

1 A bill to be entitled
2 An act relating to detention facilities; creating s.
3 900.06, 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 amending s. 951.22, F.S.; providing an exception to a
23 prohibition on contraband for certain legal documents
24 or correspondence; prohibiting introduction into or
25 possession of any cellular telephone or other portable

26 communication device on the grounds of any county
 27 detention facility; defining the term "portable
 28 communication device"; providing criminal penalties;
 29 amending s. 921.0022, F.S.; conforming a cross-
 30 reference; conforming a provision to changes made by
 31 the act; providing an effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Section 900.06, Florida Statutes, is created to
 36 read:

37 900.06 Recording of custodial interrogations for certain
 38 offenses.—

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

40 (a) "Custodial interrogation" means questioning or other
 41 conduct by a law enforcement officer which is reasonably likely
 42 to elicit an incriminating response from an individual and which
 43 occurs under circumstances in which a reasonable individual in
 44 the same circumstances would consider himself or herself to be
 45 in the custody of a law enforcement agency.

46 (b) "Electronic recording" means an audio recording or an
 47 audio and video recording that accurately records a custodial
 48 interrogation.

49 (c) "Covered offense" includes:

50 1. Arson.

- 51 2. Sexual battery.
- 52 3. Robbery.
- 53 4. Kidnapping.
- 54 5. Aggravated child abuse.
- 55 6. Aggravated abuse of an elderly person or disabled
- 56 adult.
- 57 7. Aggravated assault with a deadly weapon.
- 58 8. Murder.
- 59 9. Manslaughter.
- 60 10. Aggravated manslaughter of an elderly person or
- 61 disabled adult.
- 62 11. Aggravated manslaughter of a child.
- 63 12. The unlawful throwing, placing, or discharging of a
- 64 destructive device or bomb.
- 65 13. Armed burglary.
- 66 14. Aggravated battery.
- 67 15. Aggravated stalking.
- 68 16. Home-invasion robbery.
- 69 17. Carjacking.
- 70 (d) "Place of detention" means a police station, sheriff's
- 71 office, correctional facility, prisoner holding facility, or
- 72 other governmental facility where an individual may be held in
- 73 connection with a criminal charge that has been or may be filed
- 74 against the individual.
- 75 (e) "Statement" means a communication that is oral,

76 written, electronic, nonverbal, or in sign language.

77 (2) (a) A custodial interrogation at a place of detention,
78 including the giving of a required warning, the advisement of
79 the rights of the individual being questioned, and the waiver of
80 any rights by the individual, must be electronically recorded in
81 its entirety if the interrogation is related to a covered
82 offense.

83 (b) If a law enforcement officer conducts a custodial
84 interrogation at a place of detention without electronically
85 recording the interrogation, the officer must prepare a written
86 report explaining the reason why he or she did not record the
87 interrogation.

88 (c) As soon as practicable, a law enforcement officer who
89 conducts a custodial interrogation at a place other than a place
90 of detention shall prepare a written report explaining the
91 circumstances of the interrogation at that place and summarizing
92 the custodial interrogation process and the individual's
93 statements made at that place.

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

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

97 2. If a suspect refuses to participate in a custodial
98 interrogation if his or her statements are to be electronically
99 recorded;

100 3. If an equipment operator error prevents recording the

101 custodial interrogation in its entirety;

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

104 5. If the statement is made during the processing of the
105 arrest of a suspect;

106 6. If the custodial interrogation occurs when the law
107 enforcement officer participating in the interrogation does not
108 have any knowledge of facts and circumstances that would lead an
109 officer to reasonably believe that the individual being
110 interrogated may have committed a covered offense;

111 7. If the law enforcement officer conducting the custodial
112 interrogation reasonably believes that making an electronic
113 recording would jeopardize the safety of the officer, the
114 individual being interrogated, or others; or

115 8. If the custodial interrogation is conducted outside of
116 this state.

117 (3) Unless a court finds that one or more of the
118 circumstances specified in paragraph (2) (d) apply, the court
119 must consider the circumstances of an interrogation conducted by
120 a law enforcement officer in which he or she did not
121 electronically record all or part of a custodial interrogation
122 in determining whether a statement made during the interrogation
123 is admissible. If the court admits into evidence a statement
124 made during a custodial interrogation that was not
125 electronically recorded as required under paragraph (2) (a), the

126 court must, upon request of the defendant, give cautionary
 127 instructions to the jury regarding the law enforcement officer's
 128 failure to comply with that requirement.

129 (4) A law enforcement agency in this state which has
 130 enforced rules adopted pursuant to this section which are
 131 reasonably designed to ensure compliance with the requirements
 132 of this section is not subject to civil liability for damages
 133 arising from a violation of this section. This section does not
 134 create a cause of action against a law enforcement officer.

135 Section 2. Section 951.22, Florida Statutes, is amended to
 136 read:

137 951.22 County detention facilities; contraband articles.-

138 (1) It is unlawful, except through regular channels as
 139 duly authorized by the sheriff or officer in charge, to
 140 introduce into or possess upon the grounds of any county
 141 detention facility as defined in s. 951.23 or to give to or
 142 receive from any inmate of any such facility wherever said
 143 inmate is located at the time or to take or to attempt to take
 144 or send therefrom any of the following articles, which are
 145 hereby declared to be contraband:

146 (a) ~~for the purposes of this act, to wit:~~ Any written or
 147 recorded communication. This paragraph does not apply to any
 148 documents or correspondence exchanged between a lawyer,
 149 paralegal, or other legal staff, and an inmate during a visit to
 150 a detention facility if these documents or correspondence are

151 otherwise lawfully possessed and disseminated and relate to
 152 legal representation of any person.~~†~~

153 (b) Any currency or coin.~~†~~

154 (c) Any article of food or clothing.~~†~~

155 (d) Any tobacco products as defined in s. 210.25(12).~~†~~

156 (e) Any cigarette as defined in s. 210.01(1).~~†~~

157 (f) Any cigar.~~†~~

158 (g) Any intoxicating beverage or beverage ~~that~~ which
 159 causes or may cause an intoxicating effect.~~†~~

160 (h) Any narcotic, hypnotic, or excitative drug or drug of
 161 any kind or nature, including nasal inhalators, sleeping pills,
 162 barbiturates, and controlled substances as defined in s.
 163 893.02(4).~~†~~

164 (i) Any firearm or any instrumentality customarily used or
 165 which is intended to be used as a dangerous weapon.~~†~~ ~~and~~

166 (j) Any instrumentality of any nature which ~~that~~ may be or
 167 is intended to be used as an aid in effecting or attempting to
 168 effect an escape from a county facility.

169 (k) Any cellular telephone or other portable communication
 170 device intentionally and unlawfully introduced inside the secure
 171 perimeter of a county detention facility without prior
 172 authorization or consent from the sheriff or officer in charge
 173 of such detention facility. As used in this paragraph, the term
 174 "portable communication device" means any device carried, worn,
 175 or stored which is designed or intended to receive or transmit

176 verbal or written messages, access or store data, or connect
177 electronically to the Internet, or any other electronic device
178 and which allows communications in any form. Such devices
179 include, but are not limited to, portable two-way pagers,
180 handheld radios, cellular telephones, Blackberry-type devices,
181 personal digital assistants, laptop computers, or any components
182 of these devices which are intended to be used to assemble such
183 devices. The term also includes any new technology that is
184 developed for similar purposes. The term does not include any
185 device that has communication capabilities which has been
186 approved or issued by the sheriff or officer in charge for
187 investigative or institutional security purposes or for
188 conducting other official business.

189 (2) A person who ~~Whoever~~ violates paragraph (1) (a),
190 paragraph (1) (b), paragraph (1) (c), paragraph (1) (d), paragraph
191 (1) (e), paragraph (1) (f), or paragraph (1) (g) commits a
192 misdemeanor of the first degree, punishable as provided in s.
193 775.082 or s. 775.083. A person who violates paragraph (1) (h),
194 paragraph (1) (i), paragraph (1) (j), or paragraph (1) (k) commits
195 ~~subsection (1) shall be guilty of a felony of the third degree,~~
196 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

197 Section 3. Paragraph (f) of subsection (3) of section
198 921.0022, Florida Statutes, is amended to read:

199 921.0022 Criminal Punishment Code; offense severity
200 ranking chart.—

201	(3) OFFENSE SEVERITY RANKING CHART		
202	(f) LEVEL 6		
203	Florida Statute	Felony Degree	Description
204	316.027 (2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
205	316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
206	400.9935 (4) (c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
207	499.0051 (2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
208	499.0051 (3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
209			

210	499.0051 (4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
211	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
212	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
213	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
214	784.041	3rd	Felony battery; domestic battery by strangulation.
215	784.048 (3)	3rd	Aggravated stalking; credible threat.
216	784.048 (5)	3rd	Aggravated stalking of person under 16.
217	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.

218	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
219	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
220	784.081 (2)	2nd	Aggravated assault on specified official or employee.
221	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
222	784.083 (2)	2nd	Aggravated assault on code inspector.
223	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
224	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
	790.161 (2)	2nd	Make, possess, or throw

destructive device with intent
to do bodily harm or damage
property.

225

790.164(1) 2nd False report concerning bomb,
explosive, weapon of mass
destruction, act of arson or
violence to state property, or
use of firearms in violent
manner.

226

790.19 2nd Shooting or throwing deadly
missiles into dwellings,
vessels, or vehicles.

227

794.011(8)(a) 3rd Solicitation of minor to
participate in sexual activity
by custodial adult.

228

794.05(1) 2nd Unlawful sexual activity with
specified minor.

229

800.04(5)(d) 3rd Lewd or lascivious molestation;
victim 12 years of age or older
but less than 16 years of age;

offender less than 18 years.

230

800.04 (6) (b) 2nd Lewd or lascivious conduct;
offender 18 years of age or
older.

231

806.031 (2) 2nd Arson resulting in great bodily
harm to firefighter or any other
person.

232

810.02 (3) (c) 2nd Burglary of occupied structure;
unarmed; no assault or battery.

233

810.145 (8) (b) 2nd Video voyeurism; certain minor
victims; 2nd or subsequent
offense.

234

812.014 (2) (b) 1. 2nd Property stolen \$20,000 or more,
but less than \$100,000, grand
theft in 2nd degree.

235

812.014 (6) 2nd Theft; property stolen \$3,000 or
more; coordination of others.

236

812.015 (9) (a) 2nd Retail theft; property stolen

\$300 or more; second or subsequent conviction.

237

812.015 (9) (b) 2nd Retail theft; property stolen \$3,000 or more; coordination of others.

238

812.13 (2) (c) 2nd Robbery, no firearm or other weapon (strong-arm robbery).

239

817.4821 (5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

240

817.505 (4) (b) 2nd Patient brokering; 10 or more patients.

241

825.102 (1) 3rd Abuse of an elderly person or disabled adult.

242

825.102 (3) (c) 3rd Neglect of an elderly person or disabled adult.

243

825.1025 (3) 3rd Lewd or lascivious molestation of an elderly person or disabled

adult.

244

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

245

827.03 (2) (c) 3rd Abuse of a child.

246

827.03 (2) (d) 3rd Neglect of a child.

247

827.071 (2) & (3) 2nd Use or induce a child in a sexual performance, or promote or direct such performance.

248

836.05 2nd Threats; extortion.

249

836.10 2nd Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.

250

843.12 3rd Aids or assists person to escape.

251

847.011 3rd Distributing, offering to distribute, or possessing with

intent to distribute obscene materials depicting minors.

252

847.012 3rd Knowingly using a minor in the production of materials harmful to minors.

253

847.0135(2) 3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

254

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

255

944.35(3)(a)2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

256

944.40 2nd Escapes.

257

944.46 3rd Harboring, concealing, aiding

escaped prisoners.

258

944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

259

951.22(1)(h)-(k) 3rd Introduction of contraband into
~~951.22(1)~~ county detention facility
~~Intoxicating drug, firearm, or~~
~~weapon introduced into county~~
~~facility.~~

260

261 Section 4. This act shall take effect January 1, 2020.