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HOUSE BILL 382

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Hector H. Balderas

FOR THE CORRECTIONS OVERSIGHT, COURTS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING ELECTRONIC RECORDING OF
CUSTODIAL INTERROGATIONS; ESTABLISHING PROCEDURES FOR
ELECTRONIC RECORDINGS; ENACTING A NEW SECTION OF THE CRIMINAL
PROCEDURE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Procedure Act is
enacted to read:

"[NEW MATERIAL] ELECTRONIC RECORDINGS OF CUSTODIAL
INTERROGATIONS.--

A. A law enforcement officer shall comply with the
following procedures when taking an oral, written or sign
language statement of an individual during a custodial
interrogation:

- (1) the custodial interrogation shall be

1 electronically recorded in its entirety. If conducted in a
2 police station, the custodial interrogation shall be recorded
3 by a method that includes visual and audio recording;

4 (2) before the custodial interrogation and
5 during the electronic recording, the individual shall be
6 advised of the individual's constitutional rights regarding
7 self-incrimination and the right to counsel. If the individual
8 knowingly, intelligently and voluntarily waives the
9 individual's constitutional rights, the waiver shall be
10 electronically recorded;

11 (3) the electronic recording device used shall
12 be capable of making an accurate recording, the operator shall
13 be competent and the original recording shall not be altered;
14 and

15 (4) all voices on the electronic recording
16 that are material to the custodial interrogation, and all
17 individuals present during the interrogation, shall be
18 identified on the recording, along with the date, time and
19 place of the custodial interrogation.

20 B. A law enforcement officer shall comply with the
21 provisions of this section unless the officer can establish by
22 clear and convincing evidence that:

23 (1) the individual's statement was voluntary,
24 reliable and made after the individual knowingly, intelligently
25 and voluntarily waived the individual's constitutional rights;

1 and

2 (2) the law enforcement officer had good cause
3 not to electronically record the entire custodial
4 interrogation. Examples of good cause are:

5 (a) a location identified in Paragraph
6 (1) of Subsection E of this section was not available and the
7 requisite electronic recording equipment was not reasonably
8 available; or

9 (b) the electronic recording equipment
10 failed and obtaining replacement equipment was not feasible.

11 C. An electronic recording of a custodial
12 interrogation shall be preserved until the individual's
13 conviction for an offense related to the interrogation is final
14 and all appeals are exhausted, or the prosecution of the
15 offense is barred by law.

16 D. The provisions of this section shall apply to
17 custodial interrogations in which the individual is suspected
18 of committing a criminal offense.

19 E. As used in this section:

20 (1) "custodial interrogation" means
21 questioning initiated by a law enforcement officer after an
22 individual has been taken into custody or otherwise deprived of
23 freedom of action in any significant way, including any words
24 or actions that an officer should know are reasonably likely to
25 elicit an incriminating response. An interrogation is presumed

underscoring material = new
[bracketed material] = delete

1 to be custodial if it is conducted in a police station, police
2 car, courthouse, correctional facility, community correctional
3 center, detention facility or any other structured environment
4 where adequate recording equipment is reasonably available; and

5 (2) "electronic recording" means a complete
6 and authentic electronic recording created by motion picture,
7 videotape, audiotape or digital media."

8 Section 2. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2005.

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