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ENGROSSED SUBSTITUTE HOUSE BILL 2151

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State of Washington

57th Legislature

2001 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Carrell and Talcott)

Read first time 02/27/2001. Referred to Committee on .

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds there has been an  
6 increase in criminal abuse, assault, neglect, and sexual offenses  
7 against vulnerable persons. The legislature further finds that  
8 criminal and juvenile offense adjudication proceedings involving  
9 vulnerable persons may be hindered or precluded due to the incompetence  
10 or unavailability of a vulnerable person at the time of trial despite  
11 an otherwise reliable statement made by the vulnerable person  
12 concerning any abuse, assault, neglect, or sexual offenses against the  
13 vulnerable person. The state has a compelling interest in providing  
14 vulnerable persons who are victims of such crimes the ability to ensure  
15 reliable evidence is made available in court on their behalf. The  
16 legislature intends that this act make admissible as evidence the  
17 reliable hearsay of vulnerable persons, while ensuring the  
18 constitutional rights of other parties.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 5.60 RCW  
2 to read as follows:

3        (1) An out-of-court statement, not otherwise admissible by statute  
4 or court rule, made by a vulnerable person describing an act  
5 constituting abuse, assault, neglect, or a sexual offense against the  
6 declarant, when the act results in the death of or substantial bodily  
7 harm to the declarant, is admissible as evidence in a criminal or  
8 juvenile offense adjudication proceeding if the court finds:

9        (a) That the declarant was not incompetent under RCW 5.60.050 at  
10 the time the out-of-court statement was made;

11        (b) That the declarant is unavailable as a witness at trial;

12        (c) That there is corroborative evidence of the act against the  
13 declarant; and

14        (d) In a hearing conducted outside the presence of the jury, if  
15 any, that the time, content, and circumstances of the out-of-court  
16 statement provide sufficient indicia of reliability.

17        (2) In making its finding under subsection (1) of this section, the  
18 court shall consider whether, at the time the statement was made, the  
19 reliability of the declaration was indicated by:

20        (a) The general character and trustworthiness of the declarant;

21        (b) The timing of the declaration;

22        (c) The declarant's lack of motive to lie;

23        (d) The relationship of the declarant to the witness;

24        (e) Whether the declarant made the statement to more than one  
25 person;

26        (f) The mental and physical condition and cognitive ability of the  
27 declarant;

28        (g) Whether the statement was made spontaneously;

29        (h) Whether the statement expressed assertions of past fact;

30        (i) Whether cross-examination would not have helped to show the  
31 declarant's lack of knowledge;

32        (j) Whether the possibility of the declarant's recollection being  
33 faulty was remote;

34        (k) Whether the circumstances surrounding the statements gave no  
35 reason to suppose that the declarant misrepresented the defendant's  
36 involvement;

37        (l) The relationship of the declarant to the actor;

38        (m) The nature and duration of the abuse, assault, neglect, or  
39 sexual contact; and

1 (n) Any other factor deemed appropriate.

2 (3) A statement may not be admitted under this section unless the  
3 proponent of the statement gives notice to the adverse party of his or  
4 her intention to offer the statement and the particulars of the  
5 statement sufficiently in advance of the proceedings to provide the  
6 adverse party with a fair opportunity to challenge the admissibility of  
7 the statement at a hearing.

8 (4) The court shall state the basis for its ruling on the  
9 admissibility of any out-of-court statement by making specific findings  
10 of fact on the record.

11 (5) For purposes of this section:

12 (a) "Abuse" means the intentional, reckless, or negligent causing  
13 of physical injury to a vulnerable person by any wrongful, improper, or  
14 offensive act, manner, or method of handling or dealing with the  
15 vulnerable person which is determined to be unreasonable.

16 (b) "Assault" means the commission of any unlawful assault causing  
17 physical injury to the vulnerable person.

18 (c) "Neglect" means the failure by one having a duty of care to a  
19 vulnerable person to provide the goods or services necessary to  
20 maintain the physical well-being of the vulnerable person proximately  
21 causing physical injury to the vulnerable person.

22 (d) "Sexual offense" means the commission of any unlawful sexual  
23 offense causing physical injury to the vulnerable person.

24 (e) "Substantial bodily harm" has the same meaning as in RCW  
25 9A.04.110.

26 (f) "Unavailable" means the vulnerable person is unavailable under  
27 the Washington state court rules of evidence.

28 (g) "Vulnerable person" means any person who has the functional,  
29 mental, or physical inability to care for himself or herself and:

30 (i) Is found incapacitated under chapter 11.88 RCW; or

31 (ii) Has a developmental disability as defined under RCW  
32 71A.10.020; or

33 (iii) Has been admitted to any facility as that term is defined in  
34 RCW 74.34.020; or

35 (iv) Is receiving services from home health, hospice, or home care  
36 agencies licensed or required to be licensed under chapter 70.127 RCW;  
37 or

1 (v) Is receiving services from an individual provider as that term  
2 is defined in RCW 74.34.020.

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