
Judiciary Committee

HB 1508

Title: An act relating to creating a hearsay exception for statements offered against a party that has engaged or acquiesced in wrongdoing.

Brief Description: Creating a hearsay exception for statements offered against a party that has engaged or acquiesced in wrongdoing.

Sponsors: Representatives Lantz, Campbell, Flannigan, Newhouse, Darneille, Moeller and Kirby.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Creates a hearsay exception when: (a) the declarant is unavailable as a witness; and (b) the statement is offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, make the declarant unavailable.

Hearing Date: 2/9/05

Staff: Trudes Tango Hutcheson (786-7384).

Background:

The sixth amendment of the federal constitution and article 1, section 22 of Washington's constitution provide that a criminal defendant has the right to confront the witnesses against him. Courts consider the right to confrontation essential to a fair trial. The ultimate goal of the confrontation clause is to ensure reliability of evidence, and it requires that reliability of evidence be assessed in a particular procedural manner: by testing through cross-examination.

Hearsay is an out-of-court statement offered in court as evidence to prove the truth of the matter asserted. When a witness's testimony includes hearsay, the truth and accuracy of those statements cannot be tested by cross-examination, especially when the declarant of the statement is not available to testify in court. Under the rules of evidence, hearsay is generally not admissible.

Exceptions to the hearsay rule exist in court rules and statutes. One exception to the hearsay rule is called the "forfeiture by wrongdoing" doctrine. It was created in common law and codified in the federal rules of evidence in 1997.

Under that exception, the defendant cannot use the confrontation rights to bar testimony of an unavailable witness when the defendant wrongfully caused the witness's unavailability. The party opposing the hearsay evidence must have engaged or acquiesced in a wrongful act that was

intended to, and did, make the witness unavailable. In a recent case, the U.S. Supreme Court noted in dicta that the forfeiture by wrongdoing exception is one based on equitable grounds rather than an alternative means of determining reliability.

Forfeiture by wrongdoing has not been adopted in Washington.

Summary of Bill:

The forfeiture by wrongdoing exception to hearsay is adopted. A statement shall not be excluded by the hearsay rule if: (a) the declarant is unavailable as a witness; and (b) the statement is being offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, make the declarant unavailable. This language mirrors the federal evidence rule.

Appropriation: None.

Fiscal Note: Not requested.

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