

HB 701

2012

1                   A bill to be entitled  
2           An act relating to the Florida Evidence Code; amending  
3           s. 90.803, F.S.; providing that certain specified  
4           spontaneous statements relating to a call to an  
5           emergency operations center, such as police, fire, or  
6           emergency rescue personnel, are admissible as evidence  
7           if the call is for the immediate dispatch of personnel  
8           for emergency purposes; providing that an excited  
9           utterance made by a victim to an emergency responder,  
10          including police, fire, or emergency personnel, is  
11          admissible if the victim or witness is under the  
12          stress or excitement of the event while the statement  
13          is being made; providing an exception to the  
14          inadmissibility of a hearsay statement of the victim  
15          of domestic violence in a proceeding relating to  
16          criminal domestic violence; requiring that the court  
17          consider certain matters and make specific findings of  
18          fact to support the court's decision to admit the  
19          victim's statement into evidence; requiring that, in a  
20          criminal case, the defendant be notified of the  
21          victim's statement at least 10 days before the  
22          criminal trial or proceeding; providing for the  
23          content of the notice; amending s. 90.804, F.S.;

24          providing that, in a criminal case, upon proof by a  
25          preponderance of the evidence that the accused, at any  
26          time, assaulted an unavailable witness, or threatened  
27          to inflict physical harm upon an unavailable witness  
28          or any member of the witness's immediate family, the

HB 701

2012

29 | court may presume forfeiture of any objection under  
 30 | the hearsay rule or the confrontation clause of the  
 31 | State Constitution; creating s. 90.807, F.S.;  
 32 | providing that a statement not specifically covered by  
 33 | any other hearsay exception, but having equivalent  
 34 | circumstantial guarantees of trustworthiness, is not  
 35 | excluded by the hearsay rule if the court determines  
 36 | that the interests of justice will be best served by  
 37 | admitting the statement into evidence; requiring a  
 38 | certain procedure be followed before that statement  
 39 | may be admitted; providing an effective date.

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

42

43 | Section 1. Subsections (1) and (2) of section 90.803,  
 44 | Florida Statutes, are amended, and subsection (25) is added to  
 45 | that section, to read:

46 | 90.803 Hearsay exceptions; availability of declarant  
 47 | immaterial.—The provision of s. 90.802 to the contrary  
 48 | notwithstanding, the following are not inadmissible as evidence,  
 49 | even though the declarant is available as a witness:

50 | (1) SPONTANEOUS STATEMENT.—A spontaneous statement  
 51 | describing or explaining an event or condition made while the  
 52 | declarant was perceiving the event or condition, or immediately  
 53 | thereafter, except when such statement is made under  
 54 | circumstances that indicate its lack of trustworthiness. A call  
 55 | to an emergency operations center, such as police, fire, or  
 56 | emergency rescue personnel, is admissible if the purpose of the

57 call is for the immediate dispatch of personnel for emergency  
 58 purposes and is not merely to report a crime or event or a call  
 59 for assistance regarding an event occurring a substantial period  
 60 of time in the past.

61 (2) EXCITED UTTERANCE.—A statement or excited utterance  
 62 relating to a startling event or condition made while the  
 63 declarant was under the stress of excitement caused by the event  
 64 or condition. In a criminal case, a statement made by the victim  
 65 to an emergency responder, including police, fire, or emergency  
 66 personnel, is admissible if, while the statement is made, the  
 67 victim or witness is under the stress or excitement of the  
 68 event.

69 (25) STATEMENT OF A VICTIM OF DOMESTIC VIOLENCE IN A  
 70 CRIMINAL PROCEEDING.—

71 (a) Unless the source of information or the method or  
 72 circumstances by which the statement is reported indicates a  
 73 lack of trustworthiness, an out-of-court statement made by a  
 74 victim of domestic violence, as defined in s. 741.28, describing  
 75 any act of domestic violence not otherwise admissible, is  
 76 admissible in evidence in any criminal proceeding if:

77 1. The court finds in a hearing conducted outside the  
 78 presence of the jury that the time, content, and circumstances  
 79 of the statement provide sufficient safeguards of reliability.  
 80 In making its determination, the court may consider the mental  
 81 and physical age and maturity of the victim of domestic  
 82 violence, the nature and duration of the act of domestic  
 83 violence, the relationship of the victim to the offender, the  
 84 reliability of the assertion, the reliability of the victim of

HB 701

2012

85 domestic violence, and any other factor deemed appropriate; and

86 2. The victim of domestic violence:

87 a. Testifies; or

88 b. Is unavailable as a witness and there is corroborative  
 89 evidence of the offense. Unavailability includes a finding by  
 90 the court that the victim's participation in the criminal trial  
 91 or proceeding would result in a substantial likelihood of severe  
 92 emotional, mental, or physical harm, in addition to findings  
 93 pursuant to s. 90.804(1).

94 (b) In a criminal action, the defendant shall be notified  
 95 at least 10 days before the trial that a statement that  
 96 qualifies as a hearsay exception pursuant to this subsection  
 97 will be offered as evidence at trial. The notice must include a  
 98 written statement of the content of the victim's statement, the  
 99 time at which the statement was made, the circumstances  
 100 surrounding the statement which indicate its reliability, and  
 101 such other particulars as necessary to provide full disclosure  
 102 of the statement.

103 (c) The court shall make specific findings of fact, on the  
 104 record, as to the basis for its ruling under this subsection.

105 Section 2. Paragraph (f) is added to subsection (2) of  
 106 section 90.804, Florida Statutes, to read:

107 90.804 Hearsay exceptions; declarant unavailable.—

108 (2) HEARSAY EXCEPTIONS.—The following are not excluded  
 109 under s. 90.802, provided that the declarant is unavailable as a  
 110 witness:

111 (f) Forfeiture by wrongdoing.—A statement offered against  
 112 a party that has engaged or acquiesced in wrongdoing that was

HB 701

2012

113 intended to, and did, procure the unavailability of the  
114 declarant as a witness. In a criminal case, upon proof by a  
115 preponderance of the evidence that the accused, at any time,  
116 assaulted an unavailable witness, or threatened to inflict  
117 physical harm upon an unavailable witness or any member of the  
118 witness's immediate family, the court may presume forfeiture of  
119 any objection under the hearsay rule or the confrontation clause  
120 of the State Constitution. This presumption may be rebutted by  
121 proof by a preponderance of the evidence that the accused did  
122 not engage in, and did not acquiesce in, the wrongdoing intended  
123 to cause the witness not to testify.

124 Section 3. Section 90.807, Florida Statutes, is created to  
125 read:

126 90.807 Residual exception.—A statement that is not  
127 specifically covered by s. 90.803 or s. 90.804 but that has  
128 equivalent circumstantial guarantees of trustworthiness is not  
129 excluded by the hearsay rule if the court determines that the  
130 statement is offered as evidence of a material fact, the  
131 statement is more probative on the point for which it is offered  
132 than any other evidence that the proponent can procure through  
133 reasonable efforts, and the general purposes of these rules and  
134 the interests of justice will best be served by admission of the  
135 statement into evidence. However, a statement may not be  
136 admitted under this exception unless the party seeking admission  
137 makes known such intention, including the particulars of the  
138 statement and the declarant's name and address, to the adverse  
139 party sufficiently in advance of the trial or hearing to provide  
140 the adverse party with a fair opportunity to deny or explain the

HB 701

2012

141 | statement.

142 |       Section 4. This act shall take effect July 1, 2012.