

By Senator Geller

31-829-06

See HB 433

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 definitions;

5           describing circumstances in which an oral,

6           written, or sign language statement made by a

7           capital interrogatee during a custodial

8           interrogation is presumed inadmissible as

9           evidence against such person; describing

10          circumstances in which the prosecution may

11          rebut such presumption; describing

12          circumstances in which law enforcement officers

13          may have good cause not to electronically

14          record all or part of an interrogation;

15          providing for the admissibility of certain

16          statements of a capital interrogatee when made in

17          certain proceedings or when obtained by federal

18          officers or officers from other states;

19          providing for the preservation of electronic

20          recordings; providing for admissibility of

21          certain statements of a capital interrogatee;

22          providing a finding of important state

23          interest; providing application; providing an

24          effective date.

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

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28           Section 1. Section 901.241, Florida Statutes, is

29   created to read:

30           901.241 Custodial interrogations in cases involving

31   capital felonies.--

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

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

5           (a) "Capital interrogee" means a person who, at the  
6 time of the interrogation and concerning any topic of the  
7 interrogation, is:

8           1. Charged with a capital felony; or

9           2. Suspected by those conducting the interrogation or  
10 investigating the capital felony of involvement in the capital  
11 felony.

12           (b) "Custodial interrogation" or "interrogation" means  
13 questioning of a capital interrogee in circumstances in which  
14 a reasonable person placed in the same position would believe  
15 that his or her freedom of action was curtailed to a degree  
16 associated with actual arrest.

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

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

23           (e) "Interrogation facility" means a law enforcement  
24 facility, correctional facility, community correctional  
25 center, detention facility, law enforcement vehicle,  
26 courthouse, or other secure environment.

27           (3) An oral, written, or sign language statement made  
28 by a capital interrogee during a custodial interrogation shall  
29 be presumed to be inadmissible as evidence against such person  
30 in a criminal proceeding unless:

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

3       (b) Prior to the statement, but during the electronic  
4 recording, the capital interrogee is given all  
5 constitutionally required warnings and the capital interrogee  
6 knowingly, intelligently, and voluntarily waives any rights  
7 set out in the warnings which would, absent such waiver,  
8 otherwise preclude the admission of the statement.

9       (c) The electronic recording device was capable of  
10 making a true, complete, and accurate recording of the  
11 interrogation, the operator of such device was competent, and  
12 the electronic recording has not been altered.

13       (d) All persons recorded in the recording who are  
14 material to the custodial interrogation are identified on the  
15 electronic recording.

16       (e) During discovery pursuant to Rule 3.220, Florida  
17 Rules of Criminal Procedure, but in no circumstances later  
18 than the 20th day before the date of the proceeding in which  
19 the prosecution intends to offer the statement, the attorney  
20 representing a capital interrogee is provided with true,  
21 complete, and accurate copies of all electronic recordings of  
22 the capital interrogee made pursuant to this section.

23       (4)(a) In the absence of a true, complete, and  
24 accurate electronic recording, the prosecution may rebut a  
25 presumption of inadmissibility through clear and convincing  
26 evidence that:

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

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

1           1. The interrogation occurred in a location other than  
2 an interrogation facility under exigent circumstances where  
3 the requisite recording equipment was not readily available,  
4 and there was no reasonable opportunity to move the capital  
5 interrogee to an interrogation facility or to another location  
6 at which the requisite recording equipment was readily  
7 available;

8           2. The capital interrogee refused to have the  
9 interrogation electronically recorded and such refusal was  
10 electronically recorded;

11           3. The failure to electronically record an entire  
12 interrogation was the result of equipment failure and  
13 obtaining replacement equipment was not feasible; or

14           4. The statement of the capital interrogee was  
15 obtained in the course of electronic eavesdropping that was  
16 being conducted pursuant to a properly obtained and issued  
17 warrant or that required no warrant and was otherwise legally  
18 conducted.

19           (5) Notwithstanding any other provision of this  
20 section, a written, oral, or sign language statement of the  
21 capital interrogee made as a result of a custodial  
22 interrogation is admissible in a criminal proceeding against  
23 the capital interrogee in this state if:

24           (a) The statement was obtained in another state by  
25 investigative personnel of such state, acting independently of  
26 law enforcement personnel of this state, in compliance with  
27 the laws of such state; or

28           (b) The statement was obtained by a federal officer in  
29 this state or another state during a lawful federal  
30 investigation and was obtained in compliance with the laws of  
31 the United States.

1           (6) Every electronic recording of a custodial  
2 interrogation made pursuant to this section must be preserved  
3 until the capital interrogee's conviction for any offense  
4 relating to the interrogation is final and all direct appeals  
5 and collateral challenges are exhausted, the prosecution of  
6 such offenses is barred by law, or the state irrevocably  
7 waives in writing any future prosecution of the capital  
8 interrogee for any offense relating to the interrogation.

9           (7) This section does not preclude the admission into  
10 evidence of a statement made by the capital interrogee:

11           (a) At his or her trial or other hearing held in open  
12 court;

13           (b) Before a grand jury;

14           (c) Which is the res gestae of the arrest or the  
15 offense; or

16           (d) Which does not arise from a custodial  
17 interrogation, as defined in this section.

18           Section 2. The Legislature finds that the reputations  
19 of countless hard-working law enforcement officers are  
20 needlessly attacked by criminal suspects who falsely claim the  
21 officers have violated the suspects' constitutional rights,  
22 that limited trial court resources are squandered in hearings  
23 on motions seeking to suppress statements made by criminal  
24 suspects who are given the opportunity to make such claims  
25 because no recordings of their interrogations exist, and,  
26 further, that judicial resources are squandered when criminal  
27 suspects, after having been convicted of their crimes, file  
28 frivolous and unnecessary appeals. This process costs the  
29 taxpayers of this state untold dollars each year, dollars that  
30 could be better spent enhancing the administration of the  
31 criminal justice system. Low-cost technology is now available

1 in every jurisdiction to record each custodial interrogation  
2 of a criminal suspect, eliminating this gross waste of  
3 resources and enhancing the reliability and reputation of law  
4 enforcement. Therefore, the Legislature determines and  
5 declares that this act fulfills an important state interest.

6           Section 3. This act shall take effect July 1, 2006,  
7 and shall apply to interrogations taking place on or after  
8 that date.

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