

BILL ANALYSIS

Senate Research Center
85R8377 AJZ-D

S.B. 1577
By: Perry
Criminal Justice
4/25/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Timothy Cole Exoneration Review Commission (commission) was created by the 84th Texas Legislature to review and consider various matters related to wrongful convictions within the Texas criminal justice system.

In its December 2016 report, the commission made recommendations regarding prevention of wrongful convictions, which are included in this bill.

S.B. 1577 and the companion, H.B. 34, reflect the recommendations of the commission and include protocol for electronic recording of interrogations, informant regulation, eyewitness identification, and forensic science practices.

As proposed, S.B. 1577 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 Article 2.023, as follows:

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

(b) Requires an attorney representing the state to adopt a written policy regarding the testimony of a person to whom a defendant made a statement against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant and regarding how that testimony may be used at the defendant's trial. Requires the policy to require the attorney representing the state to implement a system to track the use of, and benefits offered or provided in exchange for, described testimony, and promptly disclose information regarding the testifying person as required by Article 39.14(h-1).

SECTION 2. 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," 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 except as provided by Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information), Government Code.

SECTION 3. Amends Article 38.075, Code of Criminal Procedure, by adding Subsection (c), as follows:

(c) Requires a person who gives testimony described by Subsection (a) (relating to prohibiting a defendant from being convicted of an offense on the testimony of a person to whom the defendant made a statement against the defendant's interest during a time when both defendants were imprisoned or confined in the same correctional facility), notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by, and information described by Article 39.14(h-1), to be admitted for its bearing on relevant matters, including the character of the person.

SECTION 4. Amends Sections 3(a) and (c), and Article 38.20, Code of Criminal Procedure, as follows:

(a) Requires each law enforcement agency to adopt and implement the model policy under Subsection (b) (relating to the requirement that the Bill Blackwood Law Enforcement Management Institute of Texas (institute), in consultation with certain law enforcement agencies and law enforcement associations develop certain training manuals and a model policy to be disseminated to all law enforcement agencies). Deletes existing text requiring each law enforcement agency to as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures in accordance with this article, and text authorizing a law enforcement agency to adopt the agency's own policy that, at a minimum, conforms to the requirements of Subsection (c). Makes nonsubstantive changes.

(c) Requires the model policy under Subsection (b), rather than the model policy or any other policy adopted by a law enforcement agency under Subsection (a), to be based on certain information and practices and address certain topics.

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

(b) Requires each law enforcement agency, not later than September 1 of each even-numbered year, to adopt the updated model policy as modified by the institute under Subsection (a) (relating to requiring the institute in certain odd-numbered years to review and modify the model policy) in the preceding year, rather than review its policy adopted under this article and to modify that policy as appropriate.

SECTION 6. Amends Section 5, Article 38.20, Code of Criminal Procedure, as follows:

Sec. 5. (a) Provides that, except as provided by Subsection (c), evidence of compliance with the model policy adopted under this article is not a condition precedent to the admissibility of an out-of-court eyewitness identification. Deletes existing text providing that evidence of compliance with the model policy or any other policy adopted under this article or with the minimum requirements of this article is not a condition precedent to the admissibility of an out-of-court eyewitness identification. Makes a nonsubstantive change.

(b) Provides that, notwithstanding Article 38.23 (Evidence Not to Be Used), as that article relates to a violation of a state statute and except as provided by Subsection (c), a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy adopted under this article, rather than the model policy or any other policy adopted under this article or with the minimum requirements of this article, does not bar the admission of eyewitness identification testimony in the courts of this state.

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

SECTION 8. 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 an electronic recording is made of the custodial interrogation; and after being given the warning described by Section 2(a), the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning. Deletes existing text requiring that no oral or sign language statement of an accused made as a result of custodial interrogation 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 of the statement; and prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning.

(b) Requires every electronic recording of, rather than every electronic recording of, a 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 9. 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. Provides that for purposes of this section, "good cause" includes:

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

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

(B) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the accused's refusal but the accused was unwilling to have the refusal recorded, and the peace officer or agent contemporaneously, in writing, documented the refusal;

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

(3) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the interrogation but

the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the knowledge of the officer or agent;

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

(5) the peace officer or agent of the law enforcement agency conducting the interrogation reasonably believed at the time the interrogation began that the accused interrogated was not taken into custody for or being interrogated concerning the commission of a felony offense.

SECTION 10. Amends Article 39.14, Code of Criminal Procedure, by adding Subsection (h-1), as follows:

(h-1) Defines "correctional facility." Requires 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, to disclose to the defendant:

(1) the person's complete criminal history, including any charges that were dismissed or reduced as part of a plea bargain;

(2) any grant, promise, or offer of immunity from prosecution, reduction of sentence, or other leniency or special treatment, given by the state in exchange for the person's testimony;

(3) information concerning other criminal cases in which the person has testified, or offered to testify, against a defendant with whom the person was imprisoned or confined, including any grant, promise, or offer as described by Subdivision (2) given by the state in exchange for the testimony; and

(4) other information in the possession, custody, or control of the state that is relevant to the person's credibility.

SECTION 11. Amends Section 1701.253, Occupations Code, by adding Subsection (n), as follows:

(n) Requires the Texas Commission on Law Enforcement (TCOLE) 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 12. 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:

(1) evaluate the quality, accuracy, and reliability of drug field test kits;

(2) identify any common problems with drug field test kits;

(3) evaluate the availability and adequacy of training for law enforcement officers regarding the use of drug field test kits and the interpretation of the test results; and

(4) develop legislative recommendations regarding the use of drug field test kits by law enforcement agencies and regarding related training for law enforcement officers.

(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 13. 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:

(1) evaluate the standard procedures used in processing a crime scene and evaluate the quality of crime scene investigations;

(2) evaluate the availability and adequacy of the training or continuing education provided to crime scene investigators; and

(3) develop legislative recommendations regarding improvements to crime scene investigation procedures and training.

(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 14. Requires each attorney representing the state, as defined by Article 2.023, Code of Criminal Procedure, as added by this Act, to adopt the written policy required by that article, not later than December 1, 2018.

SECTION 15. 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 that date.

SECTION 16. Makes application of Article 38.075(c), Code of Criminal Procedure, as added by this Act, prospective.

SECTION 17. (a) Requires each law enforcement agency to which Article 38.20, Code of Criminal Procedure, as amended by this Act, applies to adopt the model policy as required by that article, not later than October 1, 2017.

(b) Provides that Sections 5(a) and (b), Article 38.20, Code of Criminal Procedure, as amended by this Act, apply only to a photograph or live lineup identification procedure conducted on or after January 1, 2018, regardless of whether the offense to which the procedure is related was committed before, on, or after January 1, 2018.

(c) Provides that Section 5(c), Article 38.20, Code of Criminal Procedure, as added 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 January 1, 2018, regardless of whether the offense that is the subject of the trial was committed before, on, or after January 1, 2018.

SECTION 18. Makes application of Article 39.14(h-1), Code of Criminal Procedure, as added by this Act, prospective.

SECTION 19. Requires TCOLE, 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 20. Effective date: September 1, 2017.