

By: Farrar

H.B. No. 4090

A BILL TO BE ENTITLED

AN ACT

1
2 relating to electronically recording certain interrogations and
3 the admissibility of certain statements made by a juvenile or a
4 criminal defendant.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 2, Code of Criminal Procedure, is
7 amended by adding Article 2.31 to read as follows:

8 Art. 2.31. ELECTRONIC RECORDING OF INTERROGATIONS. (a)
9 Each law enforcement agency in this state shall provide training
10 concerning the technological aspects of electronically recording
11 interrogations to peace officers and other employees of the law
12 enforcement agency who interrogate criminal defendants or
13 suspects, including juveniles.

14 (b) The Department of Public Safety shall adopt rules for
15 providing funds or electronic recording equipment to law
16 enforcement agencies in this state for the purpose of recording
17 interrogations of criminal defendants or suspects, including
18 juveniles.

19 SECTION 2. Section 2, Article 38.22, Code of Criminal
20 Procedure, is amended to read as follows:

21 Sec. 2. (a) No written statement made by an accused as a
22 result of custodial interrogation is admissible as evidence against
23 the accused [~~him~~] in any criminal proceeding unless:

24 (1) it is shown on the face of the statement that:

1 (A) [~~(a)~~] the accused, prior to making the
2 statement, either received from a magistrate the warning provided
3 in Article 15.17 of this code or received from the person to whom
4 the statement is made a warning that:

5 (i) the accused [~~(1) he~~] has the right to
6 remain silent and not make any statement at all and that any
7 statement the accused [~~he~~] makes may be used against the accused
8 [~~him~~] at [~~his~~] trial;

9 (ii) [~~(2)~~] any statement the accused [~~he~~]
10 makes may be used as evidence against the accused [~~him~~] in court;

11 (iii) the accused [~~(3) he~~] has the right to
12 have a lawyer present to advise the accused [~~him~~] prior to and
13 during any questioning;

14 (iv) [~~(4)~~] if the accused [~~he~~] is unable to
15 employ a lawyer, the accused [~~he~~] has the right to have a lawyer
16 appointed to advise the accused [~~him~~] prior to and during any
17 questioning; and

18 (v) the accused [~~(5) he~~] has the right to
19 terminate the interview at any time; and

20 (B) [~~(b)~~] the accused, prior to and during the
21 making of the statement, knowingly, intelligently, and voluntarily
22 waived the rights set out in the warning prescribed by Paragraph
23 (A); and

24 (2) in the case of a criminal proceeding in which the
25 accused is charged with a felony, an electronic recording that
26 complies with the requirements of Section 3(a) is made of the
27 custodial interrogation resulting in the statement [~~Subsection (a)~~]

1 ~~of this section].~~

2 (b) Every electronic recording of a custodial
3 interrogation, if any, resulting in a written statement must be
4 preserved until such time as:

5 (1) the defendant's conviction for any offense
6 relating to the statement is final, all direct appeals of the case
7 are exhausted, and the time to file a petition for a writ of habeas
8 corpus has expired; or

9 (2) the prosecution of the offense is barred by law.

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

16 SECTION 3. Section 3, Article 38.22, Code of Criminal
17 Procedure, is amended by amending Subsections (a) and (b) and
18 adding Subsection (f) to read as follows:

19 (a) No oral or sign language statement of an accused made as
20 a result of custodial interrogation is ~~[shall be]~~ admissible
21 against the accused in a criminal proceeding unless:

22 (1) an electronic recording, which may include motion
23 picture, video tape, or other visual recording, is made of:

24 (A) the statement; and

25 (B) in the case of a criminal proceeding in which
26 the accused is charged with a felony, the custodial interrogation
27 resulting in the statement;

1 (2) prior to the statement but during the recording
2 the accused is given the warning in [~~Subsection (a) of~~] Section 2(a)
3 [~~2-above~~] and the accused knowingly, intelligently, and voluntarily
4 waives any rights set out in the warning;

5 (3) the recording device was capable of making an
6 accurate recording, the operator was competent, and the recording
7 is substantially accurate and has not been intentionally altered;

8 (4) all voices on the recording are identified; and

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

13 (b) Every electronic recording of a custodial interrogation
14 resulting in an oral or sign language statement, if any, and any
15 statement made by an accused during a custodial interrogation must
16 be preserved until such time as:

17 (1) the defendant's conviction for any offense
18 relating to the statement [~~thereto~~] is final, all direct appeals of
19 the case [~~therefrom~~] are exhausted, and the time to file a petition
20 requesting a writ of habeas corpus has expired; or

21 (2) the prosecution of the offense [~~such offenses~~] is
22 barred by law.

23 (f) Notwithstanding the requirement of Subsection (a)(1)(B)
24 that in felony cases a recording be made of the custodial
25 interrogation resulting in the statement, an oral or sign language
26 statement made by an accused as a result of a custodial
27 interrogation is admissible as evidence against the accused in a

1 criminal proceeding if the requirements of Subsection (a) are
2 otherwise satisfied with respect to each portion of the oral or sign
3 language statement that is to be used as evidence. This subsection
4 expires September 1, 2012.

5 SECTION 4. Article 38.22, Code of Criminal Procedure, is
6 amended by adding Section 9 to read as follows:

7 Sec. 9. A recording of a custodial interrogation made under
8 Section 2(a)(2) or 3(a) is exempt from required public disclosure
9 under Chapter 552, Government Code.

10 SECTION 5. Section 51.095, Family Code, is amended by
11 amending Subsections (a), (c), and (f) and adding Subsections (g),
12 (h), and (i) to read as follows:

13 (a) Notwithstanding Section 51.09, the statement of a child
14 is admissible in evidence in any future proceeding concerning the
15 matter about which the statement was given if:

16 (1) the statement is made in writing under a
17 circumstance described by Subsection (d) and:

18 (A) the statement shows that the child has at
19 some time before the making of the statement received from a
20 magistrate a warning that:

21 (i) the child may remain silent and not make
22 any statement at all and that any statement that the child makes may
23 be used in evidence against the child;

24 (ii) the child has the right to have an
25 attorney present to advise the child either prior to any
26 questioning or during the questioning;

27 (iii) if the child is unable to employ an

1 attorney, the child has the right to have an attorney appointed to
2 counsel with the child before or during any interviews with peace
3 officers or attorneys representing the state; and

4 (iv) the child has the right to terminate
5 the interview at any time;

6 (B) and:

7 (i) the statement must be signed in the
8 presence of a magistrate by the child with no law enforcement
9 officer or prosecuting attorney present, except that a magistrate
10 may require a bailiff or a law enforcement officer if a bailiff is
11 not available to be present if the magistrate determines that the
12 presence of the bailiff or law enforcement officer is necessary for
13 the personal safety of the magistrate or other court personnel,
14 provided that the bailiff or law enforcement officer may not carry a
15 weapon in the presence of the child; and

16 (ii) the magistrate must be fully convinced
17 that the child understands the nature and contents of the statement
18 and that the child is signing the same voluntarily, and if a
19 statement is taken, the magistrate must sign a written statement
20 verifying the foregoing requisites have been met;

21 (C) the child knowingly, intelligently, and
22 voluntarily waives these rights before and during the making of the
23 statement and signs the statement in the presence of a magistrate;
24 [~~and~~]

25 (D) the magistrate certifies that the magistrate
26 has had the opportunity to view any recording made under Paragraph
27 (E), has examined the child independent of any law enforcement

1 officer or prosecuting attorney, except as required to ensure the
2 personal safety of the magistrate or other court personnel, and has
3 determined that the child understands the nature and contents of
4 the statement and has knowingly, intelligently, and voluntarily
5 waived these rights; and

6 (E) in the case of a proceeding in which it is
7 alleged that the child engaged in conduct violating a penal law of
8 the grade of felony, the interrogation, if any, of the child
9 resulting in the statement is recorded by an electronic recording
10 device, including a device that records images, and:

11 (i) the recording device is capable of
12 making an accurate recording, the operator of the device is
13 competent to use the device, the recording is substantially
14 accurate, and the recording has not been intentionally altered;

15 (ii) each voice on the recording is
16 identified; and

17 (iii) not later than the 20th day before the
18 date of the proceeding, the attorney representing the child is
19 given a complete and accurate copy of each recording of the child
20 made under this subdivision;

21 (2) the statement is made orally and the child makes a
22 statement of facts or circumstances that are found to be true and
23 tend to establish the child's guilt, such as the finding of secreted
24 or stolen property, or the instrument with which the child states
25 the offense was committed;

26 (3) the statement was res gestae of the delinquent
27 conduct or the conduct indicating a need for supervision or of the

1 arrest;

2 (4) the statement is made:

3 (A) in open court at the child's adjudication
4 hearing;

5 (B) before a grand jury considering a petition,
6 under Section 53.045, that the child engaged in delinquent conduct;
7 or

8 (C) at a preliminary hearing concerning the child
9 held in compliance with this code, other than at a detention hearing
10 under Section 54.01; or

11 (5) subject to Subsection (f), the statement is made
12 orally under a circumstance described by Subsection (d) and the
13 statement and, in the case of a proceeding in which it is alleged
14 that the child engaged in conduct violating a penal law of the grade
15 of felony, the interrogation, if any, of the child resulting in the
16 statement are [is] recorded by an electronic recording device,
17 including a device that records images, and:

18 (A) before making the statement, the child is
19 given the warning described by Subdivision (1)(A) by a magistrate,
20 the warning is a part of the recording, and the child knowingly,
21 intelligently, and voluntarily waives each right stated in the
22 warning;

23 (B) the recording device is capable of making an
24 accurate recording, the operator of the device is competent to use
25 the device, the recording is substantially accurate, and the
26 recording has not been intentionally altered;

27 (C) each voice on the recording is identified;

1 and

2 (D) not later than the 20th day before the date of
3 the proceeding, the attorney representing the child is given a
4 complete and accurate copy of each recording of the child made under
5 this subdivision.

6 (c) An electronic recording [~~of a child's statement~~] made
7 under Subsection (a)(1) or (a)(5) shall be preserved until all
8 juvenile or criminal matters relating to any conduct referred to in
9 the recording [~~statement~~] are final, including the exhaustion of
10 all appeals, or barred from prosecution.

11 (f) A magistrate who provides the warnings required by
12 Subsection (a)(5) for a recorded oral statement may, at the time the
13 warnings are provided, request by speaking on the recording that
14 the officer return [~~the child and the recording~~] to the magistrate
15 at the conclusion of the process of questioning the child and the
16 recording and, in the case of a proceeding in which it is alleged
17 that the child engaged in conduct violating a penal law of the grade
18 of felony, any recording of any other interrogation of the child
19 resulting in the oral statement being recorded. The magistrate may
20 then view the recording or recordings with the child or have the
21 child view the recording or recordings to enable the magistrate to
22 determine whether the child's oral statements were given
23 voluntarily. The magistrate's determination of voluntariness
24 shall be reduced to writing and signed and dated by the magistrate.
25 If a magistrate uses the procedure described by this subsection, a
26 child's oral statement is not admissible unless the magistrate
27 determines that the statement was given voluntarily.

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

4 (h) Notwithstanding the requirements of Subsections
5 (a)(1)(E) and (a)(5) that a recording be made of the interrogation
6 resulting in the statement, a statement that is made in writing or
7 made orally under a circumstance described by Subsection (d) is
8 admissible in any future proceeding concerning the matter about
9 which the statement was given if:

10 (1) concerning a statement made in writing, the
11 requirements of Subsections (a)(1)(A)-(D) are satisfied with
12 respect to each portion of the statement that is to be used as
13 evidence; or

14 (2) concerning a statement made orally, the
15 requirements of Subsection (a)(5) are otherwise satisfied with
16 respect to each portion of the statement that is to be used as
17 evidence.

18 (i) Subsection (h) and this subsection expire September 1,
19 2012.

20 SECTION 6. The Department of Public Safety shall begin
21 adopting rules under Article 2.31(b), Code of Criminal Procedure,
22 as added by this Act, not later than March 1, 2010.

23 SECTION 7. Article 38.22, Code of Criminal Procedure, as
24 amended by this Act, and Section 51.095, Family Code, as amended by
25 this Act, apply to the admissibility of a written, oral, or sign
26 language statement that is made on or after the effective date of
27 this Act. A written, oral, or sign language statement that is made

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1 before the effective date of this Act is governed by the law in
2 effect at the time that the statement was made, and that law is
3 continued in effect for that purpose.

4 SECTION 8. This Act takes effect September 1, 2009.