

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass as Amended and Be Printed Engrossed

Vote: 4 - 1 - 0

Yeas: Bonamici, Boquist, Dingfelder, Prozanski

Nays: Whitsett

Exc.: 0

Prepared By: Bill Taylor, Counsel

Meeting Dates: 2/24, 4/20, 4/23

WHAT THE MEASURE DOES: Requires electronic recordation of a custodial interview conducted by a law enforcement agency in a law enforcement facility if the interview is in connection with certain crimes. Does not apply to statements made before a grand jury, in open court, a custodial interrogation conducted in another state in compliance with the laws of that state, a custodial interrogation conducted by federal law enforcement in compliance with the laws of the United States, a spontaneous statement of the defendant, or if good cause is shown for not electronically recording. States that "good cause" includes the refusal of the defendant to have the interrogation recorded, the equipment malfunctioned, or recording would jeopardize the safety of any person or the confidentiality of an informant. Allows unrecorded statements into evidence but requires that the judge give the jury instructions concerning the fact that the statement was not recorded. Requires the state to provide the defendant with an electronic copy of the statement, but not a written transcript of the tape. Defines law enforcement facility as a courthouse or a building where a police or sheriff's office is located. Measure applies to minors, nonnative English speakers and murder cases on January 1, 2010, and to all other person felonies on July 1, 2011. Measure does not apply to police departments of five or fewer sworn officers.

Provides that an interpreter's translation is not hearsay if it is shown that the interpreter is unavailable pursuant to ORS 40.465 (Rule 804 of the Evidence Code).

ISSUES DISCUSSED:

- A patrol car is not a "law enforcement facility"

EFFECT OF COMMITTEE AMENDMENT: The amendments replace the bill.

BACKGROUND: Currently in Oregon the statements of a defendant made during a criminal investigation and made while the defendant is in a law enforcement facility need not be recorded. Most states do not require recordation. However, about 13 states do and the list is growing. Many states and law enforcement agencies find that a recording of the defendant's statement assists in prosecution.

ORS 40.460 codifies statements that are not hearsay. In *State v. Rodriguez-Castillo*, 345 Or 39 (2008) the Oregon Supreme Court overturned the defendant's convictions for sex crimes. The key issue was the testimony by the primary detective. The detective had testified at length regarding the statements the victim made about the abuse. However, the victim spoke to the detective through an interpreter. The court held that an interpreter's translation was hearsay and thus, the detective's testimony regarding statements the victim made through the interpreter were not admissible in court.

This bill would eliminate the layer of hearsay between a speaker/interpreter/listener. Upon a showing that the interpreter had a sufficient knowledge of the language being spoken and interpreted, the person to whom the interpreter translated the statements could testify regarding those statements.

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This summary has not been adopted or officially endorsed by action of the committee.