

BILL ANALYSIS

Senate Research Center
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S.B. 116
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the national Innocence Project, approximately 25 percent of the 234 DNA wrongful convictions involve defendants who made false confessions, admissions, or statements to law enforcement officials. Three of Texas' 39 DNA wrongful convictions involved false confessions. Another problem that police face in the interrogation room is false accusations of coercion and abuse by suspects.

The best way to prevent and identify false confessions and protect officers from false accusations of abuse is by recording custodial interrogations.

As proposed, S.B. 116 requires an electronic recording of the custodial interrogation of a defendant or suspect, including a juvenile, where the person is charged with a felony, in order for the person's written or oral statement to be used in court. S.B. 116 requires law enforcement agencies to provide training to their officers on recording interrogations and requires the Department of Public Safety of the State of Texas to adopt rules for providing funds or electronic recording equipment to law enforcement agencies.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 1 (Article 2.31, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.31, as follows:

Art. 2.31. ELECTRONIC RECORDING OF INTERROGATIONS. (a) Requires each law enforcement agency in this state to provide training to certain employees of the law enforcement agency who interrogate criminal defendants or suspects, including juveniles, on the technological aspects of electronically recording interrogations.

(b) Requires the Department of Public Safety (DPS) to adopt rules for providing funds or electronic recording equipment to law enforcement agencies in this state for recording interrogations of criminal defendants or suspects, including juveniles.

SECTION 2. Amends Section 2, Article 38.22, Code of Criminal Procedure, as follows:

(a) Redesignates certain subsections and subdivisions. Makes nonsubstantive changes.

(2) Provides that no written statement made by an accused as a result of custodial interrogation in a criminal proceeding where the accused is charged with a felony is admissible as evidence against the accused unless an electronic recording that complies with Section 3(a) is made of the custodial interrogation resulting in the statement. Makes a conforming change.

(b) Requires that every electronic recording of a custodial interrogation resulting in a written statement be preserved until the defendant's conviction for the offense relating to the statement is final, all direct appeals of the case are exhausted, the time to file a

petition for a writ of habeas corpus has expired, or the prosecution of the offense is barred by law.

(c) Provides that a written statement made by an accused as a result of a custodial interrogation to be used as evidence against the accused in a criminal proceeding, notwithstanding Subsection (a)(2), is admissible if the requirements of Subsection (a)(1) are satisfied with respect to each portion of the written statement. Provides that this subsection expires September 1, 2012.

SECTION 3. Amends Section 3, Article 38.22, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (f), as follows:

(a) Provides that no oral or sign language statement of an accused made as a result of custodial interrogation is 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 in the case of a criminal proceeding in which the accused is charged with a felony, the custodial interrogation resulting in the statement is given the warning in Section 2(a), rather than Subsection (a), prior to the statement. Requires that the recording meet certain criteria, including that the recording is substantially accurate and has not been intentionally altered.

(b) Creates Subdivisions (1) and (2) from existing text. Requires that every electronic recording of a custodial interrogation resulting in an oral or sign language statement, if any, be preserved until such time as the defendant's conviction for the offense relating to the statement is final, all direct appeals of the case are exhausted, and the time to file a petition requesting a writ of habeas corpus has expired or the prosecution of the offense is barred by law. Makes nonsubstantive changes.

(f) Provides that, notwithstanding the requirement of Subsection (a)(1)(B) that a recording be made in felony cases of the custodial interrogation resulting in the statement, an oral or sign language statement, satisfying the requirements of Subsection (a) with respect to each portion of the statement, made by the accused as a result of a custodial interrogation is admissible as evidence against the accused in a criminal proceeding as evidence. Provides that this subsection expires September 1, 2012.

SECTION 4. Amends Article 38.22, Code of Criminal Procedure, by adding Section 9, to provide that a recording of a custodial interrogation made under Section 2(a)(2) or 3(a) is exempt from required public disclosure under Chapter 552 (Public Information), Government Code.

SECTION 5. Amends Section 51.095, Family Code, by amending Subsections (a), (c), and (f) and adding Subsections (g), (h), and (i), as follows:

(a) Provides that, notwithstanding Section 51.095 (Admissibility of a Statement of a Child), Family Code, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if the magistrate has had the opportunity to view any recording made under Paragraph (E); the interrogation of the child alleged to have engaged in conduct violating penal law of the grade of felony, resulting in the statement, is recorded by an electronic recording device and satisfies certain requirements; and not later than the 20th day before the date of the proceeding, the attorney representing the child is given a complete and accurate copy of each recording of the child made under this subdivision. Makes conforming changes.

(c) Requires that an electronic recording made under Subsection (a)(1) or (a)(5) be preserved until all juvenile or criminal matters relating to any conduct referred to in the recording, rather than a statement, are final, including the exhaustion of appeals, or barred from prosecution.

(f) Authorizes the magistrate who provides the warnings required by Subsection (a)(5) for a recorded oral statement at the conclusion of the process of questioning to request that the officer return the child and the recording and, in the case of a proceeding in which it is alleged that the child engaged in conduct violating a penal law of the grade of felony,

any other interrogation recording of the child resulting in an oral statement. Makes nonsubstantive changes.

(g) Provides that a recording of an interrogation made under Subsection (a)(1) or (a)(5) is exempt from required public disclosure under Chapter 552, Government Code.

(h) Provides that, notwithstanding the requirements of Subsections (a)(1)(E) and (a)(5) that a recording be made of the interrogation resulting in the statement, a statement that is made orally or in writing under Subsection (d) is admissible in any future proceeding concerning the matter about which the statement was given if the requirements under Subsections (a)(1)(A)-(D) and Subsection (a)(5) are satisfied.

(i) Provides that Subsection (h) and this subsection expire September 1, 2012.

SECTION 6. Requires DPS to begin adopting rules under Article 2.31(b), Code of Criminal Procedure, as added by this Act, not later than March 1, 2010.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date September 1, 2009.