

***Judiciary Committee***

***HB 2151***

***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 Summary of Bill***

- *Creates a hearsay exception in criminal proceedings for statements made by a person describing an act constituting an assault 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.*

***Hearing Date:*** *2/23/01*

***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 Bill:***

*An out-of-court statement made by a person describing an act constituting an assault 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 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.*

***Appropriation:*** *None.*

***Fiscal Note:*** *Not Requested.*

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