

HOUSE AMENDMENTS TO HOUSE BILL 3242

By COMMITTEE ON JUDICIARY

April 21

1 On page 1 of the printed bill, line 3, after “ORS” delete the rest of the line and insert
2 “133.400.”.

3 Delete lines 5 through 30 and delete pages 2 through 4 and insert:

4 “**SECTION 1.** ORS 133.400 is amended to read:

5 “133.400. (1) A custodial interview conducted by a peace officer in a law enforcement facility
6 shall be electronically recorded if the interview is conducted:

7 “(a) In connection with an investigation into aggravated murder as defined in ORS 163.095 or
8 a crime listed in ORS 137.700 or 137.707[.]; or

9 “(b) **With a person under 18 years of age in connection with an investigation into a per-
10 son felony, or an allegation that the person being interviewed committed an act that, if
11 committed by an adult, would constitute a person felony.**

12 “(2) Subsection (1) of this section does not apply to:

13 “(a) A statement made before a grand jury;

14 “(b) A statement made on the record in open court;

15 “(c) A custodial interview conducted in another state in compliance with the laws of that state;

16 “(d) A custodial interview conducted by a federal law enforcement officer in compliance with
17 the laws of the United States;

18 “(e) A statement that was spontaneously volunteered and did not result from a custodial inter-
19 view;

20 “(f) A statement made during arrest processing in response to a routine question;

21 “(g) A law enforcement agency that employs five or fewer peace officers;

22 “(h) A custodial interview conducted in connection with an investigation carried out by a cor-
23 rections officer, a youth corrections officer or a staff member of the Oregon State Hospital in the
24 performance of the officer’s or staff member’s official duties of treatment, custody, control or
25 supervision of individuals committed to or confined in a place of incarceration or detention; or

26 “(i) A custodial interview for which the state demonstrates good cause for the failure to elec-
27 tronically record the interview.

28 “(3)(a) If the state offers an unrecorded statement made under the circumstances described in
29 subsection (1)(a) of this section in a criminal proceeding alleging the commission of aggravated
30 murder or a crime listed in ORS 137.700 or 137.707, **or under the circumstances described in
31 subsection (1)(b) of this section in a criminal proceeding alleging the commission of a person
32 felony**, and the state is unable to demonstrate, by a preponderance of the evidence, that an excep-
33 tion described in subsection (2) of this section applies, upon the request of the defendant, the court
34 shall instruct the jury regarding the legal requirement described in subsection (1) of this section and
35 the superior reliability of electronic recordings when compared with testimony about what was said

1 and done.

2 “(b) The court may not exclude the defendant’s statement or dismiss criminal charges as a result
3 of a violation of this section.

4 “(c) If each of the statements made by the defendant that the state offers into evidence is re-
5 corded, the court may not give a cautionary jury instruction regarding the content of the
6 defendant’s statements.

7 “(4) **If the state offers an unrecorded statement made under the circumstances described**
8 **in subsection (1)(b) of this section in a juvenile delinquency proceeding alleging the commis-**
9 **sion of an act that, if committed by an adult, would constitute a person felony, and the state**
10 **is unable to demonstrate, by a preponderance of the evidence, that an exception described**
11 **in subsection (2) of this section applies, the court shall consider the superior reliability of**
12 **electronic recordings when compared with testimony about what was said and done when**
13 **determining the evidentiary value of the statement.**

14 “[4] (5) A law enforcement agency that creates an electronic recording of a custodial interview
15 shall preserve the recording until the defendant’s conviction **or youth’s adjudication** for the offense
16 is final and all direct, post-conviction relief and habeas corpus appeals are exhausted, or until the
17 prosecution of the offense is barred by law.

18 “[5] (6) The state shall provide an electronic copy of a defendant’s **or youth’s** custodial
19 interview to a defendant **or youth** in accordance with ORS 135.805 to 135.873. Providing an elec-
20 tronic copy of the custodial interview to the defendant **or youth** constitutes compliance with ORS
21 135.815 (1)(b), and the state is not required to provide the defendant **or youth** with a transcript of
22 the contents of the interview. Unless the court orders otherwise, the defendant’s **or youth’s** attor-
23 ney may not copy, disseminate or republish the electronic copy of the custodial interview, except
24 to provide a copy to an agent of the defendant’s **or youth’s** attorney for the limited purpose of case
25 preparation.

26 “[6] (7) An electronic recording of a custodial interview, and any transcription of the record-
27 ing, that is certified as containing a complete recording, or a complete transcription, of the entirety
28 of the custodial interview, from the advisement of constitutional rights to the conclusion of the
29 custodial interview, is admissible in any pretrial or post-trial hearing for the purpose of establishing
30 the contents of a statement made in the recording and the identity of the person who made the
31 statement, if the statement is otherwise admissible. A certification that complies with this subsection
32 satisfies the requirements of ORS 40.505 and 132.320 for the recording or transcription. This sub-
33 section does not prohibit a party from calling a witness to testify regarding the custodial interview.

34 “[7] (8) As used in this section:

35 “(a) ‘Custodial interview’ means an interview in which the person questioned is in custody and
36 is required to be advised of the person’s constitutional rights.

37 “(b) ‘Good cause’ includes, but is not limited to, situations in which:

38 “(A) The defendant **or youth** refused, or expressed an unwillingness, to have the custodial
39 interview electronically recorded;

40 “(B) The failure to electronically record the custodial interview was the result of equipment
41 failure and a replacement device was not immediately available;

42 “(C) The person operating the recording equipment believed, in good faith, that the equipment
43 was recording the custodial interview;

44 “(D) Electronically recording the custodial interview would jeopardize the safety of any person
45 or the identity of a confidential informant;

1 “(E) Exigent circumstances prevented the recording of the custodial interview; or
2 “(F) The peace officer conducting the custodial interview reasonably believed, at the time the
3 custodial interview began, that the custodial interview:
4 “(i) Was conducted in connection with a crime other than aggravated murder as defined in ORS
5 163.095 or a crime listed in ORS 137.700 or 137.707; or
6 “(ii) **Was conducted in connection with a crime other than a person felony, or an
7 allegation that the person being interviewed committed an act that, if committed by an adult,
8 would constitute a person felony, if the person is under 18 years of age.**
9 “(c) ‘Law enforcement facility’ means a courthouse, building or premises that is a place of op-
10 eration for a municipal police department, county sheriff’s office or other law enforcement agency
11 at which persons may be detained in connection with a juvenile delinquency petition or criminal
12 charge.
13 “(d) **‘Person felony’ has the meaning given that term in the rules of the Oregon Criminal
14 Justice Commission.**
15 “(e) **‘Youth’ means a person under 18 years of age who is suspected or alleged to have
16 committed an act that, if committed by an adult, would constitute a person felony.**
17 “**SECTION 2. The amendments to ORS 133.400 by section 1 of this 2017 Act apply to
18 interviews conducted on or after the effective date of this 2017 Act.”.**
19
