

By: Ellis

S.B. No. 181

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 Articles 2.32 and 2.33 to read as follows:

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL  
INTERROGATIONS. (a) In this article:

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

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

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

(2) "Law enforcement agency" means an agency of the  
state, or of a county, municipality, or other political subdivision  
of the state, authorized by law to employ peace officers described  
by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8), Article  
[2.12.](#)

(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.

(b) A law enforcement agency qualified under Article 2.33 to conduct a custodial interrogation of the offense shall make a complete, contemporaneous, audio or audiovisual electronic recording of any custodial interrogation that occurs in a place of detention and is of a person suspected of committing or charged with the commission of an offense under:

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

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

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

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

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

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

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

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

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

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

(11) Section 22.021, Penal Code (aggravated sexual

1 assault); or

2 (12) Section 43.25, Penal Code (sexual performance by  
3 a child).

4 (c) For purposes of Subsection (b), an electronic recording  
5 of a custodial interrogation is complete only if the recording  
6 begins at or before the time the person being interrogated receives  
7 a warning described by Section 2(a), Article 38.22, and continues  
8 until the time the interrogation ceases.

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

12 Art. 2.33. LAW ENFORCEMENT AGENCIES QUALIFIED TO CONDUCT  
13 CERTAIN CUSTODIAL INTERROGATIONS. Only a law enforcement agency  
14 that employs peace officers described by Subdivision (1), (2), (3),  
15 (4), (5), (6), (7), or (8), Article 2.12, is qualified to conduct a  
16 custodial interrogation of an individual suspected of committing an  
17 offense listed in Article 2.32(b).

18 SECTION 2. Section 1, Article 38.22, Code of Criminal  
19 Procedure, is amended to read as follows:

20 Sec. 1. In this article:

21 (1) "Electronic recording" means an audio or  
22 audiovisual electronic recording of a custodial interrogation that  
23 begins at or before the time the person being interrogated receives  
24 a warning described by Section 2(a) and continues until the time the  
25 interrogation ceases.

26 (2) "Written [~~a written~~] statement" [~~of an accused~~]  
27 means:

1                   (A) [~~(1)~~] a statement made by the accused in the  
2 accused's [~~his~~] own handwriting; or

3                   (B) [~~(2)~~] a statement made in a language the  
4 accused can read or understand that:

5                   (i) [~~(A)~~] is signed by the accused; or

6                   (ii) [~~(B)~~] bears the mark of the accused,  
7 if the accused is unable to write and the mark is witnessed by a  
8 person other than a peace officer.

9           SECTION 3. Sections 3(a) and (b), Article 38.22, Code of  
10 Criminal Procedure, are amended to read as follows:

11           (a) Except as provided by Section 9, no oral, sign language,  
12 or written statement made as a result of a custodial interrogation  
13 of a person accused of an offense listed in Article 2.32(b) is  
14 admissible against the accused in a criminal proceeding, and no  
15 [No] oral or sign language statement made as a result of a custodial  
16 interrogation of a person [of an] accused of any other offense is  
17 [made as a result of custodial interrogation shall be] admissible  
18 against the accused in a criminal proceeding, unless:

19                   (1) an electronic recording [~~, which may include~~  
20 ~~motion picture, video tape, or other visual recording,~~] is made of  
21 the custodial interrogation [~~statement~~];

22                   (2) after being [~~prior to the statement but during the~~  
23 ~~recording the accused is~~] given the warning described by Section  
24 2(a), [~~in Subsection (a) of Section 2 above and~~] the accused  
25 knowingly, intelligently, and voluntarily waives any rights set out  
26 in the warning;

27                   (3) the recording device was capable of making an

1 accurate recording, the operator was competent, and the recording  
2 is accurate and has not been altered;

3 (4) all voices on the recording are identified; and

4 (5) not later than the 20th day before the date of the  
5 proceeding, the attorney representing the defendant is provided  
6 with a true, complete, and accurate copy of all recordings of the  
7 defendant made under this article.

8 (b) Every electronic recording of ~~[any statement made by an~~  
9 ~~accused during]~~ a custodial interrogation must be preserved until  
10 such time as the defendant's conviction for any offense relating  
11 thereto is final, all direct appeals therefrom are exhausted, or  
12 the prosecution of such offenses is barred by law.

13 SECTION 4. Article 38.22, Code of Criminal Procedure, is  
14 amended by adding Section 9 to read as follows:

15 Sec. 9. An oral, sign language, or written statement of an  
16 accused made as a result of a custodial interrogation is admissible  
17 without an electronic recording otherwise required by Section 3(a)  
18 if the attorney introducing the statement shows good cause for the  
19 lack of the recording. For purposes of this section, "good cause"  
20 includes:

21 (1) the accused refused to respond to questioning or  
22 cooperate in a custodial interrogation of which an electronic  
23 recording was made, provided that:

24 (A) a contemporaneous recording of the refusal  
25 was made; or

26 (B) the peace officer or agent of the law  
27 enforcement agency conducting the interrogation attempted, in good

1 faith, to record the accused's refusal but the accused was  
2 unwilling to have the refusal recorded, and the peace officer or  
3 agent contemporaneously, in writing, documented the refusal;

4 (2) the statement was not made exclusively as the  
5 result of a custodial interrogation, including a statement that was  
6 made spontaneously by the accused and not in response to a question  
7 by a peace officer;

8 (3) the peace officer or agent of the law enforcement  
9 agency conducting the interrogation attempted, in good faith, to  
10 record the interrogation but the recording equipment did not  
11 function, the officer or agent inadvertently operated the equipment  
12 incorrectly, or the equipment malfunctioned or stopped operating  
13 without the knowledge of the officer or agent;

14 (4) exigent public safety concerns prevented or  
15 rendered infeasible the making of an electronic recording of the  
16 custodial interrogation; or

17 (5) the peace officer or agent of the law enforcement  
18 agency conducting the interrogation reasonably believed at the time  
19 the interrogation commenced that the accused interrogated was not  
20 taken into custody for or being interrogated concerning the  
21 commission of an offense listed in Article 2.32(b).

22 SECTION 5. The changes in law made by this Act apply to the  
23 use of a statement made as a result of a custodial interrogation  
24 that occurs on or after the effective date of this Act, regardless  
25 of whether the criminal offense giving rise to that interrogation  
26 is committed before, on, or after that date.

27 SECTION 6. This Act takes effect September 1, 2015.