

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.

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

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 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

HB 393

2013

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

HB 393

2013

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

HB 393

2013

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.