policies adopted pursuant to this section.

(5) At the time of the custodial interrogation, the law enforcement officer conducting the interrogation is, in good faith, unaware that the type of offense involved is a homicide as described in NRS 200.010 to 200.060, inclusive, a sexual assault as defined in NRS 200.366 or an offense for which a custodial interrogation is otherwise required to be electronically recorded in accordance with the policies adopted pursuant to this section.

(6) Exigent circumstances make recording impractical.

(d) Requirements pertaining to the retention and storage of electronic recordings made pursuant to this section.

(e) The circumstances in which all or a portion of an electronic recording is not required to be retained, including, without limitation, when the electronic recording is damaged or destroyed, without bad faith on the part of any person or entity in control of the electronic recording.

4. Each law enforcement agency in this State shall collaborate with the district attorney of the county in which the law enforcement agency is located regarding the contents of the policies required to be adopted pursuant to this section.

5. As used in this section:

(a) "Custodial interrogation" means any interrogation of a person who is required to be advised of his or her rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966).

(b) "Electronic recording" means an audio or audiovisual recording.

(c) "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.

(d) "Law enforcement agency" means:



1 (1) *The sheriff's office of a county;*

2 (2) *A metropolitan police department; or*

3 (3) *A police department of an incorporated city.*

4 (e) *“Place of detention” means a fixed location under the*
5 *control of a law enforcement agency of this State where persons*
6 *are questioned about alleged crimes.*

7 **Sec. 2.** 1. Each law enforcement agency in this State shall
8 implement any policies adopted pursuant to section 1 of this act not
9 later than April 1, 2020.

10 2. As used in this section, “law enforcement agency” has the
11 meaning ascribed to it in section 1 of this act.

12 **Sec. 3.** The provisions of NRS 354.599 do not apply to any
13 additional expenses of a local government that are related to the
14 provisions of this act.

