

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

590-03480-18

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

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

900.05 Recording of custodial interrogations for certain offenses.-

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

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

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

(c) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

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

7. Aggravated assault with a deadly weapon.

8. Murder.

9. Manslaughter.

10. Aggravated manslaughter of an elderly person or 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.

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

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

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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.

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

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

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

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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.
812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.505 (4) (b)	2nd	Patient brokering; 10 or more patients.
825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
825.102 (3) (c)	3rd	Neglect of an elderly person or disabled adult.
825.1025 (3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
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.

