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1 A bill to be entitled  
2 An act relating to recording of custodial  
3 interrogations; providing legislative intent;  
4 providing definitions; requiring statements made  
5 during a custodial interrogation relating to a crime  
6 to be electronically recorded; providing requirements  
7 for such recordings; providing that statements made  
8 during a custodial interrogation that are not  
9 electronically recorded are presumed to be  
10 inadmissible; providing that the presumption of  
11 inadmissibility may be overcome in certain  
12 circumstances; providing exceptions to the presumption  
13 of inadmissibility for certain statements; requiring  
14 the Department of Law Enforcement to monitor  
15 compliance with the recording requirements and to  
16 develop forms to monitor compliance; requiring trial  
17 judges and prosecutors to submit forms in certain  
18 circumstances; providing requirements for handling and  
19 preservation of electronic recordings; providing an  
20 effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. LEGISLATIVE INTENT.—It is the intent of  
25 Legislature to require the video and audio recording of all  
26 custodial interrogations in this state because properly recorded  
27 interrogations provide the best evidence of the communications  
28 that occurred during an interrogation, prevent disputes about

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29 how an officer conducted himself or herself or treated a suspect  
30 during the course of an interrogation, prevent a defendant from  
31 lying about the account of events that he or she originally  
32 provided to law enforcement, spare judges and jurors the time  
33 and need to assess which account of an interrogation to believe,  
34 and enhance public confidence in the criminal process.

35 Section 2. (1) DEFINITIONS.—As used in this section, the  
36 term:

37 (a) "Custodial interrogation" means any interrogation  
38 involving a law enforcement officer questioning a person that is  
39 reasonably likely to elicit incriminating responses and in which  
40 a reasonable person in the subject's position would consider  
41 himself or herself to be in custody, beginning when the person  
42 should have been advised of his or her constitutional rights  
43 against self-incrimination and right to counsel and ending when  
44 the questioning has completely finished.

45 (b) "Electronic recording" or "electronically recorded"  
46 means an audio and visual recording that is an authentic,  
47 accurate, and unaltered record of a custodial interrogation.

48 (c) "Place of detention" means a jail, police or sheriff  
49 station, holding cell, correctional or detention facility, or  
50 other place where law enforcement officers question persons in  
51 connection with criminal charges or juvenile delinquency  
52 proceedings.

53 (d) "Statement" means an oral, written, sign language, or  
54 nonverbal communication.

55 (2) ELECTRONIC RECORDING PROCEDURES.—

56 (a) A statement made by a person during a custodial

57 interrogation relating to a crime shall be electronically  
58 recorded.

59 (b) If any part of the interrogation necessarily takes  
60 place outside of a place of detention, audio recording is an  
61 acceptable alternative to audio and visual recording.

62 (c) In a place of detention, the camera shall be  
63 simultaneously focused upon both the interrogator and the  
64 suspect.

65 (3) PRESUMPTION OF INADMISSIBILITY.—Except as provided in  
66 subsections (4) and (5), a statement made by a person during a  
67 custodial interrogation that is not electronically recorded, and  
68 a statement made thereafter by the person during the custodial  
69 interrogations, including, but not limited to, a statement that  
70 is electronically recorded, shall be inadmissible as evidence  
71 against the person in any criminal or juvenile delinquency  
72 proceeding brought against the person.

73 (4) OVERCOMING THE PRESUMPTION OF INADMISSIBILITY.—The  
74 presumption of inadmissibility of a statement provided in  
75 subsection (3) may be overcome, and a statement that was not  
76 electronically recorded may be admitted into evidence in a  
77 criminal or juvenile delinquency proceeding brought against the  
78 person who made the statement, if the court finds the following:

79 (a) The statement is admissible under applicable rules of  
80 evidence.

81 (b) The statement is reliable and is proven by clear and  
82 convincing evidence to have been made voluntarily.

83 (c) That, unless not feasible to do so, law enforcement  
84 personnel made a contemporaneous audio and visual record of the

85 reason that prevented the making of an electronic recording of  
86 the statement.

87 (d) That it is proven by clear and convincing evidence  
88 that one or more of the following circumstances existed at the  
89 time of the custodial interrogation:

90 1. The questions put forth by a law enforcement officer,  
91 and the person's responsive statements, were part of the routine  
92 processing or booking of the person;

93 2. Before or during a custodial interrogation, after  
94 having consulted with the person's lawyer, the person  
95 unambiguously declared on videotape that the person would only  
96 respond to the officer's questions if the person's statements  
97 were not electronically recorded;

98 3. The custodial interrogation necessarily took place in  
99 another jurisdiction and was conducted by officials of that  
100 jurisdiction in compliance with the law of that jurisdiction; or

101 4. Exigent circumstances existed that prevented the making  
102 of, or rendered it not feasible to make, an electronic recording  
103 of the custodial interrogation.

104 (5) EXCEPTIONS.—A statement, whether or not electronically  
105 recorded, which is admissible under applicable rules of  
106 evidence, is proven by clear and convincing evidence to have  
107 been made by the person voluntarily, and is reliable, may be  
108 admitted into evidence in a criminal or juvenile delinquency  
109 proceeding brought against the person if the court finds the  
110 custodial interrogation occurred before a grand jury or court.

111 (6) MONITORING REQUIREMENT.—

112 (a) The Department of Law Enforcement shall monitor

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113 compliance with the electronic recording requirement through the  
114 submission of forms that the department develops to survey  
115 recorded interrogations and outcomes and to identify patterns of  
116 noncompliance. The trial judge and the prosecutor shall submit  
117 these forms for:

118 1. A case in which a recorded interrogation was introduced  
119 as evidence in a criminal case;

120 2. A case in which an interrogation was not recorded but  
121 was nonetheless introduced as evidence in a criminal case;

122 3. A case in which an interrogation was recorded and a  
123 plea of guilty to felony charges was entered and accepted by the  
124 court; or

125 4. A case in which an interrogation was not recorded and a  
126 plea of guilty to felony charges was entered and accepted by the  
127 court.

128 (b) The department shall monitor compliance with the  
129 electronic recording requirement through the submission of forms  
130 by each interrogating officer in each case of an unrecorded  
131 interrogation, both those not presumed inadmissible into  
132 evidence under subparagraphs (4) (d) 2., 3., or 4., or those  
133 inadmissible under this section. The department shall develop  
134 these forms, with the expectation that the reporting forms shall  
135 identify any patterns of noncompliance.

136 (7) HANDLING AND PRESERVATION OF ELECTRONIC RECORDINGS.—

137 (a) Law enforcement personnel shall clearly identify and  
138 catalog every electronic recording of a custodial interrogation.

139 (b) If a criminal or juvenile delinquency proceeding is  
140 brought against a person who was the subject of an

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141 electronically recorded custodial interrogation, law enforcement  
142 personnel shall preserve the electronic recording until all  
143 appeals and postconviction and habeas corpus proceedings are  
144 final and concluded, or the time within which such proceedings  
145 must be brought has expired.

146 (c) Upon motion by the defendant, the court may order that  
147 a copy of the recording be preserved for any period beyond the  
148 expiration of all appeals.

149 (d) If no criminal or juvenile delinquency proceeding is  
150 brought against a person who is the subject of an electronically  
151 recorded custodial interrogation, law enforcement personnel  
152 shall preserve the related electronic recording until all  
153 applicable state and federal statutes of limitations bar  
154 prosecution of the person.

155 Section 3. This act shall take effect upon becoming a law.