

BILL ANALYSIS

Senate Research Center
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S.B. 969
By: West
Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not require that statements made as the result of custodial interrogation be recorded on video. A video recording of the questions asked of a defendant and the answers given often prove to be the most reliable and accurate evidence that prosecutors have of a confession. This invaluable documentary evidence assists prosecutors across the state in presenting a case to a jury when a defendant attempts to alter, retract, excuse, or explain away a confession. A video recording of these statements also ensures fairness and transparency in the process for the public and the accused.

S.B. 969 seeks to ensure that prosecutors always have the best evidence available to them during the prosecution of their case by requiring that all statements made as the result of custodial interrogation be video recorded.

As proposed, S.B. 969 amends current law relating to the electronic recording and admissibility of certain statements made by an accused as a result of custodial interrogation.

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

Sec. 2. Provides that no written statement made by an accused as a result of custodial interrogation is admissible as evidence against the accused in any criminal proceeding unless certain conditions are met, including:

- (1) Makes nonsubstantive changes; and
- (2) an electronic recording that complies with the requirements of Section 3(a) of this article is made of the accused making the statement.

SECTION 2. Amends Sections 3(a) and (e), Article 38.22, Code of Criminal Procedure, as follows:

(a) Prohibits an oral or sign language statement of an accused made as a result of custodial interrogation from being admissible against the accused in a criminal proceeding unless:

- (1) an electronic recording that includes, rather than which is authorized to include, motion picture, video tape, or other visual recording is made of the statement;
- (2) prior to the statement but during the recording the accused is given the warning in Subdivision (1)(A) (relating to the provision that no written statement made by an accused as a result of custodial interrogation is admissible as evidence

against the accused in any criminal proceeding unless it is shown prior to making the statement, that the accused received a certain warning), rather than 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;

(3) Makes no change to this subdivision;

(4) all persons who speak or are otherwise visible, rather than all voices, on the recording are identified; and

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

(e) Requires the courts of this state to strictly construe Subsection (a) of this section and are prohibited from interpreting Subsection (a) as making admissible a statement unless all requirements of the subsection have been satisfied by the state, except that:

(1) only material persons on a recording are identified, rather than only voices that are material are identified; and

(2) the accused was given the warning in Subdivision (1)(A), rather than Subsection (a), of Section 2 above or its fully effective equivalent.

SECTION 3. Amends Article 38.22, Code of Criminal Procedure, by adding Section 3A, to require that each electronic recording of a statement be preserved until such time as the defendant's conviction for any offense relating to the statement is final, all direct appeals of the case are exhausted, and the time to file a petition for a writ of habeas corpus has expired or the prosecution of the offense is barred by law.

SECTION 4. Repealer: Section 3(b) (relating to requiring that every electronic recording of any statement made by an accused during a custodial interrogation 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), Article 38.22, Code of Criminal Procedure.

SECTION 5. Makes application of the change in law made by this Act prospective.

SECTION 6. Effective date: September 1, 2013.