

**REGULAR CALENDAR**

**February 9, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Criminal Justice and  
Public Safety to which was referred HB 1540-FN,**

**AN ACT relative to recording custodial interrogations.**

**Having considered the same, and being unable to agree  
with the Majority, report with the following resolution:**

**RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Chris True**

**FOR THE MINORITY OF THE COMMITTEE**

**MINORITY  
COMMITTEE REPORT**

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1540-FN</b>
Title:	<b>relative to recording custodial interrogations.</b>
Date:	<b>February 9, 2022</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

**STATEMENT OF INTENT**

This bill as amended would require every law enforcement officer to record by audio and/ or audio visual means, the questioning associated with a formal arrest or the questioning of an individual during any restraint on the individual's freedom. The NH County Attorneys testified that many of our law enforcement departments do not have the equipment necessary to record, store, and transmit interrogations as mandated by this bill. The NH County Attorneys testified that their offices do not have the electronic storage capacity or the personnel to receive, redact, and transmit the recordings as is required by the criminal discovery rules. The minority does not accept the argument that these mandates probably won't cost that much, therefore it is not in violation of the NH Constitution. The minority believes that since these mandated responsibilities are not fully funded by the state that the bill is in violation of the NH Constitution Part First, Article 28-a.

Rep. Chris True  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Criminal Justice and Public Safety

**HB 1540-FN**, relative to recording custodial interrogations. **INEXPEDIENT TO LEGISLATE.**

Rep. Chris True for the **Minority** of Criminal Justice and Public Safety. This bill as amended would require every law enforcement officer to record by audio and/ or audio visual means, the questioning associated with a formal arrest or the questioning of an individual during any restraint on the individual's freedom. The NH County Attorneys testified that many of our law enforcement departments do not have the equipment necessary to record, store, and transmit interrogations as mandated by this bill. The NH County Attorneys testified that their offices do not have the electronic storage capacity or the personnel to receive, redact, and transmit the recordings as is required by the criminal discovery rules. The minority does not accept the argument that these mandates probably won't cost that much, therefore it is not in violation of the NH Constitution. The minority believes that since these mandated responsibilities are not fully funded by the state that the bill is in violation of the NH Constitution Part First, Article 28-a.

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Rep. Chris True  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Criminal Justice and Public Safety

**HB 1540-FN**, relative to recording custodial interrogations. **INEXPEDIENT TO LEGISLATE.**

Rep. Chris True for the **Minority** of Criminal Justice and Public Safety. This bill as amended would require every law enforcement officer to record by audio and/or audio-visual means, the questioning associated with a formal arrest or the questioning of an individual during any restraint on the individual's freedom. The NH County Attorneys testified that many of our law enforcement departments do not have the equipment necessary to record, store, and transmit interrogations as mandated by this bill. The NH County Attorneys testified that their offices do not have the electronic storage capacity or the personnel to receive, redact, and transmit the recordings as is required by the criminal discovery rules. The minority does not accept the argument that these mandates probably won't cost that much, therefore it is not in violation of the NH Constitution. The minority believes that since these mandated responsibilities are not fully funded by the state that the bill is in violation of the NH Constitution Part First, Article 28-a.

Original: House Clerk

Cc: Committee Bill File

Amendment to HB 1540-FN

1 Amend RSA 594-A:2, I as inserted by section 1 of the bill by replacing it with the following:

2

3 I. "Custodial interrogation" means express questioning associated with a formal arrest or a  
4 restraint on freedom that is the functional equivalent of an arrest, or other actions or words by a law  
5 enforcement officer which are reasonably likely to elicit an incriminating response from an  
6 individual and occurs when reasonable individuals in the same circumstances would consider  
7 themselves in custody.

8

9 Amend RSA 594-A:2, IV as inserted by section 1 of the bill by replacing it with the following:

10

11 IV. "Law enforcement officer" means a sheriff or deputy sheriff of any county, a state police  
12 trooper, constable or police officer of any city or town, a conservation officer, a probation officer, a  
13 parole officer, a corrections officer, or a security officer employed by an educational institution who  
14 has the power to detain an individual.

15

16 Amend RSA 594-A:3 and 594-A:4 as inserted by section 1 of the bill by replacing them with the  
17 following:

18

19 594-A:3 Electronic Recording Equipment.

20 I. Except as otherwise provided in RSA 594-A:4, a custodial interrogation, including the  
21 giving of any required warning, advice regarding the rights of the individual being questioned, and  
22 the waiver of any rights by the individual, shall be recorded electronically in its entirety. A custodial  
23 interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility  
24 shall be recorded by audio and video means. A custodial interrogation at any other place of  
25 detention shall be recorded by audio means at minimum.

26 II. This section shall not apply to an administrative disciplinary hearing in a state  
27 correctional facility or to a parole violator not charged with a new offense.

28 594-A:4 Exceptions.

29 I. If a custodial interrogation occurs in another state in compliance with that state's law or  
30 is conducted by a federal law enforcement agency in compliance with federal law, the interrogation  
31 need not be recorded electronically unless the interrogation is conducted with intent to avoid the  
32 requirement of electronic recording in RSA 594-A:3.

**Amendment to HB 1540-FN**

**- Page 2 -**

1           II. If an individual to be interrogated requests that the interrogation not be recorded, or if  
2 the individual being interrogated indicates that the individual will not participate in further  
3 interrogation unless electronic recording ceases, the interrogation need not be recorded electronically  
4 provided that this request is preserved by electronic recording or in a written document that is  
5 signed by the individual. A law enforcement officer, with intent to avoid the requirement of  
6 electronic recording in RSA 594-A:3 shall not encourage an individual to request that a recording not  
7 be made.



**Amendment to HB 1540-FN**  
**- Page 3 -**

2022-0616h

AMENDED ANALYSIS

This bill requires the recording of custodial interrogations and specifies exceptions in certain circumstances.



OFFICE OF THE HOUSE CLERK



2/8/2022 3:07:34 PM  
Roll Call Committee Registers  
Report

2022 SESSION

Criminal Justice and Public Safety

Bill #: HB1540 Motion: OTPA AM #: \_\_\_\_\_ Exec Session Date: 2-9-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman		6	
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
Hopper, Gary S. <u>LYNN</u>	4		
Green, Dennis E.		1	
Wallace, Scott Clerk	5		
Testerman, Dave		2	
True, Chris		3	
Pratt, Kevin M.		4	
Marston, Dick		5	
Harriott-Gathright, Linda C. <u>SCHULTZ</u>	6		
Pantelakos, Laura C.	7		
O'Hearne, Andrew S.			1
Bordenet, John	8		
Meuse, David	9		
Newman, Ray E.	10		
Bouldin, Amanda C.			2
Conley, Casey M.	11		
Bradley, Amy	12		
Espitia, Manny <u>S. Newman</u>	13		



2022 SESSION

**Criminal Justice and Public Safety**

Bill #: \_\_\_\_\_ Motion: \_\_\_\_\_ AM #: \_\_\_\_\_ Exec Session Date: \_\_\_\_\_

TOTAL VOTE: \_\_\_\_\_





2022 SESSION

Criminal Justice and Public Safety

Bill #: HB1540 Motion: OTP AM #: 0616H Exec Session Date: 2-9-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
	16		
Abbas, Daryl A. Chairman			
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.	3		
Hopper, Gary S. <u>LYNN</u>	4		
Green, Dennis E.	5		
Wallace, Scott Clerk	6		
Testerman, Dave		1	
True, Chris		2	
Pratt, Kevin M.	7		
Marston, Dick		3	
Harriott-Gathright, Linda C. <u>SCHULTZ</u>	8		
Pantelakos, Laura C.	9		
O'Hearne, Andrew S.			1
Bordenet, John	10		
Meuse, David	11		
Newman, Ray E.	12		
Bouldin, Amanda C.			2
Conley, Casey M.	13		
Bradley, Amy	14		
Espitia, Manny <u>S. NEWMAN</u>	15		



2022 SESSION

**Criminal Justice and Public Safety**

Bill #: \_\_\_\_\_ Motion: \_\_\_\_\_ AM #: \_\_\_\_\_ Exec Session Date: \_\_\_\_\_

**TOTAL VOTE:**



OFFICE OF THE HOUSE CLERK



2/8/2022 3:07:34 PM  
Roll Call Committee Registers  
Report

2022 SESSION

Criminal Justice and Public Safety

Bill #: HB1 540 Motion: FTL AM #:        Exec Session Date: 2-9-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	6		
Roy, Terry Vice Chairman		1	
Welch, David A.		2	
Burt, John A.		3	
Hopper, Gary S. <u>LYNN</u>		4	
Green, Dennis E.	1		
Wallace, Scott Clerk		5	
Testerman, Dave	2		
True, Chris	3		
Pratt, Kevin M.	4		
Marston, Dick	5		
<del>Harriott Gathright, Linda C.</del> <u>SCHULTZ</u>		6	
Pantelakos, Laura C.		7	
O'Hearne, Andrew S.			1
Bordenet, John		8	
Meuse, David		9	
Newman, Ray E.		10	
Bouldin, Amanda C.			2
Conley, Casey M.		11	
Bradley, Amy		12	
<del>Espitia, Manny</del> <u>S. NEWMAN</u>		13	



2/8/2022 3:07:34 PM  
Roll Call Committee Registers  
Report

2022 SESSION

**Criminal Justice and Public Safety**

Bill #: \_\_\_\_\_ Motion: \_\_\_\_\_ AM #: \_\_\_\_\_ Exec Session Date: \_\_\_\_\_

**TOTAL VOTE:**







**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY**

**PUBLIC HEARING ON HB 1540-FN**

**BILL TITLE:** relative to recording custodial interrogations.

**DATE:** February 9, 2022

**LOB ROOM:** 204                      **Time Public Hearing Called to Order:** 9:00am

**Time Adjourned:** 9:42am

**Committee Members:** Reps. Abbas, Roy, Wallace, Welch, Burt, Hopper, Green, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Bradley and Espitia

**Bill Sponsors:**

**Rep. Welch**

**Rep. Wall**

**Rep. Burt**

**TESTIMONY**

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Welch**

- Introduced the bill and amendment - Supports

**Buzz Schere**

- Speaks to the amendment - Supports

**Cynthia Moussfau - New England Innocence Project**

- Supports

**Respectfully submitted,**

**Rep. Scott Wallace**



# House Remote Testify

## Criminal Justice and Public Safety Committee Testify List for Bill HB1540 on 2022-01-14

Support: 1 Oppose: 10 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Bryfonski, John	Bedford Police, NH jbryfonski@bedfordnh.org	A Member of the Public	Myself	Oppose	No	No	1/11/2022 12:58 PM
Horganc, Kate	Concord, NH khorgan@dupontgroup.com	A Lobbyist	NH Association of Counties	Oppose	No	No	1/12/2022 3:10 PM
Mousseau, Cynthia	Henniker, NH cmousseau@newenglandinnocence.org	A Member of the Public	New England Innocence Project	Support	No	No	1/13/2022 4:11 PM
knaack, frank	Concord, NH fknaack@aclu-nh.org	A Lobbyist	ACLU of New Hampshire	Support	No	No	1/14/2022 1:25 PM



## New Hampshire County Attorneys



Patricia G. Conway, Rockingham  
John Coughlin, Hillsborough  
Paul Halvorsen, Merrimack  
Marc Hathaway, Sullivan  
Marcie Hornick, Grafton  
John McCormick, Coos  
Chris McLaughlin, Cheshire  
Andrew Livernois, Belknap  
Michaela O'Rourke-Andruzzi, Carroll  
Thomas P. Velardi, Strafford

JANUARY 13, 2022

FOR RELEASE: HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

**Contact:** County Attorney Thomas Velardi, Esq.  
**Phone:** 1-603-749-2808  
**Email:** [tvelardi@strafford.nh.us](mailto:tvelardi@strafford.nh.us)

### Statement Regarding Draft Bill 1540-FN

[NEW HAMPSHIRE, January 13, 2022] Our offices have individually and collectively reviewed draft language regarding HB 1540, and we have a number of concerns regarding the proposed changes that we wish to bring to the committees attention prior to public comment session. Our offices believes that there are a number of financial impacts to law enforcement and to the County Attorney's Offices which need to be addressed. Further, there are concerns which impact the existing Constitutional mandates imposed upon law enforcement and our offices. We respectfully outline our concerns below.

- Many of our law enforcement departments do not have equipment which is necessary to record, store, and transmit interrogations as mandated by this bill;
- Our offices do not have the electronic storage capacity or the personnel to receive, redact (if necessary under the law), and transmit the recordings as is required by the criminal discovery rules;
- There are already Constitutional mandates in place which address the concerns underlying this bill, including the Miranda warnings and signed waivers;
- The New Hampshire Constitution already mandates that the State prove, beyond a reasonable doubt, that a statement was given voluntarily;

- The definition of “person” is very broadly defined. It is unclear under what circumstances a “government,” “political subdivision,” or “commercial entity” could be subject to “custodial interrogation,” as it is difficult to take a “government” into custody;
- The proposed language excludes “all statements” made during custodial interrogation, to include spontaneous utterances (contrary to current case law) and ALL statements made “thereafter” by the person “during the custodial interrogations,” which creates a confusion about how one can make statements after a custodial interrogation that are also considered to be DURING the custodial interrogation. Read logically, this provision is contrary to Miranda caselaw, which allow after-offered statements to be admitted under specific circumstances;
- It is unclear how this might impact the ALS process during roadside stops;
- It is unclear how this would work with the public safety exemption under New York v. Quarles;
- It is unclear how this would impact situations involving jailhouse confessions to other inmates, if acting under color of authority.

In short, this bill creates far more procedural hurdles than it solves. It requires a thorough reconciliation with existing caselaw and Constitutional analysis in order to ensure that it complies with currently existing Constitutional requirements.

Furthermore, the financial impact of this bill, which is not insubstantial in all counties, as we operate with many small police departments, is not addressed.

County Attorneys of New Hampshire, all concur

HB 1540-FN - AS INTRODUCED

2022 SESSION

22-2712

04/08

HOUSE BILL            ***1540-FN***

AN ACT                relative to recording custodial interrogations.

SPONSORS:            Rep. Welch, Rock. 13; Rep. Wall, Straf. 6; Rep. Burt, Hills. 39

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill requires the recording of custodial interrogations.

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Explanation:        Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT relative to recording custodial interrogations.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Recording of Custodial Interrogations. Amend RSA by inserting after chapter  
2 594 the following new chapter:

3 CHAPTER 594-A

4 RECORDING OF CUSTODIAL INTERROGATIONS

5 594-A:1 Short Title. This chapter may be known and cited as the uniform electronic recordation  
6 of custodial interrogations act.

7 594-A:2 Definitions. In this chapter:

8 I. "Custodial interrogation" means express questioning or other actions or words by a law  
9 enforcement officer which are reasonably likely to elicit an incriminating response from an  
10 individual and occurs when reasonable individuals in the same circumstances would consider  
11 themselves in custody.

12 II. "Electronic recording" means an audio recording or audio and video recording that  
13 accurately records a custodial interrogation. "Record electronically" and "recorded electronically"  
14 shall have the same meaning.

15 III. "Law enforcement agency" means any entity or part of an entity that employs a law  
16 enforcement officer.

17 IV. "Law enforcement officer" means a sheriff or deputy sheriff of any county, a state police  
18 trooper, constable or police officer of any city or town, a conservation officer, or a security officer  
19 employed by an educational institution.

20 V. "Person" means an individual, corporation, business trust, statutory trust, estate, trust,  
21 partnership, limited liability company, association, joint venture, public corporation, or government;  
22 political subdivision, agency, or instrumentality; or any other legal or commercial entity.

23 VI. "Place of detention" means a fixed location under the control of a law enforcement  
24 agency where individuals are questioned about alleged crimes or status offenses. The term includes  
25 a jail, police or sheriff's station, holding cell, correctional or detention facility, police vehicle, and a  
26 school in the case of a juvenile.

27 VII. "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
28 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
29 United States.

30 VIII. "Statement" means a communication whether oral, written, electronic, or nonverbal.



**HB 1540-FN - AS INTRODUCED**

**- Page 2 -**

1       594-A:3 Electronic Recording Equipment. Except as otherwise provided in RSA 594-A:4, a  
2 custodial interrogation, including the giving of any required warning, advice regarding the rights of  
3 the individual being questioned, and the waiver of any rights by the individual, shall be recorded  
4 electronically in its entirety. A custodial interrogation at a jail, police or sheriff's station, holding  
5 cell, or correctional or detention facility shall be recorded by audio and video means. A custodial  
6 interrogation at any other place of detention shall be recorded by audio means at minimum.

7       594-A:4 Exception For Interrogation Conducted by Another Jurisdiction. If a custodial  
8 interrogation occurs in another state in compliance with that state's law or is conducted by a federal  
9 law enforcement agency in compliance with federal law, the interrogation need not be recorded  
10 electronically unless the interrogation is conducted with intent to avoid the requirement of electronic  
11 recording in RSA 594-A:3.

12       594-A:5 Presumption of Inadmissibility. Except as provided in RSA 594-A:4, all statements  
13 made by a person during a custodial interrogation that are not electronically recorded, and all  
14 statements made thereafter by the person during the custodial interrogations, including but not  
15 limited to statements that are electronically recorded, shall be inadmissible as evidence against the  
16 person in any criminal or juvenile delinquency proceeding brought against the person.

17       594-A:6 Overcoming the Presumption of Inadmissibility. The presumption of inadmissibility of  
18 statements provided in 594-A:5 may be overcome, and statements that were not electronically  
19 recorded may be admitted into evidence in a criminal or juvenile delinquency proceeding brought  
20 against the person, if the court finds:

- 21           I. That the statements are admissible under applicable rules of evidence; and  
22           II. That the statements are proven by clear and convincing evidence to have been made  
23 voluntarily, and are reliable; and  
24           III. That law enforcement personnel provide a reasonable justification, including a summary  
25 of the surrounding facts and circumstances, explaining the lack of recording. For purposes of this  
26 statute, mere inconvenience or financial expense shall not be considered reasonable justifications.

27       2 Effective Date. This act shall take effect January 1, 2023.

**HB 1540-FN- FISCAL NOTE  
 AS INTRODUCED**

AN ACT relative to recording custodial interrogations.

**FISCAL IMPACT:**     State             County             Local             None

COUNTY:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

The New Hampshire Municipal Association indicates this bill would require that a custodial interrogation, including the giving of any required warning, advice of the rights of the individual being questioned, and the waiver of any rights by the individual, shall be recorded electronically in its entirety. A custodial interrogation at a jail, police or sheriff's station, holding cell, or correctional or detention facility in New Hampshire would be required to be recorded by audio and video means and a custodial interrogation at any other place of detention in New Hampshire would need to be recorded by audio means at minimum. Thus, all jails, police and sheriff's stations, holding cells, and correctional and detention facilities in New Hampshire would be required to install audio and video recording devices at any location where a custodial interrogation may occur, and all law enforcement officers undertaking custodial interrogations in other locations would need to be equipped with audio recording devices, at a minimum. The Association indicates while many of the listed facilities likely have at least some audio and video recording equipment, it is likely that such equipment does not exist everywhere that a custodial interrogation may occur. To the Association's knowledge, audio recording equipment is not standard issue to law enforcement officers. Additionally, it is likely that facilities with audio and video recording equipment will need to obtain portable equipment for backup purposes to avert the possibility of fixed equipment malfunctioning during a custodial interrogation. It is not possible to calculate these additional costs with the information available at this time.

The New Hampshire Association of Counties indicates this bill would increase county expenditures for the purchase and maintenance of recording equipment for county facilities. The Association assumed a cost of \$12,800 for each recording unit and ongoing annual costs of \$4,250 per unit. Based on these assumptions county expenditures would increase by \$640,000 in FY 2023 and \$212,500 each year thereafter.

The Department of Safety indicated this bill would have no impact on the Department.

The Department of Justice indicated this bill would have no fiscal impact on it's budget.

**AGENCIES CONTACTED:**

Department of Safety and Justice, New Hampshire Municipal Association and New Hampshire Association of Counties

**HB 1540-FN FISCAL NOTE  
 AS AMENDED BY THE HOUSE (AMENDMENT #2022-0616h)**

AN ACT relative to recording custodial interrogations.

**FISCAL IMPACT:**     State             County             Local             None

COUNTY:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

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The Department of Justice indicated this bill would have no fiscal impact on its budget.

**AGENCIES CONTACTED:**

Departments of Safety and Justice, New Hampshire Municipal Association and New Hampshire Association of Counties