

By: Canales

H.B. No. 1096

Substitute the following for H.B. No. 1096:

By: Herrero

C.S.H.B. No. 1096

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the electronic recording of certain custodial
3 interrogations.

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

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

7 Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL
8 INTERROGATIONS. (a) In this article:

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

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

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

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

22 (3) "Place of detention" means a police station or
23 other building that is a place of operation for a law enforcement
24 agency, including a municipal police department or county sheriff's

1 department, and is owned or operated by the law enforcement agency
2 for the purpose of detaining individuals in connection with the
3 suspected violation of a penal law. The term does not include a
4 courthouse.

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

- 10 (1) Section 19.02, Penal Code (murder);
- 11 (2) Section 19.03, Penal Code (capital murder);
- 12 (3) Section 20.03, Penal Code (kidnapping);
- 13 (4) Section 20.04, Penal Code (aggravated
14 kidnapping);
- 15 (5) Section 20A.02, Penal Code (trafficking of
16 persons);
- 17 (6) Section 20A.03, Penal Code (continuous
18 trafficking of persons);
- 19 (7) Section 21.02, Penal Code (continuous sexual abuse
20 of young child or children);
- 21 (8) Section 21.11, Penal Code (indecent with a
22 child);
- 23 (9) Section 21.12, Penal Code (improper relationship
24 between educator and student);
- 25 (10) Section 22.011, Penal Code (sexual assault);
- 26 (11) Section 22.021, Penal Code (aggravated sexual
27 assault); or

1 (12) Section 43.25, Penal Code (sexual performance by
2 a child).

3 (c) For purposes of Subsection (b), an electronic recording
4 of a custodial interrogation is complete only if the recording
5 begins at or before the time the person being interrogated receives
6 a warning described by Section 2(a), Article 38.22, and continues
7 until the time the interrogation ceases.

8 (d) A recording of a custodial interrogation that complies
9 with this article is exempt from public disclosure except as
10 provided by Section 552.108, Government Code.

11 (e) A law enforcement agency otherwise required to make an
12 electronic recording of a custodial interrogation under this
13 article is excused from the duty to make the electronic recording if
14 the law enforcement agency has good cause. For purposes of this
15 subsection, "good cause" includes:

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

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

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

26 (2) the statement was not made exclusively as the
27 result of a custodial interrogation, including a statement that was

1 made spontaneously by the accused and not in response to a question
2 by a peace officer;

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

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

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

17 Art. 2.33. LAW ENFORCEMENT AGENCIES QUALIFIED TO CONDUCT
18 CERTAIN CUSTODIAL INTERROGATIONS. Only a law enforcement agency
19 that employs peace officers described by Subdivision (1), (2), (3),
20 (4), (5), (6), (7), (8), or (30), Article 2.12, is qualified to
21 conduct a custodial interrogation of an individual suspected of
22 committing an offense listed in Article 2.32(b).

23 SECTION 2. This Act takes effect September 1, 2013.