

Jurisdictions that now require the electronic recording of interrogations through legislation or court action

**As of September 15, 2009
(17 States and Washington, DC)**

Legislation

Illinois – SB 15 (2003)

- Requirement: Law enforcement must record interrogations of homicide suspects.
- Penalty for Failure to Record: Unrecorded statements that do not meet an exception are inadmissible as evidence.

Maryland – HB 6 (2008)

- Requirement: Law enforcement must record interrogations in the following crime categories: Murder, Rape, Sexual Offense (first and second degree)
- Penalty for Failure to Record: None articulated.

Maine – LD 891 (2005)

- Requirement: Police, when feasible, must electronically record interrogations in cases involving murder, manslaughter, sexual assault, assault, robbery, kidnapping, and arson.
- Penalty for Failure to Record: Civil forfeiture against the agency.

Missouri (2009)

- Requirement: Law enforcement must record interrogations in the following crime categories: persons suspected of committing or attempting to commit murder in the first degree, murder in the second degree, assault in the first degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, arson in the first degree, forcible rape, forcible sodomy, kidnapping, statutory rape in the first degree, statutory sodomy in the first degree, child abuse, or child kidnapping
- Penalty for Failure to Record: If a law enforcement agency fails to comply with the provisions of this section, the governor may withhold any state funds appropriated to the noncompliant law enforcement agency if the governor finds that the agency did not act in good faith in attempting to comply with the provisions of this section.

Montana – HB 534 (2009)

- Requirement: Law enforcement must record interrogations relating to felony crimes
- Penalty for Failure to Record: Unrecorded statements that fail to meet an exception are inadmissible unless state can prove statements were reliable, in which case a jury instruction is to be provided (upon defense request).

Nebraska – LB 179 (2008)

- Requirement: All custodial interrogations that take place at a place of detention.
- Penalty for Failure to Record: Unrecorded statements are subject to jury instructions unless the prosecution proves by a preponderance of the evidence that there was a reasonable excuse.

New Mexico – HB 382 (2005)

- Requirement: Law enforcement, when feasible, must electronically record custodial interrogations of all criminal suspects.

North Carolina – HB 1626 (2007)

- Requirement: Law enforcement must electronically record custodial interrogations in their entirety.
- Penalty for Failure to Record: The court may suppress unrecorded statements; if unrecorded statements are admitted, the jury is instructed to consider the failure to record when determining the voluntariness and reliability of the statements.

Oregon – SB 310 (2009)

- Requirement: Law enforcement must electronically record the entirety of their custodial interrogations of suspects when they occur in law enforcement facilities. The requirement applies to major class A and B felonies and homicides, but will phase-in initially to homicides, minors and non-native speakers requiring the services of an interpreter.

Wisconsin – W.S.A. 972.115

- Requirement: Law enforcement will make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony
- Penalty for Failure to Record: Jury instruction indicating it is the policy of the state to record and the jury may consider the absence of an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement in the case

Court Action

Alaska – Stephan v. State (1985)

- Ruling: Law enforcement must record the entire conversation during custodial interrogation; an unexcused failure to record violates the suspect's right to due process under the state constitution.

Iowa – State v. Hajtic (2006)

- Ruling: The appellate court used the electronic recording of the defendant's interrogation to making a ruling on his waiver of Miranda rights. The Iowa Attorney General has concluded that this decision mandates electronic recording of interrogations when feasible.

Massachusetts – Commonwealth v. DiGiambattista (2004)

- Ruling: If an interrogation is not at least audiotaped, the jury may be instructed to weigh the evidence of defendant's alleged statement with "great caution and care," and that the absence of recording permits them to conclude that the State has failed to prove the voluntariness of the statement.

Minnesota – State v. Scales (1994)

- Ruling: Custodial interrogations must be recorded "to ensure the fair and equitable presentation of evidence at trial."

New Hampshire – State v. Barnett (2002)

- Ruling: Recorded statements are only admissible if the entire post-Miranda interrogation is recorded.

New Jersey – New Jersey Supreme Court Administrative Determination re Report of the Special Committee on the Recordation of Custodial Interrogations (2005)

- Ruling: Custodial interrogations must be recorded; in the absence of recording, the jury may be given a cautionary instruction to determine the credibility of the unrecorded statement.

Indiana – (2009)

- Ruling: Requires electronic audio-video recordings of customary custodial interrogation of suspect in the felony cases as a prerequisite for the admission of evidence of any statements made during such interrogations.