

Judiciary Committee

HB 1425

Title: *An act relating to vulnerable adults' hearsay statements.*

Brief Description: *Making admissible the hearsay statements of vulnerable adults.*

Sponsors: *Representatives Dickerson, Esser, Lantz, Edmonds, Tokuda, Kagi, O'Brien and Rockefeller; by request of Attorney General.*

Brief Summary of Bill

- *Creates a hearsay exception for statements made by vulnerable adults describing a crime committed against the vulnerable adult, or neglect, exploitation, abuse, or sexual abuse of the vulnerable adult.*

Hearing Date: *2/16/01*

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

Background:

Hearsay is an out-of-court statement offered in court as evidence to prove the truth of the matter asserted. Under the rules of evidence, hearsay is generally inadmissible. There is a presumption that the out-of-court statement is unreliable because the usual procedures (such as cross-examination) allowing the trier of fact to assess credibility of the person making the statement are not available. The ability of the trier of fact to determine the truth of the statement is compromised.

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.

For example, 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. The child's hearsay statements are admissible in criminal proceedings and dependency proceedings under certain circumstances. The child hearsay exception allows

the statement to be introduced only if the court finds sufficient indicia of reliability.— Generally, courts have stated that there must be particularized guarantees of trustworthiness after considering the time, content, and circumstances of the statement. The courts have considered certain factors in determining whether there was sufficient indicia of reliability.— See State v. Ryan, 103 Wn.2d 165 (1984). Those factors are whether:

- (1) the declarant had an apparent motive to lie;*
- (2) the general character of the declarant suggests trustworthiness;*
- (3) more than one person heard the statements;*
- (4) the statements were made spontaneously;*
- (5) the timing of the statements and the relationship between the declarant and the witness suggest trustworthiness;*
- (6) the statements contained express assertions of past fact;*
- (7) cross-examination could not help to show the declarant’s lack of knowledge;*
- (8) the possibility of the declarant’s recollection being faulty is remote; and*
- (9) the circumstances surrounding the statements give no reason to suppose that the declarant misrepresented the defendant’s involvement.*

Other exceptions to the hearsay rule that were not legislatively created but have long been recognized include statements made as excited utterances, dying declarations, and statements made to obtain a medical diagnosis.

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:

The Legislature finds that crimes and abuse of vulnerable adults are increasing, and the state has a compelling interest in hearing criminal and civil cases involving vulnerable adults.

An out-of-court statement made by a vulnerable adult describing a crime committed against a vulnerable adult declarant, or neglect, exploitation, abuse, or sexual abuse of a vulnerable adult declarant is admissible in a civil, criminal, or juvenile offense trial 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 vulnerable adult either: (i) testifies; or (ii) the court finds the vulnerable adult is unavailable as a witness, in which case, there must be corroborative evidence of the act.*

In determining whether there is sufficient indicia of reliability, the court may consider factors similar to the factors courts consider in the child hearsay exception.

For the purposes of the hearsay exception, vulnerable adult– means a person:

- (a) who is 60 years old or older who has the functional, mental, or physical inability to care for himself or herself, or his or her finances; or*
- (b) who is 18 years old or older and has been found to be incapacitated under the guardianship statutes; or*
- (c) who is 18 years old or older and has a developmental disability as defined in statute; or*
- (d) who is 18 years old or older and a resident of a facility for adults licensed or required to be licensed by the Department of Social and Health Services, including but not limited to, nursing homes, adult family homes, and boarding homes; or*
- (e) who is 18 years old or older and receives services from a home health, hospice, or home care agency or receives similar services from an individual.*

The term abuse– means willfully or negligently causing any bodily injury, pain, or mental anguish.

Exploitation– means obtaining, using, or attempting to obtain or use, the property or services of a vulnerable adult by deception, intimidation, use of undue influence, or when the person knows the vulnerable adult lacks capacity to consent.

Appropriation: *None.*

Fiscal Note: *Not Requested.*

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