

HOUSE BILL REPORT

HB 1427

As Reported by House Committee On:
Judiciary

Title: An act relating to the admissibility of confessions and admissions in criminal and juvenile offense proceedings.

Brief Description: Allowing confessions and other admissions to be admitted into evidence if substantial independent evidence establishes the trustworthiness of the statement.

Sponsors: Representatives Lantz, Delvin, O'Brien, Boldt, Blake, Hankins, Fromhold, Cody, Pearson, Mastin, Hunt, Roach, Moeller, Kagi, Benson, Rockefeller, McMahan and McDonald.

Brief History:

Committee Activity:

Judiciary: 2/28/03, 3/3/03 [DP].

Brief Summary of Bill

- Changes the traditional corpus delicti rule to a trustworthiness rule, which allows a defendant's confession to be admitted in a criminal proceeding if there is substantial independent evidence that tends to establish the trustworthiness of the confession.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Kirby, Lovick and Newhouse.

Minority Report: Do not pass. Signed by 1 member: Representative Flannigan.

Staff: Edie Adams (786-7180).

Background:

In a criminal proceeding, the prosecution has to prove that a crime has been committed and that the particular defendant charged is responsible for committing the crime. The

first requirement, proving that a crime has been committed, is often referred to as the "corpus delicti," which literally means "the body of the crime." For example, to establish the corpus delicti in a murder case, the prosecution has to show that a person died and that the person died by criminal means.

Long ago, courts in the United States established a common law doctrine known as the corpus delicti doctrine. This doctrine provides that the prosecution in a criminal case may not establish the corpus delicti solely by the confession or admission of the defendant. The corpus delicti doctrine provides that a confession or admission may only be admitted if there is independent, corroborating evidence of the corpus delicti.

The corpus delicti doctrine developed as a result of distrust of the reliability of confessions and concern that juries are likely to accept confessions uncritically. The distrust of the reliability of confessions was founded on a number of concerns, including the possibilities that the confession was: elicited by coercion or force; misreported or misconstrued; based on a mistaken perception of the facts or law; or falsely given by a mentally disturbed individual.

The level of independent, corroborative evidence that is required under the corpus delicti doctrine varies widely between the federal courts and many state courts. Washington follows the traditional corpus delicti doctrine which provides that the independent, corroborative evidence must, by itself, establish a prima facie case of the corpus delicti.

In 1954 the United States Supreme Court, in Opper v. United States, adopted what is referred to as the "trustworthiness" doctrine. The "trustworthiness" doctrine provides that a defendant's confession or admission may be admitted to establish the corpus delicti if there is substantial independent evidence that tends to establish the trustworthiness of the confession or admission. The independent evidence does not need to establish, by itself, the corpus delicti. It need only support the essential facts of the confession or admission sufficiently to justify a jury inference that the confession or admission is true.

The corpus delicti doctrine has been criticized by legal scholars and commentators on a number of grounds, including that: it has outlived its usefulness now that many other safeguards exist to protect against unreliable confessions; and it places an unrealistic burden on the prosecution since modern criminal law has made crimes more numerous and complex. A majority of states continue to follow some form of the traditional corpus delicti doctrine that a confession or admission may not be admitted unless there is independent evidence that, by itself, establishes the corpus delicti. However, many states have adopted the federal "trustworthiness" rule of corpus delicti.

A person may be a witness in a judicial proceeding only if the person is competent and legally available to testify. Competency is based on the person's mental capacity to receive an accurate impression of the facts about which he or she is examined and accurately remember and relate those facts truly. In addition to a lack of competency, a

witness may be legally unavailable to testify for a number of reasons, including if the person is: dead; physically unable to appear; intoxicated when called to the stand; or beyond the reach of the court's subpoena power and other efforts to secure the person's attendance have failed.

Summary of Bill:

The traditional corpus delicti rule is changed to a trustworthiness rule and standards for evaluating trustworthiness are provided.

In a criminal proceeding where independent proof of the corpus delicti is not present, a confession or statement of a defendant is admissible if:

- The victim of the crime is incompetent or legally unavailable to testify; and
- There is substantial independent evidence that tends to establish the trustworthiness of the confession or statement.

In determining whether the defendant's confession or statement is trustworthy, the court must consider:

- Whether there is evidence corroborating or contradicting facts in the statement;
- The character of the witness reporting the statement;
- The number of witnesses to the statement;
- Whether a record was made of the statement, and if so the timing of the making of the record; and
- The relationship between the witness and the defendant.

The court must issue a written order when finding that a statement is sufficiently trustworthy to be admitted.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The corpus delicti doctrine should be abandoned. It is an anachronistic rule that leads to unjust results. The rule is no longer necessary. There are many more safeguards in the law now that make the corpus delicti rule unnecessary. A hearing is held on the admissibility of a confession, the confession has to be voluntary, Miranda rights apply, the defendant has a right to an attorney, the jury is told to give whatever weight they see fit to the confession, and the state still has to prove the case beyond a reasonable doubt.

The corpus delicti doctrine doesn't come into play in very many cases, but it results in terrible injustice in the contexts of infant homicide and child sexual abuse where there is usually no physical evidence of the crime. After the state Supreme Court decision in Aten, the corpus delicti rule does a lot of harm, because that case requires that the independent evidence must be solely consistent with a crime. This makes infant homicide cases impossible to prosecute, even when the perpetrator has freely confessed, because it is not medically possible to tell whether a baby died from Sudden Infant Death Syndrome or from suffocation. Criminals know to go after vulnerable victims who cannot speak out in order to get away with the crime. The guilty people who go free have victims associated with them and their suffering stays with them forever. It is very difficult to make the public understand why we can't prosecute people who are coming forward and taking responsibility for their crimes.

The bill provides a better rule, the trustworthiness rule, than the current system in many ways. The federal system has had the trustworthiness rule since 1954 and they have not had problems with it. All we are talking about is whether the jury should be given the opportunity to hear the statement. The jury will determine what weight to give to the statement. Juries do a good job in sifting through all the evidence and reaching a determination.

Testimony Against: The corpus delicti doctrine is as old as the United States Constitution and serves a critical role in ensuring fairness and justice in criminal proceedings. This bill changes the focus of the law from the current standard of trustworthiness that a crime was committed to a standard of trustworthiness of the confession. Corpus delicti is not a difficult burden. The prosecution only has to make the most minimal showing that a crime may have occurred before using a defendant's statements to get a conviction.

The proponents of the bill have wrapped the issue around the vulnerable victim, but this bill is much broader than that by applying whenever a victim is "unavailable." Unavailability can include if the person refuses to testify or has a lack of memory on the subject. There are no complaints about corpus delicti in cases other than child death or child sexual abuse, which shows that the rule is fairly and justly applied. A Seattle P-I examination of child death cases determined that inadequate police investigation is the reason these cases can't be prosecuted, not the corpus delicti doctrine.

Corpus delicti is an important safeguard to prevent wrongful convictions and abolishing the doctrine will have a disproportionate impact on children and vulnerable adults. For every case in which this bill will help convict a guilty person, there will be scores of cases where people will be victimized by false confessions. This bill does not gain ground. It is proven that people, for inexplicable reasons, falsely confess to crimes. There is no adequate safeguard other than corpus delicti against convicting on a false confession. Jurors trust confessions; humans are unable to distinguish between true and false confessions. Even science has been unable to find a way to distinguish between true

and false confessions. Do not abolish the corpus delicti rule. This rule is necessary to protect innocent, vulnerable persons who falsely confess to crimes they did not commit.

Testified: (In support) Representative Lantz, prime sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; Dave McCachran, Whatcom County Prosecutor; Art Curtis, Clark County Prosecutor; Seth Dawson, Washington Association of Child Advocacy Centers; and Suzanne Brown, Washington Coalition of Sexual Assault Programs and Washington Coalition of Crime Victim Advocates.

(Opposed) Kim Gordon, Bob Wayne, and Sherry Appleton, Washington Defender Association and Washington Association of Criminal Defense Lawyers.