

HOUSE BILL NO. HB0116

Recording of custodial interrogations.

Sponsored by: Representative(s) Mercer, Bagby, Cohee, Gingery, Hallinan, Landon and Thompson and Senator(s) Dockstader and Hastert

A BILL

for

1 AN ACT relating to criminal procedure; requiring electronic
2 recording of custodial interrogations as specified;
3 establishing procedures for interrogations of suspects;
4 prohibiting the admission in court of statements that were
5 not recorded as specified; providing exceptions; providing
6 definitions; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 7-2-109 is created to read:

11

12 **7-2-109. Custodial interrogations, recording**
13 **required; definitions.**

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15 (a) As used in this section:

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1 (i) "Electronic recording" means the complete
2 and authentic reproduction of the entire custodial
3 interrogation of a criminal suspect, created by motion
4 picture, videotape, audiotape or digital media;

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6 (ii) "Custodial interrogation" means the
7 questioning by law enforcement personnel or others acting
8 in concert with or on behalf of law enforcement personnel,
9 which is conducted in a police station, police vehicle,
10 courthouse, correctional facility, community correctional
11 center, detention facility or other secure environment or
12 any place a person has been deprived of his freedom of
13 action in any significant way.

14
15 (b) An oral, written or sign-language statement of an
16 accused made during a custodial interrogation shall be
17 presumed inadmissible as evidence against the accused in a
18 criminal proceeding unless:

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20 (i) The interrogation is electronically recorded
21 in its entirety;

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23 (ii) Prior to the statement, but during the
24 recording, the accused is given the requisite advisement

1 about his constitutional rights as an accused under law
2 enforcement custody and the accused knowingly,
3 intelligently and voluntarily waives any rights set out in
4 the advisement;

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6 (iii) The recording device was capable of making
7 an accurate recording, the operator was competent to
8 operate the device and the recording was not altered;

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10 (iv) All voices on the recording that are
11 material to the custodial interrogation are identified;

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13 (v) During discovery, but in no circumstances
14 later than the twentieth day before the date of the
15 proceeding in which the prosecution intends to offer the
16 statement, the accused or the attorney representing the
17 accused is provided a true, complete and accurate copy of
18 all recordings of the accused made under this section.

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20 (c) The state may rebut a presumption of
21 inadmissibility through clear and convincing evidence that:

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23 (i) The statement was both voluntary and
24 reliable;

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2 (ii) The law enforcement officers had good cause
3 not to tape the entire interrogation, which may include the
4 following circumstances:

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6 (A) The interrogation took place at a
7 location not identified in paragraph (a)(ii) of this
8 section and under exigent circumstances where the requisite
9 recording equipment was not readily available and there was
10 no opportunity to move the accused to a location identified
11 in paragraph (a)(ii) of this section or where the requisite
12 recording equipment was readily available;

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14 (B) The accused refused to have his
15 interrogation electronically recorded and the refusal
16 itself was electronically recorded;

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18 (C) The failure to electronically record an
19 entire interrogation was the result of equipment failure
20 and obtaining replacement equipment was not feasible; or

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22 (D) The statement was obtained in the
23 course of electronic eavesdropping which was being

1 conducted pursuant to a properly obtained and issued
2 warrant.

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4 (d) Notwithstanding any other provision of this
5 section, a written, oral or sign-language statement of the
6 accused made as a result of a custodial interrogation is
7 admissible against the accused in a criminal proceeding in
8 this state if:

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10 (i) The statement was obtained in another state
11 and was obtained by law enforcement personnel of that
12 state, acting independently of law enforcement personnel
13 from Wyoming, in compliance with the laws of that state; or

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15 (ii) The statement was obtained by a federal law
16 enforcement officer in this state or another state during a
17 lawful federal criminal investigation and was obtained in
18 compliance with federal law.

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20 (e) Every electronic recording made of a custodial
21 interrogation shall be preserved until such time as the
22 accused's conviction for any offense relating to the
23 interrogation is final and all direct and habeas corpus

1 appeals are exhausted, or the prosecution of such offenses
2 is barred by law.

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4 (f) This section shall not preclude the admission of
5 a statement by an accused:

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7 (i) At his trial or other hearing in open court;

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9 (ii) Before a grand jury;

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11 (iii) That is a spontaneous declaration by the
12 accused at the time of the arrest or the offense; or

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14 (iv) That does not stem from custodial
15 interrogation.

16

17 **Section 2.** This act is effective July 1, 2009.

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(END)