

SENATE BILL REPORT

SB 5627

As Reported By Senate Committee On:
Judiciary, February 14, 2003

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: Senators Esser and Kastama.

Brief History:

Committee Activity: Judiciary: 2/12/03, 2/14/03 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5627 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: In a criminal prosecution, the state cannot rely solely on the confession of a defendant. There must be proof, independent of the defendant's confession, that a crime was committed. This is known as the "corpus delicti" (the body of a crime). The corpus delicti doctrine holds that if evidence independent of the confession does not exist, then the defendant cannot be prosecuted. Under current Washington law, a defendant's confession may not necessarily be admitted into evidence, even if there is some independent evidence that a criminal act has occurred. The corpus delicti doctrine is designed to prevent convictions based solely on the defendant's sense of guilt. It is meant to protect against confessions made or misinterpreted because of coercion, mistake, or mental incompetency.

In 1954, the federal government adopted a less restrictive "trustworthiness" doctrine. It requires that the state produce substantial independent evidence tending to establish the trustworthiness of the confession. The evidence does not need to establish the entire body of the crime. It only needs to establish that the essential facts of the confession are supported enough to justify an inference that the confession is true. The federal rule has been substantially adopted in Alaska, California, Georgia, Hawaii, Illinois, Minnesota, New Hampshire, New Mexico, North Carolina, Oklahoma, Tennessee, and Wisconsin.

Summary of Substitute Bill: In a criminal case, if there is substantial independent evidence that tends to establish the trustworthiness of a confession and the alleged victim is incompetent to testify or otherwise legally unavailable as a witness, the confession may be admissible. In making the determination, the court considers the character of the witness

reporting the statement, the number of witnesses to the statement, whether a record of the confession exists and when it was made, and the relationship between the witness and the defendant. The court issues a written order if the confession is admitted.

Substitute Bill Compared to Original Bill: The new evidence rule applies only in cases in which the alleged victim is incompetent to testify or legally unavailable. Criteria for determining the trustworthiness of a confession are enumerated. The court issues a written order if the confession is admitted.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The current judicially created rule has outlived its usefulness. The jury can and should be trusted to determine the trustworthiness of lawfully obtained confessions. The current rule prevents the state from protecting our most vulnerable citizens, the very young and the elderly. Offenders know they are protected if they attack the non-verbal.

Testimony Against: The bill goes further than required to address the issues in the current law. False confessions are common. Experts have difficulty differentiating false from true confessions.

Testified: PRO: Russ Hauge, Kitsap County Prosecuting Attorney; Tom McBride, WAPA; John Knodell, Grant County Prosecuting Attorney; Suzanne Brown, Washington Coalition of Sexual Assault Programs; Larry Erickson, WASPC; Seth Dawson, Washington State Association for Children's Advocacy Centers; CON: Kim Gordon, WDA, WACDL.