

AMENDMENTS TO LB 179

Introduced by Judiciary

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. The Legislature finds that to electronically  
4 record statements made during a custodial interrogation is  
5 an effective way to document a free, knowing, voluntary, and  
6 intelligent waiver of a person's right to remain silent, to agree  
7 to answer questions, to decide to have an attorney present during  
8 such questioning, and to decide to have an attorney provided to  
9 such person if he or she cannot afford an attorney, as provided  
10 by the Constitution of the United States and the Constitution  
11 of Nebraska. Providing a record of the statement made during a  
12 custodial interrogation and any waiver of constitutional rights  
13 will reduce speculation and claims that may arise as to the  
14 content of the statement. Such a record of the content of the  
15 statement will aid law enforcement officers in analyzing and  
16 rejecting untruthful statements and will aid the factfinder in  
17 determining whether a statement was freely, knowingly, voluntarily,  
18 and intelligently made.

19           Sec. 2. For purposes of sections 1 to 8 of this act:

20           (1) Custodial interrogation has the meaning prescribed to  
21 it under the Fourth and Fifth Amendments to the Constitution of the  
22 United States and Article I, sections 3 and 7, of the Constitution  
23 of Nebraska, as interpreted by the United States Supreme Court and

1 the Nebraska Supreme Court;

2 (2) Electronically record means to record using an audio  
3 recording device, a digital recording device, or a video recording  
4 device;

5 (3) Place of detention means a police station, sheriff's  
6 office, troop headquarters, courthouse, county attorney's office,  
7 juvenile or adult correctional or holding facility, community  
8 correctional center, or building under the permanent control of  
9 law enforcement at which the person is in custody pursuant to the  
10 authority of a law enforcement officer; and

11 (4) Reasonable exception means circumstances in which:

12 (a) A statement was made when it was not practicable to  
13 electronically record the statement;

14 (b) Equipment to electronically record the statement  
15 could not be reasonably obtained;

16 (c) The person in custody refused to have the statement  
17 electronically recorded;

18 (d) The equipment used to electronically record the  
19 statement malfunctioned; or

20 (e) The law enforcement officer conducting the statement  
21 reasonably believed that the crime for which the person was taken  
22 into custody was not a crime described in subsection (2) of section  
23 3 of this act.

24 Sec. 3. (1) All statements relating to crimes described  
25 in subsection (2) of this section and statements regarding rights  
26 described in section 1 of this act or the waiver of such rights  
27 made during a custodial interrogation at a place of detention

1 that are described in subsection (2) of this section shall be  
2 electronically recorded.

3 (2) Statements subject to subsection (1) of this section  
4 are those statements relating to:

5 (a) Crimes resulting in death or felonies involving  
6 (i) sexual assault, (ii) kidnapping, (iii) child abuse, or (iv)  
7 strangulation; or

8 (b) Offenses being investigated as part of the same  
9 course of conduct as the offenses described in subdivision (a) of  
10 this subsection.

11 Sec. 4. Except as otherwise provided in sections 5, 6,  
12 and 7 of this act, if a law enforcement officer fails to comply  
13 with section 3 of this act, a court shall instruct the jury  
14 that they may draw an adverse inference for the law enforcement  
15 officer's failure to comply with such section.

16 Sec. 5. (1) If a defendant testifies contrary to his  
17 or her statement made during a custodial interrogation at a place  
18 of detention which was not electronically recorded, such statement  
19 may be used for the purpose of impeachment if it is shown that  
20 the statement was freely, knowingly, voluntarily, and intelligently  
21 made.

22 (2) A jury instruction shall not be required if the  
23 prosecution proves, by a preponderance of the evidence, that  
24 there is a reasonable exception for there not being an electronic  
25 recording.

26 Sec. 6. If a law enforcement officer fails to comply with  
27 section 3 of this act, such failure shall not bar the use of any

1 evidence derived from such statement if the court determines that  
2 the evidence is otherwise admissible.

3           Sec. 7. Any statement made during a custodial  
4 interrogation shall be admissible against such person in a criminal  
5 proceeding in this state if:

6           (1) The statement was obtained in another state and was  
7 obtained in compliance with the laws of that state; or

8           (2) The statement was obtained by a federal law  
9 enforcement officer in this state or another state, was obtained in  
10 compliance with the laws of the United States, and was not taken  
11 by a federal law enforcement officer in an attempt to circumvent  
12 sections 1 to 8 of this act.

13           Sec. 8. The existence of inaudible portions of an  
14 electronic recording, which are not the result of bad faith by  
15 a law enforcement officer to produce an inaudible result, standing  
16 alone, shall not render a statement out of compliance with section  
17 3 of this act.