

By Senator Bracy

11-00403-17

2017296__

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

29
30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Subsection (18) of section 90.803, Florida

11-00403-17

2017296__

33 Statutes, is amended to read:

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

38 (18) ADMISSIONS.—A statement that is offered against a
39 party and is:

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

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

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

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

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

56 (f) The party's own statement that is the result of a
57 custodial interrogation conducted in compliance with this
58 paragraph.

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

60 a. "Custodial interrogation" or "interrogation" means
61 questioning of an interrogee in circumstances in which a

11-00403-17

2017296__

62 reasonable person placed in the same position would believe that
63 his or her freedom of action was curtailed to a degree
64 associated with actual arrest.

65 b. "Electronic recording" means a true, complete, and
66 accurate reproduction of a custodial interrogation. An
67 electronic recording may be created through the use of
68 videotape, audiotape, or digital or other media.

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

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

75 (I) Charged with a felony; or

76 (II) Suspected by those conducting the interrogation of
77 involvement in a felony.

78 e. "Involvement" means participation in a crime as a
79 principal or an accessory.

80 2. An oral, written, or sign-language statement made by an
81 interrogee during a custodial interrogation is inadmissible as
82 evidence against such person in a criminal proceeding unless all
83 of the following requirements are met:

84 a. The interrogation is reproduced in its entirety by means
85 of an electronic recording.

86 b. Immediately before the interrogation begins, and as part
87 of the electronic recording, the interrogee is given all
88 constitutionally required warnings and the interrogee knowingly,
89 intelligently, and voluntarily waives any rights set out in the
90 warnings that would, absent such waiver, otherwise preclude the

11-00403-17

2017296__

91 admission of the statement.

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

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

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

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

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

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

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

117 (I) The interrogation occurred in a location other than an
118 interrogation facility under exigent circumstances where the
119 requisite recording equipment was not readily available and

11-00403-17

2017296__

120 there was no reasonable opportunity to move the interrogee to an
121 interrogation facility or to another location where the
122 requisite recording equipment was readily available;

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

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

129 (IV) The statement of the interrogee was obtained in the
130 course of intercepting wire, oral, or electronic communication
131 which was being conducted pursuant to a properly obtained and
132 issued warrant or which required no warrant and was otherwise
133 legally conducted.

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

139 a. The statement was obtained in another jurisdiction by
140 investigative personnel of that jurisdiction, acting
141 independently of law enforcement personnel of this state, in
142 compliance with the laws of that jurisdiction; or

143 b. The statement was obtained by a federal officer in this
144 state or another jurisdiction during a lawful federal
145 investigation and was obtained in compliance with the laws of
146 the United States.

147 5. Every electronic recording of a custodial interrogation
148 made pursuant to this paragraph must be preserved until the

11-00403-17

2017296__

149 interrogee's conviction for any offense relating to the
150 interrogation is final and all direct appeals and collateral
151 challenges are exhausted, the prosecution of such offenses is
152 barred by law, or the state irrevocably waives in writing any
153 future prosecution of the interrogee for any offense relating to
154 the interrogation.

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

157 a. At his or her trial or other hearing held in open court;
158 b. Before a grand jury;
159 c. Which is the res gestae of the arrest or the offense; or
160 d. Which does not arise from a custodial interrogation or
161 which is a spontaneous statement.

162 Section 2. Paragraph (c) of subsection (2) of section
163 90.804, Florida Statutes, is amended to read:

164 90.804 Hearsay exceptions; declarant unavailable.—

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

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

11-00403-17

2017296__

178 made during a custodial interrogation of an interrogee as
179 defined in s. 90.803(18)(f) must comply with that paragraph when
180 required in order for the statement to be admissible under this
181 paragraph.

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

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

206 Section 4. This act shall take effect July 1, 2017.