

# HOUSE BILL ANALYSIS

## HB 2639

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**Title:** An act relating to statements made by vulnerable adults.

**Brief Description:** Providing for admission of statements of vulnerable adults.

**Sponsors:** Representatives Dickerson, Hurst, McDonald, Lantz, O'Brien, Kastama, Constantine, Lovick, H. Sommers, Campbell and Edmonds.

### Brief Summary of Bill

- Creates a hearsay exception for certain statements made by vulnerable adults.

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### HOUSE COMMITTEE ON JUDICIARY

**Staff:** Trudes Hutcheson (786-7384).

#### Background:

Generally, hearsay involves a person restating in court what somebody else has said outside of court for the purpose of asserting that the statement is true. Under the rules of evidence, hearsay is usually inadmissible because it is presumed to be unreliable. Whenever hearsay is offered against a criminal defendant, the constitutional right to confrontation is triggered, and courts generally will not admit hearsay unless there is a well recognized exception or some other assurance of reliability exists.

Exceptions to the hearsay rule exist both in court rules and in statute. The Legislature created a statutory exception to the hearsay rule permitting the introduction of statements made by a child under the age of 10 describing sexual or physical abuse that results in substantial bodily harm. The child's hearsay statements are admissible in criminal proceedings and dependency proceedings if:

- (a) the court finds in a hearing that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and
- (b) the child either testifies, or the child is unavailable as a witness in which case there is corroborative evidence of the sexual or physical abuse.

The party wanting to introduce the statement must give the opposing party advance notice of the intent to introduce the hearsay. In determining whether the time,

content, and circumstances of the statement demonstrate reliability, Washington courts have established a list of factors to consider.

Under the rules of evidence, a person is considered unavailable as a witness if the person: (a) is exercising a privilege; (b) persists in refusing to testify; (c) testifies to a lack of memory of the subject matter of the statement; (d) is unable to be present or testify due to death or illness; or (e) is absent and the party seeking to introduce the statement has been unable to obtain the person's attendance.

**Summary of Bill:**

A hearsay exception is created for statements made by a vulnerable adult describing any act or attempted act of sexual abuse on the vulnerable adult or describing any act of physical abuse that results in substantial bodily harm. The statement is admissible if:

- (a) the court finds after a hearing that the time, content, and circumstances of the statement demonstrate the statement is sufficiently reliable based on certain factors; and
- (b) the vulnerable adult either (i) testifies; or (ii) is unavailable as a witness and there is corroborative evidence of the act.

The party seeking to use the statement must first notify the other party in advance so the other party has an opportunity to challenge the admissibility of the statement. The hearsay exception applies to criminal proceedings.

For the purposes of the hearsay exception, "vulnerable adult" means a person 60 years old or older who:

- (a) has functional, mental, or physical inability to care for himself or herself;
- (b) is found incapacitated under the guardianship statutes; or
- (c) has a developmental disability as defined by the developmental disability statutes.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

Office of Program Research