

1-1 By: West S.B. No. 1253
 1-2 (In the Senate - Filed March 3, 2017; March 13, 2017, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 10, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 1; April 10, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10		X		
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1253 By: Perry

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the electronic recording and admissibility of certain
 1-22 custodial interrogations.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 2, Code of Criminal Procedure, is
 1-25 amended by adding Article 2.32 to read as follows:

1-26 Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL
 1-27 INTERROGATIONS. (a) In this article:

1-28 (1) "Custodial interrogation" means any investigative
 1-29 questioning, other than routine questions associated with booking,
 1-30 by a peace officer during which:

1-31 (A) a reasonable person in the position of the
 1-32 person being interrogated would consider himself or herself to be
 1-33 in custody; and

1-34 (B) a question is asked that is reasonably likely
 1-35 to elicit an incriminating response.

1-36 (2) "Electronic recording" means an audiovisual
 1-37 electronic recording, or an audio recording if an audiovisual
 1-38 electronic recording is unavailable, that is an authentic,
 1-39 accurate, and unaltered record of a custodial interrogation.

1-40 (3) "Law enforcement agency" means an agency of the
 1-41 state, or of a county, municipality, or other political subdivision
 1-42 of this state, that employs peace officers who, in the routine
 1-43 performance of the officers' duties, conduct custodial
 1-44 interrogations of persons suspected of committing criminal
 1-45 offenses.

1-46 (4) "Place of detention" means a police station or
 1-47 other building that is a place of operation for a law enforcement
 1-48 agency, including a municipal police department or county sheriff's
 1-49 department, and is owned or operated by the law enforcement agency
 1-50 for the purpose of detaining persons in connection with the
 1-51 suspected violation of a penal law. The term does not include a
 1-52 courthouse.

1-53 (b) Unless good cause exists that makes electronic
 1-54 recording infeasible, a law enforcement agency shall make a
 1-55 complete and contemporaneous electronic recording of any custodial
 1-56 interrogation that occurs in a place of detention and is of a person
 1-57 suspected of committing or charged with the commission of an
 1-58 offense under:

1-59 (1) Section 19.02, Penal Code (murder);

1-60 (2) Section 19.03, Penal Code (capital murder);

2-1 (3) Section 20.03, Penal Code (kidnapping);
 2-2 (4) Section 20.04, Penal Code (aggravated
 2-3 kidnapping);
 2-4 (5) Section 20A.02, Penal Code (trafficking of
 2-5 persons);
 2-6 (6) Section 20A.03, Penal Code (continuous
 2-7 trafficking of persons);
 2-8 (7) Section 21.02, Penal Code (continuous sexual abuse
 2-9 of young child or children);
 2-10 (8) Section 21.11, Penal Code (indecent with a
 2-11 child);
 2-12 (9) Section 21.12, Penal Code (improper relationship
 2-13 between educator and student);
 2-14 (10) Section 22.011, Penal Code (sexual assault);
 2-15 (11) Section 22.021, Penal Code (aggravated sexual
 2-16 assault); or
 2-17 (12) Section 43.25, Penal Code (sexual performance by
 2-18 a child).
 2-19 (c) For purposes of Subsection (b), an electronic recording
 2-20 of a custodial interrogation is complete only if the recording:
 2-21 (1) begins at or before the time the person being
 2-22 interrogated enters the area of the place of detention in which the
 2-23 custodial interrogation will take place or receives a warning
 2-24 described by Section 2(a), Article 38.22, whichever is earlier; and
 2-25 (2) continues, without interruption, until the time
 2-26 the interrogation ceases.
 2-27 (d) For purposes of Subsection (b), good cause that makes
 2-28 electronic recording infeasible includes the following:
 2-29 (1) the person being interrogated refused to respond
 2-30 or cooperate in a custodial interrogation at which an electronic
 2-31 recording was being made, provided that:
 2-32 (A) a contemporaneous recording of the refusal
 2-33 was made; or
 2-34 (B) the peace officer or agent of the law
 2-35 enforcement agency conducting the interrogation attempted, in good
 2-36 faith, to record the person's refusal but the person was unwilling
 2-37 to have the refusal recorded, and the peace officer or agent
 2-38 contemporaneously, in writing, documented the refusal;
 2-39 (2) the statement was not made as the result of a
 2-40 custodial interrogation, including a statement that was made
 2-41 spontaneously by the accused and not in response to a question by a
 2-42 peace officer;
 2-43 (3) the peace officer or agent of the law enforcement
 2-44 agency conducting the interrogation attempted, in good faith, to
 2-45 record the interrogation but the recording equipment did not
 2-46 function, the officer or agent inadvertently operated the equipment
 2-47 incorrectly, or the equipment malfunctioned or stopped operating
 2-48 without the knowledge of the officer or agent;
 2-49 (4) exigent public safety concerns prevented or
 2-50 rendered infeasible the making of an electronic recording of the
 2-51 statement; or
 2-52 (5) the peace officer or agent of the law enforcement
 2-53 agency conducting the interrogation reasonably believed at the time
 2-54 the interrogation commenced that the person being interrogated was
 2-55 not taken into custody for or being interrogated concerning the
 2-56 commission of an offense listed in Subsection (b).
 2-57 (e) The attorney representing the state shall provide to the
 2-58 defendant, in a timely manner and not later than the 30th day before
 2-59 the date the trial begins, a copy of an electronic recording
 2-60 described by Subsection (b).
 2-61 (f) A recording of a custodial interrogation that complies
 2-62 with this article is exempt from public disclosure except as
 2-63 provided by Section 552.108, Government Code.
 2-64 SECTION 2. Chapter 38, Code of Criminal Procedure, is
 2-65 amended by adding Article 38.24 to read as follows:
 2-66 Art. 38.24. USE OF CERTAIN EVIDENCE CONCERNING ELECTRONIC
 2-67 RECORDING OF CUSTODIAL INTERROGATIONS. (a) Unless the attorney
 2-68 representing the state offers proof satisfactory to the court that
 2-69 good cause, as described by Article 2.32(d), existed that made

3-1 electronic recording of the custodial interrogation infeasible,
3-2 evidence of compliance or noncompliance with Article 2.32
3-3 concerning the electronic recording of a custodial interrogation
3-4 that occurs in a place of detention and is of a person suspected of
3-5 committing or charged with the commission of an offense listed in
3-6 Article 2.32(b):

3-7 (1) is relevant and admissible before the trier of
3-8 fact; and

3-9 (2) may be considered in determining the admissibility
3-10 of a defendant's statement under Article 38.22, Article 38.23,
3-11 another provision of this chapter, or another law.

3-12 (b) If a statement made by a person during a custodial
3-13 interrogation described by Subsection (a) is admitted in evidence
3-14 during trial, and if an electronic recording of the complete
3-15 interrogation is not available, the court:

3-16 (1) if the court is the trier of fact, may consider the
3-17 absence of an electronic recording of the interrogation in
3-18 evaluating the evidence relating to and resulting from the
3-19 interrogation; and

3-20 (2) if the jury is the trier of fact, shall on request
3-21 of the defendant instruct the jury that:

3-22 (A) it is the policy of this state to
3-23 electronically record custodial interrogations of persons
3-24 suspected of committing or charged with the commission of an
3-25 offense listed in Article 2.32(b);

3-26 (B) the jury may consider the absence of an
3-27 electronic recording of the interrogation in evaluating the
3-28 evidence relating to and resulting from the interrogation; and

3-29 (C) the jury may draw a negative inference from
3-30 the failure to make an electronic recording of an interrogation in
3-31 compliance with the law.

3-32 SECTION 3. Article 38.24, Code of Criminal Procedure, as
3-33 added by this Act, applies to the use of a statement resulting from
3-34 a custodial interrogation that occurs on or after September 1,
3-35 2018, regardless of whether the criminal offense giving rise to
3-36 that interrogation is committed before, on, or after that date.

3-37 SECTION 4. This Act takes effect September 1, 2017.

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