

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 783 Custodial Interrogations
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 1936

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	_____	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Judiciary</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill provides that an oral, written or sign language statement made by an accused person during a custodial interrogation shall be presumed inadmissible as evidence against the accused in a criminal proceeding unless the interrogation was electronically recorded, the accused person was given Miranda warnings and several other requirements are met.

The bill provides that the state may rebut the presumption of inadmissibility through clear and convincing evidence that the statement was voluntary and reliable and law enforcement officers had good cause not to electronically record all or part of the interrogation.

This bill may be considered an unfunded mandate on local governments. See "Applicability of Municipality/County Mandates Provision" section of this analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill will require law enforcement agencies to record custodial interrogations in order for them to be admissible into evidence.

B. EFFECT OF PROPOSED CHANGES:

In order for a statement made during a custodial interrogation to be admissible into evidence at trial, the suspect must first be read Miranda warnings and the suspect must waive the rights described in the warning. These warnings state that a suspect “has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” Miranda v. Arizona, 86 S.Ct. 1602 (1966).

HB 783 provides that an oral, written or sign language statement made by an accused person¹ during a custodial interrogation² shall be presumed inadmissible as evidence against such person in a criminal proceeding unless:

- The interrogation is reproduced in its entirety by means of electronic recording³.
- Prior to the statement, but during the electronic recording, the accused person is given the requisite *Miranda* warnings and the accused person knowingly, intelligently, and voluntarily waives any rights set out in the warnings.
- The electronic recording device was capable of making a true, complete and accurate recording of the interrogation and the operator of such device was competent and the electronic recording has not been altered.
- Voices material to the custodial interrogation are identified on the electronic recording.
- During discovery as provided in the Florida Rules of Criminal Procedure, but no later than the 20th day before the date of the proceeding in which the prosecution intends to offer the statement, the defense attorney is provided with a true, complete and accurate copy of all electronic recordings of the defendant made pursuant to this section

The bill also provides that if there is not a true, complete and accurate recording, the presumption of inadmissibility can be rebutted through clear and convincing evidence that :

- The statement was voluntary and reliable; and

¹ The bill defines the term “accused person” to mean a person who is suspected of involvement in a capital felony.

² The bill defines the term “custodial interrogation” to mean questioning of an accused person that is conducted in a law enforcement facility, correctional facility, community correctional center, detention facility, law enforcement vehicle, courthouse, or other secure environment by law enforcement personnel or others acting in concert with, or on behalf of, law enforcement personnel.

³ The bill defines the term “electronic recording” to mean a true, complete and accurate reproduction of the entire custodial interrogation of an accused person. An electronic recording may be created by motion picture, videotape, audiotape or digital media.

- Law enforcement officers had good cause not to electronically record all or part of the interrogation.

The bill defines the term “good cause” as including but not limited to the following:

- The interrogation occurred in a location not contained in the definition of custodial interrogation and under exigent circumstances at which the requisite recording equipment was not readily available and there was no reasonable opportunity to move the defendant to a

Further, the bill provides that a statement is admissible if it was obtained in another state by law enforcement personnel of such state acting independently of Florida law enforcement personnel if it was in compliance with the laws of that state. There is a similar exception for statements obtained by a federal law enforcement officer.

The bill requires that every electronic recording of a custodial interrogation made pursuant to this section to be preserved until the defendant’s conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

The bill provides that the section does not preclude the admission into evidence of a statement made by the accused person at the person’s trial or other hearing held in open court; before a grand jury; that is the res gestae of the arrest or the offense; or that does not arise from a custodial interrogation.

C. SECTION DIRECTORY:

Section 1. Creates s. 901.241, F.S.; relating to custodial interrogations in capital cases.

Section 2. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal impact on local governments; expenditures below..

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The bill will require the expenditure of funds to purchase electronic recording equipment which will be used to record interrogations. The bill applies to interrogations that occur at a number of different places including law enforcement facilities, correctional facilities and law enforcement vehicles. As a result, it appears that agencies may have to purchase equipment that would be kept in an interrogation room and purchase equipment that would be portable for use in a vehicle or an other secure environment. Law enforcement agencies will also be required to expend funds for tapes or other materials used in the recording devices. Further, law enforcement agencies will be

required to expend funds for storage of the tapes on which interrogations are made until the case is final. It often takes more than a decade for a capital murder case to become final.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent that political subdivisions, including cities and counties (through the sheriff's department), are obligated to pay for recording equipment, the bill could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution for which no funding source is provided to such political subdivisions:

For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on the 2000 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1,598,238 would be characterized as a mandate. It is unknown at this time how much counties and cities would be required to spend to implement an electronic recording program, in expenditures to provide a suitable system, not including recurring/maintenance costs. Arguably, the agency or office does not have to implement such a policy, but due to the presumption created, and the narrowly carved rebuttal to that presumption, an officer's work in securing the statement is otherwise meaningless if statements are rendered inadmissible in court proceedings.

If it is determined that this bill does constitute a mandate, it does not include constitutionally required language that provides that the Legislature has determined that this legislation fulfills an important state interest, in accordance with Section 18 of Article VII of the State Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires, prior to a statement being made, that an accused person be given "the requisite Miranda warnings" and that the accused person knowingly, intelligently and voluntarily waive the rights set out in these warnings. This creates a statutory right to Miranda warnings that does not currently exist. The requirement has developed in case law. Miranda v. Arizona, 86 S.Ct. 1602 (1966). There is a substantial body of case law that has developed regarding when warnings are required and the contents of the warnings, when Miranda rights are waived by the suspect and exceptions to the requirement.

The definition of "custodial interrogation" that is contained in the bill describes the places in which the interrogation takes place but does not otherwise limit the scope of the definition. It does not appear to distinguish situations in which a person is in custody and situations in which a person is voluntarily

speaking to law enforcement or is otherwise free to leave. As a result, the definition appears to be broader than the definition that has developed out of cases following Miranda. Courts have limited the circumstances in which Miranda warnings are required by only requiring that warnings be given when a suspect is in custody. "A person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest." Ramirez v. State, 739 So.2d 568, 573 (Fla. 1999)(citations omitted).

The bill does not specify that the presumption of inadmissibility applies only to interrogations which occur after the effective date of the bill. As a result, it is not clear whether the provisions of the bill would bar the admissibility of an interrogation that takes place before the bill takes effect. It also unclear if it would apply to a statement being admitted during a retrial of a capital case. Further, the act takes effect on July 1, 2004. Law enforcement agencies will have a short amount of time to comply with the new requirements of the bill.

The bill applies to interrogations of a person suspected of involvement in a "capital felony". There are several offenses that are designated as capital felonies under Florida law including the offenses of murder, sexual battery of a victim under the age of 12 and certain drug trafficking offenses.

The bill refers to an "accused person" but does not limit the definition to people that the officer has probable cause to arrest. Instead it is defined as a person who is suspected of "involvement" in a capital felony. The term "involvement" is not defined. It may be difficult for an officer to know, before they have conducted the interrogation, whether the person was "involved" in the felony or was just a witness to the events. Further, it may be difficult for a law enforcement officer to know whether a person who he or she intends to interview was involved in a capital felony. In other words, before an interrogation takes place, it will often be unclear whether the circumstances of the case constitute a capital felony. Because an officer would not necessarily know whether the circumstances surrounding a death would be sufficiently egregious to classify the case as a capital case, in order to avoid the possibility that an interrogation would later be ruled inadmissible, an officer would likely be required to record all interrogations relating to a wrongful death. Further, there may be times where it would not be clear to an officer that the case could be a capital felony at the time of an interrogation because the victim had not yet died. Similarly, a law enforcement officer would most likely be required to record every interrogation of a perpetrator in a molestation case where the victim is under the age of 12, because the officer would not know whether the facts of the case would be meet the elements of sexual battery.

According to language within the bill, it is intended to "eliminate factual disputes in court as to events alleged to have occurred during a custodial interrogation." While the bill may eliminate disputes as to the words that the suspect used in the interrogation, it will potentially create other factual disputes regarding issues such as: whether the interrogation was recorded in its entirety; whether the recording equipment was capable of making a "true, complete, and accurate recording of the interrogation"; whether the operator of the device was competent and whether the electronic recording was altered. For example, if a recording is stopped in order to switch tapes or in order to allow the suspect to take a break, the suspect may later argue that the interrogation was not recorded in its entirety. Every unusual noise on the tape could be subject to scrutiny. Further, there could be factual disputes if the state attempts to admit an interrogation into evidence under one of the exceptions contained in the bill.

The bill requires a law enforcement agency to preserve an electronic recording of a custodial interrogation until all habeas corpus appeals are exhausted or the prosecution is barred by law. Courts have not consistently applied a time limit to habeas corpus proceedings. Therefore, a law enforcement agency may be forced to preserve the evidence for as long as the defendant is incarcerated. For example, according to information obtained from the Commission on Capital Cases, Gregory Kokal was convicted of capital murder in November of 1984. He has filed a number of postconviction motions during the time he has been incarcerated and currently has an appeal pending in the Florida Supreme Court from the denial of a postconviction motion. Similarly, John Richard Marek was sentenced to death in July of 1984 and currently has an appeal pending in the Florida Supreme Court from the denial

of a postconviction motion. Also, a prosecution for a capital felony may be commenced at any time. Therefore, law enforcement would be required to keep the electronic recording of an interrogation in cases that do not result in a conviction, for the duration of the suspect's life.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES