

By: Collier

H.B. No. 414

A BILL TO BE ENTITLED

AN ACT

relating to the electronic recording of certain custodial interrogations.

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

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.32 and 2.33 to read as follows:

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (a) In this article:

(1) "Custodial interrogation" means any investigative questioning, other than routine questions associated with booking, by a peace officer during which:

(A) a reasonable person in the position of the person being interrogated would consider himself or herself to be in custody; and

(B) a question is asked that is reasonably likely to elicit an incriminating response.

(2) "Electronic recording" means an audio or audiovisual electronic recording that begins at or before the time the person being interrogated receives a warning described by Section 2(a), Article 38.22, and continues until the time the interrogation ceases.

(3) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's

1 department, and is owned or operated by the law enforcement agency
2 for the purpose of detaining individuals in connection with the
3 suspected violation of a penal law. The term does not include a
4 courthouse.

5 (b) A law enforcement agency qualified under Article 2.33 to
6 conduct a custodial interrogation regarding an offense shall make
7 an electronic recording of any custodial interrogation that occurs
8 in a place of detention and is of a person suspected of committing
9 or charged with the commission of a felony offense.

10 (c) An electronic recording of a custodial interrogation
11 that complies with this article is exempt from public disclosure
12 except as provided by Section 552.108, Government Code.

13 (d) A law enforcement agency otherwise required to make an
14 electronic recording of a custodial interrogation under this
15 article is excused from the duty to make the electronic recording
16 if:

17 (1) the accused refuses to respond to questioning or
18 cooperate in a custodial interrogation of which an electronic
19 recording is made, provided that:

20 (A) a contemporaneous recording of the refusal is
21 made; or

22 (B) the peace officer or agent of the law
23 enforcement agency conducting the interrogation attempts, in good
24 faith, to record the accused's refusal but the accused is unwilling
25 to have the refusal recorded, and the peace officer or agent
26 contemporaneously, in writing, documents the refusal;

27 (2) the statement is not made as a result of a

1 custodial interrogation, including a statement that is made
2 spontaneously by the accused and not in response to a question by a
3 peace officer;

4 (3) the peace officer or agent of the law enforcement
5 agency conducting the custodial interrogation attempts, in good
6 faith, to record the interrogation, but the recording equipment
7 does not function and the officer or agent contemporaneously, in
8 writing, documents the reason why it is not possible to delay the
9 interrogation; or

10 (4) the peace officer or agent of the law enforcement
11 agency conducting the custodial interrogation reasonably believes
12 at the time the interrogation commences that the accused to be
13 interrogated was not taken into custody for or being interrogated
14 concerning the commission of a felony offense.

15 Art. 2.33. LAW ENFORCEMENT AGENCIES QUALIFIED TO CONDUCT
16 CERTAIN CUSTODIAL INTERROGATIONS. Only a law enforcement agency
17 that employs peace officers described by Article 2.12(1), (2), (3),
18 (4), (5), (6), (7), (8), or (29) is qualified to conduct a custodial
19 interrogation of an individual suspected of committing a felony
20 offense.

21 SECTION 2. This Act takes effect September 1, 2017.