

By: Representative Osborne

To: Judiciary B

HOUSE BILL NO. 1370

1 AN ACT TO CREATE THE "ELECTRONIC RECORDING OF CUSTODIAL
2 INTERROGATIONS ACT"; TO PROVIDE FINDS AND PURPOSE BY THE
3 LEGISLATURE; TO CREATE DEFINITIONS FOR THE ACT; TO PROVIDE JURY
4 INSTRUCTIONS IF THE ACT IS VIOLATED; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1. Short title.** This act shall be called the
7 "Electronic Recording of Custodial Interrogations Act."

8 **SECTION 2. Findings and purpose.** (1) The Legislature finds
9 that:

10 (a) Every year, innocent people are jailed because of
11 false confessions during custodial interrogations.

12 (b) Electronic recordings of interrogations help to
13 protect the innocent and convict the guilty.

14 (c) Law enforcement agencies that use electronic
15 recordings have proven its value.

16 (2) This law is enacted to eliminate disputes about
17 interrogations, thereby improving prosecution of the guilty while
18 affording protection to the innocent.



19 **SECTION 3. Definitions.** The following words shall have the
20 meanings described in this section, unless the context indicates
21 otherwise:

22 (a) "Custodial interrogation" means an interview
23 conducted by a law enforcement officer for the purpose of
24 investigating violations of law, of a person who is being held in
25 custody in a place of detention, when the interview is reasonably
26 likely to elicit responses that may incriminate the person in
27 connection with a felony under the laws of this state.

28 (b) "Electronic Recording" or "Electronically Recorded"
29 means an audio, video and/or digital electronic recording of a
30 custodial interview.

31 (c) "Place of detention" means a jail, police or
32 sheriff's station, holding cell, correctional or detention
33 facility, office, or other structure located in this state, where
34 persons are held in connection with juvenile or criminal charges.

35 (d) "Statement" means an oral, written, sign language,
36 or other nonverbal communication.

37 **SECTION 4. Electronic recording of interrogations required.**

38 (1) (a) Except as provided in subsection (3) of this section,
39 all custodial interviews conducted by a law enforcement officer in
40 a place of detention shall be electronically recorded.

41 (b) The recording shall be an authentic, accurate,
42 uninterrupted, and unaltered record of the interview, beginning



43 with the law enforcement officer's advice of the person's rights,
44 and ending when the interview has completely finished.

45 (c) If a visual recording is made, the camera or
46 cameras shall be simultaneously focused on both the law
47 enforcement interviewer and the suspect at all times during the
48 recording of the interview.

49 (2) An interview may only be excluded from the requirements
50 of this act if the court finds:

51 (a) The interview was a part of a routine processing or
52 "booking" of the person, or routine border inquiries;

53 (b) The interview occurred before a grand jury or
54 court;

55 (c) Before or during the interview, the person agreed
56 to respond to the law enforcement officer's questions only if his
57 or her statements were not electronically recorded, and if
58 feasible the person's agreement was electronically recorded before
59 the interview began;

60 (d) After having consulted with his or her lawyer, the
61 person agreed to participate in the interview without an
62 electronic recording being made, and if feasible the person's
63 agreement was electronically recorded before the interview began;

64 (e) The law enforcement officer in good faith failed to
65 make an electronic recording of the interview because he or she
66 inadvertently failed to operate the recording equipment properly,



67 or without his or her knowledge the recording equipment
68 malfunctioned or stopped operating;

69 (f) The interview was conducted outside this state by
70 officials of another state, country, or jurisdiction in compliance
71 with the law of that place, without involvement of or connection
72 to a law enforcement officer of this state;

73 (g) The law enforcement officer who conducted the
74 interview, or his superior, reasonably believed that the making of
75 an electronic recording would jeopardize his safety or the safety
76 of the person to be interviewed, or another person, or the
77 identity of a confidential informant, and if feasible an
78 explanation of the basis for that belief was electronically
79 recorded before the interview began;

80 (h) The interviewing law enforcement officer reasonably
81 believed that the crime for which the person was taken into
82 custody and being investigated or questioned was not a crime
83 referred to in the definition of "custodial interrogation";

84 (i) Exigent circumstances existed which prevented the
85 law enforcement officer from making, or rendered it not feasible
86 to make, an electronic recording of the interview, and if feasible
87 an explanation of the circumstances was electronically recorded
88 before the interview began; or

89 (j) The statement is offered as evidence solely to
90 impeach or rebut the person's prior testimony, and not as
91 substantive evidence.



92 (3) If the prosecution attempts to offer an unrecorded
93 interview into evidence that was required to be electronically
94 recorded by the provisions of this act, and the court finds the
95 prosecutor has not established by a preponderance of the evidence
96 that a listed exception is applicable, the trial judge shall, upon
97 request of the defendant, provide the jury with the following
98 cautionary instructions, with changes that are necessary for
99 consistency with the evidence:

100 "The law of this state required that the interview of the
101 defendant by law enforcement officers which took place on [insert
102 date] at [insert place] was to be electronically recorded, from
103 beginning to end. The purpose of this requirement is to ensure
104 that you jurors will have before you a complete, unaltered, and
105 precise record of the circumstances under which the interview was
106 conducted, and what was said and done by each of the persons
107 present.

108 In this case, the interviewing law enforcement agents failed
109 to comply with that law. They did not make an electronic
110 recording of the interview of the defendant. No justification for
111 their failure to do so has been presented to the court. Instead
112 of an electronic recording, you have been presented with testimony
113 as to what took place, based upon the recollections of law
114 enforcement personnel [and the defendant].



115 Accordingly, I must give you the following special
116 instructions about your consideration of the evidence concerning
117 that interview.

118 Because the interview was not electronically recorded as
119 required by our law, you have not been provided the most reliable
120 evidence as to what was said and done by the participants. You
121 cannot hear the exact words used by the participants, or the tone
122 or inflection of their voices.

123 Accordingly, as you go about determining what occurred during
124 the interview, you should give special attention to whether you
125 are satisfied that what was said and done has been accurately
126 reported by the participants, including testimony as to statements
127 attributed by law enforcement witnesses to the defendant."

128 (4) (a) Every Electronic Recording of a Custodial
129 Interrogation shall be clearly identified and catalogued by the
130 agency of the recording law enforcement personnel.

131 (b) If a juvenile or criminal proceeding is brought
132 against a person who was the subject of an electronically recorded
133 custodial interrogation, the recording shall be preserved by the
134 agency of the recording law enforcement personnel until all
135 appeals, post-conviction, and habeas corpus proceedings are final
136 and concluded, or the time within which they must be brought has
137 expired.

138 (c) If no juvenile or criminal proceeding is brought
139 against a person who has been the subject of an Electronically



140 Recorded Custodial Interrogation, the recording shall be preserved
141 by the agency of the recording law enforcement personnel until all
142 applicable federal and state statutes of limitations bar
143 prosecution of the person.

144 **SECTION 5. Grants for electronic recording equipment.** From
145 appropriations made for that purpose, the Department of Public
146 Safety shall make grants to local law enforcement agencies for the
147 purchase of equipment for electronic recording of interrogations.
148 The department shall promulgate rules to implement this paragraph.

149 **SECTION 6. Training of law enforcement officers.** From
150 appropriations made for that purpose, the Department of Public
151 Safety shall initiate, administer and conduct training programs
152 for law enforcement officers and recruits on the methods and
153 technical aspects of the electronic recording of interrogations.

154 **SECTION 7.** Sections 1, 2, 3, 4, 5 and 6 of this act shall
155 take effect and be in force from and after July 1, 2022. Section
156 3 of this act shall take effect and be in force from and after
157 January 1, 2023.

