

## **BILL ANALYSIS**

H.B. 219  
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Criminal Jurisprudence  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

Current law requires that a defendant's confession be in writing or, if the statement is oral or in sign language, the statement must be electronically recorded, but current law does not require law enforcement to electronically record the full interrogation of a defendant. According to the national Innocence Project, approximately 25 percent of wrongful convictions exonerated by DNA evidence involved a defendant who made a false confession, admission, or statement to law enforcement officials. A law enforcement officer may also face false accusations of coercion and abuse by a suspect in the interrogation room. The purposes of H.B. 219 are to protect law enforcement from false accusations, protect a defendant from coerced confessions, and allow law enforcement to view an interrogation in full and detect possible false confessions. The bill will save courts time and money and will help ensure that the evidence is accurate and reliable by providing an audio or audiovisual electronic recording to settle any disputes over the occurrences in an interrogation room and it requires law enforcement officials to make an audio or audiovisual electronic recording of any custodial interrogation in a place of detention of a person suspected of committing or charged with committing certain felony offenses, including murder, kidnapping, and various sexual offenses.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 219 amends the Code of Criminal Procedure to require a law enforcement agency to make a complete, contemporaneous, audio or audiovisual electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of the offense of murder, capital murder, kidnapping, aggravated kidnapping, 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, unless good cause exists that makes electronic recording infeasible. The bill specifies that an electronic recording of a custodial interrogation is complete only if it begins at or before the time the person being interrogated receives the Miranda warning and continues without interruption until the interrogation ceases. The bill provides as examples of good cause for infeasibility of electronic recording the following circumstances: the person being interrogated refused to respond or cooperate in a custodial interrogation at which an audio or audiovisual recording was made, provided that a contemporaneous recording of the refusal was made or the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the person's refusal but the person was unwilling to have the refusal recorded, and the peace officer or agent, contemporaneously, in writing, documented the refusal; the statement was not made exclusively as the result of custodial interrogation; the peace officer or agent attempted, in good faith, to record the interrogation but the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the

knowledge of the officer or agent; exigent public safety concerns prevented or rendered infeasible the making of the recording of the statement; or the officer or agent conducting the interrogation reasonably believed at the time the interrogation commenced that the person being interrogated was not taken into custody for or being interrogated concerning the commission of one of the offenses specified by the bill's provisions. The bill requires a law enforcement agency to preserve the electronic recording of a custodial interrogation until the later of the date on which any conviction for an offense that is the subject or result of the interrogation is final, all direct appeals of the case are exhausted, and the time to file a habeas corpus petition has expired or the date on which the prosecution of such an offense is barred by law. The bill requires the attorney representing the state to provide to the defendant, in a timely manner and not later than the 60th day before the date the trial begins, a copy of an electronic recording. The bill specifies that an electronic recording is exempt from public disclosure except as provided under the state's open records law.

H.B. 219 specifies that evidence of compliance or noncompliance with its provisions relating to the electronic recording of a custodial interrogation is relevant and admissible before the trier of fact and that evidence of compliance is not a condition precedent to the admissibility of a defendant's statement under another law. The bill authorizes a court that is the trier of fact to consider the absence of an electronic recording of interrogation in evaluating evidence resulting from and relating to the interrogation if the statement of a person suspected of committing or charged with a certain violent or sexual offense that is made by the person during a custodial interrogation is admitted in evidence during the trial and the electronic recording of the complete interrogation is not available. The bill requires the court under such circumstances, on request of the defendant, to instruct a jury that is the trier of fact of the state's policy to electronically record custodial interrogations of persons suspected of having committed a certain violent or sexual offense and of the jury's authority to consider the absence of an electronic recording of the interrogation in evaluating the evidence relating to and resulting from the interrogation. The bill authorizes the court to refuse to instruct the jury if the attorney representing the state offers proof satisfactory to the court that good cause, as described by the bill's provisions, existed that made electronic recording infeasible or that the law enforcement agency that failed to make the recording acted in good faith at the time the agency failed to make the recording.

H.B. 219 defines "custodial interrogation," "law enforcement agency," and "place of detention."

### **EFFECTIVE DATE**

September 1, 2011.

### **EXPLANATION OF AMENDMENTS**

#### **Committee Amendment No. 1**

Committee Amendment No. 1 authorizes a peace officer, if during a custodial interrogation of an offense other than an offense for which the bill requires a law enforcement agency to make a complete, contemporaneous, audio or audiovisual electronic recording, the person being interrogated discloses information that causes the peace officer to have reasonable suspicion to believe that the person has committed an offense that requires such an electronic recording, to continue the interrogation and establishes that good cause exists making electronic recording infeasible under such circumstances. The amendment removes the condition that an electronic recording of a custodial interrogation be without interruption to be considered complete and creates an exception to what otherwise constitutes a complete recording to authorize the recording to contain one or more pauses if the pauses occur to ensure that the recording complies with the authorization for a peace officer to continue the interrogation as described above or to accommodate a temporary break from interrogation. The amendment establishes that evidence of a pause in the recording is not admissible based solely on the existence of the pause.