

By Senator Wilson

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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 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.

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

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

4 (a) An electronic recording is made of the custodial
5 interrogation.

6 (b) The recording is substantially accurate and not
7 intentionally altered.

8 (c) Prior to the statement, but during the electronic
9 recording, the person is given all constitutionally required
10 warnings and the person knowingly, intelligently, and
11 voluntarily waives any rights set out in the warnings which
12 would otherwise preclude the admission of the statement absent
13 the waiver of those rights.

14 (d) The electronic recording device was capable of
15 making a true, complete, and accurate recording of the
16 interrogation, the operator of such device was competent, and
17 the electronic recording has not been altered.

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

20 (f) During discovery pursuant to Rule 3.220, Florida
21 Rules of Criminal Procedure, but in no circumstances later
22 than the 20th day before the date of the proceeding in which
23 the prosecution intends to offer the statement, the defense is
24 provided with a true, complete, and accurate copy of all
25 electronic recordings of the defendant made pursuant to this
26 section.

27 (3) If the court finds, by a preponderance of the
28 evidence, that the defendant was subjected to a custodial
29 interrogation in violation of this section, any statements
30 made by the defendant during or following that nonrecorded
31 custodial interrogation, even if otherwise in compliance with

1 this section, are presumed to be inadmissible in any criminal
2 proceeding against the defendant except for the purposes of
3 impeachment.

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

8 1. The statement was both voluntary and reliable.

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

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

13 1. The person refused to have the interrogation
14 electronically recorded and such refusal was electronically
15 recorded;

16 2. The failure to electronically record an entire
17 interrogation was the result of equipment failure and
18 obtaining replacement equipment was not feasible; or

19 3. The statement was obtained in the course of
20 electronic eavesdropping that was being conducted pursuant to
21 a properly obtained and issued warrant or that required no
22 warrant.

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

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

27 (b) Before a grand jury.

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

30 (d) Which is a spontaneous statement that was not made
31 in response to a question.

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

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

5 (g) Which was obtained in another state by
6 investigative personnel of such state, acting independently of
7 law enforcement personnel of this state, in compliance with
8 the laws of such state.

9 (h) Which was obtained by a federal officer in this
10 state or another state during a lawful federal investigation
11 and was obtained in compliance with the laws of the United
12 States.

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

16 (7) Each electronic recording of a custodial
17 interrogation made pursuant to this section must be preserved
18 until the person's conviction for any offense relating to the
19 interrogation is final and all direct appeals and collateral
20 challenges are exhausted, the prosecution of such offenses is
21 barred by law, or the state irrevocably waives in writing any
22 future prosecution of the person for any offense relating to
23 the interrogation.

24 Section 2. The Legislature finds that many innocent
25 persons are imprisoned and later released due to false
26 confessions; there are many reasons innocent people confess
27 ranging from coercion to mental illness; electronic recording
28 of interrogations protects the innocent and provides the best
29 evidence against the guilty; a number of other states and
30 local jurisdictions now require recording of interrogations;
31 and the benefits of electronic recording of interrogations

1 outweigh its cost. Therefore, the Legislature determines and
2 declares that this act fulfills an important state interest.

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

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6 SENATE SUMMARY

7 Provides that statements made during custodial
8 interrogations are presumed to be inadmissible in court
9 unless an electronic recording is made. Provides
10 requirements for such recordings. Provides for rebutting
11 the presumption of inadmissibility for certain
12 nonrecorded statements. Provides exceptions for certain
13 statements. Provides for the use of statements for
14 impeachment purposes. Provides requirements for
15 preserving recordings.
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