



**Colorado
Legislative
Council
Staff**

HB16-1117

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 9, 2016)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

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| Drafting Number: LLS 16-0499 | Date: April 1, 2016 |
| Prime Sponsor(s): Rep. Kagan; Saine Sen. Aguilar; Cooke | Bill Status: House Appropriations Fiscal Analyst: Jessika Shipley (303-866-3528) |

BILL TOPIC: RECORD CUSTODIAL INTERROGATIONS

| Fiscal Impact Summary | FY 2016-2017 | FY 2017-2018 |
|---|--------------|------------------------------|
| State Revenue | | |
| State Expenditures | | |
| General Fund | \$24,700 | Potential workload increase. |
| Appropriation Required: \$24,700 - Department of Corrections (FY 2016-17). | | |
| Future Year Impacts: Potential ongoing increased workload. | | |

Summary of Legislation

This bill, *as amended by the House Judiciary Committee*, requires law enforcement officials who are investigating a class 1 or 2 felony or a felony sexual assault to make an audio-video recording of custodial interrogations occurring in a permanent detention facility. A permanent detention facility is defined as any building, structure, or place where persons are or may lawfully be held in custody or confinement under the jurisdiction of the state or any political subdivision, including a building housing the offices of a law enforcement agency.

By July 1, 2017, all law enforcement agencies in the state are required to have equipment available for making such audio-visual recordings, as well as policies and procedures for preservation of the recordings.

Recordings of custodial interrogations are not required under the following circumstances:

- the defendant requests, in writing or via electronic recording, that the interrogation not be recorded;
- the recording equipment fails;
- recording equipment is unavailable, either through damage or extraordinary circumstances;
- exigent circumstances relating to public safety prevent recording; or
- the interrogation is conducted outside of the state of Colorado.

A court is permitted to admit evidence from an interrogation that was not recorded. Such evidence will be admitted with a cautionary jury instruction in situations where the prosecution cannot prove by a preponderance of the evidence that one of the above circumstances prevented the recording of the interrogation.

State Expenditures

This bill is expected to increase workload beginning January 1, 2017, and require a one-time cost in FY 2016-17 of \$24,700.

Assumptions. The following assumptions were made for this fiscal note:

- the bill does not apply to the vast majority of crimes and the overall number of recorded custody interrogations will be low;
- the bill does not specify a level of sophistication for the recording equipment, nor does it require the equipment to be specially installed;
- cost estimates for the recording equipment were gathered through a survey of chain electronics stores and include a camcorder, tripod, extra media cards, cables, and storage drives; and
- cost estimates do not include laptops as it is reasonable to assume that every department or facility has at least one laptop or other computer that may be used to transfer media to a storage drive.

Department of Corrections (DOC). The department will require, at a minimum, one set of recording equipment in each facility where a custodial interrogation might take place, including the 20 state-run prisons, four private prisons with which the department has contracts, the DOC headquarters office in Colorado Springs, and the Criminal Investigations Division office in Canon City. At an estimated cost of \$950 for each facility, the total one-time cost to the department is \$24,700.

Department of Human Services (DHS). The Division of Youth Corrections (DYC) in DHS is responsible for the detention of juveniles who are suspected of committing crimes. Because DYC facilities fall under the bill's definition of a permanent detention facility, it is expected that occasional custodial interrogations will take place in the facilities; however, since DYC does not consider itself a law enforcement agency, it does not intend to install recording equipment in its facilities. Instead, a peace officer investigating a crime would be required to bring the equipment for the interview. Some interrogations might be delayed while equipment is found and transported, but any additional workload is likely to be minimal and can be managed within existing appropriations.

Department of Public Safety (DPS). Some interrogations are conducted by the Colorado Bureau of Investigations and the Colorado State Patrol, but the number of crimes covered by the bill is very small. DPS believes it has sufficient equipment on hand to be able to cover any costs associated with the bill within existing appropriations.

Judicial Department. The bill will impact the workload of the trial courts in cases where an interrogation was not recorded as required. Under these circumstances, the admittance of the interrogation and the need for cautionary instructions would be litigated; however, the number of cases covered by the bill is relatively low and police compliance is expected to be high. As such, the cost of the bill will be absorbed within existing appropriations.

Local Government Impact

Law enforcement agencies will be required to have recording equipment available and to develop policies and procedures for storing the recordings. Anecdotal evidence shows that a number of local police departments and county sheriffs already record interrogations or have

equipment available to do so. For those that do not, the cost to install recording and storage equipment is expected to be approximately \$950 per facility. In some cases, it may be possible to use existing body-worn cameras to record the interrogation, in which case, only the storage requirements of the bill would need to be met.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to custodial interrogations conducted on or after July 1, 2017.

State Appropriations

The bill requires a General Fund appropriation of \$24,700 to the DOC in FY 2016-17.

State and Local Government Contacts

Corrections
Law

District Attorneys
Municipalities

Human Services
Public Safety

Judicial
Sheriffs

Research Note Available

An LCS Research Note for HB16-1117 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.