

SUBJECT: Electronic recording of custodial interrogations

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Gallego, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo
3 nays — Christian, Fletcher, Riddle

SENATE VOTE: On final passage, April 22 — 28-2 (Huffman, Patrick)

WITNESSES: For — Edwin Colfax, The Justice Project; Scott Henson, Innocence Project of Texas; (*Registered, but did not testify:* Brent Brewer; Kristin Etter, Texas Criminal Defense Lawyers Association; Samuel Gunter, Texas Criminal Justice Coalition; Craig Hunt; Amanda Marzullo, Texas Fair Defense Project; Scott Prevratil; Matt Simpson, American Civil Liberties Union of Texas; Jodie Smith, Texans Care for Children)

Against — (*Registered, but did not testify:* Gary Tittle, Texas Police Chiefs Association; Monty Wynn, Texas Municipal League)

BACKGROUND: Code of Criminal Procedure, art. 38.22 requires that, to be admissible as evidence in a criminal proceeding, a defendant's statement be written or that an oral or sign language statement be electronically recorded, if the statement is made as a result of a custodial interrogation.

DIGEST: SB 116 would amend Code of Criminal Procedure, ch. 2, adding sec. 2.31 to provide that, when practical, a peace officer conducting a custodial interrogation of an adult or juvenile suspected of committing any grade of felony should make an audio or audio-visual recording of the entire interrogation, including the Miranda warning.

Sec. 2.31 would not affect the admissibility into evidence at a criminal proceeding of an otherwise admissible statement.

The Department of Public Safety would be required to adopt rules for providing funds or electronic recording equipment to law enforcement agencies in this state in order to make these recordings.
The bill would take effect September 1, 2009.

SUPPORTERS
SAY:

By recommending the recording of custodial interrogations, SB 116 would recognize the value of this policy and be an important first step toward implementing best practices concerning interrogations. False confessions can result from lengthy, high-pressure, stressful interrogations and are a common cause of wrongful convictions. A recording of the actual interrogation could protect an individual who made a false confession from being wrongfully convicted by providing a jury with enough information to make an informed decision.

A recording also would aid law enforcement by preserving evidence, ensuring a statement's reliability and accuracy, and providing a tool to combat allegations of coercive interrogation techniques. The bill would save courts time and money by decreasing the need for and number of suppression hearings.

SB 116 would be permissive, not mandatory. The technology necessary to comply with the recommendations of the bill would not be costly. A simple audio recorder could be purchased from an office supply store for about \$60. By recommending recordings when practical, the bill would recognize that situations arise in which recordings are not possible and would not penalize officers for failure to make a recording.

OPPONENTS
SAY:

SB 116 would be impossible to implement due to the varying natures of custodial interrogations. Interrogations may take place at the scene of a crime or in a patrol car, where recording equipment may not be available. Law enforcement officers need the freedom to act in the best interest of the investigation.

The bill would be too costly for rural communities to implement. What might be an arguably low cost for larger communities would be more of a burden on smaller communities where resources are more limited.

OTHER
OPPONENTS
SAY:

While recommending the recording of interrogations is a good step, it would be better to make the recordings a requirement. Mandatory recordings would be the best way to preserve the integrity of the evidence and prevent wrongful convictions resulting from false confessions.

NOTES:

The House companion bill, HB 4090 by Farrar, was heard and left pending in the Criminal Jurisprudence Committee on April 14.

