

HOUSE BILL REPORT

HB 2151

As Reported by House Committee On:
Judiciary

Title: An act relating to witness unavailability due to incompetency or death.

Brief Description: Allowing certain out-of-court statements to be admitted as evidence.

Sponsors: Representatives Carrell and Talcott.

Brief History:

Committee Activity:

Judiciary: 2/23/01, 2/27/01 [DPS].

Brief Summary of Substitute Bill

- Creates a hearsay exception in criminal proceedings for statements made by a vulnerable person describing an act constituting abuse, assault, neglect, or a sex offense when the act results in substantial bodily harm or death.
- Establishes criteria that must be met before the statement may be admitted.
- Defines vulnerable person– and other terms.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Dickerson, Esser, Lovick and McDermott.

Minority Report: Do not pass. Signed by 3 members: Representatives Lambert, Republican Vice Chair; Boldt and Casada.

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.

Other exceptions to the hearsay rule that have long been recognized by courts 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 Substitute Bill:

An out-of-court statement made by a vulnerable person describing an act constituting abuse, assault, neglect, or a sex offense against the person, when the act results in substantial bodily harm or death, is admissible in a criminal proceeding if the court finds:

- (a) the declarant was not competent at the time the statement was made;
- (b) the declarant is unavailable as a witness at trial;
- (c) there is corroborative evidence of the act; and
- (d) there is sufficient indicia of reliability.

In making the determination of whether there is sufficient indicia of reliability, the court must consider specific factors.

"Vulnerable person " means a person who has the functional, mental, or physical inability

to care for himself or herself and:

- (a) is found incapacitated under the guardianship statutes; or
- (b) has a developmental disability as defined under law; or
- (c) has been admitted to a facility licensed by the Department of Social and Health Services (DSHS); or
- (d) is receiving services from an individual provider contracting with the DSHS to provide in-home services.

The bill also defines the terms "abuse," "assault," "neglect," and "sexual offense."

Substitute Bill Compared to Original Bill:

The substitute bill expands the types of statements that are admissible to include statements about acts of abuse and neglect. The original bill only included statements of assault and sex offenses. The original bill applies to any person, as opposed to "vulnerable persons."

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The bill needs to focus on criminal conduct in criminal proceedings only. The term "abuse" should be defined as it is in the current reporting laws on abuse. Hearsay is not very reliable and made for a variety of reasons that may not be connected to the actual care being given. The bill is tight enough to deal with the serious issues that face vulnerable adults while protecting the care giver community from defending against accusations.

Testimony Against: The bills and the proposed substitute bill are narrower than the original bill by the attorney general. The bill needs specific legislative findings to narrow the specific purpose of these types of exceptions. The definitions are too limiting in terms of what was originally intended to be covered under the attorney general bill. The definition of "vulnerable person" leaves a loophole over who would be covered. The requirement for "substantial bodily harm" is too narrow, and the standard may be too difficult to meet.

Testified: (In support) Jeff Larsen, Washington State Residential Care Council.

(In support with amendments) Tom Stanley, Northwest Assisted Living Facilities

Association.

(Opposed) Carol Murphy, Office of the Attorney General.