



AN ACT REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT.

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

Section 1. Purpose. The legislature intends to require the electronic recording of custodial interrogations in felony cases based on the finding that properly recorded interrogations:

- (1) provide the best evidence of the communications that occurred during an interrogation;
- (2) prevent disputes about a peace officer's conduct or treatment of a suspect during the course of an interrogation;
- (3) prevent a defendant from lying about the account of events originally provided to law enforcement by the defendant;
- (4) spare judges and jurors the time necessary and the need to assess which account of an interrogation to believe;
- (5) enhance public confidence in the criminal process; and
- (6) have been encouraged by the Montana supreme court in a written opinion of that court.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

- (1) "Custodial interrogation" means an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony or, in the case of a youth, an offense that would be a felony if committed by an adult if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense.
- (2) "Electronic recording" or "electronically recorded" means an audio recording, visual recording, or audiovisual recording, if available, that is an authentic, unaltered record of a custodial interrogation.
- (3) "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention

facility, office, or other structure in this state where persons are held in connection with criminal charges or juvenile delinquency proceedings.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

Section 3. Recordings required. Except as provided in [section 4], all custodial interrogations must be electronically recorded. The recording must contain a peace officer advising the person being interviewed of the person's Miranda rights, a recording of the interview, and a conclusion of the interview.

Section 4. Exceptions to custodial recording requirements. A judge shall admit statements or evidence of statements that do not conform to [section 3] if, at hearing, the state proves by a preponderance of the evidence that:

(1) the statements have been made voluntarily and are reliable; or

(2) one or more of the following circumstances existed at the time of the custodial interrogation:

(a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;

(b) before or during a custodial interrogation, the person unambiguously declared that the person would respond to the law enforcement officer's questions only if the person's statements were not electronically recorded;

(c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not practicable;

(d) exigent circumstances prevented the making of an electronic recording of the custodial interrogation;

(e) the person's statements were surreptitiously recorded by or under the direction of law enforcement personnel;

(f) the person's statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state; or

(g) the person's statement was made spontaneously and not in response to a question.

Section 5. Cautionary jury instruction. If the defendant objects to the introduction of evidence under [section 3] and the court finds by a preponderance of the evidence that the statements are admissible, the judge

shall, upon motion of the defendant, provide the jury with a cautionary instruction.

Section 6. Handling and preservation of electronic recordings. (1) An electronic recording of a custodial interrogation must be clearly identified and catalogued by law enforcement personnel.

(2) If a criminal or youth court proceeding is brought against a person who was the subject of an electronically recorded custodial interrogation, the electronic recording must be preserved by law enforcement personnel until all appeals and all postconviction and habeas corpus proceedings are final and concluded or until the time within which the proceedings must be brought has expired.

(3) Upon motion by the defendant, the court may order that a copy of the electronic recording be preserved for any period beyond the expiration of all appeals.

(4) If a criminal or youth court proceeding is not brought against a person who has been the subject of an electronically recorded custodial interrogation, the related electronic recording must be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46 apply to [sections 1 through 6].

- END -

I hereby certify that the within bill,
HB 0534, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 534

INTRODUCED BY CAMPBELL, FRENCH, HAMILTON, MCCHESENEY, SANDS, WILMER, LASLOVICH,
SHOCKLEY, WINDY BOY, HAMLETT, JENT, STEWART-PEREGOY, KOTTEL

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