

By Senator Bracy

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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; specifying
7 that an oral, written, or sign-language statement made
8 by an interrogee during a custodial interrogation is
9 inadmissible as evidence against such person unless
10 certain requirements are met; authorizing the
11 prosecution to rebut a presumption of inadmissibility
12 under certain circumstances; defining the term "good
13 cause"; providing for the admissibility of certain
14 statements of an interrogee when obtained by federal
15 officers or investigative personnel from other
16 jurisdictions; requiring the preservation of
17 electronic recordings until certain requirements are
18 met; providing that admissibility is not precluded for
19 certain statements of an interrogee; amending s.
20 90.804, F.S.; requiring that any statements made
21 during a custodial interrogation comply with certain
22 requirements in order for the statement to be
23 admissible; providing a legislative finding of
24 important state interest; specifying the purpose of
25 the act; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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

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30 Statutes, is amended to read:

31 90.803 Hearsay exceptions; availability of declarant
32 immaterial.—The provision of s. 90.802 to the contrary
33 notwithstanding, the following are not inadmissible as evidence,
34 even though the declarant is available as a witness:

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

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

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

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

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

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

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

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

57 a. "Custodial interrogation" or "interrogation" means
58 questioning of an interrogee in circumstances in which a

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

62 b. "Electronic recording" means a true, complete, and
63 accurate reproduction of a custodial interrogation created
64 through the use of videotape, audiotape, or digital or other
65 media.

66 c. "Interrogation facility" means a law enforcement
67 facility, correctional facility, community correctional center,
68 detention facility, law enforcement vehicle, courthouse, or
69 other secure environment.

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

72 (I) Charged with a felony; or

73 (II) Suspected by those conducting the interrogation of
74 involvement in a felony.

75 e. "Involvement" means participation in a crime as a
76 principal or an accessory.

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

81 a. The interrogation is reproduced in its entirety by means
82 of an electronic recording.

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

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88 admission of the statement.

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

93 d. All persons recorded on the electronic recording who are
94 material to the custodial interrogation are identified on the
95 electronic recording.

96 e. During discovery pursuant to Rule 3.220, Florida Rules
97 of Criminal Procedure, but under no circumstances later than the
98 20th day before the date of the proceeding in which the
99 prosecution intends to offer the statement, the attorney
100 representing an interrogee is provided with true, complete, and
101 accurate copies of all electronic recordings of the interrogee
102 made pursuant to this paragraph.

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

107 (I) The statement was both voluntary and reliable, made
108 after the interrogee was fully advised of all constitutionally
109 required warnings; and

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

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

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

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117 there was no reasonable opportunity to move the interrogee to an
118 interrogation facility or to another location where the
119 requisite recording equipment was readily available;

120 (II) The interrogee refused to have the interrogation
121 electronically recorded, and such refusal was electronically
122 recorded;

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

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

131 4. Notwithstanding any other provision of this paragraph, a
132 written, oral, or sign-language statement of the interrogee
133 which 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 that jurisdiction, acting
138 independently of law enforcement personnel of this state, in
139 compliance with the laws of that 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

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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 court;
155 b. Before a grand jury;
156 c. Which is the res gestae of the arrest or the offense; or
157 d. Which does not arise from a custodial interrogation or
158 which is a spontaneous statement.

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

161 90.804 Hearsay exceptions; declarant unavailable.—

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

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

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

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

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

203 Section 4. This act shall take effect July 1, 2020.