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A bill to be entitled  
 An act relating to custodial interrogations in cases  
 involving capital felonies; creating s. 901.241, F.S.;  
 providing definitions; describing circumstances in which  
 an oral, written, or sign language statement made by a  
 capital interrogatee during a custodial interrogation is  
 presumed inadmissible as evidence against such person;  
 describing circumstances in which the prosecution may  
 rebut such presumption; describing circumstances in which  
 law enforcement officers may have good cause not to  
 electronically record all or part of an interrogation;  
 providing for the admissibility of certain statements of a  
 capital interrogatee when made in certain proceedings or  
 when obtained by federal officers or officers from other  
 states; providing for the preservation of electronic  
 recordings; providing for admissibility of certain  
 statements of a capital interrogatee; providing a finding of  
 important state interest; providing application; providing  
 an effective date.

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

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

901.241 Custodial interrogations in cases involving  
 capital felonies.--

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

30 (2) As used in this section, the term:

31 (a) "Capital interrogee" means a person who, at the time  
32 of the interrogation and concerning any topic of the  
33 interrogation, is:

34 1. Charged with a capital felony; or

35 2. Suspected by those conducting the interrogation or  
36 investigating the capital felony of involvement in the capital  
37 felony.

38 (b) "Custodial interrogation" means questioning of a  
39 capital interrogee in circumstances in which a reasonable person  
40 placed in the same position would believe that his or her  
41 freedom of action was curtailed to a degree associated with  
42 actual arrest.

43 (c) "Electronic recording" means a true, complete, and  
44 accurate reproduction of a custodial interrogation. An  
45 electronic recording may be created by motion picture,  
46 videotape, audiotape, or digital or other media.

47 (d) "Involvement" means participation in a crime as a  
48 principal or an accessory.

49 (e) "Interrogation facility" means a law enforcement  
50 facility, correctional facility, community correctional center,  
51 detention facility, law enforcement vehicle, courthouse, or  
52 other secure environment.

53 (3) An oral, written, or sign language statement made by a  
54 capital interrogee during a custodial interrogation shall be

55 presumed to be inadmissible as evidence against such person in a  
 56 criminal proceeding unless:

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

59 (b) Prior to the statement, but during the electronic  
 60 recording, the capital interrogee is given all constitutionally  
 61 required warnings and the capital interrogee knowingly,  
 62 intelligently, and voluntarily waives any rights set out in the  
 63 warnings that would otherwise preclude the admission of the  
 64 statement.

65 (c) The electronic recording device was capable of making  
 66 a true, complete, and accurate recording of the interrogation,  
 67 the operator of such device was competent, and the electronic  
 68 recording has not been altered.

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

71 (e) During discovery pursuant to Rule 3.220, Florida Rules  
 72 of Criminal Procedure, but in no circumstances later than the  
 73 20th day before the date of the proceeding in which the  
 74 prosecution intends to offer the statement, the attorney  
 75 representing a criminal defendant is provided with true,  
 76 complete, and accurate copies of all electronic recordings of  
 77 the defendant made pursuant to this section.

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

- 81 1. The statement was both voluntary and reliable.
- 82 2. Law enforcement officers had good cause not to

83 electronically record all or part of the interrogation.

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

86 1. The interrogation occurred in a location other than an  
 87 interrogation facility under exigent circumstances where the  
 88 requisite recording equipment was not readily available, and  
 89 there was no reasonable opportunity to move the capital  
 90 interrogee to an interrogation facility or to another location  
 91 at which the requisite recording equipment was readily  
 92 available;

93 2. The capital interrogee refused to have the  
 94 interrogation electronically recorded and such refusal was  
 95 electronically recorded;

96 3. The failure to electronically record an entire  
 97 interrogation was the result of equipment failure and obtaining  
 98 replacement equipment was not feasible; or

99 4. The statement of the capital interrogee was obtained in  
 100 the course of electronic eavesdropping that was being conducted  
 101 pursuant to a properly obtained and issued warrant or that  
 102 required no warrant.

103 (5) Notwithstanding any other provision of this section, a  
 104 written, oral, or sign language statement of the capital  
 105 interrogee made as a result of a custodial interrogation is  
 106 admissible in a criminal proceeding against the capital  
 107 interrogee in this state if:

108 (a) The statement was obtained in another state by  
 109 investigative personnel of such state, acting independently of  
 110 law enforcement personnel of this state, in compliance with the

111 laws of such state; or

112 (b) The statement was obtained by a federal officer in  
 113 this state or another state during a lawful federal  
 114 investigation and was obtained in compliance with the laws of  
 115 the United States.

116 (6) Every electronic recording of a custodial  
 117 interrogation made pursuant to this section must be preserved  
 118 until the capital interogee's conviction for any offense  
 119 relating to the interrogation is final and all direct appeals  
 120 and collateral challenges are exhausted, the prosecution of such  
 121 offenses is barred by law, or the state irrevocably waives in  
 122 writing any future prosecution of the capital interogee for any  
 123 offense relating to the interrogation.

124 (7) This section does not preclude the admission into  
 125 evidence of a statement made by the capital interogee:

126 (a) At his or her trial or other hearing held in open  
 127 court;

128 (b) Before a grand jury;

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

131 (d) That does not arise from a custodial interrogation, as  
 132 defined by this section.

133 Section 2. The Legislature finds that the reputations of  
 134 countless hard-working law enforcement officers are needlessly  
 135 attacked by criminal suspects who falsely claim the officers  
 136 have violated the suspects' constitutional rights, that limited  
 137 trial court resources are squandered in hearings on motions  
 138 seeking to suppress statements made by criminal suspects who are

139 given the opportunity to make such claims because no recordings  
140 of their interrogations exist, and further that judicial  
141 resources are squandered when criminal suspects, after having  
142 been convicted of their crimes, file frivolous and unnecessary  
143 appeals. This process costs the taxpayers of this state untold  
144 dollars each year, dollars that could be better spent enhancing  
145 the administration of the criminal justice system. Low-cost  
146 technology is now available in every jurisdiction to record each  
147 and every custodial interrogation of a criminal suspect,  
148 eliminating this gross waste of resources and enhancing the  
149 reliability and reputation of law enforcement. Therefore, the  
150 Legislature determines and declares that this act fulfills an  
151 important state interest.

152       Section 3. This act shall take effect July 1, 2005, and  
153 shall apply to interrogations taking place on or after that  
154 date.