

## CHAPTER 329

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**CRIMINAL LAW AND PROCEDURE**


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**HOUSE BILL 16-1117**

BY REPRESENTATIVE(S) Kagan and Saine, Carver, Lundeen, Court, Becker K., Coram, Dore, Lawrence, Rosenthal, Salazar, Conti, Duran, Esgar, Foote, Garnett, Kraft-Tharp, Lebsock, Lee, Melton, Mitsch Bush, Moreno, Pabon, Priola, Ryden, Williams, Windholz, Young;

also SENATOR(S) Aguilar and Cooke, Marble, Baumgardner, Heath, Hill, Holbert, Jahn, Martinez Humenik, Merrifield, Neville T., Newell, Roberts, Scheffel, Woods.

**AN ACT**

**CONCERNING A REQUIREMENT THAT CUSTODIAL INTERROGATIONS RELATED TO INVESTIGATIONS FOR CERTAIN SERIOUS FELONIES BE ELECTRONICALLY RECORDED, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **add** part 6 to article 3 of title 16 as follows:

**PART 6**  
**RECORDING CUSTODIAL INTERROGATIONS**

**16-3-601. Recording custodial interrogations - definitions.** (1) ON AND AFTER JULY 1, 2017, EXCEPT AS PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, WHEN A PEACE OFFICER REASONABLY BELIEVES HE OR SHE IS INVESTIGATING A CLASS 1 OR CLASS 2 FELONY OR A FELONY SEXUAL ASSAULT DESCRIBED IN SECTION 18-3-402, 18-3-404, 18-3-405, OR 18-3-405.5, C.R.S., THE PEACE OFFICER SHALL ELECTRONICALLY RECORD A CUSTODIAL INTERROGATION OCCURRING IN A PERMANENT DETENTION FACILITY OF ANY PERSON SUSPECTED OF SUCH AN OFFENSE.

(2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY IF:

(a) THE DEFENDANT REQUESTS THE INTERROGATION NOT BE RECORDED, AS LONG AS THIS REQUEST IS PRESERVED BY ELECTRONIC RECORDING OR IN WRITING;

(b) THE RECORDING EQUIPMENT FAILS;

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(c) RECORDING EQUIPMENT IS UNAVAILABLE, EITHER THROUGH DAMAGE OR EXTRAORDINARY CIRCUMSTANCES;

(d) EXIGENT CIRCUMSTANCES RELATING TO PUBLIC SAFETY PREVENT THE PRESERVATION BY ELECTRONIC RECORDING; OR

(e) THE INTERROGATION IS CONDUCTED OUTSIDE THE STATE OF COLORADO.

(3) NOTHING IN THIS SECTION PREVENTS A COURT FROM ADMITTING A STATEMENT MADE IN A CUSTODIAL INTERROGATION IN A PERMANENT DETENTION FACILITY AS REBUTTAL OR IMPEACHMENT TESTIMONY OF THE DEFENDANT.

(4) IF A LAW ENFORCEMENT AGENCY DOES NOT MAKE AN ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION AS REQUIRED BY THIS SECTION, THE COURT MAY STILL ADMIT EVIDENCE FROM THE INTERROGATION. IF THE PROSECUTION WHEN OFFERING THE EVIDENCE FROM THE INTERROGATION ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT ONE OF THE EXCEPTIONS IDENTIFIED IN SUBSECTION (2) APPLIES OR THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (3) APPLY, THE COURT MAY ADMIT THE EVIDENCE WITHOUT A CAUTIONARY INSTRUCTION. IF THE PROSECUTION DOES NOT MEET THIS BURDEN OF PROOF, THE COURT SHALL PROVIDE A CAUTIONARY INSTRUCTION TO THE JURY REGARDING THE FAILURE TO RECORD THE INTERROGATION AFTER ADMITTING THE EVIDENCE. THE COURT SHALL INSTRUCT THE JURY THAT THE FAILURE TO RECORD THE INTERROGATION IS A VIOLATION OF THE LAW ENFORCEMENT AGENCY'S POLICY AND STATE LAW AND THAT THE VIOLATION MAY BE CONSIDERED BY THE JURY IN DETERMINING THE WEIGHT THAT IS GIVEN TO ANY STATEMENT OF THE DEFENDANT IN VIOLATION OF THIS POLICY IN THE COURSE OF THE JURY'S DELIBERATIONS.

(5) BY JULY 1, 2017, ALL LAW ENFORCEMENT AGENCIES SHALL HAVE AVAILABLE EQUIPMENT FOR MAKING ELECTRONIC RECORDINGS AND HAVE IN PLACE POLICIES AND PROCEDURES FOR THE PRESERVATION OF CUSTODIAL INTERROGATIONS CONSISTENT WITH THIS SECTION.

(6) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(a) "CUSTODIAL INTERROGATION" MEANS ANY INTERROGATION OF A PERSON WHILE SUCH PERSON IS IN CUSTODY.

(b) "CUSTODY" MEANS RESTRAINT ON A PERSON'S FREEDOM SUCH THAT A REASONABLE PERSON WOULD BELIEVE HE OR SHE IS IN POLICE CUSTODY TO THE DEGREE ASSOCIATED WITH A FORMAL ARREST.

(c) "ELECTRONIC RECORDING" MEANS AN AUDIO-VISUAL RECORDING THAT ACCURATELY PRESERVES THE STATEMENTS OF ALL PARTIES TO A CUSTODIAL INTERROGATION.

(d) "INTERROGATION" MEANS WORDS OR CONDUCT INITIATED BY A LAW ENFORCEMENT OFFICER THAT THE OFFICER SHOULD KNOW ARE REASONABLY LIKELY TO ELICIT AN INCRIMINATING RESPONSE FROM THE SUSPECT.

(e) "PERMANENT DETENTION FACILITY" MEANS ANY BUILDING, STRUCTURE, OR PLACE WHERE PERSONS ARE OR MAY LAWFULLY BE HELD IN CUSTODY OR CONFINEMENT UNDER THE JURISDICTION OF THE STATE OF COLORADO OR ANY POLITICAL SUBDIVISION OF THE STATE OF COLORADO, INCLUDING A BUILDING HOUSING THE OFFICES OF A LAW ENFORCEMENT AGENCY. "PERMANENT DETENTION FACILITY" DOES NOT INCLUDE A VEHICLE, TRAILER, MOBILE OFFICE, OR TEMPORARY STRUCTURE.

**SECTION 2. Appropriation.** For the 2016-17 state fiscal year, \$24,700 is appropriated to the department of corrections. This appropriation is from the general fund. To implement this act, the department may use this appropriation for operating expenses related to the inspector general subprogram.

**SECTION 3. Applicability.** This act applies to custodial interrogations conducted on or after July 1, 2017.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 10, 2016