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# Jurisdictions that Record Police Interrogations

Brandon Garrett



**WILSON**  
CENTER FOR SCIENCE AND JUSTICE  
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# Jurisdictions that Record Police Interrogations

Most jurisdictions in the United States now record interrogations, including all federal law enforcement agencies, thirty states, and the District of Columbia. This memo provides updated information about the state-level adoption of electronic recording requirements, in a table displayed below, through statutes, court rulings and rules, and police policies. In addition, many localities now require the recording of some of all interrogations.<sup>1</sup>

Leading law, psychology, criminal procedure, and policing experts have long recommended electronically recording interrogations, preferably by videotaping the full interrogation. The American Psychology-Law Society has set out what is known about police-induced confessions and has recommended mandatory electronic recording.<sup>2</sup> The International Association of Chiefs of Police recommends recording “all interviews involving major crimes” and prefers video recordings.<sup>3</sup> The American Law Institute’s Principles of Policing set out the principle that: “Written policies should set out the procedures for the recording of questioning, and for the disclosure and the retention of recorded evidence.”<sup>4</sup>

A large body of high-profile exonerations of innocent persons have occurred in cases in which false confessions were obtained during interrogations that were not recorded. In cases of “confession contamination,” law enforcement falsely reports that a suspect had volunteered supposedly inside information during an interrogation. Almost all of the persons exonerated by post-conviction DNA testing, who had falsely confessed, also had reports by law enforcement that the defendant had volunteered key crime scene details. We now know, with the benefit of DNA testing, that law enforcement contaminated these interrogations through the use of leading questions or feeding facts to the suspect. And none of the interrogations in those cases of DNA exonerations had been recorded in their entirety.<sup>5</sup>

Recording police questioning assists law-enforcement agencies by furthering the important goal of documenting evidence and ensuring the conviction of those who commit wrongdoing.<sup>6</sup> Video recordings also empower judges to better assess the reliability of interrogation evidence, both to reject false claims of police overreaching and to examine potential wrongful convictions.<sup>7</sup> Agencies have reported positive experiences with recording interrogations because it provides powerful documentation that interrogations are conducted professionally and non-coercively.<sup>8</sup> Fears that “few would allow themselves to be interviewed or interrogated” if it were known that interviews and interrogations are recorded have not been realized in jurisdictions in which recording has been introduced.<sup>9</sup> That said, the Principles of Policing noted that some flexibility with reluctant witnesses may be important. In addition, it may be increasingly feasible to conduct video recording in the field, as body-worn cameras are utilized more widely by agencies. And that said, states do often provide for exceptions due to exigent circumstances, equipment malfunction and the like.<sup>10</sup>

As summarized below, state statutes increasingly have required recording at least some categories of police questioning. The recording of police questioning is required or recommended in many respected quarters. The U.S. Department

of Justice has a memorandum setting out a policy for recording interrogations; several states have done the same.<sup>11</sup> Although the Principles of Policing took no position on the admissibility of unrecorded statements, others have. For example, the Alaska Supreme Court has ruled that judges should suppress unrecorded statements unless failure to record is excused by good cause; other courts have adopted court rules or rules of evidence requiring electronic recording of interrogations.<sup>12</sup> The table below summarizes these statutes, court rulings, rules, and policies.

## Jurisdictions that Record Police Interrogations

Jurisdiction	Year	Coverage	Authority	Citation
Alaska	1985	All crimes	Court	Stephan v. State, 711 P.2d 1156 (Alaska 1985)
Arkansas	2012	All crimes	Court	Ark. R. Crim. P. 4.7.
California	2013	Homicides	Statute	Ann. Cal. Penal Code § 859.5 (West 2014)
Colorado	2016	All crimes	Statute	Co. Code § 16-3-601 (2016)
Connecticut	2011	Specified felonies	Statute	Conn. Gen. Stat. § 54-10 (West 2014)
Hawaii		Serious crimes	Police policy	See <a href="https://www.nacdl.org/mapdata/RecordingInterrogationsHawaii">https://www.nacdl.org/mapdata/RecordingInterrogationsHawaii</a>
Illinois	2003, 2009	Homicides and additional specified felonies	Statute	725 Ill. Comp. Stat. Ann. 5/103-2.1 (West 2009); 705 Ill. Comp. Stat. Ann. 401.5(b-5); 725 Ill. Comp. Stat. Ann. 103-2.1(b-5)
Indiana	2009	All felonies	Court	Ind. R. Evid. 617
Kansas	2017, 2023	Homicides, sex offenses	Statute	Ks. Stat. § 22-4620 (2017)
Maine	2007	Serious crimes	Statute	Me. Rev. Stat. Ann. tit. 25, § 2803-B (2009)
Maryland	2008	Specified felonies	Statute	Md. Code Ann., Crim. Proc. § 2-402 (2009)
Michigan	2012	Specified felonies	Statute	Mich. Comp. Laws Ann. §§ 763.8, 763.9 (West 2013)
Minnesota	1994	All crimes	Court	State v. Scales, 518 N.W.2d 587, 592 (Minn. 1994)
Missouri	2009	Specified felonies	Statute	Mo. Rev. Stat. ch. 590.700 (Vernon 2013)
Montana	2009	All crimes	Statute	Mont. Code Ann. § 46-4-408 (West 2009)

Jurisdiction	Year	Coverage	Authority	Citation
Nebraska	2008	Specified felonies	Statute	Neb. Rev. Stat. Ann. §§ 29-4503, 29-4504 (West 2008)
New Jersey	2005	All crimes	Court	State v. Cook, 847 A.2d 530, 547 (N.J. 2004); N.J. Supreme Court Rule 3:17
New Mexico	2006	All felonies	Statute	N.M. Stat. Ann. § 29-1-16 (West 2006)
North Carolina	2007	All juveniles, specified felonies	Statute	N.C. Gen. Stat. § 15A-211 (2009)
New York	2018	Specified felonies	Statute	N.Y. Crim. Proc. Law § 60.45 (McKinney) (2018)
Ohio	2021	Homicides, sexual assaults	Statute	Ohio Rev. Code Ann. § 2933.81 (Baldwin 2010)
Oklahoma	2019	Homicides, sexual assaults	Statute	22 Ok. Stat. §22 (2019)
Oregon	2010	Specified felonies	Statute	Or. Rev. Stat. § 133.400 (West 2009)
Rhode Island	2013	Capital offenses	Statute	Rhode Island Police Accreditation Commission (RIPAC) Accreditation Standards Manual (2013)
Texas	2017	All crimes	Statute	Tex. Code Crim. Proc. Ann. art. 38.22, § 3 (Vernon 2007)
Washington	2021	Juveniles, adult felonies	Statute	RCW 10.122.030 (2021)
Wisconsin	2005	Juveniles, adult felonies	Court and statute	Wis. Stat. Ann. §§ 968.073, 972.115 (West 2009); In re Jerrell C.J., 699 N.W.2d 110, 123 (Wis. 2005)
Utah	2015	Felonies	Court	Utah R. Evid. 616
Vermont	2014	Homicides, sexual assaults	Statute	13 V.S.A. § 5581 (2014)
Virginia	2020	All crimes	Statute	Va. Code § 19.2-390.04 (2020)
Washington, D.C.	2009	All crimes	Statute	D.C. Code § 5-116.01 (2009)
Federal Government	2014	All crimes	Policy	Memorandum from James M. Cole, Deputy Attorney Gen., Dep't of Justice, Policy Concerning Electronic Recording of Statements 1 (May 12, 2014)

# References

- <sup>1</sup> Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 *Law & Hum. Behav.* 381, 382 (2007). For a study of agency policies requiring recording in Pennsylvania, a state that does not have statutes or court rulings requiring that agencies do so, see *Videotaping Interrogations in Pennsylvania: A Wilson Center for Science and Justice and Quattrone Center for the Fair Administration of Justice Report*, at <https://wcsj.law.duke.edu/projects/safeguarding-against-false-or-coerced-confessions/>.
- <sup>2</sup> Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 *L. & Hum. Behav.* 3, 4 (2010).
- <sup>3</sup> International Association of Chiefs of Police, *National Summit on Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions* 18 (August 2013); see also International Association of Chiefs of Police, *Interviewing and Interrogating Juveniles Model Policy* (May 2012); International Association of Chiefs of Police, *Electronic Recording of Interrogations and Confessions Model Policy* (February 2006).
- <sup>4</sup> See American Law Institute, *Principles of the Law, Policing*, § 11.02. Recording of Police Questioning (2023), at <https://www.policingprinciples.org/chapter-11/11-02-recording-of-police-questioning/>.
- <sup>5</sup> Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 21-44 (2011).
- <sup>6</sup> Orin Kerr, *Fourth Amendment Seizures of Computer Data*, 119 *Yale L. J.* 700, 715 (2010) (“To create a record of the event, the officer might record a suspect’s confession.”).
- <sup>7</sup> Paul Cassell, *Protecting the Innocent from False Confessions and Lost Confessions—and from Miranda*, 88 *J. Crim. L. & Criminology* 497, 503 (Winter 1998); Richard A. Leo, Peter J. Neufeld, Steven A. Drizin & Andrew E. Taslitz, *Promoting Accuracy in The Use of Confession Evidence: An Argument for Pretrial Reliability Assessments to Prevent Wrongful Convictions*, 85 *Temp. L. Rev.* 759 (2013).
- <sup>8</sup> Thomas P. Sullivan & Andrew W. Vail, *The Consequences of Law Enforcement Officials’ Failure to Record Custodial Interviews as Required by Law*, 99 *J. Crim. L. & Criminol.* 215, 220-221, 228-234 (2009).
- <sup>9</sup> Nathan J. Gordon & William L. Fleischer, *Academy For Scientific Investigative Training, Effective Interviewing & Interrogation Techniques* 209 (2d ed. 2006).
- <sup>10</sup> Many state statutes also retain exceptions for exigent circumstances, such as for equipment malfunctions. See, e.g., N.C. Gen. Stat. Ann. § 15A-211(e); Vt. Stat. Ann. tit. 13, § 5585(c)(1); N.J. Ct. R. 3:17(b); Ind. R. Evid. 617(a); Wis. Stat. Ann. § 972.115(2)(a); Mont. Code Ann. § 46-4-409(1). Others create an exception for a spontaneous statement that could not be recorded in time. See, e.g., Ark. R. Crim. P. 4.7(b)(2); Conn. Gen. Stat. Ann. § 54-10(e); 725 Ill. Comp. Stat. Ann. 5/103-2.1(b-10); Ind. R. Evid. 617(a); N.C. Gen. Stat. Ann. § 15A-211(g); N.J. Ct. R. 3:17(b); N.M. Stat. Ann. § 29-1-16(C); Mont. Code Ann. § 46-4-409(1); Mo. Ann. Stat. § 590.700(3); Or. Rev. Stat. Ann. § 133.400(2); Tex. Crim. Proc. Code Ann. art. 38.22, § 5; Wis. Stat. Ann. § 972.115(2)(a). Some statutes include a “good cause” provision like that stated in this Section. See, e.g., N.M. Stat. Ann. § 29-1-16(F); N.C. Gen. Stat. Ann. § 15A-211(e); Or. Rev. Stat. Ann. § 133.400(2); Wis. Stat. Ann. § 968.073(2).
- <sup>11</sup> See Memorandum from James M. Cole, Deputy Attorney Gen., Dep’t of Justice, Policy Concerning Electronic Recording of Statements 1 (May 12, 2014), <http://archive.azcentral.com/ic/pdf/DOJ-policy-electronic-recording.pdf> (creating a presumption that statements by individuals in federal custody, following arrest but prior to a first court appearance, will be electronically recorded).

<sup>12</sup> *Stephan v. State*, 711 P.2d 1156 (Alaska 1985). The Restatement of the Law, Children and the Law, calls for the exclusion of unrecorded statements in court. Restatement of the Law, Children and the Law § 14.23, Reporters' Notes (Am. L. Inst., Tentative Draft No. 1, 2018) (citing authority including *State v. Scales*, 518 N.W.2d 587, 592-593 (Minn. 1994); *In re Dionicia M.*, 791 N.W.2d 236, 241 (Wis. 2010); *State v. Barnett*, 789 A.2d 629 (N.H. 2001); Ind. R. Evid. 617; Wis. Stat. Ann. §§ 938.195, 938.31; Wis. Stat. Ann. §§ 968.073, 972.115; Tex. Fam. Code Ann. § 51.095; Mont. Code Ann. § 46-4-409(1); 725 Ill. Comp. Stat. Ann. 5/103-2.1 (same)). See also Thomas Sullivan, *Video Recording of Custodial Interrogation: Everybody Wins*, 95 J. Crim. L. & Criminol. 1127 (2005) (proposed model statute presumptively excluding unrecorded interrogation statements).

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