HOUSE BILL NO. 172

INTRODUCED BY M. CAMPBELL

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A STATEMENT BY A PERSON DURING CUSTODIAL QUESTIONING IS PRESUMED TO BE INADMISSIBLE IN EVIDENCE UNLESS IT IS ELECTRONICALLY RECORDED; PROVIDING GROUNDS FOR REBUTTAL OF THE PRESUMPTION; AND REQUIRING PRESERVATION OF THE RECORDING."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Recording of custodial questioning -- admissibility.** (1) As used in this section, the following definitions apply:

(a) "Custodial questioning" means the questioning in this state by a state or local government law enforcement officer of a person who is in custody and is questioned concerning an act, occurrence, or failure to act that is or may be a criminal offense. Custodial questioning is questioning conducted in a law enforcement office or vehicle, courthouse, correctional facility, community correctional center, detention facility, health care facility, or any other place where adequate electronic recording equipment can be made readily available, whether or not the equipment is in fact available.

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

(2) An oral, written, or sign language statement of a person made during custodial questioning is rebuttably presumed to be inadmissible in evidence in a criminal proceeding unless:

(a) the custodial questioning was electronically recorded in its entirety;

(b) at the start of the custodial questioning and electronic recording, the person was given the requisite Miranda warning and knowingly, intelligently, and voluntarily waived the rights referenced in the warning;

(c) the electronic recording equipment was capable of making an accurate recording, the equipment operator was competent, and the electronic recording has not been altered;

(d) each electronically recorded voice that is material to the custodial questioning is identified; and

(e) at least 20 days before the beginning of any trial or hearing in which it is contemplated that the electronic recording will be introduced in evidence, the defense attorney, or the defendant if the defendant does

not have a defense attorney, is provided with a true, complete, and accurate copy of the electronic recording.

(3) The presumption of inadmissibility of the statement may be overcome by clear and convincing evidence that the statement was voluntary and reliable and that the law enforcement officer or officers conducting the custodial questioning had good cause for not electronically recording the custodial questioning. Good cause includes but is not limited to:

(a) custodial questioning conducted in a place where electronic recording equipment could not be made readily available;

(b) refusal of the person questioned to have the custodial questioning electronically recorded, and the refusal itself was electronically recorded; or

(c) equipment failure that resulted in the inability to electronically record the custodial questioning in its entirety.

(4) The electronic recording must be preserved until:

(a) the statute of limitations has run out for any offense for which the person might be charged;

(b) for any offense for which the person could be and was charged, the person was found not guilty; or

(c) for any offense for which the person could be and was charged, the person was convicted and all time for appeal, postconviction relief, and habeas corpus relief has passed and the conviction has become final.

(5) This section does not apply to a statement made in a judicial hearing or trial or before a grand jury or spontaneously made during or after the commission of an offense and not made in response to custodial questioning.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46 apply to [section 1].

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