

BILL ANALYSIS

C.S.H.B. 1096
By: Canales
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that current Texas law requires investigators to record a confession made by an accused under custodial interrogation in most cases but does not provide for the recording of interrogations leading up to a confession. An advisory panel established by a recent Texas legislature to address wrongful convictions in the Texas criminal justice system recommended mandating the recording of all custodial interrogations. The parties report that many other states currently require such recordings and contend that recording an interrogation is the most accurate means of preserving the events that occur in an interrogation room, including the accused's actual words. In an effort to help prevent wrongful convictions and false confessions by retaining proof of the events leading to a confession, C.S.H.B. 1096 provides for the recording of certain custodial interrogations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1096 amends the Code of Criminal Procedure to require a law enforcement agency that employs certain peace officers and that is qualified to make a custodial interrogation regarding an offense to make an electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of the following offenses: murder, capital murder, kidnapping, aggravated kidnapping, trafficking of persons, continuous trafficking of persons, continuous sexual abuse of a young child or children, indecency with a child, improper relationship between an educator and student, sexual assault, aggravated sexual assault, or sexual performance by a child. The bill establishes that an electronic recording of a custodial interrogation is complete only if the recording begins at or before the time the person being interrogated receives a Miranda warning and continues until the time the interrogation ceases. The bill exempts a recording of a custodial interrogation that complies with the bill's provisions from public disclosure, with certain exceptions.

C.S.H.B. 1096 excuses a law enforcement agency otherwise required to make an electronic recording of a custodial interrogation under the bill's provisions from the duty to make the electronic recording if the law enforcement agency has good cause, and the bill sets out circumstances constituting such good cause.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1096 may differ from the original in minor or nonsubstantive ways, the

following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.32 and 2.33 to read as follows:

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.

(a) In this article:

(1) "Custodial interrogation" means any investigative questioning, other than routine questions associated with booking, by a peace officer during which:

(A) a reasonable person in the position of the person being interrogated would consider himself or herself to be in custody; and

(B) a question is asked that is reasonably likely to elicit an incriminating response.

(2) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, authorized by law to employ peace officers described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8), Article 2.12.

(See SECTION 2 below.)

(3) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned or operated by the law enforcement agency for the purpose of detaining individuals in connection with the suspected violation of a penal law. The term does not include a courthouse.

(b) A law enforcement agency qualified under Article 2.33 to conduct a custodial interrogation of the offense shall make a complete, contemporaneous, audio or audiovisual electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of an offense under:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.32 and 2.33 to read as follows:

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.

(a) In this article:

(1) "Custodial interrogation" means any investigative questioning, other than routine questions associated with booking, by a peace officer during which:

(A) a reasonable person in the position of the person being interrogated would consider himself or herself to be in custody; and

(B) a question is asked that is reasonably likely to elicit an incriminating response.

(2) "Electronic recording" means an audio or audiovisual electronic recording of a custodial interrogation that begins at or before the time the person being interrogated receives a warning described by Section 2(a), Article 38.22, and continues until the time the interrogation ceases.

(3) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned or operated by the law enforcement agency for the purpose of detaining individuals in connection with the suspected violation of a penal law. The term does not include a courthouse.

(b) A law enforcement agency qualified under Article 2.33 to conduct a custodial interrogation of the offense shall make an electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of an offense under:

- (1) Section 19.02, Penal Code (murder);
 - (2) Section 19.03, Penal Code (capital murder);
 - (3) Section 20.03, Penal Code (kidnapping);
 - (4) Section 20.04, Penal Code (aggravated kidnapping);
 - (5) Section 20A.02, Penal Code (trafficking of persons);
 - (6) Section 20A.03, Penal Code (continuous trafficking of persons);
 - (7) Section 21.02, Penal Code (continuous sexual abuse of young child or children);
 - (8) Section 21.11, Penal Code (indecent with a child);
 - (9) Section 21.12, Penal Code (improper relationship between educator and student);
 - (10) Section 22.011, Penal Code (sexual assault);
 - (11) Section 22.021, Penal Code (aggravated sexual assault); or
 - (12) Section 43.25, Penal Code (sexual performance by a child).
- (c) For purposes of Subsection (b), an electronic recording of a custodial interrogation is complete only if the recording begins at or before the time the person being interrogated receives a warning described by Section 2(a), Article 38.22, and continues until the time the interrogation ceases.
- (d) A recording of a custodial interrogation that complies with this article is exempt from public disclosure except as provided by Section 552.108, Government Code.

No equivalent provision, but see SECTION 4 below.

- (1) Section 19.02, Penal Code (murder);
 - (2) Section 19.03, Penal Code (capital murder);
 - (3) Section 20.03, Penal Code (kidnapping);
 - (4) Section 20.04, Penal Code (aggravated kidnapping);
 - (5) Section 20A.02, Penal Code (trafficking of persons);
 - (6) Section 20A.03, Penal Code (continuous trafficking of persons);
 - (7) Section 21.02, Penal Code (continuous sexual abuse of young child or children);
 - (8) Section 21.11, Penal Code (indecent with a child);
 - (9) Section 21.12, Penal Code (improper relationship between educator and student);
 - (10) Section 22.011, Penal Code (sexual assault);
 - (11) Section 22.021, Penal Code (aggravated sexual assault); or
 - (12) Section 43.25, Penal Code (sexual performance by a child).
- (c) For purposes of Subsection (b), an electronic recording of a custodial interrogation is complete only if the recording begins at or before the time the person being interrogated receives a warning described by Section 2(a), Article 38.22, and continues until the time the interrogation ceases.
- (d) A recording of a custodial interrogation that complies with this article is exempt from public disclosure except as provided by Section 552.108, Government Code.

- (e) A law enforcement agency otherwise required to make an electronic recording of a custodial interrogation under this article is excused from the duty to make the electronic recording if the law enforcement agency has good cause. For purposes of this subsection, "good cause" includes:
- (1) the accused refused to respond to questioning or cooperate in a custodial interrogation of which an electronic recording was made, provided that:
 - (A) a contemporaneous recording of the refusal was made; or
 - (B) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the accused's refusal but the accused was unwilling to have the refusal recorded, and the peace officer or agent contemporaneously, in writing, documented

the refusal;

(2) the statement was not made exclusively as the result of a custodial interrogation, including a statement that was made spontaneously by the accused and not in response to a question by a peace officer;

(3) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the interrogation but the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the knowledge of the officer or agent;

(4) exigent public safety concerns prevented or rendered infeasible the making of an electronic recording of the custodial interrogation; or

(5) the peace officer or agent of the law enforcement agency conducting the interrogation reasonably believed at the time the interrogation commenced that the accused interrogated was not taken into custody for or being interrogated concerning the commission of an offense listed in Subsection (b).

Art. 2.33. LAW ENFORCEMENT AGENCIES QUALIFIED TO CONDUCT CERTAIN CUSTODIAL INTERROGATIONS. Only a law enforcement agency that employs peace officers described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8), Article 2.12, is qualified to conduct a custodial interrogation of an individual suspected of committing an offense listed in Article 2.32(b).

Art. 2.33. LAW ENFORCEMENT AGENCIES QUALIFIED TO CONDUCT CERTAIN CUSTODIAL INTERROGATIONS. Only a law enforcement agency that employs peace officers described by Subdivision (1), (2), (3), (4), (5), (6), (7), (8), or (30), Article 2.12, is qualified to conduct a custodial interrogation of an individual suspected of committing an offense listed in Article 2.32(b).

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

Sec. 1. In this article:

(1) "Electronic recording" means an audio or audiovisual electronic recording of a custodial interrogation that begins at or before the time the person being interrogated receives a warning described by Section 2(a) and continues until the time the interrogation ceases.

(2) "Written [~~a written~~] statement" [~~of an accused~~] means a statement of an accused signed by the accused or a statement made by the accused in the accused's [~~his~~] own

(See SECTION 1 above.)

No equivalent provision.

handwriting or, if the accused is unable to write, a statement bearing the accused's [his] mark, when the mark has been witnessed by a person other than a peace officer.

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

(a) Except as provided by Section 9, no oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of an offense listed in Article 2.32(b) is admissible against the accused in a criminal proceeding, and no ~~[No]~~ oral or sign language statement made as a result of a custodial interrogation of a person ~~[of an]~~ accused of any other offense is ~~[made as a result of custodial interrogation shall be]~~ admissible against the accused in a criminal proceeding, unless:

(1) an electronic recording ~~[- which may include motion picture, video tape, or other visual recording,]~~ is made of the custodial interrogation ~~[statement]~~;

(2) after being ~~[prior to the statement but during the recording the accused is]~~ given the warning described by Section 2(a), ~~[in Subsection (a) of Section 2 above and]~~ the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

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

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

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

(b) Every electronic recording of ~~[any statement made by an accused during]~~ a custodial interrogation must be preserved until such time as the defendant's conviction for any offense relating thereto is final, all direct appeals therefrom are exhausted, or the prosecution of such offenses is barred by law.

SECTION 4. Article 38.22, Code of Criminal Procedure, is amended by adding Section 9 to read as follows:

No equivalent provision.

No equivalent provision, but see Art. 2.32(e), Code of Criminal Procedure, in SECTION 1 above.

Sec. 9. An oral, sign language, or written statement of an accused made as a result of a custodial interrogation is admissible without an electronic recording otherwise required by Section 3(a) if the attorney introducing the statement shows good cause for the lack of the recording. For purposes of this section, "good cause" includes:

(1) the accused refused to respond to questioning or cooperate in a custodial interrogation of which an electronic recording was made, provided that:

(A) a contemporaneous recording of the refusal was made; or

(B) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the accused's refusal but the accused was unwilling to have the refusal recorded, and the peace officer or agent contemporaneously, in writing, documented the refusal;

(2) the statement was not made exclusively as the result of a custodial interrogation, including a statement that was made spontaneously by the accused and not in response to a question by a peace officer;

(3) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the interrogation but the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the knowledge of the officer or agent;

(4) exigent public safety concerns prevented or rendered infeasible the making of an electronic recording of the custodial interrogation; or

(5) the peace officer or agent of the law enforcement agency conducting the interrogation reasonably believed at the time the interrogation commenced that the accused interrogated was not taken into custody for or being interrogated concerning the commission of an offense listed in Article 2.32(b).

SECTION 5. The changes in law made by this Act apply to the use of a statement made as a result of a custodial interrogation that occurs on or after the effective date of this Act, regardless of whether the criminal offense giving rise to that interrogation is

No equivalent provision.

committed before, on, or after that date.

SECTION 6. This Act takes effect
September 1, 2013.

SECTION 2. Same as introduced version.