

By: Smithee

H.B. No. 3134

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 Article 2.32 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 audiovisual  
18 electronic recording, or an audio recording if an audiovisual  
19 electronic recording is unavailable, that is an authentic,  
20 accurate, and unaltered record of a custodial interrogation.

21 (3) "Law enforcement agency" means an agency of the  
22 state, or of a county, municipality, or other political subdivision  
23 of this state, that employs peace officers who, in the routine  
24 performance of the officers' duties, conduct custodial

1 interrogations of persons suspected of committing criminal  
2 offenses.

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

10 (b) Unless good cause exists that makes electronic  
11 recording infeasible, a law enforcement agency shall make a  
12 complete and contemporaneous electronic recording of any custodial  
13 interrogation that occurs in a place of detention and is of a person  
14 suspected of committing or charged with the commission of a felony  
15 offense.

16 (c) For purposes of Subsection (b), an electronic recording  
17 of a custodial interrogation is complete only if the recording:

18 (1) begins at or before the time the person being  
19 interrogated enters the area of the place of detention in which the  
20 custodial interrogation will take place or receives a warning  
21 described by Section 2(a), Article 38.22, whichever is earlier; and

22 (2) continues, without interruption, until the time  
23 the interrogation ceases.

24 (d) For purposes of Subsection (b), good cause that makes  
25 electronic recording infeasible includes the following:

26 (1) the person being interrogated refused to respond  
27 or cooperate in a custodial interrogation at which an electronic

1 recording was being made, provided that:

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

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

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

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

19 (4) exigent public safety concerns prevented or  
20 rendered infeasible the making of an electronic recording of the  
21 statement; or

22 (5) the peace officer or agent of the law enforcement  
23 agency conducting the interrogation reasonably believed at the time  
24 the interrogation commenced that the person being interrogated was  
25 not taken into custody for or being interrogated concerning the  
26 commission of a felony offense.

27 (e) The attorney representing the state shall provide to the

1 defendant, in a timely manner and not later than the 60th day before  
2 the date the trial begins, a copy of an electronic recording  
3 described by Subsection (b).

4 (f) A recording of a custodial interrogation that complies  
5 with this article is exempt from public disclosure except as  
6 provided by Section 552.108, Government Code.

7 SECTION 2. Chapter 38, Code of Criminal Procedure, is  
8 amended by adding Article 38.24 to read as follows:

9 Art. 38.24. USE OF CERTAIN EVIDENCE CONCERNING ELECTRONIC  
10 RECORDING OF CUSTODIAL INTERROGATIONS. (a) Unless the attorney  
11 representing the state offers proof satisfactory to the court that  
12 good cause, as described by Article 2.32(d), existed that made  
13 electronic recording of the custodial interrogation infeasible,  
14 evidence of compliance or noncompliance with Article 2.32  
15 concerning the electronic recording of a custodial interrogation  
16 that occurs in a place of detention and is of a person suspected of  
17 committing or charged with the commission of a felony offense:

18 (1) is relevant and admissible before the trier of  
19 fact; and

20 (2) may be considered in determining the admissibility  
21 of a defendant's statement under Article 38.22, Article 38.23,  
22 another provision of this chapter, or another law.

23 (b) If a statement made by a person during a custodial  
24 interrogation described by Subsection (a) is admitted in evidence  
25 during trial, and if an electronic recording of the complete  
26 interrogation is not available, the court:

27 (1) if the court is the trier of fact, may consider the

1 absence of an electronic recording of the interrogation in  
2 evaluating the evidence relating to and resulting from the  
3 interrogation; and

4 (2) if the jury is the trier of fact, shall on request  
5 of the defendant instruct the jury that:

6 (A) it is the policy of this state to  
7 electronically record custodial interrogations of persons  
8 suspected of committing or charged with the commission of a felony  
9 offense;

10 (B) the jury may consider the absence of an  
11 electronic recording of the interrogation in evaluating the  
12 evidence relating to and resulting from the interrogation; and

13 (C) the jury may draw a negative inference from  
14 the failure to make an electronic recording of an interrogation in  
15 compliance with the law.

16 SECTION 3. Article 38.24, Code of Criminal Procedure, as  
17 added by this Act, applies to the use of a statement resulting from  
18 a custodial interrogation that occurs on or after September 1,  
19 2018, regardless of whether the criminal offense giving rise to  
20 that interrogation is committed before, on, or after that date.

21 SECTION 4. This Act takes effect September 1, 2017.