

House Bill 1395

By: Representative Mobley of the 58<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,  
2 so as to require the recording of a defendant's custodial statement under certain  
3 circumstances; to provide for a short title; to provide for legislative findings; to provide for  
4 definitions; to provide for general guidelines relating to the admissibility of a defendant's  
5 statement and exceptions thereto; to provide regulations for preserving a defendant's  
6 statement; to amend Title 35 of the Official Code of Georgia Annotated, relating to law  
7 enforcement officers and agencies, so as to provide for training in recording a defendant's  
8 custodial statement; to provide for related matters; to provide for effective dates and  
9 applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Electronic Recording of Defendant's  
13 Statement Act."

14 **SECTION 2.**

15 The General Assembly finds and declares that:

- 16 (1) Every year many people are incarcerated as a result of false confessions during  
17 custodial interrogations;
- 18 (2) Law enforcement officers and other criminal investigators do not have to use force  
19 to elicit statements from mentally retarded, mentally ill, juvenile, or poorly educated  
20 suspects;
- 21 (3) Electronic recording of a suspect's statement protects innocent people and provides  
22 the best evidence against a suspect; and
- 23 (4) Electronic recording of an entire custodial interrogation may eliminate disputes as  
24 to what actually occurred during the interrogation thereby improving prosecution of  
25 guilty persons and affording protection to innocent persons.

**SECTION 3.**

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by adding a new chapter to the end of the title to read as follows:

**"CHAPTER 19**

17-19-1.

As used in this chapter, the term:

(1) 'Custodial interrogation' means any interrogation which is conducted in a place of detention and during which a reasonable person in the subject's position would consider himself or herself to be in custody.

(2) 'Electronic recording' means a motion picture, audiotape, videotape, or digital recording.

(3) 'Place of detention' means a police station, correctional facility, holding facility for prisoners, or other government facility where persons are held in detention in connection with criminal charges which have been or may be filed against them.

17-19-2.

(a) During the prosecution of a felony, an oral, written, or sign language statement of a defendant made during a custodial interrogation shall be presumed inadmissible as evidence against a defendant in a criminal proceeding unless an electronic recording is:

(1) Made of the custodial interrogation in its entirety;

(2) Substantially accurate; and

(3) Not intentionally altered.

(b) If the court finds that the defendant was subjected to a custodial interrogation in violation of subsection (a) of this Code section, then any statement made by the defendant following that custodial interrogation, even if otherwise in compliance with this Code section, shall also be presumed inadmissible.

17-19-3.

(a) The state may rebut a presumption of inadmissibility through clear and convincing evidence that the statement was both voluntary and reliable, and law enforcement officers had good cause for failing to electronically record the entire interrogation.

(b) Examples of good cause for failing to electronically record the entire interrogation include:

1 (1) The interrogation took place in a location other than a police station, correctional  
 2 facility, or holding facility for prisoners and where the requisite recording equipment was  
 3 not readily available;

4 (2) The defendant refused to have his or her interrogation electronically recorded, and  
 5 the refusal itself was electronically recorded; or

6 (3) The failure to electronically record an entire interrogation was the result of equipment  
 7 failure and obtaining replacement equipment was not feasible.

8 17-19-4.

9 Nothing in this chapter shall preclude the admission of:

10 (1) A statement made by the defendant in open court at his or her trial, before a grand  
 11 jury, or at a preliminary hearing;

12 (2) A defendant's spontaneous statement that is not made in response to a question;

13 (3) A defendant's statement made after questioning that is routinely asked during the  
 14 processing of the arrest of the suspect;

15 (4) A defendant's statement made during a custodial interrogation that is conducted out  
 16 of state;

17 (5) A defendant's statement obtained by a federal law enforcement officer in a federal  
 18 place of detention;

19 (6) A defendant's statement given at a time when the interrogators are unaware that a  
 20 felony has in fact occurred; or

21 (7) A defendant's statement, otherwise inadmissible under this chapter, that is used only  
 22 for impeachment and not as substantive evidence.

23 17-19-5.

24 The state shall not destroy or alter any electronic recording made of a custodial  
 25 interrogation until such time as the defendant's conviction for any offense relating to the  
 26 interrogation is final and all direct and habeas corpus appeals are exhausted, or the  
 27 prosecution of the offense is barred by law."

#### 28 SECTION 4.

29 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and  
 30 agencies, is amended by adding a new Code section to the end of Chapter 1, relating to  
 31 general provisions for law enforcement officers and agencies, to read as follows:

32 "35-1-15.

33 The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety  
 34 Training Center shall establish guidelines and procedures for the incorporation of training

1 materials and information in methods for electronically recording a suspect's statement  
2 pursuant to Chapter 19 of Title 17 in all courses for which they have responsibility and  
3 oversight."

4 **SECTION 5.**

5 (a) This Section and Sections 1, 2, 4, and 6 of this Act shall become effective on July 1,  
6 2004.

7 (b) Section 3 of this Act shall become effective on July 1, 2005, and shall apply to all  
8 interrogations that occur on or after July 1, 2005.

9 **SECTION 6.**

10 All laws and parts of laws in conflict with this Act are repealed.