

- SUBJECT:** Requiring the electronic recording of custodial interrogations
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Wilson
1 nay — Lang
- SENATE VOTE:** On final passage, April 24 — 25-5 (Huffman, Nichols, Schwertner, L. Taylor, V. Taylor)
- WITNESSES:** No public hearing
- BACKGROUND:** Code of Criminal Procedure, ch. 2 governs the general duties of law enforcement officers, including peace officers, magistrates, and prosecuting attorneys.
- DIGEST:** SB 1253 would require every custodial interrogation in which a person being interrogated was suspected of committing or charged with certain felonies to be electronically recorded, unless good cause existed that made electronic recording infeasible. The bill would require audiovisual recording, or an audio recording if audiovisual recording was unavailable. The felonies would include:
- murder;
 - capital murder;
 - kidnapping;
 - aggravated kidnapping;
 - trafficking of persons;
 - continuous trafficking of persons;
 - continuous sexual abuse of a young child or children;
 - indecency with a child;
 - improper relationship between educator and student;
 - sexual assault;
 - aggravated sexual assault; or

- sexual performance by a child.

The recording would have to be authentic, accurate, and unaltered, and would have to begin at or before the time the person being interrogated entered the area of the place of detention where the custodial interrogation would take place or the location where the suspect received a Miranda warning, whichever was earlier. The recording would have to continue until the end of the interrogation.

The bill would define a place of detention as a police station or other building that was a place of operation for a law enforcement agency that was owned or operated by the agency for the purpose of detaining persons in connection with a suspected violation of a penal law. The term would not include a courthouse.

No statement produced from a custodial interrogation would be admissible in a criminal trial unless the interrogation was electronically recorded or the prosecuting attorney could show that good cause existed that made an electronic recording infeasible. For the purposes of the bill, good cause would include:

- the person being interrogated refused to respond or cooperate in a recorded custodial interrogation, provided that the refusal itself was recorded or the law enforcement officer conducting the interrogation attempted to record the person's refusal but the person was unwilling to have the refusal recorded and the officer documented the refusal in writing at that time;
- a statement that was not made as the result of a custodial interrogation, including spontaneous statements by the accused that were not in response to a question by a peace officer;
- a law enforcement agent attempted in good faith to record the interrogation, but the equipment malfunctioned, or the agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped recording unbeknownst to the agent;
- exigent public safety concerns prevented or made infeasible making an electronic recording; or

- the agent conducting the interrogation reasonably believed at the time the interrogation began that the person was not taken into custody or being interrogated for one of the eligible offenses.

A recording of a custodial interrogation under the bill would be exempt from public disclosure under the Public Information Act.

The bill would take effect September 1, 2017, and would apply only to a custodial interrogation that took place on or after March 1, 2018.

**SUPPORTERS
SAY:**

SB 1253 would foster greater transparency in the criminal justice system and remove any doubts about the integrity of confessions, leaving it to the judge or jury to weigh such evidence on its own merits. This bill would reduce the number of individuals that were wrongfully convicted based on faulty or coerced confessions.

**OPPONENTS
SAY:**

SB 1253 could negatively affect the ability of counties with little flexibility in their budgets to prosecute very serious offenses. The Legislature should not make it more difficult for law enforcement to investigate the some of the most serious felonies.

NOTES:

Two companion bills, HB 229 by Canales and HB 3134 by Smithee, were referred to the House Committee on Criminal Jurisprudence.