

By Senator Geller

31-992-04

See HB

1                                   A bill to be entitled  
2           An act relating to custodial interrogations in  
3           cases involving capital felonies; creating s.  
4           901.241, F.S., providing purpose and intent to  
5           create true, complete, and accurate records of  
6           certain custodial interrogations in order to  
7           eliminate factual disputes in court as to  
8           events alleged to have occurred during such  
9           interrogations; providing definitions;  
10          describing circumstances in which an oral,  
11          written, or sign language statement made by an  
12          accused person during a custodial interrogation  
13          is presumed inadmissible as evidence against  
14          such person; describing circumstances in which  
15          the prosecution may rebut such presumption;  
16          describing circumstances in which law  
17          enforcement officers may have good cause not to  
18          electronically record all or part of an  
19          interrogation; providing for the admissibility  
20          of certain statements of an accused person when  
21          made in certain proceedings or when obtained by  
22          federal law enforcement officers or law  
23          enforcement officers from other states;  
24          providing for the preservation of electronic  
25          recordings made pursuant to this act; providing  
26          for admissibility of certain statements of an  
27          accused person; providing an effective date.

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29           WHEREAS, the reputations of countless hard-working law  
30          enforcement officers are needlessly attacked by criminal  
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1 suspects who falsely claim that the officers have violated  
2 their constitutional rights, and

3 WHEREAS, limited trial court resources are squandered  
4 in hearings on motions seeking to suppress statements made by  
5 criminal suspects who are given the opportunity to make such  
6 claims because no recordings of their interrogations exist,  
7 and

8 WHEREAS, further judicial resources are squandered when  
9 criminal suspects, after having been convicted of their  
10 crimes, file frivolous and unnecessary appeals, and

11 WHEREAS, this process is costing the taxpayers of  
12 Florida untold dollars each year, dollars which could be  
13 better spent enhancing the administration of the criminal  
14 justice system, and

15 WHEREAS, the low cost technology is now available in  
16 every jurisdiction, to record each and every custodial  
17 interrogation of a criminal suspect, eliminating this gross  
18 waste of resources and enhancing the reliability and  
19 reputation of law enforcement, NOW, THEREFORE,

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Section 901.241, Florida Statutes, is  
24 created to read:

25 901.241 Custodial interrogations in cases involving  
26 capital felonies.--

27 (1) This section shall apply to custodial  
28 interrogations in which the accused person is suspected of  
29 involvement in a capital felony.

30 (2) The purpose of this section is to enhance the  
31 quality of prosecution of those who may be guilty while

1 affording protection to the innocent by providing a true,  
2 complete, and accurate record of the entire custodial  
3 interrogation. This section is intended to eliminate factual  
4 disputes in court as to events alleged to have occurred during  
5 a custodial interrogation.

6 (3) As used in this section, the term:

7 (a) "Accused person" means a person who is suspected  
8 of involvement in a capital felony.

9 (b) "Custodial interrogation" means questioning of an  
10 accused person that is conducted in a law enforcement  
11 facility, correctional facility, community correctional  
12 center, detention facility, law enforcement vehicle,  
13 courthouse, or other secure environment by law enforcement  
14 personnel or others acting in concert with, or on behalf of,  
15 law enforcement personnel.

16 (c) "Electronic recording" means a true, complete, and  
17 accurate reproduction of the entire custodial interrogation of  
18 an accused person. An electronic recording may be created by  
19 motion picture, videotape, audiotape, or digital media.

20 (4) An oral, written, or sign language statement made  
21 by an accused person during a custodial interrogation shall be  
22 presumed inadmissible as evidence against such person in a  
23 criminal proceeding unless:

24 (a) The interrogation is reproduced in its entirety by  
25 means of an electronic recording.

26 (b) Prior to the statement, but during the electronic  
27 recording, the accused person is given the requisite Miranda  
28 warnings and the accused person knowingly, intelligently, and  
29 voluntarily waives any rights set out in the warnings.

30 (c) The electronic recording device was capable of  
31 making a true, complete, and accurate recording of the

1 interrogation, the operator of such device was competent, and  
2 the electronic recording has not been altered.

3 (d) All voices that are material to the custodial  
4 interrogation are identified on the electronic recording.

5 (e) During discovery pursuant to Rule 3.220, Florida  
6 Rules of Criminal Procedure, but in no circumstances later  
7 than the 20th day before the date of the proceeding in which  
8 the prosecution intends to offer the statement, the attorney  
9 representing the defendant is provided with a true, complete,  
10 and accurate copy of all electronic recordings of the  
11 defendant made pursuant to this section.

12 (5)(a) In the absence of a true, complete, and  
13 accurate electronic recording, the prosecution may rebut a  
14 presumption of inadmissibility through clear and convincing  
15 evidence that:

- 16 1. The statement was both voluntary and reliable.  
17 2. Law enforcement officers had good cause not to  
18 electronically record all or part of the interrogation.

19 (b) For purposes of paragraph (a), "good cause"  
20 includes, but is not limited to, the following:

21 1. The interrogation occurred in a location not  
22 identified in paragraph (3)(b) and under exigent circumstances  
23 at which the requisite recording equipment was not readily  
24 available and there was no reasonable opportunity to move the  
25 defendant to a location identified in paragraph (3)(b) or to a  
26 location at which the requisite recording equipment was  
27 readily available;

28 2. The accused person refused to have the  
29 interrogation electronically recorded and such refusal was  
30 electronically recorded;

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1           3. 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           4. The statement of the accused person was obtained in  
5 the course of electronic eavesdropping which was being  
6 conducted pursuant to a properly obtained and issued warrant.

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

12           (a) The statement was obtained in another state by law  
13 enforcement personnel of such state, acting independently of  
14 law enforcement personnel of this state, in compliance with  
15 the laws of such state.

16           (b) 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           (7) Every electronic recording of a custodial  
21 interrogation made pursuant to this section must be preserved  
22 until such time as the defendant's conviction for any offense  
23 relating to the interrogation is final and all direct and  
24 habeas corpus appeals are exhausted, or the prosecution of  
25 such offenses is barred by law.

26           (8) This section does not preclude the admission into  
27 evidence of a statement made by the accused person:

28           (a) At the person's trial or other hearing held in  
29 open 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 arise from a custodial  
4 interrogation, as defined by this section.  
5           Section 2. This act shall take effect July 1, 2004.  
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