## Florida Senate - 2007

By Senator Geller

31-238-07

| 1  | A bill to be entitled                                     |
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| 2  | An act relating to custodial interrogations in            |
| 3  | cases involving capital felonies; creating s.             |
| 4  | 901.241, F.S.; providing definitions;                     |
| 5  | describing circumstances in which an oral,                |
| б  | written, or sign-language statement made by a             |
| 7  | capital interrogee during a custodial                     |
| 8  | interrogation is presumed inadmissible as                 |
| 9  | evidence against such person; describing                  |
| 10 | circumstances in which the prosecution may                |
| 11 | rebut such presumption; describing                        |
| 12 | circumstances in which law enforcement officers           |
| 13 | may have good cause not to electronically                 |
| 14 | record all or part of an interrogation;                   |
| 15 | providing for the admissibility of certain                |
| 16 | statements of a capital interrogee when made in           |
| 17 | certain proceedings or when obtained by federal           |
| 18 | officers or officers from other states;                   |
| 19 | providing for the preservation of electronic              |
| 20 | recordings; providing for admissibility of                |
| 21 | certain statements of a capital interrogee;               |
| 22 | providing a finding of important state                    |
| 23 | interest; providing an effective date.                    |
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| 25 | Be It Enacted by the Legislature of the State of Florida: |
| 26 |   |
| 27 | Section 1. Section 901.241, Florida Statutes, is          |
| 28 | created to read:  |
| 29 | 901.241 Custodial interrogations in cases involving       |
| 30 | <u>capital felonies</u>                                   |
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| 1        | (1) This section applies to custodial interrogations   |
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| 2        | in which the capital interrogee is suspected of involvement in   |
| 3        | <u>a capital felony.</u>   |
| 4        | (2) As used in this section, the term:   |
| 5        | (a) "Capital interrogee" means a person who, at the  |
| 6        | time of the interrogation and concerning any topic of the  |
| 7        | interrogation, is:   |
| 8        | 1. Charged with a capital felony; or   |
| 9        | 2. Suspected by those conducting the interrogation or  |
| 10       | investigating the capital felony of involvement in the capital   |
| 11       | felony.  |
| 12       | (b) "Custodial interrogation" or "interrogation" means   |
| 13       | questioning of a capital interrogee in circumstances in which  |
| 14       | a reasonable person placed in the same position would believe  |
| 15       | that his or her freedom of action was curtailed to a degree  |
| 16       | associated with actual arrest.   |
| 17       | (c) "Electronic recording" means a true, complete, and   |
| 18       | accurate reproduction of a custodial interrogation. An   |
| 19       | electronic recording may be created by motion picture,   |
| 20       | videotape, audiotape, or digital or other media.   |
| 21       | (d) "Involvement" means participation in a crime as a  |
| 22       | principal or an accessory.   |
| 23       | (e) "Interrogation facility" means a law enforcement   |
| 24       | facility, correctional facility, community correctional  |
| 25       | center, detention facility, law enforcement vehicle,   |
| 26       | courthouse, or other secure environment.   |
| 27       | (3) An oral, written, or sign-language statement which   |
| 28       | was made by a capital interrogee during a custodial  |
|          |  |
| 29       | interrogation shall be presumed to be inadmissible as evidence   |
| 29<br>30 | interrogation shall be presumed to be inadmissible as evidence<br>against such person in a criminal proceeding unless: |

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| 1  | (a) The interrogation is reproduced in its entirety by        |
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| 2  | means of an electronic recording.                             |
| 3  | (b) Prior to the statement, but during the electronic         |
| 4  | recording, the capital interrogee is given all                |
| 5  | constitutionally required warnings and the capital interrogee |
| 6  | knowingly, intelligently, and voluntarily waives any rights   |
| 7  | set out in the warnings which would, absent such waiver,      |
| 8  | otherwise preclude the admission of the statement.            |
| 9  | (c) The electronic recording device was capable of            |
| 10 | making a true, complete, and accurate recording of the        |
| 11 | interrogation, the operator of such device was competent, and |
| 12 | the electronic recording has not been altered.                |
| 13 | (d) All persons recorded in the recording who are             |
| 14 | material to the custodial interrogation are identified on the |
| 15 | electronic recording.   |
| 16 | (e) During discovery pursuant to Rule 3.220, Florida          |
| 17 | Rules of Criminal Procedure, but in no circumstances later    |
| 18 | than the 20th day before the date of the proceeding in which  |
| 19 | the prosecution intends to offer the statement, the attorney  |
| 20 | representing a capital interrogee is provided with true,      |
| 21 | complete, and accurate copies of all electronic recordings of |
| 22 | the capital interrogee which are made pursuant to this        |
| 23 | section.  |
| 24 | (4)(a) In the absence of a true, complete, and                |
| 25 | accurate electronic recording, the prosecution may rebut a    |
| 26 | presumption of inadmissibility through clear and convincing   |
| 27 | evidence that:  |
| 28 | 1. The statement was both voluntary and reliable.             |
| 29 | 2. Law enforcement officers had good cause not to             |
| 30 | electronically record all or part of the interrogation.       |
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1 (b) For purposes of paragraph (a), the term "good 2 cause" includes, but is not limited to: 3 1. The interrogation occurred in a location other than 4 an interrogation facility under exigent circumstances where 5 the requisite recording equipment was not readily available, 6 and there was no reasonable opportunity to move the capital 7 interrogee to an interrogation facility or to another location 8 at which the requisite recording equipment was readily available; 9 10 2. The capital interrogee refused to have the interrogation electronically recorded and such refusal was 11 12 electronically recorded; 13 3. The failure to electronically record an entire interrogation was the result of equipment failure and 14 obtaining replacement equipment was not feasible; or 15 The statement of the capital interrogee was 16 17 obtained in the course of electronic eavesdropping that was 18 being conducted pursuant to a properly obtained and issued warrant or that required no warrant and was otherwise legally 19 conducted. 20 21 (5) Notwithstanding any other provision of this section, a written, oral, or sign-language statement of the 2.2 23 capital interrogee which was made as a result of a custodial interrogation is admissible in a criminal proceeding against 2.4 the capital interrogee in this state if: 25 (a) The statement was obtained in another state by 26 27 investigative personnel of such state, acting independently of 2.8 law enforcement personnel of this state, in compliance with 29 the laws of such state; or 30 (b) The statement was obtained by a federal officer in this state or another state during a lawful federal 31

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| 1  | investigation and was obtained in compliance with the laws of  |
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| 2  | the United States.   |
| 3  | (6) Every electronic recording of a custodial                  |
| 4  | interrogation made pursuant to this section must be preserved  |
| 5  | until the capital interrogee's conviction for any offense      |
| 6  | relating to the interrogation is final and all direct appeals  |
| 7  | and collateral challenges are exhausted, the prosecution of    |
| 8  | such offenses is barred by law, or the state irrevocably       |
| 9  | waives in writing any future prosecution of the capital        |
| 10 | interrogee for any offense relating to the interrogation.      |
| 11 | (7) This section does not preclude the admission into          |
| 12 | evidence of a statement made by the capital interrogee:        |
| 13 | (a) At his or her trial or other hearing held in open          |
| 14 | <u>court;</u>  |
| 15 | (b) Before a grand jury;                                       |
| 16 | (c) Which is the res gestae of the arrest or the               |
| 17 | offense; or  |
| 18 | (d) Which does not arise from a custodial                      |
| 19 | interrogation, as defined in this section.                     |
| 20 | Section 2. <u>The Legislature finds that the reputations</u>   |
| 21 | of countless hard-working law enforcement officers are         |
| 22 | needlessly attacked by criminal suspects who falsely claim the |
| 23 | officers have violated the suspects' constitutional rights,    |
| 24 | that limited trial court resources are squandered in hearings  |
| 25 | on motions seeking to suppress statements made by criminal     |
| 26 | suspects who are given the opportunity to make such claims     |
| 27 | because no recordings of their interrogations exist, and,      |
| 28 | further, that judicial resources are squandered when criminal  |
| 29 | suspects, after having been convicted of their crimes, file    |
| 30 | frivolous and unnecessary appeals. This process costs the      |
| 31 | taxpayers of this state untold dollars each year, dollars that |
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| 1  | could be better spent enhancing the administration of the  |
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| 2  | criminal justice system. Low-cost technology is now available  |
| 3  | in every jurisdiction to record each custodial interrogation   |
| 4  | of a criminal suspect, eliminating this gross waste of   |
| 5  | resources and enhancing the reliability and reputation of law  |
| 6  | enforcement officers. Therefore, the Legislature determines  |
| 7  | and declares that this act fulfills an important state   |
| 8  | interest.  |
| 9  | Section 3. This act shall take effect July 1, 2007.  |
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| 12 | SENATE SUMMARY   |
| 13 | Provides definitions. Describes circumstances in which an oral, written, or sign-language statement made by a    |
| 14 | capital interrogee during a custodial interrogation is<br>presumed inadmissible as evidence against such person. |
| 15 | Describes circumstances in which the prosecution may<br>rebut such presumption. Describes circumstances in which |
| 16 | law enforcement officers may have good cause not to<br>electronically record all or part of an interrogation.    |
| 17 | Provides for the admissibility of certain statements of a capital interrogee when made in certain proceedings or |
| 18 | when obtained by federal officers or officers from other states. Provides for the preservation of electronic     |
| 19 | recordings. Provides for admissibility of certain statements of a capital interrogee. Provides a finding of      |
| 20 | important state interest.  |
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