

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1253
By: West
Criminal Justice
3/31/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1253, if approved by the legislature, would require the electronic recording of custodial interrogations following certain felony arrests. Advocates for criminal justice reform, including prosecutors and defense attorneys, agree that improving the quality of investigations on the front end will result in fewer wrongful convictions. Reports by the National Registry of Exonerations say that over the last 25 years, 60 percent of wrongful convictions were the result of misconduct by prosecutors and police. The same study pointed to coerced confessions during police interrogations as a major factor leading to wrongful convictions. False convictions have contributed to nine wrongful convictions in Texas, according to the registry.

A 2016 survey of 850 law enforcement agencies conducted by the Timothy Cole Exoneration Review Commission concluded that 68 percent of the agencies, by various methods, record custodial interrogations. The United States Department of Justice now requires all federal law enforcement agencies to record interrogations. However, in Texas, there are no uniform standards in place regarding the recording of custodial interrogations. This allows the quality of evidence gathered through recorded interrogations to vary from agency to agency. S.B. 1253 will create statewide procedures for the recording of custodial interrogations performed by Texas law enforcement agencies.

S.B. 1253 will -

- Strengthen cases for prosecutors by reducing complaints and later lawsuits alleging that improper interrogation tactics were used.
- Require police departments to record the interrogations of all serious and violent felony offenses (3G).
- Require recordings to begin when a person who is to be interrogated enters the area where the interrogation will take place or when the person is informed of their rights and end when the custodial interrogation is completed.
- Require prosecutors to provide the defendant with a copy of the interrogation recording no later than 30 days prior to the start of a trial.
- Establish standards for what is a complete custodial recording and conditions where good cause would exist that would make the use of the recording of an interrogation not feasible.
- Asks the court to consider the absence of a recording of the custodial interrogation, but allow evidence obtained during an unrecorded interrogation to be admissible. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1253 amends current law relating to the electronic recording and admissibility of certain custodial interrogations.

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 Article 2.32, as follows:

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (a) Defines "custodial interrogation," "electronic recording," "law enforcement agency" and "place of detention."

(b) Requires a law enforcement agency, unless good cause exists that makes electronic recording infeasible, to make a complete and contemporaneous 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 certain offenses.

(c) Provides that for purposes of Subsection (b), an electronic recording of a custodial interrogation is complete only if the recording begins at or before the time the person being interrogated enters the area of the place of detention in which the custodial interrogation will take place or receives a warning described by Section 2(a) (relating to providing that no written statement made by an accused as a result of custodial interrogation is admissible as evidence against him in any criminal proceeding unless it is shown on the face of the statement that the accused received a certain warning), Article 38.22 (When Statements May be Used), whichever is earlier and continues until the time the interrogation ceases.

(d) Provides that for purposes of Subsection (b), good cause that makes electronic recording infeasible includes certain criteria.

(e) Requires the attorney representing the state to provide to the defendant, in a timely manner and not later than the 30th day before the date the trial begins, a copy of an electronic recording described by Subsection (b).

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

SECTION 2. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.24, as follows:

Art. 38.24. USE OF CERTAIN EVIDENCE CONCERNING ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (a) Provides that unless the attorney representing the state offers proof satisfactory to the court that good cause, as described by Article 2.32(d), existed that made electronic recording of the custodial interrogation infeasible, evidence of compliance or noncompliance with Article 2.32 concerning the electronic recording of a 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 listed in Article 2.32(b):

(1) is relevant and admissible before the trier of fact; and

(2) is authorized to be considered in determining the admissibility of a defendant's statement under Article 38.22, Article 38.23 (Evidence Not to Be Used), another provision of this chapter, or another law.

(b) Provides that if a statement made by a person during a custodial interrogation described by Subsection (a) is admitted in evidence during trial, and if an electronic recording or the complete interrogation is not available, the court:

(1) if the court is the trier of fact, is authorized to consider the absence of an electronic recording of the interrogation in evaluating the evidence relating to and resulting from the interrogation; and

(2) if the jury is the trier of fact, is required to on request of the defendant give certain instruction to the jury.

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

SECTION 4. Effective date: September 1, 2017.