

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.

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

32 | Section 1. Subsection (18) of section 90.803, Florida
 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
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
85 means of an electronic recording.

86 b. Immediately before the interrogation begins, and as
87 part 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
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
97 are material to the custodial interrogation are identified on
98 the 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
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,
 135 a 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
 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
158 court;

159 b. Before a grand jury;

160 c. Which is the res gestae of the arrest or the offense;
161 or

162 d. Which does not arise from a custodial interrogation or
163 which is a spontaneous statement.

164 Section 2. Paragraph (c) of subsection (2) of section
165 90.804, Florida Statutes, is amended to read:

166 90.804 Hearsay exceptions; declarant unavailable.—

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

170 (c) *Statement against interest.*—A statement which, at the
171 time of its making, was so far contrary to the declarant's
172 pecuniary or proprietary interest or tended to subject the
173 declarant to liability or to render invalid a claim by the
174 declarant against another, so that a person in the declarant's
175 position would not have made the statement unless he or she

176 | believed it to be true. A statement tending to expose the
177 | declarant to criminal liability and offered to exculpate the
178 | accused is inadmissible, unless corroborating circumstances show
179 | the trustworthiness of the statement. However, any statement
180 | made during a custodial interrogation of an interrogee as
181 | defined in s. 90.803(18)(f) must comply with that paragraph when
182 | required in order for the statement to be admissible under this
183 | paragraph.

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

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201 Legislature determines and declares that this act fulfills an
202 important state interest.

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

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