

By Senator Joyner

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1 A bill to be entitled

2 An act relating to the admissibility of statements of a
3 criminal defendant in felony cases; amending s. 90.803,
4 F.S.; requiring that hearsay statements made during
5 certain custodial interrogations comply with specified
6 requirements in order to be admissible; providing
7 definitions; describing circumstances in which an oral,
8 written, or sign-language statement made by an interrogee
9 during a custodial interrogation is presumed inadmissible
10 as evidence against such person; describing circumstances
11 in which the prosecution may rebut such presumption;
12 describing circumstances in which law enforcement officers
13 may have good cause not to electronically record all or
14 part of an interrogation; providing for the admissibility
15 of certain statements of an interrogee when made in
16 certain proceedings or when obtained by federal officers
17 or officers from other jurisdictions; providing for the
18 preservation of electronic recordings; providing for
19 admissibility of certain statements of an interrogee;
20 amending s. 90.804, F.S.; requiring that for a hearsay
21 statement against interest made during certain custodial
22 interrogations to be admissible when the declarant is
23 unavailable specified requirements must have been complied
24 with; providing a finding of important state interest;
25 specifying the purpose of the act; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Subsection (18) of section 90.803, Florida
31 Statutes, is amended to read:

32 90.803 Hearsay exceptions; availability of declarant
33 immaterial.--The provision of s. 90.802 to the contrary
34 notwithstanding, the following are not inadmissible as evidence,
35 even though the declarant is available as a witness:

36 (18) ADMISSIONS.--A statement that is offered against a
37 party and is:

38 (a) The party's own statement in either an individual or a
39 representative capacity;

40 (b) A statement of which the party has manifested an
41 adoption or belief in its truth;

42 (c) A statement by a person specifically authorized by the
43 party to make a statement concerning the subject;

44 (d) A statement by the party's agent or servant concerning
45 a matter within the scope of the agency or employment thereof,
46 made during the existence of the relationship; ~~or~~

47 (e) A statement by a person who was a coconspirator of the
48 party during the course, and in furtherance, of the conspiracy.
49 Upon request of counsel, the court shall instruct the jury that
50 the conspiracy itself and each member's participation in it must
51 be established by independent evidence, either before the
52 introduction of any evidence or before evidence is admitted under
53 this paragraph; ~~or-~~

54 (f) The party's own statement that is the result of a
55 custodial interrogation and the interrogation, if required to do
56 so, complied with this paragraph.

57 1. As used in this paragraph, the term:

58 a. "Custodial interrogation" or "interrogation" means

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59 questioning of an interrogee in circumstances in which a
60 reasonable person placed in the same position would believe that
61 his or her freedom of action was curtailed to a degree associated
62 with actual arrest.

63 b. "Electronic recording" means a true, complete, and
64 accurate reproduction of a custodial interrogation. An electronic
65 recording may be created by motion picture, videotape, audiotape,
66 or digital or other media.

67 c. "Interrogation facility" means a law enforcement
68 facility, correctional facility, community correctional center,
69 detention facility, law enforcement vehicle, courthouse, or other
70 secure environment.

71 d. "Interrogee" means a person who, at the time of the
72 interrogation and concerning any topic of the interrogation, is:

73 (I) Charged with a felony; or

74 (II) Suspected by those conducting the interrogation of
75 involvement in the felony.

76 e. "Involvement" means participation in a crime as a
77 principal or an accessory.

78 2. An oral, written, or sign-language statement made by an
79 interrogee during a custodial interrogation shall be inadmissible
80 as evidence against such person in a criminal proceeding unless
81 all of the following are complied with:

82 a. The interrogation is reproduced in its entirety by means
83 of an electronic recording.

84 b. Immediately prior to the commencement of the
85 interrogation, and as part of the electronic recording, the
86 interrogee is given all constitutionally required warnings and
87 the interrogee knowingly, intelligently, and voluntarily waives

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88 any rights set out in the warnings that would, absent such
89 waiver, otherwise preclude the admission of the statement.

90 c. The electronic recording device was capable of making a
91 true, complete, and accurate recording of the interrogation, the
92 operator of such device was competent, and the electronic
93 recording has not been altered.

94 d. All persons recorded on the electronic recording who are
95 material to the custodial interrogation are identified on the
96 electronic recording.

97 e. During discovery pursuant to Rule 3.220, Florida Rules
98 of Criminal Procedure, but in no circumstances later than the
99 20th day before the date of the proceeding in which the
100 prosecution intends to offer the statement, the attorney
101 representing an interrogee is provided with true, complete, and
102 accurate copies of all electronic recordings of the interrogee
103 that are made pursuant to this paragraph.

104 3.a. In the absence of a true, complete, and accurate
105 electronic recording, the prosecution may rebut a presumption of
106 inadmissibility only by offering clear and convincing evidence
107 that:

108 (I) The statement was both voluntary and reliable, made
109 after the interrogee was fully advised of all constitutionally
110 required warnings; and

111 (II) Law enforcement officers had good cause not to
112 electronically record all or part of the interrogation.

113 b. For purposes of sub-subparagraph a., the term "good
114 cause" includes, but is not limited to, the following:

115 (I) The interrogation occurred in a location other than an
116 interrogation facility under exigent circumstances where the

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117 requisite recording equipment was not readily available and there
118 was no reasonable opportunity to move the interrogee to an
119 interrogation facility or to another location at which the
120 requisite recording equipment was readily available;

121 (II) The interrogee refused to have the interrogation
122 electronically recorded, and such refusal was electronically
123 recorded;

124 (III) The failure to electronically record an entire
125 interrogation was the result of equipment failure, and obtaining
126 replacement equipment was not feasible; or

127 (IV) The statement of the interrogee was obtained in the
128 course of electronic eavesdropping that was being conducted
129 pursuant to a properly obtained and issued warrant or that
130 required no warrant and was otherwise legally conducted.

131 4. Notwithstanding any other provision of this paragraph, a
132 written, oral, or sign-language statement of the interrogee that
133 was made as a result of a custodial interrogation is admissible
134 in a criminal proceeding against the interrogee in this state if:

135 a. The statement was obtained in another jurisdiction by
136 investigative personnel of such jurisdiction, acting
137 independently of law enforcement personnel of this state, in
138 compliance with the laws of such jurisdiction; or

139 b. The statement was obtained by a federal officer in this
140 state or another jurisdiction during a lawful federal
141 investigation and was obtained in compliance with the laws of the
142 United States.

143 5. Every electronic recording of a custodial interrogation
144 made pursuant to this paragraph must be preserved until the
145 interrogee's conviction for any offense relating to the

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146 interrogation is final and all direct appeals and collateral
147 challenges are exhausted, the prosecution of such offenses is
148 barred by law, or the state irrevocably waives in writing any
149 future prosecution of the interrogee for any offense relating to
150 the interrogation.

151 6. This paragraph does not preclude the admission into
152 evidence of a statement made by the interrogee:

153 a. At his or her trial or other hearing held in open court;

154 b. Before a grand jury;

155 c. That is the res gestae of the arrest or the offense; or

156 d. That does not arise from a custodial interrogation or
157 that is a spontaneous statement.

158 Section 2. Paragraph (c) of subsection (2) of section
159 90.804, Florida Statutes, is amended to read:

160 90.804 Hearsay exceptions; declarant unavailable.--

161 (2) HEARSAY EXCEPTIONS.--The following are not excluded
162 under s. 90.802, provided that the declarant is unavailable as a
163 witness:

164 (c) Statement against interest.--A statement which, at the
165 time of its making, was so far contrary to the declarant's
166 pecuniary or proprietary interest or tended to subject the
167 declarant to liability or to render invalid a claim by the
168 declarant against another, so that a person in the declarant's
169 position would not have made the statement unless he or she
170 believed it to be true. A statement tending to expose the
171 declarant to criminal liability and offered to exculpate the
172 accused is inadmissible, unless corroborating circumstances show
173 the trustworthiness of the statement. However, any statement made
174 during a custodial interrogation of an interrogee as defined in

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175 s. 90.803(18)(f) must comply with the requirements of that
176 paragraph when required to do so to be admissible under this
177 paragraph.

178 Section 3. (1) The Legislature finds that the reputations
179 of countless hard-working law enforcement officers are needlessly
180 attacked by criminal suspects who falsely claim the officers have
181 violated the suspects' constitutional rights, that limited trial
182 court resources are squandered in hearings on motions seeking to
183 suppress statements made by criminal suspects who are given the
184 opportunity to make such claims because no recordings of their
185 interrogations exist, and, further, that judicial resources are
186 squandered when criminal suspects, after having been convicted of
187 their crimes, file frivolous and unnecessary appeals. This
188 process costs the taxpayers of this state untold dollars each
189 year, dollars that could be better spent enhancing the
190 administration of the criminal justice system. Low-cost
191 technology is now available in every jurisdiction to record each
192 custodial interrogation of a criminal suspect, eliminating this
193 gross waste of resources and enhancing the reliability and
194 reputation of law enforcement officers. Therefore, the
195 Legislature determines and declares that this act fulfills an
196 important state interest.

197 (2) The purpose of this act is to require the creation of
198 an electronic record of an entire custodial interrogation in
199 order to eliminate disputes about interrogations, thereby
200 improving prosecution of the guilty while affording protection to
201 the innocent and increasing court efficiency.

202 Section 4. This act shall take effect July 1, 2008.