

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) "Electronic recording" means an audiovisual
10 electronic recording, or an audio recording if an audiovisual
11 electronic recording is unavailable, that is authentic, accurate,
12 and unaltered.

13 (2) "Law enforcement agency" means an agency of the
14 state, or of a county, municipality, or other political subdivision
15 of this state, that employs peace officers who, in the routine
16 performance of the officers' duties, conduct custodial
17 interrogations of persons suspected of committing criminal
18 offenses.

19 (3) "Place of detention" means a police station or
20 other building that is a place of operation for a law enforcement
21 agency, including a municipal police department or county sheriff's
22 department, and is owned or operated by the law enforcement agency
23 for the purpose of detaining persons in connection with the
24 suspected violation of a penal law. The term does not include a

1 courthouse.

2 (b) Unless good cause exists that makes electronic
3 recording infeasible, a law enforcement agency shall make a
4 complete and contemporaneous electronic recording of any custodial
5 interrogation that occurs in a place of detention and is of a person
6 suspected of committing or charged with the commission of an
7 offense under:

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

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

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

11 (4) Section 20.04, Penal Code (aggravated
12 kidnapping);

13 (5) Section 20A.02, Penal Code (trafficking of
14 persons);

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

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

19 (8) Section 21.11, Penal Code (indecent with a
20 child);

21 (9) Section 21.12, Penal Code (improper relationship
22 between educator and student);

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

24 (11) Section 22.021, Penal Code (aggravated sexual
25 assault); or

26 (12) Section 43.25, Penal Code (sexual performance by
27 a child).

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

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

7 (2) continues until the time the interrogation ceases.

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

10 (1) the person being interrogated refused to respond
11 or cooperate in a custodial interrogation at which an electronic
12 recording was being made, provided that:

13 (A) a contemporaneous recording of the refusal
14 was made; or

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

20 (2) the statement was not made as the result of a
21 custodial interrogation, including a statement that was made
22 spontaneously by the accused and not in response to a question by a
23 peace officer;

24 (3) the peace officer or agent of the law enforcement
25 agency conducting the interrogation attempted, in good faith, to
26 record the interrogation but the recording equipment did not
27 function, the officer or agent inadvertently operated the equipment

1 incorrectly, or the equipment malfunctioned or stopped operating
2 without the knowledge of the officer or agent;

3 (4) exigent public safety concerns prevented or
4 rendered infeasible the making of an electronic recording of the
5 statement; or

6 (5) the peace officer or agent of the law enforcement
7 agency conducting the interrogation reasonably believed at the time
8 the interrogation commenced that the person being interrogated was
9 not taken into custody for or being interrogated concerning the
10 commission of an offense listed in Subsection (b).

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

14 SECTION 2. Article 38.22, Code of Criminal Procedure, is
15 amended by adding Section 9 to read as follows:

16 Sec. 9. Notwithstanding any other provision of this
17 article, no oral, sign language, or written statement that is made
18 by a person accused of an offense listed in Article 2.32(b) and made
19 as a result of a custodial interrogation occurring in a place of
20 detention, as that term is defined by Article 2.32, is admissible
21 against the accused in a criminal proceeding unless:

22 (1) an electronic recording was made of the statement,
23 as required by Article 2.32(b); or

24 (2) the attorney representing the state offers proof
25 satisfactory to the court that good cause, as described by Article
26 2.32(d), existed that made electronic recording of the custodial
27 interrogation infeasible.

1 SECTION 3. Section 9, Article 38.22, Code of Criminal
2 Procedure, as added by this Act, applies to the use of a statement
3 resulting from a custodial interrogation that occurs on or after
4 March 1, 2018, regardless of whether the criminal offense giving
5 rise to that interrogation is committed before, on, or after that
6 date.

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