

THE CONSEQUENCES OF LAW ENFORCEMENT OFFICIALS' FAILURE TO RECORD CUSTODIAL INTERVIEWS AS REQUIRED BY LAW

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I. INTRODUCTION

In an article published in this Journal in 2005, we advocated the enactment of state statutes requiring that interviews of suspects held in custody in police facilities be electronically recorded, and we attached a proposed model statute.¹ After several years of additional research, and discussions with law enforcement and legislative personnel, we have revised our proposed statute in one important substantive respect. We have deleted the provision that evidence of an unrecorded interview is presumed inadmissible in evidence when no statutory exception to the recording requirement applies. Instead, we now recommend that the trial judge permit the prosecution to introduce evidence of all unrecorded interviews, and if the failure to record is not justified under the law, and if the case is heard by a jury, the judge must give instructions explaining the greater reliability of electronic recordings of custodial interviews, as compared to witnesses' testimony about what occurred.

The new model statute is contained in Appendix A.² In this article, we explain the reasons for the change.

II. THE PROVISIONS OF OUR PRIOR MODEL STATUTE.

As relevant here, our 2005 model statute contains the following provisions:

Section 2 provides that all statements made by persons suspected of designated felonies during custodial interviews must be electronically recorded. Section 3 provides that unless recording is excused under the provisions of Sections 4 or 5, unrecorded statements "shall be presumed inadmissible as evidence against the person in any juvenile or criminal proceeding brought against the person." Sections 4 and 5 describe a variety of circumstances which excuse the requirement that custodial interviews be recorded, thus overcoming the presumption of inadmissibility and permitting unrecorded statements to be admitted into evidence.

The presumption of inadmissibility in Section 3 was based upon a similar provision contained in the Illinois recording statute,³ enacted in 2003, which requires, with certain exceptions, that custodial interviews of suspects in first degree murder investigations be electronically recorded. This was the first mandatory recording law to be enacted by a state legislature.

III. A SUMMARY OF STATUTES AND COURT RULINGS REQUIRING RECORDED CUSTODIAL INTERVIEWS, AND THE CONSEQUENCES OF FAILURE TO RECORD AS REQUIRED.

The earliest requirements that custodial interviews be recorded by state law enforcement officials came in a 1985 ruling of the Supreme Court of Alaska, followed almost a decade later by a 1994 decision

¹ *Electronic Recording of Custodial Interrogations: Everybody Wins*, 95 J. Crim. L. Criminology 1127 at 1141-44 (2005).

² We have also made editorial changes to the model statute, designed to bring more clarity to its provisions, but which do not alter the substance.

³ 705 ILCS §405/5-401.5 and 725 ILCS §5/103-2.1, relating to investigations of first degree murder suspects (the statute took statewide effect in July 2005).

of the Supreme Court of Minnesota.⁴ After the Illinois statute was enacted in 2003, the District of Columbia and four other states – Maine, New Mexico, North Carolina and Wisconsin – adopted mandatory recording laws, applicable to custodial interviews in a variety of felony investigations.⁵ In addition, the New Jersey Supreme Court has by rule provided that recordings be made of custodial interviews in named felony investigations,⁶ and an opinion of the highest court of Massachusetts⁷ has resulted in statewide adoption of the practice of recording custodial interviews.⁸

These statutes and court rulings contain a variety of provisions dealing with when custodial interviews must be recorded, the circumstances that excuse the need for recordings, and the consequences of unexcused failures to record. They may be roughly categorized as follows:

A. INADMISSIBILITY IN EVIDENCE.

The supreme courts of both Alaska and Minnesota ruled that testimonial evidence of what occurred during a custodial interview will be excluded from evidence if the prosecution is unable to establish a valid excuse for not making an electronic recording.⁹ Later decisions of both courts have adopted exceptions that justify non-recording,¹⁰ but neither court has altered its position on inadmissibility.

B. PRESUMED INADMISSIBILITY.

The District of Columbia Code provides that a statement of an accused taken without the required electronic recording is subject to a rebuttable presumption that the statement was involuntary; the presumption may be overcome if the prosecution proves by clear and convincing evidence that it was voluntarily.¹¹

In Illinois, custodial statements which are not recorded as required are presumed inadmissible, but the presumption of inadmissibility may be overcome if the prosecution establishes by a preponderance of the evidence that the statement was voluntarily given and is reliable, based upon the totality of the circumstances.¹²

C. INADMISSIBILITY COUPLED WITH ALTERNATIVE CAUTIONARY INSTRUCTIONS.

The New Jersey Supreme Court rule provides that an unexcused failure to record a custodial interview as required is a factor for the trial court to consider in determining the admissibility of testimony describing the interview. If testimony of a defendant's unrecorded statement is admitted, the trial judge is required to give the jury strongly worded cautionary instructions.¹³

⁴ *Stephan v. State*, 711 P.2d 1156 (Alaska 1985, based upon the state constitutional Due Process Clause); *State v. Scales*, 518 N.W.2d 587 (Minn. 1994, based on the court's supervisory power). Many other state reviewing courts, while expressing support for recording custodial interviews, have declined to direct law enforcement officers to do so. See cases cited in our original article, 95 JCLC at 1137, note 38.

⁵ D.C. Code Ann. §§5-116.01 to 5-116.03; Me. Rev. Stat. Ann. tit. 25, § 2803-B; N.M. Stat. Ann. §29-1-16; N.C. Stat. §15A-211; Wis. Stat. Ann. §972.115. Regarding the provisions of the recently enacted Maryland statute (Md. Ann. Code art. 2 § 401-04 (2008), see Note 6 to Appendix B. As to the Texas statute (Tex. Crim. Code. Proc. Ann. art. 38.22), see Note 13 to Appendix B.

⁶ N. J. S. Ct. Rule 3:17.

⁷ *Commonwealth v. DiGiambattista*, 813 N.E.2d 516 (Mass. 2004).

⁸ A ruling of the New Hampshire Supreme Court in *State v. Barnett*, 789 A.2d 629 (N.H. 2001) is discussed in Note 9 to Appendix B. The decision of the Supreme Court of Iowa in *State v. Hajtic*, 724 N.W.2d 449 (Iowa 2007) is discussed in Section 4 below.

⁹ Note 4, above, *Stephan* at 1162, and *Scales* at 591. The ruling in *Scales* is limited to "substantial" violations.

¹⁰ See cases cited in our earlier JCLC article, above Note 1, at 1137, note 38.

¹¹ D.C. Code Ann. §5-116.03.

¹² 725 ILCS §5/103-2.1(d)(f) (relating to adults); 705 ILCS §5-401.5 (d)(f) (relating to minors).

¹³ N. J. Sup. Ct. R. 3:17(d)(e). The instructions state in part:

Where there is a failure to electronically record an interrogation, you have not been provided with a complete picture of all of the facts surrounding the defendant's alleged statement and the precise details of that statement. By way of example, you cannot hear the tone or inflection of the defendant's or interrogator's voices, or hear first hand the interrogation, both questions and answers, in its entirety. Instead you have been presented with a summary based upon the recollections of law enforcement personnel. . .The absence of an

The North Carolina statute requires, with certain exceptions, that custodial interviews in homicide investigations be electronically recorded.¹⁴ An unexcused failure to record is admissible in support of a claim that the defendant's statement was involuntary or is unreliable. If testimony about the unrecorded interview is admitted before a jury, the judge is to instruct the jurors that they may consider evidence of non-compliance with the recording requirement in determining whether the statement was voluntary and reliable.

D. CAUTIONARY JURY INSTRUCTIONS.

The Wisconsin statute provides that, in a jury case, when an exception to the recording requirement is not applicable, the jury is to be instructed that it is state policy to make recordings of custodial interviews, and the jury may consider absence of a recording in evaluating testimony as to what occurred during the unrecorded interviews. Similarly, in non-jury hearings, the judge may consider the absence of a recording in evaluating the evidence relating to the unrecorded interview.¹⁵

In the *DiGiambattista* case, the Supreme Judicial Court of Massachusetts ruled that when prosecution testimony of a non-recorded custodial interview is admitted into evidence, the jury is to be instructed that "the State's highest court has expressed a preference that interrogations be recorded whenever practicable," and "if the defendant claims the statement was made involuntarily, the jury may (but need not) conclude from the police's failure to record the interrogation that the state has not met its burden of proof that the statement was made voluntarily."¹⁶

E. NO ADVERSE CONSEQUENCES.

The Maine and New Mexico statutes provide no adverse consequence for a failure to follow their statutory recording mandates.¹⁷

IV. OUR REASONS FOR REVISING OUR MODEL STATUTE BY REMOVING THE PRESUMPTION OF INADMISSIBILITY, AND PROVIDING INSTEAD FOR CAUTIONARY JURY INSTRUCTIONS.

Since drafting our original model statute, we have observed the results of these statutes and court rulings on the practices of law enforcement officials in each of the states discussed above, and talked with law enforcement officers, prosecutors and defense lawyers in those states and many others.¹⁸ We have also appeared before several state legislative committees and legal organizations to discuss why we favor

electronic recording permits but does not compel you to conclude that the State has failed to prove that a statement was in fact given and if so, accurately reported by State's witnesses.

These instructions have formed the basis for the instructions we propose in our revised model bill.

¹⁴ Note 7 above.

¹⁵ W.S.A. § 972.115(d)(2).

¹⁶ *DiGiambattista*, 813 N.E.2d at 533-34. Following this ruling, the state Attorney General and District Attorneys Association wrote in a Sept. 2006 Justice Initiative Report: "Law enforcement officers shall, whenever it is practical and with the suspect's knowledge, electronically record all custodial interrogations of suspects and interrogations of suspects conducted in places of detention." The Massachusetts Chiefs of Police Association, District Attorneys Association and State Police distributed a "Sample Policy and Procedure" (No. 2.17) to law enforcement agencies throughout the state, in order "to have all law enforcement departments 'on the same page' while waiting for clarification from the courts on many issues left unanswered in *DiGiambattista*." The sample begins, under the heading "Policy": "It is the policy of the department, whenever it is practical, to electronically record all custodial interrogations of suspects or interrogations of suspects in places of detention."

¹⁷ 25 Me. Rev. Stat. Ann. §2803-B 1 K; N.M. Stat. Ann. §29-1-16.

¹⁸ We have spoken with more than 600 law enforcement officers – most of them detectives and their supervisors – from police and sheriff departments in every state, that make it a practice to record custodial interviews in varying felony investigations. Their enthusiasm and support for the practice is virtually unanimous. Our current list of these departments is attached as Appendix B.

electronic recordings of custodial interviews, and state legislation requiring recordings.¹⁹

Based upon the information we have gathered through these contacts, we have concluded that neither wise nor necessary to provide that testimony is inadmissible, or presumed inadmissible, relating to custodial interviews that should have been but were not electronically recorded. The better approach is to allow testimony by both prosecution and defense as to what occurred during the interviews, and to provide that the trial judges give jury instructions about the legal requirement of electronically recording custodial interviews, and comparing their superior reliability to the testimony as to what was said and done.

Our reasons are these:

First, we have concluded that provisions that threaten admissibility of testimony about unrecorded interviews are not necessary in order to achieve compliance with recording laws. So far as we are able to determine, the differences in the consequences for failing to make electronic recordings have not had an impact upon law enforcement agency practices in the states mentioned in Part 3.

This is consistent with the enthusiastic support for recording custodial interviews we have heard in our conversations with detectives and their supervisors from small, medium and large police and sheriff departments in every state. The hundreds of law enforcement officers we have spoken with say that having given recordings a try, they become enthusiastic supporters of the practice. Most record voluntarily because of the benefits derived, rather than threats of adverse evidentiary consequences if they fail to record.

When a suspect has confessed or made damaging admissions during a properly conducted electronically recorded custodial interview, the prosecution's case is virtually unassailable. Recordings readily and conclusively refute defense claims that the detectives who conducted the interviews failed to give *Miranda* warnings, used inappropriate tactics to obtain confessions, or are misstating what was said and done during interviews.

Law enforcement personnel also obtain other advantages by recording custodial interviews. A great deal of time of police, prosecutors and trial judges is saved. Lengthy pretrial and trial hearings about closed door interrogations, often involving attacks on the integrity of the interviewers, are unnecessary; the tapes contain conclusive evidence as to what took place.

We have also found support of custodial recordings among members of the defense bar, because the honesty and sincerity of suspects is often apparent to detectives and their supervisors, and helps to prevent unwarranted criminal charges. Another reason that both state and defense personnel support recordings is that officers who tend to abuse their authority during custodial interviews are weeded out. This has the additional benefit of reducing civil suits for money damages.²⁰

¹⁹ *Legislative:* State Legislative Leaders Foundation (June 2004); DC City Council Judiciary Committee (Nov. 2004); MO General Assembly committee (Nov. 2005); MD House of Delegates committees (Mar. 2006, Jan. 2007); CA Comm. on Fair Administration of Justice (June 2006); National State Legislators' Conference (Dec. 2006); NE legislative committee (Feb. 2007); TN legislative committee (Dec. 2007); NY Assembly committees (Oct. 2005, Apr. 2008); TN General Assembly Study Committee (Dec. 2007); PA Joint State Government Commission (Mar. and Aug. 2008).

Law Enforcement: Prosecuting attorneys course (July 2004); Hennepin County Attorney, MN conference (Feb. 2005); International Assn. of Chiefs of Police annual meeting (Oct. 2006); MI Assn. of Chiefs of Police mid-winter meeting (Jan. 2007).

Other: NC Leadership Summit (Mar. 2003); American Judicature Society (Jan. 2003, Dec. 2004, Aug. 2006); American Academy of Psychiatry and Law Midwest conference (Apr. 2003); Midwest Sociological Society annual meeting (Apr. 2003); National Lawyers Assn. annual convention (July 2003); American Bar Assn. midyear meeting (Feb. 2004); Center for Policy Alternatives (Dec. 2004); State Bar of TX (Feb. 2005, Feb. 2006); National Assn. of Criminal Defense Lawyers annual state legislative conference (Aug. 2005); Natl. Institute of Justice (Sept. 2005); Innocence Project conferences (Mar., 2006, Mar. and June 2007); CA Innocence Project, UCLA (Apr. 2006); PA Bar Institute Annual Symposium (June 2006); John Jay School of Criminal Justice (Mar. 2007); Center for American and International Law (Aug. 2008).

²⁰ At the 2007 mid-winter conference of the Michigan Association of Chiefs of Police, we heard their lawyer endorse recordings of custodial interviews as a way of reducing the threats of civil damage claims that impact the cost of the municipal risk pool. See Gene King, *Why Michigan Police Agencies Should Embrace a Policy to Record Certain Custodial Interrogations*, *Law Enforcement Action Forum News*, Vol. 13, Issue 3 at 4 (Oct. 2006).

Additional evidence that a statutory threat of inadmissibility is not needed is illustrated by the reaction of Iowa's chief law enforcement officials, after the Iowa Supreme Court's 2007 decision in *State v. Hajtic*.²¹ The court expressly declined to direct that custodial interviews be recorded, or to order trial judges to give cautionary jury instructions about unrecorded custodial interviews. Rather, the majority opinion stated, "We believe electronic recording, particularly videotaping, of custodial interrogations should be encouraged, and we take this opportunity to do so."²² This ruling prompted the Iowa Attorney General to write in the Iowa State Police Association's publication: "Although the court stated that it is 'encouraging' the practice of electronic recording, the attorney general's office believes that the *Hajtic* decision should be interpreted as essentially requiring this practice."

Second, the inclusion of provisions for inadmissibility has proven to be a major stumbling block in achieving enactment of mandatory recording legislation. We, and others who have supported mandatory recording legislation, have encountered strong opposition from police, sheriffs and prosecutors, and their organizations, to provisions that threaten admissibility of testimony about confessions and admissions that should have been recorded. They are concerned that felons will either not be charged or will be acquitted for lack of sufficient evidence of guilt.²³

We acknowledge that there is merit to their concerns, which carry considerable weight with governors and members of state legislatures as they deliberate the wisdom of mandatory recording legislation. There is, therefore, a greater likelihood of obtaining favorable consideration of state recording statutes if the proposed bills do not contain provisions that potentially prohibit testimony of unrecorded custodial interviews.

V. CONCLUSION.

These are the considerations that have caused us to alter our model bill, by changing the provisions as to the consequences that follow when officers fail to record custodial interviews in violation of the law. Instead of presumed inadmissibility of testimony about those interviews, we have substituted the requirement that instructions be given to jurors drawing attention to the dramatic differences in the value and reliability of testimonial descriptions, when compared with electronic recordings as to what occurred during custodial interviews.

²¹ Above, Note 8.

²² Above, Note 8 at 456. The Court also stated (at 454):

"We are aided in our de novo review of this case by a complete videotape and audiotape of the *Miranda* proceedings and the interrogation that followed.

* * *

This case illustrates the value of electronic recording, particularly videotaping, of custodial interrogations."

²³ This calls to mind Justice Benjamin Cardozo's oft-quoted lament, "The criminal is to go free because the constable has blundered." *People v. DeFore*, 150 N.E. 585, 587 (1926).

APPENDIX A

MODEL BILL FOR ELECTRONIC RECORDING OF CUSTODIAL INTERVIEWS

Be it enacted by [insert name of legislating body]:

Section 1: Definitions.

(a) “Custodial Interview” means an interview conducted by a law enforcement officer for the purpose of investigating violations of law, of a person who is being held in custody in a Place of Detention, when the interview is reasonably likely to elicit responses that may incriminate the person in connection with a felony under the laws of this state.²⁴

(b) “Place of Detention” means a jail, police or sheriff’s station, holding cell, correctional or detention facility, office, or other structure located in this state, where persons are held in connection with juvenile or criminal charges.²⁵

(c) “Electronic Recording” or “Electronically Recorded” means an audio, video and/or digital electronic recording of a Custodial Interview.

(d) “Statement” means an oral, written, sign language or other nonverbal communication.

Section 2: Recordings Required.

Except as provided in Section 3, all Custodial Interviews conducted by a law enforcement officer in a Place of Detention shall be Electronically Recorded. The recording shall be an authentic, accurate, uninterrupted, and unaltered record of the interview, beginning with the law enforcement officer’s advice of the person’s rights, and ending when the interview has completely finished. If a visual recording is made, the camera or cameras shall be simultaneously focused on both the law enforcement interviewer and the suspect.

Section 3: Exceptions.

A Statement which is not Electronically Recorded, but which is admissible under applicable rules of evidence, and is proven by a preponderance of evidence to have been made by the person voluntarily, may be admitted into evidence in a juvenile or criminal proceeding brought against the person, if the court finds:

(a) The interview was a part of a routine processing or “booking” of the person, or routine border inquiries; or

(b) The interview occurred before a grand jury or court; or

(c) Before or during the interview, the person agreed to respond to the law enforcement officer’s questions only if his/her statements were not electronically recorded, and if feasible the person’s agreement was electronically recorded before the interview began; or

(d) After having consulted with his or her lawyer, the person agreed to participate in the interview without an electronic recording being made and if feasible the person’s agreement was electronically recorded before the interview began; or

(e) The law enforcement officer in good faith failed to make an electronic recording of the interview because he/she inadvertently failed to operate the recording equipment properly, or without his/her knowledge the recording equipment malfunctioned or stopped operating; or

(f) The interview was conducted outside this state by officials of another state, country or jurisdiction in compliance with the law of that place, without involvement of or connection to a law enforcement

²⁴ If fewer than all felonies are to be covered, this provision should be revised by inserting statutory citations to the felonies to be covered.

²⁵ If it is intended to expand the reach of this bill to include interviews of persons who are in custody outside a Place of Detention, delete Section 1 (b), and delete the words “in a Place of Detention” from Sections 1 (a) and 2.

officer of this state; or

(g)The law enforcement officer who conducted the interview, or his superior, reasonably believed that the making of an electronic recording would jeopardize his safety or the safety of the person to be interviewed, or another person, or the identity of a confidential informant, and if feasible an explanation of the basis for that belief was electronically recorded before the interview began; or

(h)The interviewing law enforcement officer reasonably believed that the crime for which the person was taken into custody and being investigated or questioned was not related to a crime referred to in Section 1 (a); or

(i)Exigent circumstances existed which prevented the law enforcement officer from making, or rendered it not feasible to make, an electronic recording of the interview, and if feasible an explanation of the circumstances was electronically recorded before the interview began; or

(j)The Statement is offered as evidence solely to impeach or rebut the person's prior testimony, and not as substantive evidence.

Section 4. Cautionary Jury Instructions.

In the event the prosecution offers an unrecorded Statement into evidence that was required to be Electronically Recorded as required by the provisions of Section 2, and the prosecutor is unable to establish by a preponderance of the evidence that an Exception listed in Section 3 is applicable, the trial judge shall, upon request of the defendant, provide the jury with the following cautionary instructions, with changes that are necessary for consistency with the evidence:

"The law of this state required that the interview of the defendant by law enforcement officers which took place on [insert date] at [insert place] was to be electronically recorded, from beginning to end. The purpose of this requirement is to ensure that you jurors will have before you a complete, unaltered and precise record of the circumstances under which the interview was conducted, and what was said and done by each of the persons present.

"In this case, the interviewing law enforcement agents failed to comply with that law. They did not make an electronic recording of the interview of the defendant. No justification for their failure to do so has been presented to the court. Instead of an electronic recording, you have been presented with testimony as to what took place, based upon the recollections of law enforcement personnel [and the defendant].

"Accordingly, I must give you the following special instructions about your consideration of the evidence concerning that interview.

"Because the interview was not electronically recorded as required by our law, you have not been provided the most reliable evidence as to what was said and done by the participants. You cannot hear the exact words used by the participants, or the tone or inflection of their voices.

"Accordingly, as you go about determining what occurred during the interview, you should give special attention to whether you are satisfied that what was said and done has been accurately reported by the participants, including testimony as to statements attributed by law enforcement witnesses to the defendant."

Section 5. Handling and Preservation of Electronic Recordings.

(a)Every Electronic Recording of a Custodial Interrogation shall be clearly identified and catalogued by the agency of the recording law enforcement personnel.

(b)If a juvenile or criminal proceeding is brought against a person who was the subject of an Electronically Recorded Custodial Interrogation, the recording shall be preserved by the agency of the recording law enforcement personnel until all appeals, post-conviction and habeas corpus proceedings are

final and concluded, or the time within which they must be brought has expired.

(c) If no juvenile or criminal proceeding is brought against a person who has been the subject of an Electronically Recorded Custodial Interrogation, the recording shall be preserved by the agency of the recording law enforcement personnel until all applicable federal and state statutes of limitations bar prosecution of the person.

Section 6. Effective Date.

This Act shall take effect on [insert date].

APPENDIX B

DEPARTMENTS THAT CURRENTLY RECORD A MAJORITY OF CUSTODIAL INTERROGATIONS

*PD stands for Police Department, DPS for Department of Public Safety,
and CS for County Sheriff.*

Alabama

Mobile CS
Mobile PD
Prichard PD

Alaska

All departments - Supreme
Court ruling²⁶

Arizona

Casa Grande PD
Chandler PD
Coconino CS
El Mirage PD
Flagstaff PD
Gila CS
Gilbert PD
Glendale PD
Marana PD
Maricopa CS
Mesa PD
Oro Valley PD
Payson PD
Peoria PD
Phoenix PD
Pima CS
Pinal CS
Prescott PD
Scottsdale PD
Sierra Vista PD
Somerton PD
South Tucson PD
Surprise PD
Tempe PD
Tucson PD
Yavapai CS
Yuma CS
Yuma PD

Arkansas

AR State PD
Eureka Springs PD
Fayetteville FD
Fayetteville PD
14th Judicial District
Drug Task Force
Washington CS
Van Buren PD

California

Alameda CS
Arcadia PD
Auburn PD
Bishop PD
Butte CS
Carlsbad PD
Contra Costa CS
El Cajon PD
El Dorado CS
Escondido PD
Folsom PD
Grass Valley PD
Hayward PD
LaMesa PD
Livermore PD
Oceanside PD
Orange CO Fire Authority
Orange CS
Placer CS
Pleasanton PD
Rocklin PD
Roseville PD
Sacramento CS
Sacramento PD
San Bernardino CS
San Diego PD
San Francisco PD
San Joaquin CS
San Jose PD
San Leandro PD
San Luis PD
Santa Clara CS
Santa Clara PD
Santa Cruz PD

²⁶ *Stephan v. State*, 711 P.2d 1156, 1162
(Alaska 1985).

Stockton PD
 Union City PD
 Vallejo PD
 Ventura CS
 West Sacramento PD
 Woodland PD
 Yolo CS

Colorado

Arvada PD
 Aurora PD
 Boulder PD
 Brighton PD
 Broomfield PD
 Colorado Springs PD
 Commerce City PD
 Cortez PD
 Denver PD
 El Paso CS
 Ft. Collins PD
 Lakewood PD
 Larimer CS
 Logan CS
 Loveland PD
 Montezuma CS
 Sterling PD
 Thornton PD

Connecticut

Bloomfield PD
 Cheshire PD
 CT State PD Internal
 Affairs Unit

Delaware

DE State PD
 New Castle City PD
 New Castle County PD

District of Columbia

All departments - statute²⁷

Florida

Broward CS
 Cape Coral PD
 Collier CS
 Coral Springs PD
 Daytona Beach PD
 Ft. Lauderdale PD
 Ft. Myers PD
 Hallandale Beach PD

Hialeah PD
 Hollywood PD
 Key West PD
 Kissimmee PD
 Lee CS
 Manatee CS
 Margate PD
 Miami PD
 Monroe CS
 Mount Dora PD
 Orange CS
 Osceola CS
 Palatka PD
 Pembroke Pines PD
 Pinellas CS
 Port Orange PD
 Sanibel PD
 St. Petersburg PD

Georgia

Atlanta PD
 Centerville PD
 Cobb County PD
 DeKalb County PD
 Fulton County PD
 Gwinnett County PD
 Houston CS
 Macon PD
 Perry PD
 Savannah-Chatham PD
 Warner Robins PD

Hawaii

Honolulu PD

Idaho

Ada CS
 Blaine CS
 Boise City PD
 Bonneville CS
 Caldwell PD
 Canyon CS
 Cassia CS
 Coeur d' Alene PD
 Garden City PD
 Gooding CS
 Gooding PD
 Hailey PD
 ID Dept Fish & Games
 ID Falls PD
 ID State PD

²⁷ D.C. CODE §§ 5-116.01-03 (2005).

Jerome CS
 Jerome PD
 Ketchum PD
 Lincoln CS
 Meridian PD
 Nampa PD
 Pocatello PD
 Post Falls PD
 Twin Falls PD

Illinois

All departments -
 homicides - statute²⁸
 Other felonies -
 Bloomington PD
 Cahokia PD
 Caseyville PD
 Dixon PD
 DuPage CS
 East St. Louis PD
 Fairview Heights PD
 Galena PD
 Kankakee CS
 Kankakee PD
 Macon CS
 Naperville PD
 O'Fallon PD
 Rockton PD
 St. Clair CS
 Swansea PD
 Winnebago CS

Indiana

Albion PD
 Allen CS
 Atlanta PD
 Auburn PD
 Carmel PD
 Cicero PD
 Clark CS

Clarksville PD
 Columbia City PD
 Dyer PD
 Elkhart CS
 Elkhart PD
 Fishers PD
 Floyd CS
 Fort Wayne PD
 Greensburg PD
 Hamilton CS
 Hancock CS
 Hartford PD
 IN State PD
 Jeffersonville PD
 Johnson CS
 Kendallville PD
 LaGrange CS
 Lowell PD
 Montpelier PD
 Nappanee PD
 Noble CS
 Noblesville PD
 Schererville PD
 Sheridan PD
 Shippshewana PD
 Steuben CS
 Tipton PD
 Westfield PD

²⁸ 705 Ill. Comp. Stat. Ann. § 405/5-401.5; 725 Ill. Comp. Stat. Ann. § 5/103-2.1; 720 Ill. Comp. Stat. Ann. § 5/14-3(k).

Iowa²⁹

Altoona PD
 Ames PD
 Ankeny PD
 Arnolds Park PD
 Benton CS
 Bettendorf PD
 Cedar Rapids PD
 Council Bluffs PD
 Davenport PD
 Des Moines PD
 Fayette CS
 Fayette County PD
 Iowa City PD
 Iowa DPS
 Johnson CS
 Kossuth CS
 Linn CS
 Marion PD
 Marshalltown PD
 Muscatine PD
 Nevada PD
 Parkersburg PD
 Polk CS
 Pottawattamie CS
 Sioux City PD
 Vinton PD
 Waterloo PD
 Waverly PD
 Woodbury CS

Kansas

Kansas Univ. DPS
 Liberal PD
 Ottawa PD
 Sedgwick CS
 Wichita PD

Kentucky

Elizabethtown PD
 Hardin CS
 Jeffersontown PD
 Louisville Metro PD
 Louisville PD
 Oldham CS
 St. Matthews PD

Louisiana

Lafayette City PD
 Lake Charles PD
 Oak Grove PD
 Plaquemines Parish CS
 St. Tammany Parish CS

Maine

All departments - statute³⁰

Maryland³¹

Harford CS
 Montgomery PD
 Prince George's County PD

²⁹ Following the ruling of the Supreme Court of Iowa in *State v. Hajtic*, 724 N.W.2d 449 (Iowa 2006), the Iowa Attorney General wrote in the Iowa State Police Association's publication: "Although the court stated that it is 'encouraging' the practice of electronic recording, the attorney general's office believes that the *Hajtic* decision should be interpreted as essentially requiring this practice."

³⁰ ME REV. STAT. ANN. Title 25, § 2803-B(1)(K).

³¹ The Maryland Code of Criminal Procedure contains a newly enacted provision directing that law enforcement units shall make "reasonable efforts" to create a recording of custodial interviews of suspects in connection with cases involving named felonies "whenever possible." The statute contains no provisions relating to consequences for failure to record. MD. Ann. Code art. 2§ 401-04 (2008).

Massachusetts³²

Barnstable PD
 Boston PD
 Bourne PD
 Brewster PD
 Cambridge
 Chatham PD
 Dennis PD
 Easton PD
 Edgartown PD
 Fall River PD
 MA State PD
 North Central Correctional
 Inst.
 Oak Bluffs PD
 Orleans PD

Pittsfield PD
 Revere Fire Dept.
 Somerset PD
 Tewksbury PD
 Troro PD
 West Tisbury PD
 Yarmouth PD

Michigan

Auburn Hills PD
 Benzie CS
 Big Rapids DPS
 Bloomfield Hills DPS
 Cass County Drug
 Enforcement Team
 Cass County CS
 Charlevoix CS
 Detroit PD (homicides)
 Emmet CS
 Farmington DPS
 Gerrish Township PD
 Gladwin PD
 Huntington Woods DPS
 Isabella CS
 Kent CS
 Kentwood PD
 Lake CS
 Ludington PD
 Manistee CS
 Mason CS
 Mecosta CS
 MI State PD
 Milford PD
 Mt. Pleasant PD
 Novi PD
 Oak Park DPS
 Onaway PD
 Paw Paw PD
 Redford Township PD
 Scottville PD
 Troy PD
 Waterford PD
 West Branch PD

Minnesota

³² *DiGiambattista*, 813 N.E.2d at 533-34. Following this ruling, the state Attorney General and District Attorneys Association wrote in a Sept. 2006 Justice Initiative Report: "Law enforcement officers shall, whenever it is practical and with the suspect's knowledge, electronically record all custodial interrogations of suspects and interrogations of suspects conducted in places of detention." The Massachusetts Chiefs of Police Association, District Attorneys Association and State Police distributed a "Sample Policy and Procedure" (No. 2.17) to law enforcement agencies throughout the state, in order "to have all law enforcement departments 'on the same page' while waiting for clarification from the courts on many issues left unanswered in *DiGiambattista*." The sample begins, under the heading "Policy": "It is the policy of the department, whenever it is practical, to electronically record all custodial interrogations of suspects or interrogations of suspects in places of detention."

All departments - Supreme
Court ruling³³

Mississippi

Biloxi PD
Cleveland PD
Gulfport PD
Harrison CS
Jackson CS

Missouri

Lake Area Narcotics
Enforcement Group
Platte CS
St. Louis County
Major Case Squad
St. Louis County PD

Montana

Billings PD
Bozeman PD
Butte/Silverbow LED
Cascade CS
Flathead CS
Gallatin CS
Great Falls PD
Helena PD
Kalispell PD
Lewis & Clark CS
Missoula PD
Missoula CS

Nebraska

Beatrice PD
Buffalo CS
Columbus PD
Cozad PD
Dawson CS
Douglas CS
Fremont PD
Grand Island PD
Hall CS
Hastings PD
Holdredge PD
Kearney PD
Lancaster CS
Lincoln CS
Lincoln PD
Madison CS

NE State Patrol
Norfolk PD
North Platte PD
Omaha PD
O'Neill PD
Sarpy CS

Nevada

Boulder City PD
Carlin PD
Douglas CS
Elko CS
Elko PD
Henderson PD
Lander CS
Las Vegas Metro PD
Nevada DPS
North Las Vegas PD
Reno PD
Sparks PD
Washoe CS
Wells PD
Yerington PD

New Hampshire³⁴

Carroll CS
Concord PD
Conway PD
Enfield PD
Keene PD
Laconia PD
Lebanon PD

³³ *State v. Scales*, 518 N.W.2d 587, 591 (Minn. 1994).

³⁴ In *State v. Barnett*, 789 A.2d 629, 632-33 (N.H. 2001), the Supreme Court of New Hampshire held that if an electronically recorded statement is offered into evidence, the recording is admissible only if the entire post-*Miranda* interrogation interview was recorded. The ruling does not require that custodial interviews be recorded either in whole or in part. Further, if a partially recorded statement is excluded from evidence because the entire interview was not recorded, testimonial evidence is nevertheless admissible as to what occurred before, during and after the custodial interview, including the portion that was recorded.

Nashua PD
 NH State PD
 Plymouth PD
 Portsmouth PD
 Swanzey PD

New Jersey

All departments - Supreme
 Court Rule³⁵

Jersey City Fire Dept. - Arson

New Mexico

All departments - statute³⁶

New York

Binghamton PD
 Broome CS
 Cayuga Heights PD
 Delaware CS
 Deposit PD
 Dryden PD
 Endicott PD
 Greece PD
 Glenville PD
 Irondequoit PD
 NY State PD - Ithaca
 NY State PD - Oneonta
 NY State PD - Sidney
 Rotterdam PD
 Schenectady PD
 Tompkins CS
 Vestal PD

North Carolina

All departments -
 homicides - statute³⁷
 Other felonies -
 Burlington PD
 Concord PD
 Wilmington PD

North Dakota

Bismarck PD
 Burleigh CS
 Fargo PD
 Grand Forks CS
 Grand Forks PD
 Valley City PD

Ohio

Akron PD
 Brown CS
 Cincinnati PD
 Columbus PD
 Dawson CS
 Dublin PD
 Franklin PD
 Garfield Heights PD
 Grandview Heights PD
 Grove City PD
 Hartford PD
 Hudson PD
 Millersburg PD
 OH Board of Pharmacy
 OH State Univ. PD
 Ontario PD
 Reynoldsburg PD
 Upper Arlington PD
 Wapakoneta PD
 Warren CS
 Westerville PD
 Westlake PD
 Worthington PD

Oklahoma

Moore PD
 Norman PD
 Oklahoma CS
 Tecumseh PD

Oregon

Bend PD
 Clackamas CS
 Coburg PD
 Douglas CS
 Eugene PD
 Lincoln City PD

³⁵ Supreme Court Rule 3.17 (2005).

³⁶ N.M. STAT. ANN. § 29-1-16.

³⁷ N.C. GEN. STAT. § 15A-211 (2007).

Medford PD
 Ontario PD
 OR State PD, Springfield
 Roseburg PD
 Salem PD
 Warrenton PD
 Yamhill CS

Pennsylvania

Bethlehem PD
 Tredyffrin Township PD
 Whitehall PD

Rhode Island

Woonsocket PD

South Carolina

Aiken CS
 Aiken DPS
 N. Augusta DPS
 Savannah River
 Site Law Enf.

South Dakota

Aberdeen PD
 Brown CS
 Clay CS
 Lincoln CS
 Mitchell PD
 Sioux Falls PD
 SD State Div. of Criminal
 Investigations
 Vermillion PD

Tennessee

Blount CS
 Bradley CS
 Brentwood PD
 Chattanooga PD
 Cleveland PD
 Goodlettsville PD
 Hamilton CS
 Hendersonville PD
 Loudon CS
 Montgomery CS
 Murfreesboro PD
 Nashville PD

Texas³⁸

Abilene PD
 Arlington PD
 Austin PD
 Burleson PD
 Cedar Park PD
 Cleburne PD
 Collin CS
 Corpus Christi PD
 Dallas PD
 Duncanville PD
 Florence PD
 Frisco PD
 Georgetown PD
 Granger PD
 Harris CS
 Houston PD
 Hutto PD
 Irving PD
 Johnson CS
 Killeen PD
 Leander PD
 Midland PD
 Parker CS
 Plano PD
 Randall CS
 Richardson PD
 Round Rock PD
 San Antonio PD
 San Jacinto CS
 Southlake DPS

³⁸ The Texas Code of Criminal Procedure provides that a defendant's oral statement is inadmissible if it is not recorded, unless the statement "contains assertions of facts or circumstances that are found to be true and which conduce to establish the guilt of the accused." TEX. CRIM. CODE PROC. ANN. art. 38.22; *see Moore v. State*, 999 S.W.2d 385, 400 (Tex. App. 1999). The statute does not require recording of custodial interviews preceding recorded statements, nor exclusion of suspects' unrecorded written statements. *See Rae v. State*, No. 01-98-00283-CR, 2001 WL 125977, at 3 (Tex. App. 2001); *Franks v. State*, 712 S.W.2d 858, 860 (Tex. App. 1986).

Sugar Land PD
 Taylor PD
 Travis CS
 Webster PD
 Williamson CS

Utah

Layton PD
 Salt Lake City PD
 Salt Lake CS
 Utah CS

Vermont

Burlington PD
 Norwich PD
 Rutland PD

Virginia

Alexandria PD
 Chesterfield County PD
 Clarke CS
 Loudoun CS
 Richmond PD

Washington

Adams CS
 Arlington PD
 Bellevue PD
 Bothell PD
 Buckley PD
 Chehalis CS
 Columbia CS
 Ellesburg PD
 Federal Way PD
 Kennewick PD
 Kent City PD
 King CS
 King County Arson
 Investigation Units
 Kirkland PD
 Kittitas CS
 Klickitat CS
 Lewis CS
 Mercer Island PD
 Mount Vernon PD
 Pierce CS

Snohomish CS
 Thurston CS
 Univ. WA PD
 Walla Walla PD
 WA State Patrol
 Yakima CS

West Virginia

Charles Town PD
 Morgantown PD
 Wheeling PD

Wisconsin

All departments - statute³⁹

Wyoming

Cheyenne PD
 Gillette City PD
 Laramie CS
 Laramie PD

³⁹ Wis. Stat. § § 968.073, 972.115 (2005).

