

1 A bill to be entitled
 2 An act relating to the recording of custodial
 3 interrogations; creating s. 925.13, F.S.; providing
 4 definitions; requiring statements made during
 5 custodial interrogations conducted at places of
 6 detention to be electronically recorded in certain
 7 circumstances; providing exceptions; requiring law
 8 enforcement officers who conduct custodial
 9 interrogations without electronically recording them
 10 or conduct custodial interrogations outside places of
 11 detention to prepare written reports that include
 12 specified information; requiring a court to consider
 13 the failure to electronically record a custodial
 14 interrogation as a factor in determining the
 15 admissibility of statements and to give a jury
 16 cautionary instructions in certain circumstances;
 17 providing civil immunity for law enforcement agencies
 18 that enforce rules meeting specified requirements;
 19 providing construction; providing an effective date.

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

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 23 Section 1. Section 925.13, Florida Statutes, is created to
 24 read:
 25 925.13 Recording custodial interrogations.-

26 (1) As used in this section, the term:
 27 (a) "Covered offense" means:
 28 1. Murder under s. 782.04.
 29 2. Manslaughter under s. 782.07.
 30 3. Sexual battery under s. 794.011.
 31 (b) "Custodial interrogation" means questioning initiated
 32 by a law enforcement officer that is reasonably likely to elicit
 33 an incriminating response from an individual under circumstances
 34 in which a reasonable individual would consider himself or
 35 herself to be in custody.
 36 (c) "Electronically recording" means making an audio
 37 recording or an audio and video recording that accurately
 38 records a custodial interrogation.
 39 (d) "Place of detention" means a fixed location under the
 40 control of law enforcement at which an individual may be
 41 questioned or temporarily detained in connection with a criminal
 42 offense pending a potential arrest or citation issued by an
 43 entity that is authorized to make an arrest or issue a citation
 44 including, but not limited to, a law enforcement agency or
 45 sheriff's office, a correctional facility, or a detention
 46 facility. The term does not include a law enforcement vehicle.
 47 (e) "Statement" means a communication whether it is oral,
 48 written, electronic, nonverbal, or in sign language.
 49 (2) (a) Except as otherwise provided in paragraph (b), a
 50 custodial interrogation at a place of detention, including the

51 issuance of any required warning, advice regarding the rights of
52 the individual being questioned, and waiver of any rights by the
53 individual, must be electronically recorded in its entirety if
54 the custodial interrogation relates to a covered offense.

55 (b) Paragraph (a) does not apply if:

56 1. An equipment malfunction prevents the custodial
57 interrogation from being electronically recorded in whole or in
58 part.

59 2. The individual refuses to participate in the custodial
60 interrogation if his or her statements are electronically
61 recorded.

62 3. An equipment operator error prevents the custodial
63 interrogation from being electronically recorded in whole or in
64 part.

65 4. A statement is made spontaneously and not in response
66 to a question asked in a custodial interrogation.

67 5. A statement is made after routine questioning during
68 the processing of the arrest of an individual.

69 6. The custodial interrogation occurs when a law
70 enforcement officer conducting such interrogation does not have
71 any knowledge of facts and circumstances that would lead the
72 officer to reasonably believe that the individual being
73 interrogated may have committed a covered offense.

74 7. The law enforcement officer conducting the custodial
75 interrogation reasonably believes that electronically recording

76 such interrogation would jeopardize the safety of the officer,
77 the individual being interrogated, or others.

78 8. The custodial interrogation is conducted outside of
79 the state.

80 (3) If a law enforcement officer conducts a custodial
81 interrogation:

82 (a) Without electronically recording it in whole or in
83 part, the officer shall prepare a written report explaining the
84 reason he or she did not comply with paragraph (2) (a) and
85 summarizing the custodial interrogation process and the
86 individual's unrecorded statements.

87 (b) Outside a place of detention, the officer shall
88 prepare a written report explaining the reason he or she did not
89 comply with paragraph (2) (a) and summarizing the custodial
90 interrogation process and the individual's statements.

91 (4) (a) Unless the court finds that an exception in
92 paragraph (2) (b) applies, the court shall consider the failure
93 to electronically record a custodial interrogation in compliance
94 with paragraph (2) (a) as a factor in determining whether a
95 statement made during the custodial interrogation is admissible.

96 (b) If the court admits into evidence a statement made
97 during a custodial interrogation that was not electronically
98 recorded in compliance with paragraph (2) (a), the court, upon
99 the defendant's request, shall give cautionary instructions to
100 the jury regarding the state's failure to comply.

101 (5) A law enforcement agency that has enforced rules for
102 its personnel that are reasonably designed to ensure compliance
103 with this section is not subject to civil liability for damages
104 arising from a violation of this section.

105 (6) This section does not create a cause of action against
106 a law enforcement officer.

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