

By: Duncan

S.B. No. 2036

A BILL TO BE ENTITLED

AN ACT

relating to the admissibility of a statement made by an accused in a criminal case.

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

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

Sec. 2. No ~~[written]~~ statement made by an accused as a result of custodial interrogation is admissible as evidence against him in any criminal proceeding unless it is shown ~~[on the face of the statement]~~ that:

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

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

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

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

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and

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

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

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

(a) An ~~[No]~~ oral or sign language statement of an accused made as the ~~[a]~~ result of custodial interrogation is not ~~[shall be]~~ admissible against the accused in a criminal proceeding unless:

(1) the statement is made in compliance with the requirements of Section 2;

(2) the oral statement was heard or the sign language statement was witnessed by two or more persons;

(3) at least two of the persons described by Subdivision (2) have prepared a written memorandum of the contents of the statement within 48 hours after the time the statement was made, including the date, time, and place the statement was made; and

(4) the persons who prepared a written memorandum under Subdivision (3) swear before a magistrate that the date, time, and place of the memorandum are correct and that the memorandum accurately reflects the statement made by the accused
~~[an electronic recording, which may include motion picture, video tape, or other visual recording, is made of the statement,~~

~~[(2) prior to the statement but during the recording the~~

1 ~~accused is given the warning in Subsection (a) of Section 2 above~~
2 ~~and the accused knowingly, intelligently, and voluntarily waives~~
3 ~~any rights set out in the warning;~~

4 ~~[(3) the recording device was capable of making an~~
5 ~~accurate recording, the operator was competent, and the recording~~
6 ~~is accurate and has not been altered;~~

7 ~~[(4) all voices on the recording are identified; and~~

8 ~~[(5) not later than the 20th day before the date of the~~
9 ~~proceeding, the attorney representing the defendant is provided~~
10 ~~with a true, complete, and accurate copy of all recordings of the~~
11 ~~defendant made under this article].~~

12 (c) Subsection (a) does ~~[of this section shall]~~ not apply to
13 any statement which contains assertions of facts or circumstances
14 that are found to be true and which conduce to establish the guilt
15 of the accused, such as the finding of secreted or stolen property
16 or the instrument with which he states the offense was committed.

17 (d) If the accused is a deaf person, the accused's statement
18 under Subsection (a) ~~[Section 2 or Section 3(a) of this article]~~ is
19 not admissible against the accused unless the warning in Section 2
20 ~~[of this article]~~ is interpreted to the deaf person by an
21 interpreter who is qualified and sworn as provided in Article 38.31
22 ~~[of this code].~~

23 SECTION 3. Sections 3(b) and (e), Article 38.22, Code of
24 Criminal Procedure, are repealed.

25 SECTION 4. The change in law made by this Act applies only
26 to a statement made by an accused on or after the effective date of
27 this Act. A statement made by an accused before the effective date

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1 of this Act is governed by the law in effect at the time the
2 statement was made, and the former law is continued in effect for
3 that purpose.

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