

## **BILL ANALYSIS**

Senate Research Center  
85R22596 AJZ-D

H.B. 34  
By: Smithee et al. (Perry)  
Criminal Justice  
5/18/2017  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A recent study reviewed and examined certain criminal cases in Texas in which an innocent defendant was convicted and subsequently exonerated. H.B. 34 prevents wrongful convictions by implementing recommendations from the study.

H.B. 34 amends current law relating to measures to prevent wrongful convictions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 2, Code of Criminal Procedure, by adding Articles 2.023 and 2.32, as follows:

Art. 2.023. TRACKING USE OF CERTAIN TESTIMONY. (a) Defines "attorney representing the state" and "correctional facility."

(b) Requires an attorney representing the state to track certain information.

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (a) Defines "electronic recording" and "place of detention."

(b) Requires a law enforcement agency to make an electronic recording of any custodial interrogation that is of a person suspected of committing or charged with the commission of a felony offense and that the law enforcement agency conducts in a place of detention.

(c) Provides that an electronic recording of a custodial interrogation that complies with this article is exempt from public disclosure as provided by Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information), Government Code.

SECTION 2. Amends Article 38.075, Code of Criminal Procedure, by adding Subsection (c), to authorize evidence of a prior offense committed by a person who gives testimony described by Subsection (a) (relating to the prohibition against convicting a defendant of an offense on the testimony of a person to whom the defendant made a certain statement) to be admitted for the purpose of impeachment if the person received a benefit described by Article 39.14(h-1)(2) with respect to the offense, regardless of whether the person was convicted of the offense.

SECTION 3. Amends Section 3, Article 38.20, Code of Criminal Procedure, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the model policy or any other policy adopted by a law enforcement agency under Subsection (a) (relating to the adoption, implementation, and amendment of a certain written policy) to:

(1) makes no changes to this subdivision;

(2) include, rather than address, the following information regarding evidence-based practices, rather than topics:

(A) procedures for selecting photograph and live lineup filler photographs or participants to ensure that the photographs or participants are consistent in appearance with the description of the alleged perpetrator that was provided by a witness and do not make the suspect noticeably stand out;

(B) instructions given to a witness before conducting a photograph or live lineup identification procedure that must include a statement that the person who committed the offense may or may not be present in the procedure and that the investigation will continue regardless of whether the witness identifies a person in the procedure;

(C) procedures for documenting and preserving the results of a photograph or live lineup identification procedure, including the documentation of witness statements, regardless of the outcome of the procedure;

(D) makes no changes to this paragraph;

(E) deletes existing text including alternative procedures designed to prevent opportunities to influence the witness; and

(F) and (G) makes no changes to these paragraphs.

Makes nonsubstantive changes.

(d) Requires that a witness who makes an identification based on a photograph or live lineup identification procedure be immediately asked after the procedure to state, in the witness's own words, the witness's level of confidence in making the identification. Requires a law enforcement agency to document in accordance with Subsection (c)(2)(C) any statement made under this subsection.

SECTION 4. Amends Section 5, Article 38.20, Code of Criminal Procedure, as follows:

Sec. 5. (a) Creates an exception under Subsection (c) and makes nonsubstantive changes.

(b) Creates an exception under Subsection (c) and makes a conforming change.

(c) Provides that, if a witness makes an in-court identification of the accused, the eyewitness identification is admissible into evidence against the accused only if the evidence is accompanied by the details of any prior identification made of the accused by the witness, including the manner in which that identification procedure was conducted, and evidence showing the witness's confidence level as described by the witness at the time of the prior identification.

SECTION 5. Amends Section 1, Article 38.22, Code of Criminal Procedure, to define "electronic recording" and redefine "written statement."

SECTION 6. Amends Sections 3(a) and (b), Article 38.22, Code of Criminal Procedure, as follows:

(a) Provides that, except as provided by Section 9, no oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of a felony offense is admissible against the accused in a criminal proceeding, and no oral or sign

language statement made as a result of a custodial interrogation of a person accused of any other offense is admissible against the accused in a criminal proceeding, unless:

- (1) an electronic recording is made of the custodial interrogation, rather than statement;
- (2) after being given the warning described by Section 2(a), the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;
- (3) through (5) makes no changes to these subdivisions.

Deletes existing text prohibiting any oral or sign language statement of an accused result of custodial interrogation to be admissible against the accused in a criminal proceeding unless an electronic recording, which may include motion picture, video tape, or other visual recording, is made prior to the statement but during the recording the accused is given a certain warning. Makes nonsubstantive changes.

(b) Requires that every electronic recording of a custodial interrogation of an accused, rather than any statement made by an accused during a custodial interrogation, to be preserved until such time as the defendant's conviction for any offense relating thereto is final, all direct appeals therefrom are exhausted, or the prosecution of such offenses is barred by law.

SECTION 7. Amends Article 38.22, Code of Criminal Procedure, by adding Section 9, as follows:

Sec. 9. Provides that an oral, sign language, or written statement of an accused made as a result of a custodial interrogation is admissible without an electronic recording otherwise required by Section 3(a) if the attorney introducing the statement shows good cause for the lack of the recording. Defines "good cause."

SECTION 8. Amends Article 39.14, Code of Criminal Procedure, by adding Subsection (h-1), as follows:

(h-1) Defines "correctional facility." Requires that the state, notwithstanding any other provision of this article, if the state intends to use at a defendant's trial testimony of a person to whom the defendant made a statement against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant, disclose to the defendant certain information.

SECTION 9. Amends Section 1701.253, Occupations Code, by adding Subsection (n), as follows:

(n) Requires the Texas Commission on Law Enforcement, as part of the minimum curriculum requirements, to establish a statewide comprehensive education and training program on eyewitness identification, including the variables that affect a witness's vision and memory, practices for minimizing contamination, and effective eyewitness identification protocols.

SECTION 10. STUDY REGARDING USE OF DRUG FIELD TEST KITS. (a) Requires the Texas Forensic Science Commission (FSC) to conduct a study regarding the use of drug field test kits by law enforcement agencies in this state. Requires FSC to make certain evaluations, identifications, and recommendations.

(b) Requires FSC, not later than December 1, 2018, to submit to the governor, the lieutenant governor, and each member of the legislature a written report that summarizes the results of the study conducted under this section and includes any legislative recommendations.

SECTION 11. CRIME SCENE INVESTIGATION STUDY. (a) Requires FSC to conduct a study regarding the manner in which crime scene investigations are conducted in this state. Requires FSC to make certain evaluations, identifications, and recommendations.

(b) Requires FSC, not later than December 1, 2018, to submit to the governor, the lieutenant governor, and each member of the legislature a written report that summarizes the results of the study conducted under this section and includes any legislative recommendations.

SECTION 12. Provides that Article 2.32 and Section 9, Article 38.22, Code of Criminal Procedure, as added by this Act, and Sections 1 and 3, Article 38.22, Code of Criminal Procedure, as amended by this Act, apply to the use of a statement made as a result of a custodial interrogation that occurs on or after the effective date of this Act, regardless of whether the criminal offense giving rise to that interrogation is committed before, on, or after the effective date of this Act.

SECTION 13. Makes application of Article 38.075(c), Code of Criminal Procedure, as added by this Act, prospective.

SECTION 14. (a) Provides that Section 3(d), Article 38.20, Code of Criminal Procedure, as added by this Act, applies only to a photograph or live lineup identification procedure conducted on or after the effective date of this Act, regardless of whether the offense to which the procedure is related was committed before, on, or after the effective date of this Act.

(b) Provides that Section 5, Article 38.20, Code of Criminal Procedure, as amended by this Act, applies only to the trial of an offense with respect to which a prior identification of the accused occurred on or after the effective date of this Act, regardless of whether the offense that is the subject of the trial was committed before, on, or after the effective date of this Act.

SECTION 15. Makes application of Article 39.14(h-1), Code of Criminal Procedure, as added by this Act, prospective.

SECTION 16. Requires the Texas Commission on Law Enforcement, not later than January 1, 2018, to establish the eyewitness identification education and training program as required by Section 1701.253(n), Occupations Code, as added by this Act.

SECTION 17. Effective date: September 1, 2017.