



HB 1709

2003

1 A bill to be entitled

2 An act relating to statements by the accused; providing a
3 popular name; providing intent; providing for
4 applicability; providing definitions; providing that
5 statements made during custodial interrogations are
6 presumed inadmissible; providing exceptions; providing an
7 effective date.

8
9 WHEREAS, the reputations of countless hard-working law
10 enforcement officers are needlessly attacked by criminal
11 suspects who falsely claim that the officers have violated their
12 constitutional rights, and

13 WHEREAS, limited trial court resources are squandered in
14 hearings on motions seeking to suppress statements made by
15 criminal suspects who are given the opportunity to make such
16 claims because no recordings of their interrogations exist, and

17 WHEREAS, further judicial resources are squandered when
18 criminal suspects, after having been convicted of their crimes,
19 file frivolous and unnecessary appeals, and

20 WHEREAS, this process is costing the taxpayers of Florida
21 untold dollars each year, dollars which could be better spent
22 enhancing the administration of the criminal justice system, and

23 WHEREAS, low cost technology is now available in every
24 jurisdiction to record each custodial interrogation of a
25 criminal suspect, eliminating this gross waste of resources and
26 enhancing the reliability and reputation of law enforcement,

27 NOW, THEREFORE,

28
29 Be It Enacted by the Legislature of the State of Florida:
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31 Section 1. (1) POPULAR NAME.--This act shall be known by
32 the popular name "The Brenton Butler Act."

33 (2) LEGISLATIVE INTENT.--The purpose of this act is to
34 enhance the quality of the prosecution of those who may be
35 guilty while affording protection to the innocent. It is
36 intended to create a verbatim record of the entire custodial
37 interrogation for the purpose of eliminating disputes in court
38 as to what factually occurred during the interrogation.

39 (3) APPLICABILITY.--This act shall apply to custodial
40 interrogations in which the accused is suspected of a felony.

41 (4) DEFINITIONS.--As used in this act:

42 (a) "Electronic recording" means the complete and
43 authentic reproduction of the entire custodial interrogation of
44 a criminal suspect, created by motion picture, videotape,
45 audiotape, or digital media.

46 (b) "Custodial interrogation" means the questioning by law
47 enforcement personnel or others acting in concert with or on
48 behalf of law enforcement personnel, which is conducted in a
49 police station, police vehicle, courthouse, correctional
50 facility, community correctional center, detention facility, or
51 other secure environment.

52 (5) PRESUMPTION OF INADMISSIBILITY.--

53 (a) An oral, written, or sign-language statement of a
54 defendant made during a custodial interrogation shall be
55 presumed inadmissible as evidence against a defendant in a
56 criminal proceeding unless:

57 1. The interrogation is electronically recorded in its
58 entirety.

59 2. Prior to the statement, but during the recording, the
60 accused is given the requisite Miranda warnings and the accused



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61 knowingly, intelligently, and voluntarily waives any rights set
62 out in the warning.

63 3. The recording device was capable of making an accurate
64 recording, the operator was competent, and the recording was not
65 altered.

66 4. All voices on the recording that are material to the
67 custodial interrogation are identified.

68 5. During discovery, but in no circumstances later than
69 the 20th day before the date of the proceeding in which the
70 prosecution intends to offer the statement, the attorney
71 representing the defendant is provided with a true, complete,
72 and accurate copy of all recordings of the defendant made under
73 this act.

74 (b) The state may rebut a presumption of inadmissibility
75 through clear and convincing evidence that:

76 1. The statement was both voluntary and reliable.

77 2. The law enforcement officers had good cause not to tape
78 the entire interrogation. For the purpose of this subparagraph,
79 good cause includes, but is not limited to the following
80 circumstances:

81 a. The interrogation took place at a location not
82 identified by paragraph (4)(b) and under exigent circumstances
83 where the requisite recording equipment was not readily
84 available and there was no opportunity to move the defendant to
85 a location identified by paragraph (4)(b) or where the requisite
86 recording equipment was readily available;

87 b. The accused refused to have his or her interrogation
88 electronically recorded, and the refusal itself was
89 electronically recorded;

90 c. The failure to electronically record an entire



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91 interrogation was the result of equipment failure and obtaining
92 replacement equipment was not feasible; or

93 d. The statements were obtained in the course of
94 electronic eavesdropping which was being conducted pursuant to a
95 properly obtained and issued warrant.

96 (c) Notwithstanding any other provision of this
97 subsection, a written, oral, or sign-language statement of the
98 accused made as a result of a custodial interrogation is
99 admissible against the accused in a criminal proceeding in this
100 state if:

101 1. The statement was obtained in another state and was
102 obtained by law enforcement personnel of that state, acting
103 independently of law enforcement personnel from Florida, in
104 compliance with the laws of that state; or

105 2. The statement was obtained by a federal law enforcement
106 officer in this state or another state during a lawful federal
107 criminal investigation and was obtained in compliance with the
108 laws of the United States.

109 (6) Every electronic recording made of a custodial
110 interrogation must be preserved until such time as the
111 defendant's conviction for any offense relating to the
112 interrogation is final and all direct and habeas corpus appeals
113 are exhausted, or the prosecution of such offenses is barred by
114 law.

115 (7) This act does not preclude the admission of a
116 statement made by the accused:

117 (a) At his or her trial or other hearing in open court;

118 (b) Before a grand jury;

119 (c) That is the res gestae of the arrest or the offense;

120 or



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(d) That does not stem from custodial interrogation.

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Section 2. This act shall take effect July 1, 2003.