
HOUSE BILL 2943

State of Washington 58th Legislature 2004 Regular Session

By Representatives O'Brien, Delvin and Lantz

Read first time 01/23/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to the admissibility of statements made by
2 dependent persons; adding new sections to chapter 10.58 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the state has a
6 compelling interest in making it possible for the courts to adequately
7 and fairly conduct cases involving dependent persons who are the
8 victims of crimes.

9 The legislature further finds that court proceedings involving
10 dependent persons may be hindered or precluded by circumstances related
11 to the dependent person's situation, such as, but not limited to,
12 memory problems associated with the length of time between the act or
13 crime and the related court proceedings, even though the dependent
14 person made a reliable statement about the crime or event shortly after
15 it occurred, and the unavailability of the dependent person as a
16 witness because of his or her physical or mental condition or
17 difficulties with verbal communication, or because participation in the
18 trial or proceeding has a substantial likelihood of resulting in
19 significant emotional, mental, or physical harm.

1 The legislature intends that this act make admissible as evidence
2 the reliable hearsay of dependent persons beyond what is currently
3 admissible, while respecting the constitutional rights of other
4 parties. When utilizing the hearsay exception pursuant to this act,
5 courts may find guidance in *State v. Ryan*, 103 Wn.2d 165 (1984), while
6 recognizing the different factors set forth in this act as well as
7 other factors that may apply to dependent persons. The legislature
8 intends this act to facilitate fair and just adjudication of criminal
9 and juvenile cases involving dependent persons in this state.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.58 RCW
11 to read as follows:

12 The definitions in this section apply to section 3 of this act,
13 unless the context clearly requires otherwise.

14 (1) "Assault" means assault in the first degree, assault in the
15 second degree, assault in the third degree, or assault in the fourth
16 degree, as those crimes are defined in chapter 9A.36 RCW.

17 (2) "Coercion" has the same meaning as defined in RCW 9A.36.070.

18 (3) "Criminal mistreatment" means any of the crimes as defined in
19 chapter 9A.42 RCW.

20 (4) "Dependent person" has the same meaning as defined in RCW
21 9A.42.010.

22 (5) "Fraud" means any of the crimes as defined in chapter 9A.60
23 RCW.

24 (6) "Extortion" means extortion in the first degree and extortion
25 in the second degree, as those crimes are defined in chapter 9A.56 RCW.

26 (7) "Sex offense" means rape in the first degree, rape in the
27 second degree, rape in the third degree, and indecent liberties, as
28 those crimes are defined in chapter 9A.44 RCW.

29 (8) "Unavailable" means the dependent person is unavailable under
30 ER 804 in the Washington state court rules of evidence.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.58 RCW
32 to read as follows:

33 (1) An out-of-court statement made by a dependent person describing
34 an assault, a sex offense, coercion, criminal mistreatment, extortion,
35 or fraud committed against the dependent person declarant is admissible

1 in evidence in a criminal trial or juvenile offense adjudication
2 proceeding if:

3 (a) The court finds in a hearing conducted outside the presence of
4 the jury, if any, that the time, content, and circumstances of the
5 statement provide sufficient indicia of reliability. In making its
6 determination, the court may consider: (i) The reliability of the
7 declarant; (ii) the timing of the declaration; (iii) whether the
8 declarant had an apparent motive to lie; (iv) the relationship of the
9 declarant to the witness; (v) the relationship of the declarant to the
10 actor; (vi) whether the declarant made the statement to more than one
11 person; (vii) the mental and physical condition and cognitive ability
12 of the dependent person; (viii) the nature and duration of the crime,
13 neglect, abuse, sexual abuse, or exploitation; and (ix) any other
14 factor deemed appropriate; and

15 (b) The dependent person either:

16 (i) Testifies; or

17 (ii) The court finds the dependent person is unavailable as a
18 witness, but when the dependent person is unavailable as a witness, the
19 statement may be admitted only if there is corroborative evidence of
20 the act.

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

--- END ---