

By: Collier

H.B. No. 4188

A BILL TO BE ENTITLED

AN ACT

relating to the electronic recording of non-custodial interviews.

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

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

Art. 2.32. ELECTRONIC RECORDING OF NON-CUSTODIAL INTERVIEWS. (a) In this article:

(1) "Non-custodial interview" means an investigative interview for the purpose of gathering information in which the suspect is not in custody as defined in 38.01 of the Penal Code.

(2) "Electronic recording" means an audio or audiovisual electronic recording that begins at the time the person is interviewed, and continues until the time the questioning ceases or Miranda rights are given.

(3) "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.

(4) A "qualified law enforcement agency" means a law enforcement agency that employs peace officer as described by Article 2.12

1 (b) A non-custodial interview may occur in the field or
2 place of detention.

3 (c) A qualified law enforcement agency shall make an
4 electronic recording of all non-custodial interviews.

5 (d) An electronic recording of a non-custodial interview
6 that complies with this article is exempt from public disclosure
7 except as provided by Section 552.108, Government Code.

8 (e) A law enforcement agency otherwise required to make an
9 electronic recording of a non-custodial interview under this
10 article is excused from the duty to make the electronic recording
11 if:

12 (1) the accused refuses to respond to questioning or
13 cooperate in a non-custodial interview of which an electronic
14 recording is made, provided that:

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

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

22 (2) the statement was made spontaneously by the
23 accused and not in response to a question by a peace officer; or

24 (3) the peace officer or agent of the law enforcement
25 agency conducting the non-custodial interview attempts, in good
26 faith, to record the interview, but the recording equipment does
27 not function and the officer or agent contemporaneously, in

1 writing, documents the reason why it is not possible to delay the
2 interview.

3 SECTION 2. This Act takes effect September 1, 2017.