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**Judiciary Committee**

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**HB 1427**

**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:** Representatives Lantz, Delvin, O'Brien, Boldt, Blake, Hankins, Fromhold, Cody, Pearson, Mastin, Hunt, Roach, Moeller, Kagi, Benson, Rockefeller, McMahan and McDonald.

**Brief Summary of Bill**

- 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.

**Hearing Date:** 2/28/03

**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 provides 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 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 the corpus delicti. However, many states have adopted the federal "trustworthiness" rule of corpus delicti.

A person may be a witness in a judicial proceeding only if the person is competent and legally available to testify. Competency is based on the person's mental capacity to receive an accurate impression of the facts about which they are examined and accurately remember and relate those facts truly. In addition to a lack of competency, a witness may be legally unavailable to testify for a number of reasons, including if the person is: dead; physically unable to appear; intoxicated when called to the stand; or beyond the reach of the court's subpoena power and other efforts to secure the person's attendance have failed.

### **Summary of 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 incompetent or legally unavailable 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;
- The character of the witness reporting the statement;
- 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.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

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