

By: Canales

H.B. No. 229

A BILL TO BE ENTITLED

AN ACT

relating to the electronic recording and admissibility of certain
custodial interrogations.

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

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

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

(1) "Law enforcement agency" means a governmental
agency authorized by law to employ peace officers.

(2) "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 of the state or of a
municipality, county, or other political subdivision of the state
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:

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

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

1 (e) Evidence from a custodial interrogation conducted by a
2 federal law enforcement agency or a law enforcement agency of
3 another state is not admissible in a criminal proceeding unless the
4 interrogation complied with that agency's custodial interrogation
5 procedures.

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

8 Sec. 1. In this article:

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

14 (2) "Written statement"~~[, a written statement of an~~
15 ~~accused]~~ means:

16 (A) [(1)] a statement made by the accused in the
17 accused's ~~[his]~~ own handwriting; or

18 (B) [(2)] a statement made in a language the
19 accused can read or understand that:

20 (i) [(A)] is signed by the accused; or

21 (ii) [(B)] bears the mark of the accused,
22 if the accused is unable to write and the mark is witnessed by a
23 person other than a peace officer.

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

26 (a) Except as provided by Section 9, an oral, sign language,
27 or written statement made as a result of a custodial interrogation

1 of a person accused of an offense listed in Article 2.32(b) is not
2 admissible against the accused in a criminal proceeding, and an
3 ~~[No]~~ oral or sign language statement made as a result of a custodial
4 interrogation of a person ~~[of an]~~ accused of any other offense is
5 not ~~[made as a result of custodial interrogation shall be]~~
6 admissible against the accused in a criminal proceeding, unless:

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

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

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

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

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

23 (b) Each ~~[Every]~~ electronic recording of ~~[any statement~~
24 ~~made by an accused during]~~ a custodial interrogation must be
25 preserved until:

26 (1) [such time as] the defendant's conviction for any
27 offense relating to the recording ~~[thereto]~~ is final and ~~[7]~~ all

1 direct appeals from the conviction [~~therefrom~~] are exhausted; [7] or

2 (2) the prosecution of an offense described by
3 Subdivision (1) [~~such offenses~~] is barred by law.

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

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

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

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

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

22 (2) the statement was not made exclusively as the
23 result of a custodial interrogation, including a statement that was
24 made spontaneously by the accused and not in response to a question
25 by a peace officer or agent of the law enforcement agency conducting
26 the interrogation;

27 (3) the peace officer or agent of the law enforcement

1 agency conducting the interrogation attempted, in good faith, to
2 record the interrogation but the recording equipment did not
3 function, the officer or agent inadvertently operated the equipment
4 incorrectly, or the equipment malfunctioned or stopped operating
5 without the knowledge of the officer or agent;

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

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

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

19 SECTION 6. This Act takes effect September 1, 2017.