

HOUSE BILL REPORT

SSB 5627

As Reported by House Committee On:
Judiciary

Title: An act relating to the admissibility of confessions and admissions in criminal and juvenile offense proceedings.

Brief Description: Allowing confessions and other admissions to be admitted into evidence if substantial independent evidence establishes the trustworthiness of the statement.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Esser and Kastama).

Brief History:

Committee Activity:

Judiciary: 3/20/03, 3/25/03 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Changes the traditional corpus delicti rule to a trustworthiness rule, which allows a defendant's confession to be admitted in a criminal proceeding if there is substantial independent evidence that tends to establish the trustworthiness of the confession.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Edie Adams (786-7180).

Background:

In a criminal proceeding, the prosecution has to prove that a crime has been committed and that the particular defendant charged is responsible for committing the crime. The first requirement, proving that a crime has been committed, is often referred to as the "corpus delicti," which literally means "the body of the crime." For example, to

establish the corpus delicti in a murder case, the prosecution has to show that a person died and that the person died by criminal means.

Long ago, courts in the United States established a common law doctrine known as the corpus delicti doctrine. This doctrine provides that the prosecution in a criminal case may not establish the corpus delicti solely by the confession or admission of the defendant. The corpus delicti doctrine requires that a confession or admission may only be admitted if there is independent, corroborating evidence of the corpus delicti.

The corpus delicti doctrine developed as a result of distrust of the reliability of confessions and concern that juries are likely to accept confessions uncritically. The distrust of the reliability of confessions was founded on a number of concerns, including the possibilities that the confession was: elicited by coercion or force; misreported or misconstrued; based on a mistaken perception of the facts or law; or falsely given by a mentally disturbed individual.

The level of independent, corroborative evidence that is required under the corpus delicti doctrine varies widely between the federal courts and many state courts. Washington follows the traditional and stricter corpus delicti doctrine which provides that the independent, corroborative evidence must, by itself, establish a prima facie case of the corpus delicti.

In 1954 the United States Supreme Court, in Opper v. United States, adopted what is referred to as the "trustworthiness" doctrine. The "trustworthiness" doctrine provides that a defendant's confession or admission may be admitted to establish the corpus delicti if there is substantial independent evidence that tends to establish the trustworthiness of the confession or admission. The independent evidence does not need to establish, by itself, the corpus delicti. It need only support the essential facts of the confession or admission sufficiently to justify a jury inference that the confession or admission is true.

The corpus delicti doctrine has been criticized by legal scholars and commentators on a number of grounds, including that: it has outlived its usefulness now that many other safeguards exist to protect against unreliable confessions; and it places an unrealistic burden on the prosecution since modern criminal law has made crimes more numerous and complex. A majority of states continue to follow some form of the traditional corpus delicti doctrine that a confession or admission may not be admitted unless there is independent evidence that, by itself, establishes a prima facie case of the corpus delicti. However, many states have adopted the federal "trustworthiness" rule of corpus delicti.

A person may be a witness in judicial proceeding only if the person is competent. Competency is based on the person's mental capacity to receive an accurate impression of the facts about which he or she is examined and accurately remember and relate those facts truly.

Summary of Amended Bill:

The traditional corpus delicti rule is changed to a trustworthiness rule and standards for evaluating trustworthiness are provided.

In a criminal proceeding where independent proof of the corpus delicti is not present, a confession or statement of a defendant is admissible if:

- The victim of the crime is dead or incompetent to testify; and
- There is substantial independent evidence that tends to establish the trustworthiness of the confession or statement.

In determining whether the defendant's confession or statement is trustworthy, the court must consider:

- Whether there is evidence corroborating or contradicting facts in the statement, including the elements of the offense;
- The character of the witness reporting the statement and the number of witnesses to the statement;
- Whether a record was made of the statement, and if so the timing of the making of the record; and
- The relationship between the witness and the defendant.

The court must issue a written order when finding that a statement is sufficiently trustworthy to be admitted.

Amended Bill Compared to Substitute Bill:

The original bill applied also when the victim of the crime is legally unavailable to testify. The original bill did not specifically provide that the court must consider whether there is any evidence corroborating or contradicting the elements of the offense set out in the statement in determining whether the statement is trustworthy. The amended bill combines two of the other factors the court must consider into one subsection.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The bill adopts the federal law trustworthiness standard, which is

simple and straightforward. It will not mean that the prosecution will necessarily get a conviction. Rather, it will provide to the jury as much relevant information as possible, and then we rely on the common sense of the jury to balance all the factors and judge the evidence fairly. The bill will help protect children and the elderly or vulnerable and will give these victims a voice.

The House version of this bill is a step back but is a good compromise. It will enable the system to deal with the cases that are at the heart of the problem -- infanticide and child molestation.

Testimony Against: We endorse the version of the bill as passed the House. The legally unavailable standard in this bill is too broad and the House version narrows this. In addition, the House version requires the court to look to the elements of the offense. The federal courts still require corroborating evidence for the elements sought to be established by the confession. The list of factors the court must consider is not exclusive. We want the court to look at the factors that produce false confessions, such as mental illness, youth and susceptibility to influence.

Testified: (In support, with amendments) Senator Esser, prime sponsor; Seth Dawson, Washington State Association of Children's Advocacy Centers; Tom McBride, Washington Association of Prosecuting Attorneys; and Dave McCachran, Whatcom County Prosecutor's Office.

(Opposed) David Donnan, Washington Association of Criminal Defense Attorneys.