

By Senator Brandes

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

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

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

900.06 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 must prepare a written
83 report explaining the reason why he or she did not record the
84 interrogation.

85 (c) As soon as practicable, a law enforcement officer who
86 conducts a custodial interrogation at a place other than a place
87 of detention shall prepare a written report explaining the

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88 circumstances of the interrogation at that place and summarizing
89 the custodial interrogation process and the individual's
90 statements made at that place.

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

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

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

97 3. If an equipment operator error prevents recording the
98 custodial interrogation in its entirety;

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

101 5. If the statement is made during the processing of the
102 arrest of a suspect;

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

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

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

114 (3) Unless a court finds that one or more of the
115 circumstances specified in paragraph (2)(d) apply, the court
116 must consider the circumstances of an interrogation conducted by

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117 a law enforcement officer in which he or she did not
118 electronically record 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 with that requirement.

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 that ~~which~~ causes
- 151 or 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 which ~~that~~ may be or
- 159 is 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, laptop computers, or any components
- 174 of these devices which are intended to be used to assemble such

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175 devices. The term also includes any new technology that is
 176 developed for similar purposes. The term does not include any
 177 device that has communication capabilities which has been
 178 approved or issued by the sheriff or officer in charge for
 179 investigative or institutional security purposes or for
 180 conducting other official business.

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

189 Section 3. Paragraph (f) of subsection (3) of section
 190 921.0022, Florida Statutes, is amended to read:

191 921.0022 Criminal Punishment Code; offense severity ranking
 192 chart.—

193 (3) OFFENSE SEVERITY RANKING CHART

194 (f) LEVEL 6

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

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conviction.

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400.9935 (4) (c) 2nd Operating a clinic, or offering services requiring licensure, without a license.

199

499.0051 (2) 2nd Knowing forgery of transaction history, transaction information, or transaction statement.

200

499.0051 (3) 2nd Knowing purchase or receipt of prescription drug from unauthorized person.

201

499.0051 (4) 2nd Knowing sale or transfer of prescription drug to unauthorized person.

202

775.0875 (1) 3rd Taking firearm from law enforcement officer.

203

784.021 (1) (a) 3rd Aggravated assault; deadly weapon without intent to kill.

204

784.021 (1) (b) 3rd Aggravated assault; intent to commit felony.

205

784.041 3rd Felony battery; domestic

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battery by strangulation.

206

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

207

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

208

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

209

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

210

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

211

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

212

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

213

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

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787.02 (2) 3rd False imprisonment; restraining

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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.

216

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

217

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.

218

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

219

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

220

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

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222	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.
223	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
224	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
225	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
226	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
227	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
228	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
	812.015 (9) (a)	2nd	Retail theft; property stolen

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\$300 or more; second or subsequent conviction.

229

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

230

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

231

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

232

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

233

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

234

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

235

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

236

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is

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valued at less than \$10,000.

237

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

238

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

239

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

240

836.05 2nd Threats; extortion.

241

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

242

843.12 3rd Aids or assists person to escape.

243

847.011 3rd Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

244

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

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246	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
247	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
248	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.
249	944.40	2nd	Escapes.
250	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
251	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
	<u>951.22</u>	3rd	<u>Introduction of contraband into county detention facility</u>
	<u>(1)(h)-(k)</u>		
	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, 2020.