

Senate Judiciary Committee

Brendan Bunnell 271-4063

HB 1236-FN, relative to recordings of custodial interrogations.

Hearing Date: April 2, 2026

Time Opened: 2:21 p.m.

Time Closed: 3:17 p.m.

Members of the Committee Present: Senators Gannon, Abbas, Altschiller and Reardon

Members of the Committee Absent: Senator Carson

Bill Analysis: This bill requires custodial interrogations to be recorded and precludes admissibility of unrecorded custodial interrogations in criminal or juvenile matters absent a reasonable justification.

Sponsors:
Rep. Scherr

Who supports the bill: Representative Buzz Sherr, Representative Timothy Horrigan, Representative Popovici-Muller, Winnie Ye, Cynthia Mousseau, Cory Stone, Danielle Clive, Dan Richardson, Lisa Rivard, Suzanna Derynioski.

Who opposes the bill: Sarah Burke Cohen (NHMA).

Who is neutral on the bill: Capt. Matt Amatucci, Capt. Daniel Conley, Alexandria Morrell (DOJ), and Benjamin Agati (DOJ).

Summary of the testimony presented:

Representative Buzz Sherr introduced the bill and began by explaining that the bill requires police to record all custodial interrogations, establishes that if an interrogation is not recorded there is a presumption that any resulting statement is inadmissible, and includes an override provision allowing a judge to admit the statement if there is a reasonable explanation for the failure to record, such as equipment malfunction.

- He emphasized that the bill requires only electronic recording, not video, and argued that concerns about cost are misplaced because officers already have access to recording devices like cell phones and recordings can be transferred to department systems without long-term storage burdens.

- He explained that the bill has been heard before and represents an improved version addressing prior concerns.
- He then walked through multiple scenarios to clarify what does and does not qualify as custodial interrogation, citing longstanding U.S. Supreme Court precedent including *Berkemer v. McCarty* and *Miranda v. Arizona*.
- He explained that roadside stops, field sobriety tests, transport in a cruiser without questioning, spontaneous statements made without interrogation, and routine booking questions do not constitute custodial interrogation.
- He stressed that custodial interrogation is a well-established concept taught in police training and that the bill does not create a new legal standard. He argued that recording interrogations would reduce litigation over Miranda rights by creating a clear record of whether rights were properly read, waived, or invoked, comparing this to how body cameras have reduced disputes in DWI cases.
- He also referenced research from the Innocence Project showing that approximately 28% of wrongful convictions involved false confessions and argued that recording interrogations helps reduce that risk.
- Senator Gannon asked about his statement that officers could use personal devices like cell phones and whether there was truly no fiscal impact, noting that law enforcement had previously expressed concerns about relying on personal devices.
 - Representative Sherr responded that while he could not say with absolute certainty that there would be zero cost, he believed there would effectively be no fiscal note because police departments already have incentives to record confessions and therefore already possess recording capability. He added that officers routinely use their phones to document crime scenes, reinforcing his view that the necessary tools are already available.

Captain Matt Amatucci testified and introduced himself as a captain with the New Hampshire State Police, outlining his nearly 21 years of law enforcement experience, including time in a local agency, the major crime unit, and the polygraph unit.

- He stated that there is a misconception about what constitutes custodial interrogation, explaining that it is not limited to formal questioning at a police station but instead depends on whether a reasonable person would feel free to leave, using an objective standard.
- He defined interrogation as questioning that could elicit incriminating responses and emphasized that both formal and informal questioning can qualify.

- Senator Gannon asked whether custody could begin earlier than described by prior testimony, such as when a person is handcuffed in the back of a cruiser.
 - Captain Amatucci agreed that this would meet the standard of a reasonable person not feeling free to leave and said he would elaborate further with examples.
- He then explained the impact of RSA 105-D:2 governing body-worn cameras, specifically Section 9, stating that in places where there is a reasonable expectation of privacy, such as homes, restrooms, or locker rooms, individuals may decline to be recorded and officers are required to turn off recording unless an exception applies, such as executing a warrant or a warrantless exception.
- He emphasized that officers must inform individuals of this option and, if declined, must deactivate recording and obscure any captured images.
- He described how this plays out in real-world calls, such as domestic disturbances or noise complaints, where officers may arrive, request permission to record, and be told no, requiring them to turn cameras off even while interacting with individuals who may be detained and questioned.
- He explained that a person can be detained, even handcuffed for safety, and questioned in their home after being read Miranda rights, and that this situation could meet the definition of custodial interrogation despite not being formally arrested.
- He provided additional examples, including a homicide investigation where a suspect was located in a hospital after injuring himself and was not free to leave but could not be recorded due to hospital policies, and officer-involved shooting cases where suspects are hospitalized and questioned in environments that may prohibit recording. He explained that in these situations, questioning may clearly be custodial and potentially incriminating, yet recording may not be possible due to legal or institutional restrictions.
- He addressed the suggestion that officers could use personal cell phones to record interrogations, arguing that this would create an unfunded mandate because agencies would need to develop policies for storage, retention, and evidentiary compliance, and could not simply store recordings on personal devices. He referenced existing requirements for handling digital evidence under body camera laws and stressed that similar infrastructure would be needed. He acknowledged that recording interrogations is best practice and a valuable safeguard but argued that any policy must account for real-world limitations such as equipment failures, emergencies, and situations where individuals decline recording.
- Senator Gannon asked a question about using personal phones and how it may alter admissibility.

- o Captain Amatucci stated that while various forms of evidence can be introduced in court, including statements relayed by private individuals, issues such as chain of custody could complicate admission of recordings from personal devices.
- o He pointed out that under the bill, a statement obtained by law enforcement without recording could be deemed inadmissible, whereas a similar statement made to a private individual could still be introduced through testimony, even though that individual may have bias.
- Senator Reardon asked about RSA 105-D:2 and whether individuals have absolute control over recording in private spaces.
 - o Captain Amatucci confirmed that in locations with a reasonable expectation of privacy, individuals can decline recording and officers must comply unless an exception applies.
 - Senator Reardon asked whether officers can override a refusal in situations that appear to involve a crime, such as domestic violence,
 - o Captain Amatucci explained that exceptions exist when officers can articulate that a crime is occurring, but otherwise the rule applies. He clarified that in public settings there is no expectation of privacy, so officers may record without permission but must notify individuals.

Winnie Ye testified on behalf of the Innocence Project in support of the bill, explaining that wrongful convictions harm innocent individuals, cost the state millions of dollars, and deny justice to victims while allowing actual perpetrators to remain free.

- She stated that since 1989 there have been over 4,000 known wrongful convictions and that false confessions are a leading contributing factor.
- She emphasized that recording custodial interrogations is an evidence-based practice that increases transparency, protects both law enforcement and defendants, and reduces pretrial litigation.
- She noted that 31 states and the District of Columbia already require recording of custodial interrogations and that in New Hampshire at least 16 jurisdictions, covering over half the state's population, already record interrogations and have policies and equipment in place. She explained that the bill is intended to create consistency statewide so that rights do not vary by location.

- She provided legislative history, stating that the concept has been considered since 2022, that prior versions included funding and more detailed exceptions, and that based on feedback the current version was narrowed and funding was removed because many agencies already record.
- She explained that the bill includes a broad presumption of inadmissibility for unrecorded statements but allows courts to admit them if justified, meaning recordings are not automatically excluded.
- She also stated that details such as storage and management of recordings can be handled by individual agencies rather than prescribed in statute.
- She cited a study showing that informing suspects they are being recorded does not reduce cooperation, Miranda waivers, or confessions.
- Senator Abbas asked why the bill requires law enforcement to provide a reasonable justification when a custodial interrogation is not recorded, noting that unlike Miranda violations, which automatically suppress statements, this framework allows admission if justified and questioning why that additional requirement is necessary.
 - Winnie Ye responded that earlier versions of the bill listed specific exceptions, but feedback favored a broader, more flexible standard. She explained that the reasonable justification requirement exists to account for situations where recording is not possible while still allowing cases to proceed, and clarified that the presumption of inadmissibility is not automatic in practice because it must be raised by the defense, after which the state can respond and attempt to justify the lack of recording.

Captain Daniel Conley of the Goffstown Police Department testified in opposition, stating that he has nearly 19 years of law enforcement experience and has also been a licensed attorney in New Hampshire for over 10 years.

- He focused his testimony on the practical and financial impact of the bill on police departments, particularly smaller agencies.
- He argued that officers cannot reasonably be expected to use personal cell phones to record interrogations, explaining that doing so would raise significant issues, including exposure of personal devices to Right-to-Know (RSA 91-A) requests, commingling of personal and evidentiary data, and complications related to evidence handling and storage.
- He questioned how such recordings would be managed, whether they would remain on personal devices, and how they would be separated from officers' private content.

- He further explained that if departments required use of personal phones, municipalities might ultimately have to subsidize those devices, adding additional cost.
- He described the financial burden already faced by his department, noting that Goffstown issues department cell phones to officers, maintains body-worn cameras, and pays significant and increasing costs for cloud storage of digital evidence.
- He emphasized that these technology-related expenses are substantial and continuing to rise, while the town is currently operating under a default budget with no increase in funding despite rising costs.
- He concluded that implementing the requirements of the bill would impose additional financial burdens on taxpayers, as municipalities would need to fund equipment, infrastructure, and storage systems necessary to comply.

Assistant Attorney General Alexandria Morell, joined by **Senior Assistant Attorney General Benjamin Agati**, testified on behalf of the New Hampshire Department of Justice in opposition and urged interim study.

- Morrell explained that her role as traffic safety resource prosecutor involves advising law enforcement statewide and handling appellate issues, including questions around custodial interrogation and Miranda. She stated that their testimony was structured as a back-and-forth discussion to highlight concerns identified after receiving inquiries about the bill.
- The Department’s primary concern was that the bill attempts to address a problem that has not been demonstrated to exist in New Hampshire, noting that examples cited often come from other jurisdictions or older cases.
- Agati emphasized that a central issue is the lack of clarity around what constitutes “custodial interrogation.” He explained that scenarios presented earlier such as questioning near a cruiser or during evolving encounters may not qualify as custodial interrogation, but the ambiguity in the bill could invite litigation arguing otherwise.
- He provided a detailed example drawn from *State v. Lopez*, 139 N.H. 309, where an officer, during a physical struggle with a suspect, asked about the location of a weapon for safety reasons. He explained that under the bill’s unclear language, such a moment could be argued to constitute custodial interrogation, illustrating the risk of overbroad or misapplied definitions.
- Morell and Agati further testified that the bill lacks clarity regarding exceptions to recording requirements. They questioned what qualifies as a “reasonable justification” for failing to record and noted the absence of guidance when a suspect refuses to be recorded. They also raised concerns about situations where

a witness becomes a suspect mid-interaction, asking at what point recording obligations would attach or change.

- They highlighted similar ambiguity in DWI cases, where roadside interactions are frequently litigated as custodial or non-custodial, and where statements made after Miranda warnings such as refusals are evidentiary but may not be clearly covered under the bill's framework.
- They raised operational and financial concerns, particularly for smaller departments that may lack resources. They questioned whether lack of funding would qualify as a "reasonable justification" and emphasized that costs would extend beyond police departments to prosecutors, courts, and corrections due to storage and retention requirements.
- They noted that evidentiary materials must often be retained until the final resolution of a case, including appeals, and highlighted risks related to data storage, cybersecurity incidents, and system failures. They also explained constraints, such as hospital policies that prohibit recording, even in situations involving serious criminal charges, which would make compliance difficult or impossible in some cases.
- Morell also raised concerns about how the bill would affect the evaluation of witness testimony. She explained that New Hampshire law treats all witnesses equally, and jurors are instructed to assess credibility without bias. She argued that the bill, as written, could effectively diminish the credibility of law enforcement testimony by creating a presumption against unrecorded statements, even where no misconduct occurred. She warned that this could conflict with constitutional principles and existing evidentiary standards.
- Agati concluded by explaining that current law already requires the state to prove that statements were made voluntarily before they can be admitted, and that the bill would shift the focus from constitutional violations to technical compliance with recording requirements. He expressed concern that the bill could create an "irrefutable presumption" of coercion in cases where recording was not possible, regardless of actual circumstances.
- Senator Abbas asked whether a jury instruction rather than exclusion of evidence could address concerns about unrecorded statements.
 - o Agati explained that the current adversarial system already allows defense counsel to argue the absence of a recording to the jury. He stated that such arguments go to the weight and credibility of the evidence, and that judges are best positioned to determine appropriate jury instructions.
 - o Morrell added that, based on her experience as a former public defender, this type of argument is already commonly used and effective without requiring statutory changes.

Cynthia Mousseau testified in support and began by clarifying distinctions she felt were misunderstood in prior testimony.

- She explained that the bill is not triggered by detention but only by custody, which she described as a higher threshold involving arrest or its functional equivalent. She stated that roadside stops and similar lower level encounters would not fall under the bill and emphasized that only custodial interrogations involving direct questioning about a crime would trigger recording requirements.
- She addressed concerns about practical scenarios such as questioning in homes, hospitals, or situations where individuals refuse to be recorded, arguing that these are all covered by the bill's reasonable justification exception.
- She emphasized that law enforcement would be able to explain those circumstances and that the bill was designed to accommodate real world conditions. She also clarified that spontaneous statements not made in response to police questioning would remain admissible and would not be subject to recording requirements.
- She explained that the motivation for the bill comes from wrongful conviction work, stating that she is the only full time innocence attorney in New Hampshire and that she cannot effectively litigate wrongful conviction cases without recorded confessions.
- She said the inability to review or analyze unrecorded interrogations makes it extremely difficult to assess confessions, especially in cases involving false confessions, and that this is the primary reason the legislation continues to be brought forward.
- She responded to concerns about police credibility by arguing that the bill does not create a presumption against officers and that such issues would be handled prior to trial rather than presented to juries in a prejudicial way. She stated that law enforcement is given significant authority including the power to arrest and detain and that additional accountability such as recording interrogations is appropriate given that authority.
- She also rejected the idea that the bill is punitive, stating that recording interrogations is already best practice and widely used. She argued that recording benefits law enforcement by reducing motions to suppress and limiting disputes over what occurred during interrogations while the real harm comes from unrecorded interrogations in wrongful conviction cases.
- Addressing the discussion about jury instructions, she noted that Massachusetts uses an instruction that can reduce the credibility of unrecorded confessions and pointed out that this bill does not go that far. She also expressed skepticism about jury instructions generally, stating they are not always followed in practice.

- On evidence handling, she clarified that the bill does not require submission of entire devices such as cell phones into evidence and that only the recording itself would be submitted just like body camera or interrogation room recordings. She emphasized that no one is seeking access to personal data or unrelated material.
- She stated that the bill has been repeatedly discussed with law enforcement and training bodies and that she has not heard substantive concerns in those settings. She argued that there is a national consensus that recording custodial interrogations is best practice and that New Hampshire should adopt it.

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Date Hearing Report completed: April 6, 2026