

1 A bill to be entitled
 2 An act relating to custodial interrogations in cases
 3 involving capital felonies; creating s. 901.241, F.S.;
 4 providing definitions; describing circumstances in which
 5 an oral, written, or sign-language statement made by a
 6 capital interrogee during a custodial interrogation is
 7 presumed inadmissible as evidence against such person;
 8 describing circumstances in which the prosecution may
 9 rebut such presumption; describing circumstances in which
 10 law enforcement officers may have good cause not to
 11 electronically record all or part of an interrogation;
 12 providing for the admissibility of certain statements of a
 13 capital interrogee when made in certain proceedings or
 14 when obtained by federal officers or officers from other
 15 states; providing for the preservation of electronic
 16 recordings; providing for admissibility of certain
 17 statements of a capital interrogee; providing a finding of
 18 important state interest; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

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

24 901.241 Custodial interrogations in cases involving
 25 capital felonies.--

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

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

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

33 1. Charged with a capital felony; or

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

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

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

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

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

52 (3) An oral, written, or sign-language statement which was
53 made by a capital interrogee during a custodial interrogation
54 shall be presumed to be inadmissible as evidence against such
55 person in a criminal proceeding unless:

56 (a) The interrogation is reproduced in its entirety by

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57 means of an electronic recording.

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

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

68 (d) All persons recorded in the recording who are material
69 to the custodial interrogation are identified on the electronic
70 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 capital interrogee is provided with true,
76 complete, and accurate copies of all electronic recordings of
77 the capital interrogee which are 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), the term "good cause"

85 includes, but is not limited to:

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 and was otherwise legally conducted.

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

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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 interrogee'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 interrogee 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 interrogee:

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

128 (b) Before a grand jury;

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

130 or

131 (d) Which does not arise from a custodial interrogation,
132 as defined in 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

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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 custodial interrogation of a criminal suspect, eliminating this
148 gross waste of resources and enhancing the reliability and
149 reputation of law enforcement officers. 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, 2007.