

By: Hinojosa

S.B. No. 1957

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the electronic recording of custodial interrogations  
3 and certain statements and the admissibility of statements  
4 resulting from those interrogations.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 2, Article 38.22, Code of Criminal  
7 Procedure, is amended to read as follows:

8 Sec. 2. No written statement made by an accused as a result  
9 of custodial interrogation is admissible as evidence against him in  
10 any criminal proceeding unless the interrogation was recorded  
11 according to the requirements of Section 3 and unless it is shown on  
12 the face of the statement that:

13 (a) the accused, prior to making the statement, either  
14 received from a magistrate the warning provided in Article 15.17  
15 [~~of this code~~] or received from the person to whom the statement is  
16 made a warning that:

17 (1) he has the right to remain silent and not make  
18 any statement at all and that any statement he makes may be used  
19 against him at his trial;

20 (2) any statement he makes may be used as  
21 evidence against him in court;

22 (3) he has the right to have a lawyer present to  
23 advise him prior to and during any questioning;

24 (4) if he is unable to employ a lawyer, he has the

1 right to have a lawyer appointed to advise him prior to and during  
2 any questioning; and

3 (5) he has the right to terminate the interview  
4 at any time; and

5 (b) the accused, prior to and during the making of the  
6 statement, knowingly, intelligently, and voluntarily signed a  
7 written waiver of [~~waived~~] the rights set out in the warning  
8 prescribed by Subsection (a) [~~of this section~~].

9 SECTION 2. Sections 3(a), (c), and (e), Article 38.22, Code  
10 of Criminal Procedure, are amended to read as follows:

11 (a) No oral or sign language statement of an accused made as  
12 a result of custodial interrogation is [~~shall be~~] admissible  
13 against the accused in a criminal proceeding unless:

14 (1) at least two [~~an~~] electronic recordings are made  
15 of the interrogation and the statement, in the form of a [~~recording,~~  
16 ~~which may include~~] motion picture, video tape, audio tape, or other  
17 means appropriate for the recording [~~visual recording, is made~~] of  
18 the interrogation and the statement;

19 (2) prior to the statement but during the recording  
20 the accused is given the warning in Subsection (a) of Section 2  
21 [~~above~~] and the accused knowingly, intelligently, and voluntarily  
22 signs a written waiver of [~~waives~~] any rights set out in the  
23 warning;

24 (3) the recording device was capable of making an  
25 accurate recording, the operator was competent, and the recording  
26 is accurate and has not been altered;

27 (4) all voices on the recording that are material to

1 the custodial interrogation or the making of the statement are  
2 identified; and

3 (5) not later than the 20th day before the date of the  
4 proceeding, the attorney representing the defendant is provided  
5 with a true, complete, and accurate copy of all recordings of the  
6 defendant made under this article.

7 (c) The electronic recording requirements of this article  
8 do [~~Subsection (a) of this section shall~~] not apply to any statement  
9 which contains assertions of facts or circumstances that are found  
10 to be true and which conduce to establish the guilt of the accused,  
11 such as the finding of secreted or stolen property or the instrument  
12 with which he states the offense was committed.

13 (e) The courts of this state shall strictly construe the  
14 electronic recording requirements [~~Subsection (a)]~~ of this article  
15 [~~section~~] and may not interpret those requirements [~~Subsection (a)]~~  
16 as making admissible a statement unless all requirements of  
17 Subsection (a) [~~the subsection~~] have been satisfied by the state,  
18 except that [~~+~~

19 [~~(1) only voices that are material are identified, and~~  
20 [~~(2)]~~ the accused was given the warning in Subsection  
21 (a) of Section 2 [~~above~~] or its fully effective equivalent.

22 SECTION 3. Article 38.22, Code of Criminal Procedure, is  
23 amended by adding Section 3A to read as follows:

24 Sec. 3A. Notwithstanding the electronic recording  
25 requirements of this article, a statement is not inadmissible  
26 because of a failure to make an electronic recording if it is shown  
27 by clear and convincing evidence that the statement was voluntary

1 and reliable and that the law enforcement officers conducting the  
2 interrogation or taking the statement, as applicable, had good  
3 cause not to comply with those requirements. Good cause may be  
4 established by showing that the failure to record an interrogation  
5 or an oral or sign language statement was the result of:

6 (1) an accident or unintentional mistake by a law  
7 enforcement officer conducting the interrogation or taking the  
8 statement;

9 (2) a failure of the recording equipment that was not  
10 caused by the negligence of a law enforcement officer conducting  
11 the interrogation or taking the statement; or

12 (3) the occurrence or imminent threat of a disaster,  
13 as defined by Section 418.004, Government Code.

14 SECTION 4. The change in law made by this Act applies only  
15 to the admissibility of a statement made on or after the effective  
16 date of this Act. The admissibility of a statement made before the  
17 effective date of this Act is covered by the law in effect when the  
18 statement was made, and the former law is continued in effect for  
19 that purpose.

20 SECTION 5. This Act takes effect September 1, 2009.