
HOUSE BILL 2077

State of Washington

57th Legislature

2001 Regular Session

By Representatives Dickerson and Esser

Read first time 02/14/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to witness unavailability due to incompetency or
2 death; and adding a new section to chapter 5.60 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 5.60 RCW
5 to read as follows:

6 (1) An out-of-court statement, not otherwise admissible by statute
7 or court rule, made by a person describing an assault, or neglect of
8 the declarant, when the act results in the death of or substantial
9 bodily harm to the declarant, as defined in RCW 9A.04.110, or any sex
10 offense is admissible as evidence in a civil, criminal, or juvenile
11 offense adjudication proceeding if the court finds:

12 (a) That the declarant, at the time the out-of-court statement was
13 made, was otherwise qualified to be a witness under RCW 5.60.020;

14 (b) The declarant is not qualified to be a witness under RCW
15 5.60.050 or is no longer alive at the time of his or her production for
16 examination;

17 (c) There is corroborative evidence of the act against the
18 declarant; and

1 (d) In a hearing conducted outside the presence of the jury, if
2 any, that the time, content, and circumstances of the out-of-court
3 statement provide sufficient indicia of reliability. In making its
4 determination, the court shall consider whether, at the time the
5 statement was made, the reliability of the declaration was indicated
6 by:

7 (i) The general character and trustworthiness of the declarant;

8 (ii) The timing of the declaration;

9 (iii) The declarant's lack of motive to lie;

10 (iv) The relationship of the declarant to the witness;

11 (v) Whether the declarant made the statement to more than one
12 person;

13 (vi) The mental and physical condition and cognitive ability of the
14 declarant;

15 (vii) Whether the statement was made spontaneously;

16 (viii) Whether the statement expressed assertions of past fact;

17 (ix) Whether cross-examination would not have helped to show the
18 declarant's lack of knowledge;

19 (x) Whether the possibility of the declarant's recollection being
20 faulty was remote;

21 (xi) Whether the circumstances surrounding the statements gave no
22 reason to suppose that the declarant misrepresented the actor's
23 involvement;

24 (xii) The relationship of the declarant to the actor;

25 (xiii) The nature and duration of the sexual abuse, assault, or
26 neglect; and

27 (xiv) Any other factor deemed appropriate.

28 (2) A statement may not be admitted under this section unless the
29 proponent of the statement gives notice to the adverse party of his or
30 her intention to offer the statement and the particulars of the
31 statement sufficiently in advance of the proceedings to provide the
32 adverse party with a fair opportunity to challenge the admissibility of
33 the statement at a hearing. The court shall state the basis for its
34 ruling by making specific findings of fact on the record.

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