



**Hundredth Legislature - First Session - 2007
Committee Statement
LB 179**

Hearing Date: February 8, 2007
Committee On: Judiciary

Introducer(s): (Lathrop)
Title: Require electronic recording of custodial interrogations

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

- | | | |
|---|-------------------------------|---|
| 7 | Yes | Sen. Ashford, Sen. Lathrop, Sen. Chambers, Sen. McDonald,
Sen. McGill, Sen. Pedersen, Sen. Schimek |
| | No | |
| 1 | Present, not voting
Absent | Sen Pirsch |
-

Proponents:

Sen. Lathrop
James Mowbray
Thomas Sullivan
Nick Sampson
Jerry Soucie
Bill Mueller

Representing:

Nebraska Commission Public Advocacy
Citizen
Citizen
Commission on Public Advocacy
NSBA

Opponents:

Tom Casady
Larry Thoren
Lance Webster

Representing:

Lincoln Police
PCAN
PCAN

Neutral:

Representing:

Summary of purpose and/or changes: Legislative Bill 179 requires that all custodial interrogations by law enforcement which occur at a place of detention be electronically recorded. If there is a failure to electronically record a custodial interrogation, any statements a defendant makes shall be suppressed, unless:

1. An accused person testifies contrary to the unrecorded admission or statement, then such an admission or statement may be used for impeachment of the accused person's testimony if it is shown the statement was voluntarily made; or
2. The prosecution proves by a preponderance of the evidence that there is a reasonable excuse for not recording the statement;

Reasonable excuse is defined to include situations where it was not practicable to record the statement, recording equipment could not be obtained, the accused person refused consent to being recorded, or the recording equipment malfunctioned.

LB 179 also contains provisions which allow the use of admissions or statements obtained in another state or by federal law enforcement officers even if no electronic recording took place. Statements or admissions made by a defendant in another state are admissible if they were obtained in compliance with the laws of that state, and statements obtained by federal officers are admissible so long as the federal officer complied with federal law and did not take the statement in an attempt to circumvent the provisions of the act. Lastly, the bill allows the use of evidence derived from a statement or admission which is suppressed due to the lack of electronic recording if the court determines that the evidence in question is otherwise admissible.

Explanation of amendments, if any:

COMMITTEE AMENDMENT

The committee amendment to LB 179, AM 583, makes the following changes to the bill as introduced:

1. The definition of "Place of detention" is amended to limit its coverage to buildings under the permanent control of law enforcement and to remove health care facility from the list of included locations.

2. Adds a new exception to the electronic recording requirement for situations in which the law enforcement officer reasonably believed that the crime for which the person was taken into custody was not a crime for which recording was required by the act.
3. Limits the requirement to record statements made during a custodial interrogation at a place of detention to those statements made during the investigation of crimes involving death or felonies involving sexual assault, kidnapping, child abuse, or strangulation and offenses being investigated as part of the same course of conduct of one of the above listed offenses.
4. Replaces the requirement that a court must suppress statements which are not recorded with a requirement that the court shall instruct the jury that an adverse inference may be drawn from the failure of law enforcement to comply with the recording requirement. A jury instruction is not required if the prosecution proves by a preponderance of the evidence that there is a reasonable exception for the failure to record the statement.

Senator Brad Ashford, Chairperson