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## Judiciary Committee

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### HB 2943

**Title:** An act relating to the admissibility of statements made by dependent persons.

**Brief Description:** Regarding the admissibility of statements made by dependent persons.

**Sponsors:** Representatives O'Brien, Delvin and Lantz.

Brief Summary of Bill
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| <ul style="list-style-type: none"><li>• Allows certain hearsay statements made by dependent persons to be admissible in criminal proceedings.</li></ul> |
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**Hearing Date:** 2/12/04

**Staff:** Trudes Tango Hutcheson (786-7384).

**Background:**

Out-of-court statements (hearsay) are generally inadmissible in court as evidence to prove the truth of the matter asserted. Hearsay is generally inadmissible because the trier of fact was not able to determine the credibility of the declarant since the usual procedures, such as cross-examination, were not available when the statement was made.

Exceptions to the hearsay rule exist both in court rules and statutes. The Legislature created a statutory exception to the hearsay rule for statements made by a child under the age of 10 describing sexual or physical abuse. Such a child's out-of-court statement is admissible in criminal proceedings and dependency proceedings if the time, content, and circumstances of the statement provide sufficient indicia of reliability, and the child either testifies or is unavailable to testify. If the child is unavailable, then the statement may be admitted only if there is corroborative evidence of the act.

Under the rules of evidence, a person is considered unavailable as witness if the person: (a) is exercising a privilege; (b) refuses 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.

There are various statutes making it a crime to mistreat or abandon a dependent person. "Dependent person" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life. A

resident of a nursing home or adult family home, or a frail elder or vulnerable adult is presumed to be a dependent person for purposes of the criminal mistreatment statutes.

**Summary of Bill:**

An out-of-court statement made by a dependent person describing an assault, a sex offense, coercion, criminal mistreatment, extortion, or fraud committed against the dependent person is admissible as evidence in a criminal trial or juvenile offense adjudication proceeding if: (a) the court finds in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and (b) the dependent person either testifies or is unavailable as a witness. If the dependent person is unavailable as a witness, the statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted unless the party wanting to use the statement gives the adverse party notice in advance to allow that party a fair opportunity to challenge the admissibility of the statement at a hearing.

In determining if there is sufficient indicia of reliability, the court may consider: (a) the reliability of the declarant; (b) the timing of the declaration; (c) whether the declarant had an apparent motive to lie; (d) the relationship of the declarant to the witness; (e) the relationship of the declarant to the actor; (f) whether the declarant made the statement to more than one person; (g) the mental and physical condition and cognitive ability of the dependent person; (h) the nature and duration of the crime; and (i) any other appropriate factor.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.