

Senate Bill 323

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires that statement made by defendant during custodial interrogation be recorded electronically to be admissible as evidence against defendant. Provides exceptions.

A BILL FOR AN ACT

1
2 Relating to criminal procedure.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Custodial interrogation" means an interrogation of a person suspected of committing**
6 **a felony that is conducted in:**

7 (A) **A sheriff's office, a police station, a courthouse, a detention facility or a state, re-**
8 **gional or local correctional facility; or**

9 (B) **A place not listed in subparagraph (A) of this paragraph if an adequate recording**
10 **device is available.**

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

13 (2) **Notwithstanding ORS 136.432 and except as otherwise provided in subsection (3) of**
14 **this section, a statement made by a defendant during a custodial interrogation is inadmissi-**
15 **ble as evidence against the defendant in a criminal proceeding unless:**

16 (a) **An electronic recording of the entire custodial interrogation was created;**

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

20 (c) **At the time the electronic recording was created, the recording device being used was**
21 **capable of creating an accurate recording and the person operating the recording device was**
22 **qualified to operate the recording device;**

23 (d) **The electronic recording is not altered;**

24 (e) **All voices on the electronic recording that are material to the custodial interrogation**
25 **are identified; and**

26 (f) **The defendant was provided with a complete and accurate copy of the electronic re-**
27 **recording in accordance with ORS 135.815 and 135.845 and in no event later than the 20th day**
28 **before the date of the criminal proceeding.**

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 **(a) The statement was made before a grand jury;**
- 2 **(b) The statement was made in open court at trial or in a hearing;**
- 3 **(c) The custodial interrogation was conducted in another state in compliance with the**
4 **laws of that state;**
- 5 **(d) The custodial interrogation was conducted by a federal law enforcement officer in**
6 **compliance with the laws of the United States;**
- 7 **(e) The defendant refused to have the custodial interrogation electronically recorded and**
8 **the refusal was electronically recorded; or**
- 9 **(f) The law enforcement agency that conducted the custodial interrogation can demon-**
10 **strate through clear and convincing evidence that the failure to create an electronic re-**
11 **recording of the entire custodial interrogation was the result of malfunction of the recording**
12 **device and that obtaining a replacement device was not feasible.**
- 13 **(4) A statement of a defendant made during an interrogation other than a custodial in-**
14 **terrogation is inadmissible as evidence against the defendant in a criminal proceeding if the**
15 **law enforcement agency conducting the interrogation selected the location for the interro-**
16 **gation for the purpose of avoiding the electronic recording requirements of this section.**
- 17 **(5) A law enforcement agency that creates an electronic recording of a custodial inter-**
18 **rogation shall preserve the electronic recording until the defendant's conviction for any of-**
19 **fense relating to the custodial interrogation is final and all direct and habeas corpus appeals**
20 **are exhausted, or until the prosecution of such offenses is barred by law.**

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