

By: West

S.B. No. 969

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the electronic recording and admissibility of certain  
3 statements made by an accused as a result of custodial  
4 interrogation.

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:

11 (1) it is shown on the face of the statement that:

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

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

19 (ii) [~~(2)~~] any statement he makes may be  
20 used as evidence against him in court;

21 (iii) [~~(3)~~] he has the right to have a  
22 lawyer present to advise him prior to and during any questioning;

23 (iv) [~~(4)~~] if he is unable to employ a  
24 lawyer, he has the right to have a lawyer appointed to advise him

1 prior to and during any questioning; and

2 (v) [~~(5)~~] he has the right to terminate the  
3 interview at any time; and

4 (B) [~~(b)~~] the accused, prior to and during the  
5 making of the statement, knowingly, intelligently, and voluntarily  
6 waived the rights set out in the warning prescribed by Paragraph (A)  
7 [~~Subsection (a)~~] of this subdivision; and

8 (2) an electronic recording that complies with the  
9 requirements of Section 3(a) of this article is made of the accused  
10 making the statement [~~section~~].

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

13 (a) No oral or sign language statement of an accused made as  
14 a result of custodial interrogation shall be admissible against the  
15 accused in a criminal proceeding unless:

16 (1) an electronic recording that includes [~~which may~~  
17 ~~include~~] motion picture, video tape, or other visual recording[~~7~~]  
18 is made of the statement;

19 (2) prior to the statement but during the recording  
20 the accused is given the warning in Subdivision (1)(A) [~~Subsection~~  
21 ~~(a)~~] of Section 2 above and the accused knowingly, intelligently,  
22 and voluntarily waives any rights set out 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 persons who speak or are otherwise visible  
27 [~~voices~~] on the recording are identified; and

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

5           (e) The courts of this state shall strictly construe  
6 Subsection (a) of this section and may not interpret Subsection (a)  
7 as making admissible a statement unless all requirements of the  
8 subsection have been satisfied by the state, except that:

9           (1) only [~~voices that are~~] material persons on a  
10 recording are identified; and

11           (2) the accused was given the warning in Subdivision  
12 (1)(A) [~~Subsection (a)~~] of Section 2 above or its fully effective  
13 equivalent.

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

16           Sec. 3A. Each electronic recording of a statement must be  
17 preserved until such time as:

18           (1) the defendant's conviction for any offense  
19 relating to the statement is final, all direct appeals of the case  
20 are exhausted, and the time to file a petition for a writ of habeas  
21 corpus has expired; or

22           (2) the prosecution of the offense is barred by law.

23           SECTION 4. Section 3(b), Article 38.22, Code of Criminal  
24 Procedure, is repealed.

25           SECTION 5. The change in law made by this Act applies only  
26 to the admissibility of a statement made by an accused on or after  
27 the effective date of this Act. The admissibility of a statement

1 made by an accused before the effective date of this Act is governed  
2 by the law in effect when the statement was made, and the former law  
3 is continued in effect for that purpose.

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