

By: Representative Osborne

To: Judiciary B

HOUSE BILL NO. 814

1 AN ACT TO CREATE THE "ELECTRONIC RECORDING OF CUSTODIAL
2 INTERROGATIONS ACT"; TO PROVIDE THE FINDINGS AND PURPOSE OF 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) The purpose of this law is 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



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

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

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

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

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

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

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

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



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

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

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

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

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

(j) The statement is offered as evidence solely to impeach or rebut the person's prior testimony, and not as 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, the jurors, will have before you a complete, unaltered,
105 and precise record of the circumstances under which the interview
106 was 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 the law. They did not make an electronic recording
110 of the interview of the defendant. No justification for their
111 failure to do so has been presented to the court. Instead of an
112 electronic recording, you have been presented with testimony as to
113 what took place, based upon the recollections of law enforcement
114 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) Each law enforcement agency shall preserve each
129 electronic recording:

130 (a) In a manner that clearly identifies the date, time
131 and names and badge numbers of the interviewing officers, and
132 catalogues the recording by date or by alphabet;

133 (b) Until all appeals, post-conviction, and habeas
134 corpus proceedings are final and concluded, or until all
135 applicable federal and state statutes of limitations bar
136 prosecution of the person, whichever is later, if the electronic
137 recording is used in any proceeding in which criminal charges may
138 be filed; or



(c) Until all applicable federal and state statutes of limitations bar prosecution of the person, if it is not used in any proceeding in which criminal charges maybe filed.

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

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

SECTION 7. This act shall take effect and be in force from and after July 1, 2023.

