

By Senator Klein

28-1327-00

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A bill to be entitled
An act relating to evidence; amending s.
90.803, F.S.; modifying conditions under which
statements of elderly persons or mentally
disabled persons, as defined, may be admitted
into evidence as a hearsay exception; providing
an effective date.

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

Section 1. Subsection (24) of section 90.803, Florida
Statutes, is amended to read:

90.803 Hearsay exceptions; availability of declarant
immaterial.--The provision of s. 90.802 to the contrary
notwithstanding, the following are not inadmissible as
evidence, even though the declarant is available as a witness:

(24) HEARSAY EXCEPTION; STATEMENT OF ELDERLY PERSON OR
MENTALLY DISABLED PERSON ~~ADULT~~--

(a) As used in this subsection, the term:

1. "Elderly person" means a person 60 years of age or
older who suffers from the infirmities of aging as manifested
by advanced age, organic brain damage, or other mental or
emotional dysfunctioning to the extent that the person's
ability to provide adequately for his or her own care or
protection is impaired.

2. "Mentally disabled person" means a person who
suffers from a condition of mental or emotional incapacitation
due to a developmental disability, organic brain damage, or
mental illness which restricts the person's ability to perform
the normal activities of daily living.

1 **(b)(a)** When made in a context that provides
2 substantial guarantees of its ~~Unless the source of information~~
3 ~~or the method or circumstances by which the statement is~~
4 ~~reported indicates a lack of trustworthiness, an out-of-court~~
5 statement made by an elderly person or mentally disabled
6 person ~~adult, as defined in s. 825.101, describing any act of~~
7 abuse or neglect, any act of exploitation, or any act of
8 violence, including a sexual offense, committed ~~the offense of~~
9 ~~battery or aggravated battery or assault or aggravated assault~~
10 ~~or sexual battery, or any other violent act~~ on the declarant
11 elderly person or mentally disabled person ~~which~~ adult, not
12 otherwise admissible, is admissible in evidence in any civil
13 or criminal proceeding if:

14 1. The court finds in a hearing conducted outside the
15 presence of the jury that the time, content, and circumstances
16 of the statement provide such sufficient safeguards of
17 reliability that adversarial testing of the statement in court
18 would add little to its reliability. In making its
19 determination, the court must ~~may~~ consider the mental age and
20 capacity ~~physical age and maturity~~ of the declarant elderly
21 person or mentally disabled person ~~adult~~, the nature and
22 duration of the abuse or offense, the relationship of the
23 declarant ~~victim~~ to the offender, the reliability of the
24 assertion under the totality of the circumstances, and the
25 reliability of the declarant. In addition the court may
26 consider ~~elderly person or disabled adult, and~~ any other
27 factor deemed appropriate, including, but not limited to, the
28 statement's spontaneity, whether the statement was made at the
29 first available opportunity following the alleged incident,
30 whether the statement was elicited in response to questions,
31 the mental state of the elderly or mentally disabled person,

1 when the incident was reported, whether the elderly or
2 mentally disabled person used terminology unexpected of a
3 person with his or her disability, the motive or lack thereof
4 to fabricate the statement, the vagueness of the accusations,
5 the possibility of any improper influence on the elderly
6 person or mentally disabled person, and contradictory
7 statements; and

8 2. The elderly person or mentally disabled person
9 ~~adult~~ either:

10 a. Testifies; or

11 b. Is unavailable as a witness, provided that there is
12 corroborative evidence of the abuse or offense. Unavailability
13 shall include a finding by the court that the elderly person's
14 or mentally disabled person's ~~adult's~~ participation in the
15 trial or proceeding would result in a substantial likelihood
16 of severe emotional, mental, or physical harm, in addition to
17 findings pursuant to s. 90.804(1).

18 ~~(c)(b)~~ In a criminal action, the defendant shall be
19 notified no later than 10 days before the trial that a
20 statement that ~~which~~ qualifies as a hearsay exception pursuant
21 to this subsection will be offered as evidence at trial. The
22 notice shall include a written statement of the content of the
23 elderly person's or mentally disabled person's ~~adult's~~
24 statement, the time at which the statement was made, the
25 circumstances surrounding the statement which indicate its
26 reliability, and such other particulars as necessary to
27 provide full disclosure of the statement.

28 ~~(d)(c)~~ The court shall make specific findings of fact,
29 on the record, as to the basis for its ruling under this
30 subsection.

31 Section 2. This act shall take effect July 1, 2000.

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SENATE SUMMARY

Modifies the conditions under which statements of elderly persons and mentally disabled persons, as defined, may be admitted into evidence as an exception to the hearsay rule.