

By Senator Bennett

21-00433-12

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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, is 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
29 court may presume forfeiture of any objection under

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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:

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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

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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) HEARSAY EXCEPTION; STATEMENT OF A VICTIM OF DOMESTIC
70 VIOLENCE IN A 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
85 domestic violence, and any other factor deemed appropriate; and

86 2. The victim of domestic violence:

87 a. Testifies; or

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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 a
112 party that has engaged or acquiesced in wrongdoing that was
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

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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
141 statement.

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