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HOUSE BILL 2151

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Carrell and Talcott

Read first time 02/19/2001. Referred to Committee on Judiciary.

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 person describing an act constituting an  
8 assault or a sex offense against the declarant when the act results in  
9 substantial bodily harm, as defined in RCW 9A.04.110, to the declarant  
10 or in the death of the declarant, is admissible as evidence in a  
11 criminal or juvenile offense adjudication proceeding if the court  
12 finds:

13            (a) That the declarant was competent under RCW 5.60.050 at the time  
14 the out-of-court statement was made;

15            (b) That the declarant is unavailable as a witness at trial under  
16 evidence rule 804(a);

17            (c) There is corroborative evidence of the act against the  
18 declarant; and

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

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

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

8 (b) The timing of the declaration;

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

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

11 (e) Whether the declarant made the statement to more than one  
12 person;

13 (f) The mental and physical condition and cognitive ability of the  
14 declarant;

15 (g) Whether the statement was made spontaneously;

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

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

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

21 (k) Whether the circumstances surrounding the statements gave no  
22 reason to suppose that the declarant misrepresented the defendant's  
23 involvement;

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

25 (m) The nature and duration of the assault or sexual offense; and

26 (n) Any other factor deemed appropriate.

27 (3) Unless excused for good cause shown, a statement may not be  
28 admitted under this section unless the proponent of the statement gives  
29 notice to the adverse party of his or her intention to offer the  
30 statement and the particulars of the statement sufficiently in advance  
31 of the proceedings to provide the adverse party with a fair opportunity  
32 to challenge the admissibility of the statement at a hearing. The  
33 court shall state the basis for its ruling by making specific findings  
34 of fact on the record.

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