

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5736
OFFERED BY M . _____**

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Federal Accountability
3 in Interviews Reform Act” or as the “FAIR Act”.

**4 SEC. 2. AUDIO RECORDING OF INTERVIEWS CONDUCTED
5 BY CERTAIN FEDERAL LAW ENFORCEMENT
6 OFFICERS.**

7 (a) IN GENERAL.—The Attorney General shall re-
8 quire the recording, using an electronic audio recording
9 technology, of each interview of a United States citizen
10 who is suspected of having committed a criminal offense
11 conducted by an officer or employee of a covered agency
12 in connection with—

13 (1) an investigation of a Federal offense; or

14 (2) an investigation with respect to which the
15 Bureau is assisting a State, local, or tribal law en-
16 forcement agency.

17 (b) APPLICATION.—

1 (1) CUSTODIAL AND NON-CUSTODIAL INTER-
2 VIEWS.—The requirements under this section apply
3 with respect to each custodial or non-custodial inter-
4 view, but do not apply—

5 (A) in the case of an interview for pur-
6 poses of gathering information intended to
7 avert an immediate threat to public safety;

8 (B) in the case of exigent circumstances;
9 or

10 (C) in the case of a non-custodial inter-
11 view—

12 (i) with respect to any communication
13 with a confidential informant; or

14 (ii) with respect to any communica-
15 tion by an officer or employee who is en-
16 gaging in an undercover operation with a
17 United States citizen who is suspected of
18 having committed a criminal offense.

19 (2) EXTRATERRITORIAL APPLICATION.—The re-
20 quirements under this section apply with respect to
21 any interview of a United States citizen outside of
22 the United States conducted by an officer or em-
23 ployee of a covered agency.

24 (3) SUBMISSION TO CONGRESS.—The head of
25 each covered agency shall submit, to the Committees

1 on the Judiciary of the House of Representatives
2 and of the Senate, a report every 6 months that de-
3 scribes each interview that occurred during the 6
4 month period preceding the report wherein the re-
5 quirements under this section did not apply pursu-
6 ant to subparagraph (A) of paragraph (1), and sets
7 forth the determination that the exception was appli-
8 cable.

9 (c) NOTIFICATION, CONSENT NOT REQUIRED.—An
10 officer or employee of a covered agency may record an
11 interview described in this section without providing notice
12 to or obtaining consent from the interviewee.

13 (d) INADMISSIBILITY.—A statement or information
14 obtained during an interview that is not recorded in ac-
15 cordance with this section may not be offered as evidence
16 by the Government in Federal court.

17 (e) RETENTION.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), a recording of an interview described in
20 this section shall be retained for a period of 10 years
21 beginning on the date on which the applicable inves-
22 tigation or any related judicial procedures is finally
23 concluded, whichever is later.

24 (2) EXCEPTION.—A recording of an interview
25 described in this section shall be retained indefinitely

1 if the content of the recording is related to a judicial
2 proceeding that involves a Federal capital offense or
3 a State capital offense with respect to which the offi-
4 cer or employee of a covered agency was assisting
5 the law enforcement agency of the jurisdiction in
6 which the offense occurred.

7 (f) RULES.—The Attorney General shall finalize rules
8 to carry out this section not later than 180 days after the
9 date of enactment of this Act.

10 (g) DEFINITION.—The term “covered agency” means
11 the Federal Bureau of Investigation, Drug Enforcement
12 Administration, the Bureau of Alcohol, Tobacco, Fire-
13 arms, and Explosives, and the United States Marshals
14 Service.

