

By the Committee on Judiciary and Senator Klein

308-2073-00

1 A bill to be entitled
2 An act relating to evidence; amending s.
3 90.803, F.S.; modifying conditions under which
4 statements of elderly persons or mentally
5 disabled persons, as defined, may be admitted
6 into evidence as a hearsay exception; amending
7 s. 90.502, F.S.; providing that discussion or
8 activity that is not a meeting under s.
9 286.011, F.S., shall not waive the
10 attorney-client privilege; providing that such
11 privilege does not constitute an exemption to
12 s. 119.07 or s. 286.011, F.S.; providing an
13 effective date.

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

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

19 90.803 Hearsay exceptions; availability of declarant
20 immaterial.--The provision of s. 90.802 to the contrary
21 notwithstanding, the following are not inadmissible as
22 evidence, even though the declarant is available as a witness:

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

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

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

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

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

19 1. The court finds in a hearing conducted outside the
20 presence of the jury that the time, content, and circumstances
21 of the statement provide such sufficient safeguards of
22 reliability that adversarial testing of the statement in court
23 would add little to its reliability. In making its
24 determination, the court must ~~may~~ consider the mental age and
25 capacity ~~physical age and maturity~~ of the declarant elderly
26 person or mentally disabled person adult, the nature and
27 duration of the abuse or offense, the relationship of the
28 declarant ~~victim~~ to the offender, the reliability of the
29 assertion under the totality of the circumstances, and the
30 reliability of the declarant. In addition the court may
31 consider ~~elderly person or disabled adult, and any other~~

1 factor deemed appropriate, including, but not limited to, the
2 statement's spontaneity, whether the statement was made at the
3 first available opportunity following the alleged incident,
4 whether the statement was elicited in response to questions,
5 the mental state of the elderly or mentally disabled person,
6 when the incident was reported, whether the elderly or
7 mentally disabled person used terminology unexpected of a
8 person with his or her disability, the motive or lack thereof
9 to fabricate the statement, the vagueness of the accusations,
10 the possibility of any improper influence on the elderly
11 person or mentally disabled person, and contradictory
12 statements; and

13 2. The elderly person or mentally disabled person
14 ~~adult~~ either:

15 a. Testifies; or

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

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

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

6 Section 2. Subsection (6) is added to section 90.502,
7 Florida Statutes, to read:

8 90.502 Lawyer-client privilege.--

9 (6) A discussion or activity that is not a meeting for
10 purposes of s. 286.011 shall not be construed to waive the
11 attorney-client privilege established in this section. This
12 shall not be construed to constitute an exemption or alter an
13 existing exemption to s. 119.07 or s. 286.011.

14 Section 3. This act shall take effect July 1, 2000.

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16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 SB 2048

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19 Removes hearsay statements about "any act of violence"
20 committed on an elderly person or mentally disabled adult from
21 the list of hearsay statements that will be admissible in
evidence in a criminal or civil proceeding pursuant to this
section.

22 Adds a new section to the bill which amends s. 90.502, F.S.
23 This section of the Florida Evidence Code contains the
24 lawyer-client privilege. A new subsection is added to provide
25 that a discussion or activity that is not a meeting for
26 purposes of s. 286.011, F.S., shall not be construed as
waiving the attorney-client privilege. Additionally, this
subsection shall not be construed as an exemption to ss.
119.07 or 286.011, F.S., which pertain to public records and
meetings under the Government in the Sunshine Act.

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