
SUBSTITUTE HOUSE BILL 2151

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; and adding a new section to chapter 5.60 RCW.

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

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

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

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

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

15 (c) That there is corroborative evidence of the act against the
16 declarant; and

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

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

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

5 (b) The timing of the declaration;

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

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

8 (e) Whether the declarant made the statement to more than one
9 person;

10 (f) The mental and physical condition and cognitive ability of the
11 declarant;

12 (g) Whether the statement was made spontaneously;

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

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

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

18 (k) Whether the circumstances surrounding the statements gave no
19 reason to suppose that the declarant misrepresented the defendant's
20 involvement;

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

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

24 (n) Any other factor deemed appropriate.

25 (3) A statement may not be admitted under this section unless the
26 proponent of the statement gives notice to the adverse party of his or
27 her intention to offer the statement and the particulars of the
28 statement sufficiently in advance of the proceedings to provide the
29 adverse party with a fair opportunity to challenge the admissibility of
30 the statement at a hearing.

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

34 (5) For purposes of this section:

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

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

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

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

9 (e) "Substantial bodily harm" has the same meaning as in RCW
10 9A.04.110.

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

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

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

16 (ii) Has a developmental disability as defined under RCW
17 71A.10.020; or

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

20 (iv) Is receiving services from home health, hospice, or home care
21 agencies licensed or required to be licensed under chapter 70.127 RCW;
22 or

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

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