

By the Committees on Judiciary; and Criminal Justice; and
Senator Brandes

590-03480-18

20181220c2

1 A bill to be entitled
2 An act relating to detention facilities; creating s.
3 900.05, 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 amending s. 951.22, F.S.; prohibiting introduction
23 into or possession of, on the grounds of any county
24 detention facility, any cellular telephone or other
25 portable communication device; defining the term
26 "portable communication device"; providing criminal
27 penalties; amending s. 921.0022, F.S.; conforming a
28 cross-reference; conforming a provision to changes
29 made by the act; providing an effective date.

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

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33 Section 1. Section 900.05, Florida Statutes, is created to
34 read:

35 900.05 Recording of custodial interrogations for certain
36 offenses.-

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

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

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

47 (c) "Covered offense" includes:

48 1. Arson.

49 2. Sexual battery.

50 3. Robbery.

51 4. Kidnapping.

52 5. Aggravated child abuse.

53 6. Aggravated abuse of an elderly person or disabled adult.

54 7. Aggravated assault with a deadly weapon.

55 8. Murder.

56 9. Manslaughter.

57 10. Aggravated manslaughter of an elderly person or
58 disabled adult.

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59 11. Aggravated manslaughter of a child.

60 12. The unlawful throwing, placing, or discharging of a
61 destructive device or bomb.

62 13. Armed burglary.

63 14. Aggravated battery.

64 15. Aggravated stalking.

65 16. Home-invasion robbery.

66 17. Carjacking.

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

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

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

80 (b) If a law enforcement officer conducts a custodial
81 interrogation at a place of detention without electronically
82 recording the interrogation, the officer shall prepare a written
83 report explaining the reason for his or her noncompliance with
84 this section and summarizing the custodial interrogation process
85 and the individual's statements.

86 (c) As soon as practicable, a law enforcement officer who
87 conducts a custodial interrogation at a place other than a place

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88 of detention shall prepare a written report explaining the
89 decision to interrogate at that place and summarizing the
90 custodial interrogation process and the individual's statements
91 made at that place.

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

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

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

98 3. Due to equipment operator error;

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

101 5. If a statement is made after questioning that is
102 routinely asked during the processing of the arrest of a
103 suspect;

104 6. If the custodial interrogation occurs when no law
105 enforcement officer participating in the interrogation has
106 knowledge of facts and circumstances that would lead an officer
107 to reasonably believe that the individual being interrogated may
108 have committed a covered offense;

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

113 8. If the custodial interrogation is conducted outside of
114 the state.

115 (3) Unless a court finds that one or more of the
116 circumstances specified in paragraph (2) (d) apply, the court

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117 must consider a law enforcement officer's failure to make an
118 electronic recording of all or part of a custodial interrogation
119 in determining whether a statement made during the interrogation
120 is admissible. If the court admits into evidence a statement
121 made during a custodial interrogation that was not
122 electronically recorded as required under paragraph (2) (a), the
123 court must, upon request of the defendant, give cautionary
124 instructions to the jury regarding the law enforcement officer's
125 failure to comply.

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

132 Section 2. Section 951.22, Florida Statutes, is amended to
133 read:

134 951.22 County detention facilities; contraband articles.—

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

143 (a) ~~for the purposes of this act, to wit:~~ Any written or
144 recorded communication.†

145 (b) Any currency or coin.†

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- 146 (c) Any article of food or clothing.~~†~~
- 147 (d) Any tobacco products as defined in s. 210.25(12).~~†~~
- 148 (e) Any cigarette as defined in s. 210.01(1).~~†~~
- 149 (f) Any cigar.~~†~~
- 150 (g) Any intoxicating beverage or beverage which causes or
151 may cause an intoxicating effect.~~†~~
- 152 (h) Any narcotic, hypnotic, or excitative drug or drug of
153 any kind or nature, including nasal inhalators, sleeping pills,
154 barbiturates, and controlled substances as defined in s.
155 893.02(4).~~†~~
- 156 (i) Any firearm or any instrumentality customarily used or
157 which is intended to be used as a dangerous weapon.~~†~~~~and~~
- 158 (j) Any instrumentality of any nature that may be or is
159 intended to be used as an aid in effecting or attempting to
160 effect an escape from a county facility.
- 161 (k) Any cellular telephone or other portable communication
162 device intentionally and unlawfully introduced inside the secure
163 perimeter of a county detention facility without prior
164 authorization or consent from the sheriff or officer in charge
165 of such detention facility. As used in this paragraph, the term
166 "portable communication device" means any device carried, worn,
167 or stored which is designed or intended to receive or transmit
168 verbal or written messages, access or store data, or connect
169 electronically to the Internet or any other electronic device
170 and which allows communications in any form. Such devices
171 include, but are not limited to, portable two-way pagers,
172 handheld radios, cellular telephones, Blackberry-type devices,
173 personal digital assistants or PDAs, laptop computers, or any
174 components of these devices which are intended to be used to

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175 assemble such devices. The term also includes any new technology
 176 that is developed for similar purposes. Excluded from this
 177 definition is any device having communication capabilities which
 178 has been approved or issued by the sheriff or officer in charge
 179 for investigative or institutional security purposes or for
 180 conducting other official business.

181 (2) A person who ~~Whoever~~ violates paragraph (1) (a), (b),
 182 (c), (d), (e), (f), or (g) commits a misdemeanor of the first
 183 degree, punishable as provided in s. 775.082 or s. 775.083. A
 184 person who violates paragraph (1) (h), (i), (j), or (k) commits
 185 ~~subsection (1) shall be guilty of a felony of the third degree,~~
 186 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

187 Section 3. Paragraph (f) of subsection (3) of section
 188 921.0022, Florida Statutes, is amended to read:

189 921.0022 Criminal Punishment Code; offense severity ranking
 190 chart.-

191 (3) OFFENSE SEVERITY RANKING CHART

192 (f) LEVEL 6

193

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.

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- 400.9935 (4) (c) 2nd Operating a clinic, or offering services requiring licensure, without a license.
- 499.0051 (2) 2nd Knowing forgery of transaction history, transaction information, or transaction statement.
- 499.0051 (3) 2nd Knowing purchase or receipt of prescription drug from unauthorized person.
- 499.0051 (4) 2nd Knowing sale or transfer of prescription drug to unauthorized person.
- 775.0875 (1) 3rd Taking firearm from law enforcement officer.
- 784.021 (1) (a) 3rd Aggravated assault; deadly weapon without intent to kill.
- 784.021 (1) (b) 3rd Aggravated assault; intent to commit felony.
- 784.041 3rd Felony battery; domestic battery by strangulation.

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784.048 (3) 3rd Aggravated stalking; credible threat.

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784.048 (5) 3rd Aggravated stalking of person under 16.

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784.07 (2) (c) 2nd Aggravated assault on law enforcement officer.

208

784.074 (1) (b) 2nd Aggravated assault on sexually violent predators facility staff.

209

784.08 (2) (b) 2nd Aggravated assault on a person 65 years of age or older.

210

784.081 (2) 2nd Aggravated assault on specified official or employee.

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784.082 (2) 2nd Aggravated assault by detained person on visitor or other detainee.

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784.083 (2) 2nd Aggravated assault on code inspector.

787.02 (2) 3rd False imprisonment; restraining with purpose other than those in s. 787.01.

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790.115(2)(d) 2nd Discharging firearm or weapon
on school property.

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790.161(2) 2nd Make, possess, or throw
destructive device with intent
to do bodily harm or damage
property.

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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.

216

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

217

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

218

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

219

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

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

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

229

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

230

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

231

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

232

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

233

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

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

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827.03 (2) (c)	3rd	Abuse of a child.
827.03 (2) (d)	3rd	Neglect of a child.
827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

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

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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.

247

944.40 2nd Escapes.

248

944.46 3rd Harboring, concealing, aiding
escaped prisoners.

249

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

250

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

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Section 4. This act shall take effect January 1, 2019.