

By Senator Campbell

32-688A-03

See HB 1709

1                                   A bill to be entitled  
2           An act relating to statements by the accused;  
3           providing a popular name; providing intent;  
4           providing for applicability; providing  
5           definitions; providing that statements made  
6           during custodial interrogations are presumed  
7           inadmissible; providing exceptions; providing  
8           an effective date.  
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10           WHEREAS, the reputations of countless hard-working law  
11 enforcement officers are needlessly attacked by criminal  
12 suspects who falsely claim that the officers have violated  
13 their constitutional rights, and  
14           WHEREAS, limited trial court resources are squandered  
15 in hearings on motions seeking to suppress statements made by  
16 criminal suspects who are given the opportunity to make such  
17 claims because no recordings of their interrogations exist,  
18 and  
19           WHEREAS, further judicial resources are squandered when  
20 criminal suspects, after having been convicted of their  
21 crimes, file frivolous and unnecessary appeals, and  
22           WHEREAS, this process is costing the taxpayers of  
23 Florida untold dollars each year, dollars which could be  
24 better spent enhancing the administration of the criminal  
25 justice system, and  
26           WHEREAS, low cost technology is now available in every  
27 jurisdiction to record each custodial interrogation of a  
28 criminal suspect, eliminating this gross waste of resources  
29 and enhancing the reliability and reputation of law  
30 enforcement, NOW, THEREFORE,  
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. (1) POPULAR NAME.--This act shall be known  
4 by the popular name "The Brenton Butler Act."

5 (2) LEGISLATIVE INTENT.--The purpose of this act is to  
6 enhance the quality of the prosecution of those who may be  
7 guilty while affording protection to the innocent. It is  
8 intended to create a verbatim record of the entire custodial  
9 interrogation for the purpose of eliminating disputes in court  
10 as to what factually occurred during the interrogation.

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

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

14 (a) "Electronic recording" means the complete and  
15 authentic reproduction of the entire custodial interrogation  
16 of a criminal suspect, created by motion picture, videotape,  
17 audiotape, or digital media.

18 (b) "Custodial interrogation" means the questioning by  
19 law enforcement personnel or others acting in concert with or  
20 on behalf of law enforcement personnel, which is conducted in  
21 a police station, police vehicle, courthouse, correctional  
22 facility, community correctional center, detention facility,  
23 or other secure environment.

24 (5) PRESUMPTION OF INADMISSIBILITY.--

25 (a) An oral, written, or sign-language statement of a  
26 defendant made during a custodial interrogation shall be  
27 presumed inadmissible as evidence against a defendant in a  
28 criminal proceeding unless:

29 1. The interrogation is electronically recorded in its  
30 entirety.

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1           2. Prior to the statement, but during the recording,  
2 the accused is given the requisite Miranda warnings and the  
3 accused knowingly, intelligently, and voluntarily waives any  
4 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  
7 recording was not altered.

8           4. All voices on the recording that are material to  
9 the custodial interrogation are identified.

10           5. During discovery, but in no circumstances later  
11 than the 20th day before the date of the proceeding in which  
12 the prosecution intends to offer the statement, the attorney  
13 representing the defendant is provided with a true, complete,  
14 and accurate copy of all recordings of the defendant made  
15 under this act.

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

18           1. The statement was both voluntary and reliable; and

19           2. The law enforcement officers had good cause not to  
20 tape the entire interrogation. For the purpose of this  
21 subparagraph, good cause includes, but is not limited to, the  
22 following circumstances:

23           a. The interrogation took place at a location not  
24 identified by paragraph (4)(b) and under exigent circumstances  
25 where the requisite recording equipment was not readily  
26 available and there was no opportunity to move the defendant  
27 to a location identified by paragraph (4)(b) or where the  
28 requisite recording equipment was readily available;

29           b. The accused refused to have his or her  
30 interrogation electronically recorded, and the refusal itself  
31 was electronically recorded;

1           c. The failure to electronically record an entire  
2 interrogation was the result of equipment failure and  
3 obtaining replacement equipment was not feasible; or

4           d. The statements were obtained in the course of  
5 electronic eavesdropping which was being conducted pursuant to  
6 a properly obtained and issued warrant.

7           (c) Notwithstanding any other provision of this  
8 subsection, a written, oral, or sign-language statement of the  
9 accused made as a result of a custodial interrogation is  
10 admissible against the accused in a criminal proceeding in  
11 this state if:

12           1. The statement was obtained in another state and was  
13 obtained by law enforcement personnel of that state, acting  
14 independently of law enforcement personnel from Florida, in  
15 compliance with the laws of that state; or

16           2. The statement was obtained by a federal law  
17 enforcement officer in this state or another state during a  
18 lawful federal criminal investigation and was obtained in  
19 compliance with the laws of the United States.

20           (6) Every electronic recording made of a custodial  
21 interrogation must be preserved until such time as the  
22 defendant's conviction for any offense relating to the  
23 interrogation is final and all direct and habeas corpus  
24 appeals are exhausted, or the prosecution of such offenses is  
25 barred by law.

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

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

30           (b) Before a grand jury;

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1           (c) That is the res gestae of the arrest or the  
2 offense; or  
3           (d) That does not stem from custodial interrogation.  
4           Section 2. This act shall take effect July 1, 2003.  
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