

By the Committee on Criminal Justice; and Senator Brandes

591-02131-18

20181220c1

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 robbery.

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59 17. Carjacking.

60 (d) "Place of detention" means a police station, sheriff's
61 office, correctional facility, prisoner holding facility, or
62 other governmental facility where an individual may be held in
63 connection with a criminal charge that has been or may be filed
64 against the individual.

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

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

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

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

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

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

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88 2. If a suspect refuses to participate in a custodial
89 interrogation if his or her statements are electronically
90 recorded;

91 3. Due to equipment operator error;

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

94 5. If a statement is made after questioning that is
95 routinely asked during the processing of the arrest of a
96 suspect;

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

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

106 8. If the custodial interrogation is conducted outside of
107 the state.

108 (3) Unless a court finds that one or more of the
109 circumstances specified in paragraph (2) (d) apply, the court
110 shall consider a law enforcement officer's failure to make an
111 electronic recording of all or part of a custodial interrogation
112 in determining whether a statement made during the interrogation
113 is admissible. If the court admits into evidence a statement
114 made during a custodial interrogation that was not
115 electronically recorded as required under paragraph (2) (a), the
116 court must, upon request of the defendant, give cautionary

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117 instructions to the jury regarding the law enforcement officer's
118 failure to comply.

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

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