

By: West, et al.  
(Smithee)

S.B. No. 1253

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

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

(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 persons in connection with the  
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.