

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 179

FINAL READING

Introduced by Lathrop, 12.

Read first time January 9, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to require electronic
2 recording of custodial interrogations as prescribed; to
3 define terms; to require jury instructions for failure to
4 comply; to provide exceptions; and to address inaudible
5 portions of recordings.

6 Be it enacted by the people of the State of Nebraska,

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

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

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

23 (2) Electronically record means to record using an audio
24 recording device, a digital recording device, or a video recording
25 device;

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

7 (4) Reasonable exception means circumstances in which:

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

10 (b) Equipment to electronically record the statement
11 could not be reasonably obtained;

12 (c) The person in custody refused to have the statement
13 electronically recorded;

14 (d) The equipment used to electronically record the
15 statement malfunctioned; or

16 (e) The law enforcement officer conducting the statement
17 reasonably believed that the crime for which the person was taken
18 into custody was not a crime described in subsection (2) of section
19 3 of this act.

20 Sec. 3. (1) All statements relating to crimes described
21 in subsection (2) of this section and statements regarding rights
22 described in section 1 of this act or the waiver of such rights
23 made during a custodial interrogation at a place of detention
24 that are described in subsection (2) of this section shall be
25 electronically recorded.

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

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

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

9 Sec. 4. Except as otherwise provided in sections 5 to
10 7 of this act, if a law enforcement officer fails to comply with
11 section 3 of this act, a court shall instruct the jury that they
12 may draw an adverse inference for the law enforcement officer's
13 failure to comply with such section.

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

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

24 Sec. 6. If a law enforcement officer fails to comply with
25 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.