

ENROLLED

HB 1169

2005 Legislature

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 interrogee 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 interrogee 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 interrogee; 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.--

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

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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.

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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

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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

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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

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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.