

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1253  
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Criminal Justice  
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As Filed

### **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.

As proposed, 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 "law enforcement agency" and "place of detention."

(b) Requires a law enforcement agency of the state or of a municipality, county, or other political subdivision of the state to make a complete, contemporaneous, audio or audiovisual 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 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), and continues until the time the interrogation ceases.

(d) 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.

(e) Provides that evidence from a custodial interrogation conducted by a federal law enforcement agency or a law enforcement agency of another state is not admissible in a criminal proceeding unless the interrogation complied with that agency's custodial interrogation procedures.

SECTION 2. Amends Section 1, Article 38.22, Code of Criminal Procedure, to define "electronic recording" and redefine "written statement."

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

(a) Provides that except as provided by Section 9, an oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of an offense listed in Article 2.32(b) is not admissible against the accused in a criminal proceeding, and an oral or sign language statement made as a result of a custodial interrogation of a person accused of any other offense is not, rather than 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:

(1) an electronic recording is made of the custodial interrogation, rather than an electronic recording, which may include motion picture, video tape, or other visual recording is made of the statement;

(2) after receiving, rather than prior to the statement but during the recording the accused is given, the warning described by Section 2(a), rather than in Subsection (a) of Section 2 above, the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) to (5) makes no changes to these subdivisions.

Makes nonsubstantive changes.

(b) Requires each, rather than every, electronic recording of a custodial interrogation, rather than any statement made by an accused during a custodial interrogation, to be preserved until:

(1) the defendant's conviction for any offense relating to the recording is final and all direct appeals from the conviction are exhausted; or

(2) the prosecution of an offense described by Subdivision (1), rather than such offenses, is barred by law.

Makes nonsubstantive changes.

SECTION 4. 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 5. Provides that the changes in law made 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 offense giving rise to that interrogation is committed before, on, or after that date.

SECTION 6. Effective date: September 1, 2017.