

HB 721

2008

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.

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 1. Subsection (18) 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:

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

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

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

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

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

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

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

57           1. As used in this paragraph, the term:  
 58           a. "Custodial interrogation" or "interrogation" means  
 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  
 62 associated with actual arrest.  
 63           b. "Electronic recording" means a true, complete, and  
 64 accurate reproduction of a custodial interrogation. An  
 65 electronic recording may be created by motion picture,  
 66 videotape, audiotape, 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  
 70 other 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  
 80 inadmissible as evidence against such person in a criminal  
 81 proceeding unless all of the following are complied with:  
 82           a. The interrogation is reproduced in its entirety by  
 83 means 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  
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  
95 are material to the custodial interrogation are identified on  
96 the 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  
117 requisite recording equipment was not readily available and  
118 there 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,  
132 a written, oral, or sign-language statement of the interrogee  
133 that was made as a result of a custodial interrogation is  
134 admissible in a criminal proceeding against the interrogee in  
135 this state if:

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

140 b. The statement was obtained by a federal officer in this

141 state or another jurisdiction during a lawful federal  
 142 investigation and was obtained in compliance with the laws of  
 143 the United States.

144 5. Every electronic recording of a custodial interrogation  
 145 made pursuant to this paragraph must be preserved until the  
 146 interrogee's conviction for any offense relating to the  
 147 interrogation is final and all direct appeals and collateral  
 148 challenges are exhausted, the prosecution of such offenses is  
 149 barred by law, or the state irrevocably waives in writing any  
 150 future prosecution of the interrogee for any offense relating to  
 151 the interrogation.

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

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

156 b. Before a grand jury;

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

158 d. That does not arise from a custodial interrogation or  
 159 that is a spontaneous statement.

160 Section 2. Paragraph (c) of subsection (2) of section  
 161 90.804, Florida Statutes, is amended to read:

162 90.804 Hearsay exceptions; declarant unavailable.--

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

166 (c) Statement against interest.--A statement which, at the  
 167 time of its making, was so far contrary to the declarant's  
 168 pecuniary or proprietary interest or tended to subject the

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169 declarant to liability or to render invalid a claim by the  
170 declarant against another, so that a person in the declarant's  
171 position would not have made the statement unless he or she  
172 believed it to be true. A statement tending to expose the  
173 declarant to criminal liability and offered to exculpate the  
174 accused is inadmissible, unless corroborating circumstances show  
175 the trustworthiness of the statement. However, any statement  
176 made during a custodial interrogation of an interrogee as  
177 defined in s. 90.803(18)(f) must comply with the requirements of  
178 that paragraph when required to do so to be admissible under  
179 this paragraph.

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

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197 officers. Therefore, the Legislature determines and declares  
198 that this act fulfills an important state interest.

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

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