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A bill to be entitled
 An act relating to electronic recording of 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 which is reasonably likely to elicit an incriminating response.

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

(2) A statement made by a person during a custodial interrogation shall be presumed to be inadmissible as evidence

29 against that person in a criminal proceeding unless:

30 (a) An electronic recording is made of the custodial
31 interrogation.

32 (b) The recording is substantially accurate and not
33 intentionally altered.

34 (c) Prior to the statement, but during the electronic
35 recording, the person is given all constitutionally required
36 warnings and the person knowingly, intelligently, and
37 voluntarily waives any rights set out in the warnings which
38 would otherwise preclude the admission of the statement absent
39 the waiver of those rights.

40 (d) The electronic recording device was capable of making
41 a true, complete, and accurate recording of the interrogation,
42 the operator of such device was competent, and the electronic
43 recording has not been altered.

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

46 (f) During discovery pursuant to Rule 3.220, Florida Rules
47 of Criminal Procedure, but in no circumstances later than the
48 20th day before the date of the proceeding in which the
49 prosecution intends to offer the statement, the defense is
50 provided with a true, complete, and accurate copy of all
51 electronic recordings of the defendant made pursuant to this
52 section.

53 (3) If the court finds, by a preponderance of the
54 evidence, that the defendant was subjected to a custodial
55 interrogation in violation of this section, any statements made
56 by the defendant during or following that nonrecorded custodial

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57 interrogation, even if otherwise in compliance with this
58 section, are presumed to be inadmissible in any criminal
59 proceeding against the defendant except for the purposes of
60 impeachment.

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

64 1. The statement was both voluntary and reliable.

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

67 (b) As used in paragraph (a), "good cause" includes, but
68 is not limited to, the following circumstances:

69 1. The person refused to have the interrogation
70 electronically recorded and such refusal was electronically
71 recorded;

72 2. The failure to electronically record an entire
73 interrogation was the result of equipment failure and obtaining
74 replacement equipment was not feasible; or

75 3. The statement was obtained in the course of electronic
76 eavesdropping that was being conducted pursuant to a properly
77 obtained and issued warrant or that required no warrant.

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

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

82 (b) Before a grand jury.

83 (c) Which is the res gestae of the arrest or the offense.

84 (d) Which is a spontaneous statement that was not made in

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85 response to a question.

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

88 (f) Which does not arise from a custodial interrogation,
89 as defined by this section.

90 (g) Which was obtained in another state by investigative
91 personnel of such state, acting independently of law enforcement
92 personnel of this state, in compliance with the laws of such
93 state.

94 (h) Which was obtained by a federal officer in this state
95 or another state during a lawful federal investigation and was
96 obtained in compliance with the laws of the United States.

97 (6) This section does not preclude the admission of a
98 statement, otherwise inadmissible under this section, which is
99 used only for impeachment and not as substantive evidence.

100 (7) Each electronic recording of a custodial interrogation
101 made pursuant to this section must be preserved until the
102 person's conviction for any offense relating to the
103 interrogation is final and all direct appeals and collateral
104 challenges are exhausted, the prosecution of such offenses is
105 barred by law, or the state irrevocably waives in writing any
106 future prosecution of the person for any offense relating to the
107 interrogation.

108 Section 2. The Legislature finds that many innocent
109 persons are imprisoned and later released due to false
110 confessions; there are many reasons innocent people confess
111 ranging from coercion to mental illness; electronic recording of
112 interrogations protects the innocent and provides the best

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113 evidence against the guilty; a number of other states and local
114 jurisdictions now require recording of interrogations; and the
115 benefits of electronic recording of interrogations outweigh its
116 cost. Therefore, the Legislature determines and declares that
117 this act fulfills an important state interest.

118 Section 3. This act shall take effect July 1, 2006.