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HOUSE BILL 1932

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Lantz, Delvin, Dunshee, Mielke, Chase, Moeller, O'Brien and Edwards

Read first time 02/17/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to electronic recording of custodial  
2 interrogations; and adding a new section to chapter 10.58 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.58 RCW  
5 to read as follows:

6 (1) The definitions in this subsection apply throughout this  
7 section unless the context clearly requires otherwise.

8 (a) "Custodial interrogation" means an interrogation of a person  
9 suspected of committing a felony that is conducted in:

10 (i) A sheriff's office, police station, courthouse, correctional  
11 facility, community correctional center, detention facility, or a  
12 state, regional, or local correctional facility; or

13 (ii) A place not listed in (a)(i) of this subsection if an adequate  
14 recording device is available.

15 (b) "Electronic recording" means a complete and authentic recording  
16 created by motion picture, videotape, audiotape, or digital media.

17 (2) Except as otherwise provided in subsection (3) of this section,  
18 a statement made by a defendant during a custodial interrogation is

1 inadmissible as evidence against the defendant in a criminal proceeding  
2 unless:

3 (a) An electronic recording of the entire custodial interrogation  
4 was created;

5 (b) While the electronic recording was being made and prior to  
6 making the statement, the defendant was advised of all rights of the  
7 defendant as required by state and federal law and the defendant  
8 knowingly, intelligently, and voluntarily waived those rights;

9 (c) At the time the electronic recording was created, the recording  
10 device being used was capable of creating an accurate recording and the  
11 person operating the recording device was qualified to operate the  
12 recording device;

13 (d) The electronic recording is not altered;

14 (e) All voices on the electronic recording that are material to the  
15 custodial interrogation are identified; and

16 (f) The defendant was provided with a complete and accurate copy of  
17 the electronic recording not later than twenty days before the date of  
18 the criminal proceeding.

19 (3) Nothing in this section precludes the admission of a statement  
20 made by a defendant during a custodial interrogation if:

21 (a) The statement was made before a grand jury;

22 (b) The statement was made in open court at trial or in a hearing;

23 (c) The custodial interrogation was conducted in another state in  
24 compliance with the laws of that state;

25 (d) The custodial interrogation was conducted by a federal law  
26 enforcement officer in compliance with the laws of the United States;

27 (e) The defendant refused to have the custodial interrogation  
28 electronically recorded and the refusal was electronically recorded; or

29 (f) The law enforcement agency that conducted the custodial  
30 interrogation can demonstrate through clear and convincing evidence  
31 that the failure to create an electronic recording of the entire  
32 custodial interrogation was the result of malfunction of the recording  
33 device and that obtaining a replacement device was not feasible.

34 (4) A statement of a defendant made during an interrogation other  
35 than a custodial interrogation is inadmissible as evidence against the  
36 defendant in a criminal proceeding if the law enforcement agency  
37 conducting the interrogation selected the location for the

1 interrogation for the purpose of avoiding the electronic recording  
2 requirements of this section.

3 (5) A law enforcement agency that creates an electronic recording  
4 of a custodial interrogation shall preserve the electronic recording  
5 until the defendant's conviction for any offense relating to the  
6 custodial interrogation is final and all direct and habeas appeals are  
7 exhausted, or until the prosecution of such offense is barred by law.

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