

By: Ellis

S.B. No. 87

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the electronic recording and admissibility of certain
3 custodial 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) "Law enforcement agency" means an agency of the
18 state, or of a county, municipality, or other political subdivision
19 of the state, authorized by law to employ peace officers described
20 by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8), Article
21 2.12.

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 a
7 complete, contemporaneous, audio or audiovisual electronic
8 recording of any custodial interrogation that occurs in a place of
9 detention and is of a person suspected of committing or charged with
10 the commission of an offense under:

11 (1) Section 19.02, Penal Code (murder);

12 (2) Section 19.03, Penal Code (capital murder);

13 (3) Section 20.03, Penal Code (kidnapping);

14 (4) Section 20.04, Penal Code (aggravated
15 kidnapping);

16 (5) Section 20A.02, Penal Code (trafficking of
17 persons);

18 (6) Section 20A.03, Penal Code (continuous
19 trafficking of persons);

20 (7) Section 21.02, Penal Code (continuous sexual abuse
21 of young child or children);

22 (8) Section 21.11, Penal Code (indecent with a
23 child);

24 (9) Section 21.12, Penal Code (improper relationship
25 between educator and student);

26 (10) Section 22.011, Penal Code (sexual assault);

27 (11) Section 22.021, Penal Code (aggravated sexual

1 assault); or

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

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

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

12 Art. 2.33. LAW ENFORCEMENT AGENCIES QUALIFIED TO CONDUCT
13 CERTAIN CUSTODIAL INTERROGATIONS. Only a law enforcement agency
14 that employs peace officers described by Subdivision (1), (2), (3),
15 (4), (5), (6), (7), or (8), Article 2.12, is qualified to conduct a
16 custodial interrogation of an individual suspected of committing an
17 offense listed in Article 2.32(b).

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

20 Sec. 1. In this article:

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

26 (2) "Written [~~a written~~] statement" [~~of an accused~~]
27 means a statement of an accused signed by the accused or a statement

1 made by the accused in the accused's [~~his~~] own handwriting or, if
2 the accused is unable to write, a statement bearing the accused's
3 [~~his~~] mark, when the mark has been witnessed by a person other than
4 a peace officer.

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

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

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

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

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

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

27 (5) not later than the 20th day before the date of the

1 proceeding, the attorney representing the defendant is provided
2 with a true, complete, and accurate copy of all recordings of the
3 defendant made under this article.

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

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

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

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

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

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

27 (2) the statement was not made exclusively as the

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

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

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

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

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

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