

By Senator Brandes

24-00773-18

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1 A bill to be entitled
2 An act relating to custodial interrogations; creating
3 s. 900.05, F.S.; defining terms and specifying covered
4 offenses; requiring that a custodial interrogation at
5 a place of detention be electronically recorded in its
6 entirety in connection with certain offenses;
7 requiring law enforcement officers who do not comply
8 with the electronic recording requirement or who
9 conduct custodial interrogations at a place other than
10 a place of detention to prepare a specified report;
11 providing exceptions to the electronic recording
12 requirement; requiring a court to consider a law
13 enforcement officer's failure to comply with the
14 electronic recording requirements in determining the
15 admissibility of a statement unless an exception
16 applies; requiring a court, upon the request of a
17 defendant, to give cautionary instructions to a jury
18 under certain circumstances; providing immunity from
19 civil liability to law enforcement agencies that
20 enforce certain rules; providing that no cause of
21 action is created against a law enforcement officer;
22 providing an effective date.

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

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26 Section 1. Section 900.05, Florida Statutes, is created to
27 read:

28 900.05 Recording of custodial interrogations for certain
29 offenses.-

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30 (1) As used in this section, the term:

31 (a) "Custodial interrogation" means questioning or other
32 conduct by a law enforcement officer which is reasonably likely
33 to elicit an incriminating response from an individual and which
34 occurs under circumstances in which a reasonable individual in
35 the same circumstances would consider himself or herself to be
36 in the custody of a law enforcement agency.

37 (b) "Electronic recording" means an audio recording or an
38 audio and video recording that accurately records a custodial
39 interrogation.

40 (c) "Covered offense" includes:

- 41 1. Arson.
- 42 2. Sexual battery.
- 43 3. Robbery.
- 44 4. Kidnapping.
- 45 5. Aggravated child abuse.
- 46 6. Aggravated abuse of an elderly person or disabled adult.
- 47 7. Aggravated assault with a deadly weapon.
- 48 8. Murder.
- 49 9. Manslaughter.
- 50 10. Aggravated manslaughter of an elderly person or
51 disabled adult.
- 52 11. Aggravated manslaughter of a child.
- 53 12. The unlawful throwing, placing, or discharging of a
54 destructive device or bomb.
- 55 13. Armed burglary.
- 56 14. Aggravated battery.
- 57 15. Aggravated stalking.
- 58 16. Home invasion or robbery.

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59 17. Carjacking.

60 (d) "Place of detention" means a fixed location under the
61 control of a law enforcement agency where persons may be
62 questioned in connection with suspected criminal offenses or
63 where persons are detained temporarily in connection with
64 criminal charges pending a potential arrest or citation,
65 including, but not limited to, a police department or sheriff's
66 office, a correctional facility, or a detention facility. The
67 term does not include a police vehicle.

68 (e) "Statement" means a communication that is oral,
69 written, electronic, nonverbal, or in sign language.

70 (2) (a) A custodial interrogation at a place of detention,
71 including the giving of a required warning, the advisement of
72 the rights of the individual being questioned, and the waiver of
73 any rights by the individual, must be electronically recorded in
74 its entirety if the interrogation is related to a covered
75 offense.

76 (b) If a law enforcement officer conducts a custodial
77 interrogation at a place of detention without electronically
78 recording the interrogation, the officer shall prepare a written
79 report explaining the reason for his or her noncompliance with
80 this section and summarizing the custodial interrogation process
81 and the individual's statements.

82 (c) As soon as practicable, a law enforcement officer who
83 conducts a custodial interrogation at a place other than a place
84 of detention shall prepare a written report explaining the
85 decision to interrogate at that place and summarizing the
86 custodial interrogation process and the individual's statements
87 made at that place.

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88 (d) Paragraph (a) does not apply:

89 1. If an unforeseen equipment malfunction prevents
90 recording the custodial interrogation in its entirety;

91 2. If a suspect refuses to participate in a custodial
92 interrogation if his or her statements are electronically
93 recorded;

94 3. Due to equipment operator error;

95 4. If the statement is made spontaneously and not in
96 response to a custodial interrogation question;

97 5. If a statement is made after questioning that is
98 routinely asked during the processing of the arrest of a
99 suspect;

100 6. If the custodial interrogation occurs when no law
101 enforcement officer participating in the interrogation has
102 knowledge of facts and circumstances that would lead an officer
103 to reasonably believe that the individual being interrogated may
104 have committed a covered offense;

105 7. If the law enforcement officer conducting the custodial
106 interrogation reasonably believes that electronic recording
107 would jeopardize the safety of the officer, individual being
108 interrogated, or others; or

109 8. If the custodial interrogation is conducted outside of
110 the state.

111 (3) Unless a court finds that one or more of the
112 circumstances specified in paragraph (2) (d) apply, the court
113 shall consider a law enforcement officer's failure to make an
114 electronic recording of all or part of a custodial interrogation
115 in determining whether a statement made during the interrogation
116 is admissible. If the court admits into evidence a statement

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117 made during a custodial interrogation that was not
118 electronically recorded as required under paragraph (2) (a), the
119 court must, upon request of the defendant, give cautionary
120 instructions to the jury regarding the law enforcement officer's
121 failure to comply.

122 (4) A law enforcement agency in this state which has
123 enforced rules adopted pursuant to this section which are
124 reasonably designed to ensure compliance with the requirements
125 of this section is not subject to civil liability for damages
126 arising from a violation of this section. This section does not
127 create a cause of action against a law enforcement officer.

128 Section 2. This act shall take effect July 1, 2018.