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A bill to be entitled
 An act relating to recording custodial interrogations;
 providing definitions; providing that statements made
 during custodial interrogations are presumed to be
 inadmissible in court unless an electronic recording is
 made; providing requirements for such recordings;
 providing for rebutting the presumption of inadmissibility
 for certain nonrecorded statements; providing exceptions
 for certain statements; providing for use of statements
 for impeachment purposes; providing for preservation of
 recordings; providing a finding of important state
 interest; providing an effective date.

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

Section 1. Custodial interrogations; recording.--

(1) As used in this section, the term:

(a) "Custodial interrogation" means any interrogation
during which:

1. A reasonable person in the subject's position would
consider himself or herself to be in custody.

2. A question is asked that is reasonably likely to elicit
an incriminating response.

(b) "Place of detention" means a building or a police
station that is a place of operation for a police department,
sheriff's department, or other law enforcement agency, other
than a courthouse, that is owned or operated by a law
enforcement agency at which persons are or may be held in

29 detention in connection with criminal charges against those
30 persons.

31 (c) "Electronic recording" means a reproduction of a
32 custodial interrogation and may be created by motion picture,
33 videotape, audiotape, or digital or other media.

34 (2) A statement made by a person during a custodial
35 interrogation shall be presumed to be inadmissible as evidence
36 against that person in a criminal proceeding unless:

37 (a) An electronic recording is made of the custodial
38 interrogation.

39 (b) The recording is substantially accurate and not
40 intentionally altered.

41 (c) Prior to the statement, but during the electronic
42 recording, the person is given all constitutionally required
43 warnings and the person knowingly, intelligently, and
44 voluntarily waives any rights set out in the warnings that would
45 otherwise preclude the admission of the statement absent the
46 waiver of those rights.

47 (d) The electronic recording device was capable of making
48 a true, complete, and accurate recording of the interrogation,
49 the operator of such device was competent, and the electronic
50 recording has not been altered.

51 (e) All voices that are material to the custodial
52 interrogation are identified on the electronic recording.

53 (f) During discovery pursuant to Rule 3.220, Florida Rules
54 of Criminal Procedure, but in no circumstances later than the
55 20th day before the date of the proceeding in which the
56 prosecution intends to offer the statement, the defense is

57 provided with a true, complete, and accurate copy of all
 58 electronic recordings of the defendant made pursuant to this
 59 section.

60 (3) If the court finds, by a preponderance of the
 61 evidence, that the defendant was subjected to a custodial
 62 interrogation in violation of this section, any statements made
 63 by the defendant during or following that nonrecorded custodial
 64 interrogation, even if otherwise in compliance with this
 65 section, are presumed to be inadmissible in any criminal
 66 proceeding against the defendant except for the purposes of
 67 impeachment.

68 (4)(a) In the absence of a true, complete, and accurate
 69 electronic recording, the prosecution may rebut a presumption of
 70 inadmissibility through clear and convincing evidence that:

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

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

- 76 1. The person refused to have the interrogation
 77 electronically recorded and such refusal was electronically
 78 recorded;
- 79 2. The failure to electronically record an entire
 80 interrogation was the result of equipment failure and obtaining
 81 replacement equipment was not feasible; or
- 82 3. The statement was obtained in the course of electronic
 83 eavesdropping that was being conducted pursuant to a properly
 84 obtained and issued warrant or that required no warrant.

85 (5) This section does not apply to a statement made by the
 86 person:

87 (a) At the person's trial or other hearing held in open
 88 court.

89 (b) Before a grand jury.

90 (c) That is the res gestae of the arrest or the offense.

91 (d) That is a spontaneous statement that was not made in
 92 response to a question.

93 (e) During questioning that is routinely asked during the
 94 processing of the arrest of a person.

95 (f) That does not arise from a custodial interrogation, as
 96 defined by this section.

97 (g) That was obtained in another state by investigative
 98 personnel of such state, acting independently of law enforcement
 99 personnel of this state, in compliance with the laws of such
 100 state.

101 (h) That was obtained by a federal officer in this state
 102 or another state during a lawful federal investigation and was
 103 obtained in compliance with the laws of the United States.

104 (6) Nothing in this section precludes the admission of a
 105 statement, otherwise inadmissible under this section, that is
 106 used only for impeachment and not as substantive evidence.

107 (7) Every electronic recording of a custodial
 108 interrogation made pursuant to this section must be preserved
 109 until the person's conviction for any offense relating to the
 110 interrogation is final and all direct appeals and collateral
 111 challenges are exhausted, the prosecution of such offenses is
 112 barred by law, or the state irrevocably waives in writing any

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113 future prosecution of the person for any offense relating to the
114 interrogation.

115 Section 2. The Legislature finds that many innocent
116 persons are imprisoned and later released due to false
117 confessions; there are many reasons innocent people confess
118 ranging from coercion to mental illness; electronic recording of
119 interrogations protects the innocent and provides the best
120 evidence against the guilty; a number of other states and local
121 jurisdictions now require recording of interrogations; and the
122 benefits of electronic recording of interrogations outweigh its
123 cost. Therefore, the Legislature determines and declares that
124 this act fulfills an important state interest.

125 Section 3. This act shall take effect July 1, 2005.