
A BILL FOR AN ACT

RELATING TO DOMESTIC VIOLENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Oregon has adopted a
2 pioneering approach to addressing certain challenges associated
3 with prosecuting domestic violence cases in which the victims
4 are uncooperative. Victims in these cases are often reluctant
5 to testify in court and may ignore court subpoenas to appear for
6 trial. This reluctance has been attributed to fear of the
7 perpetrator, consequences threatened by the perpetrator if the
8 victim testifies, or more generally to the complicated dynamic
9 of abusive relationships in which the abuser wields power and
10 control over the victim while promising to change and begging
11 for forgiveness between acts of violence.

12 More specifically, the legislature finds that Oregon's
13 rules of evidence provide a limited hearsay exception for a
14 statement made by a victim of domestic violence to a government
15 official within twenty-four hours of a domestic violence attack,
16 even if the statement is testimonial in nature, as long as the



1 statement bears "sufficient indicia of reliability", which is a
2 determination made by the trial judge.

3 The legislature notes that the general prohibition on the
4 use of hearsay evidence stems from the federal and state
5 constitutional right of a defendant in a criminal trial to
6 confront the defendant's accusers. This right was examined at
7 length in the United States Supreme Court's 2004 opinion in
8 *Crawford v. Washington*, 541 U.S. 36, and clarified in the
9 Court's 2006 opinion in *Davis v. Washington*, 547 U.S. 813.
10 However, a 2017 article in the Boston College Journal of Law and
11 Social Justice noted that Oregon's hearsay exception adequately
12 safeguards a defendant's confrontation right by setting a clear
13 time limit for the admissible hearsay statement to be made, and
14 that in a domestic violence context, victim statements made
15 within twenty-four hours of an incident are the most reliable.
16 After this window, the willingness of victims to cooperate
17 diminishes, the potential for coercion increases, and memories
18 become less clear.

19 The legislature further notes that Oregon's hearsay
20 exception is premised on a policy approach that treats domestic
21 violence cases as a form of "ongoing emergency". That is, given



1 the statistics showing that incidents of domestic violence tend
2 to escalate over time and sometimes culminate in the victim's
3 death, the mere fact that a single domestic violence attack has
4 ended does not necessarily mean that the emergency has ended.
5 The legislature believes that recognition of a domestic violence
6 incident as being part of a larger "ongoing emergency" is what
7 distinguishes, and makes admissible in certain circumstances,
8 what would otherwise be considered an inadmissible hearsay
9 statement under *Crawford v. Washington*, *Davis v. Washington*, and
10 *State v. Fields*, 115 Hawaii 503, a 2007 Hawaii supreme court
11 opinion that discussed the holdings of the two federal cases.
12 The legislature further believes that to effectively prosecute
13 domestic violence cases and hold offenders accountable, the
14 Hawaii rules of evidence must strike a balance between
15 protecting the constitutional rights of defendants while
16 promoting the safety of domestic violence victims and the larger
17 society.

18 Accordingly, the purpose of this Act is to allow a narrow
19 hearsay exception for statements made by a domestic violence
20 victim to a government official within twenty-four hours of a
21 domestic violence attack, even if the statement is testimonial



1 in nature, as long as the statement bears sufficient indicia of
2 reliability.

3 SECTION 2. Section 626-1, Hawaii Revised Statutes, is
4 amended by amending rule 803, subsection (b), to read as
5 follows:

6 "(b) Other exceptions.

7 (1) Present sense impression. A statement describing or
8 explaining an event or condition made while the
9 declarant was perceiving the event or condition or
10 immediately thereafter.

11 (2) Excited utterance. A statement relating to a
12 startling event or condition made while the declarant
13 was under the stress of excitement caused by the event
14 or condition.

15 (3) Then existing mental, emotional, or physical
16 condition. A statement of the declarant's then
17 existing state of mind, emotion, sensation, or
18 physical condition (such as intent, plan, motive,
19 design, mental feeling, pain, and bodily health), but
20 not including a statement of memory or belief to prove
21 the fact remembered or believed unless it relates to



1 the execution, revocation, identification, or terms of
2 declarant's will.

3 (4) Statements for purposes of medical diagnosis or
4 treatment. Statements made for purposes of medical
5 diagnosis or treatment and describing medical history,
6 or past or present symptoms, pain, or sensations, or
7 the inception or general character of the cause or
8 external source thereof insofar as reasonably
9 pertinent to diagnosis or treatment.

10 (5) Reserved.

11 (6) Records of regularly conducted activity. A
12 memorandum, report, record, or data compilation, in
13 any form, of acts, events, conditions, opinions, or
14 diagnoses, made in the course of a regularly conducted
15 activity, at or near the time of the acts, events,
16 conditions, opinions, or diagnoses, as shown by the
17 testimony of the custodian or other qualified witness,
18 or by certification that complies with rule 902(11) or
19 a statute permitting certification, unless the sources
20 of information or other circumstances indicate lack of
21 trustworthiness.



- 1 (7) Absence of entry in records kept in accordance with
2 the provisions of paragraph (6). Evidence that a
3 matter is not included in the memoranda, reports,
4 records, or data compilations, in any form, kept in
5 accordance with the provisions of paragraph (6), to
6 prove the nonoccurrence or nonexistence of the matter,
7 if the matter was of a kind of which a memorandum,
8 report, record, or data compilation was regularly made
9 and preserved, unless the sources of information or
10 other circumstances indicate lack of trustworthiness.
- 11 (8) Public records and reports. Records, reports,
12 statements, or data compilations, in any form, of
13 public offices or agencies, setting forth (A) the
14 activities of the office or agency, or (B) matters
15 observed pursuant to duty imposed by law as to which
16 matters there was a duty to report, excluding,
17 however, in criminal cases matters observed by police
18 officers and other law enforcement personnel, or (C)
19 in civil proceedings and against the government in
20 criminal cases, factual findings resulting from an
21 investigation made pursuant to authority granted by



- 1 law, unless the sources of information or other
2 circumstances indicate lack of trustworthiness.
- 3 (9) Records of vital statistics. Records or data
4 compilations, in any form, of births, fetal deaths,
5 deaths, or marriages, if the report thereof was made
6 to a public office pursuant to requirements of law.
- 7 (10) Absence of public record or entry. To prove the
8 absence of a record, report, statement, or data
9 compilation, in any form, or the nonoccurrence or
10 nonexistence of a matter of which a record, report,
11 statement, or data compilation, in any form, was
12 regularly made and preserved by a public office or
13 agency, evidence in the form of a certification in
14 accordance with rule 902, or testimony, that diligent
15 search failed to disclose the record, report,
16 statement, or data compilation, or entry.
- 17 (11) Records of religious organizations. Statements of
18 births, marriages, divorces, deaths, legitimacy,
19 ancestry, relationship by blood or marriage, or other
20 similar facts of personal or family history, contained



1 in a regularly kept record of a religious
2 organization.

3 (12) Marriage, baptismal, and similar certificates.

4 Statements of fact contained in a certificate that the
5 maker performed a marriage or other ceremony or
6 administered a sacrament, made by a clergyman, public
7 official, or other person authorized by the rules or
8 practices of a religious organization or by law to
9 perform the act certified, and purporting to have been
10 issued at the time of the act or within a reasonable
11 time thereafter.

12 (13) Family records. Statements of fact concerning
13 personal or family history contained in family Bibles,
14 genealogies, charts, engravings on rings, inscriptions
15 on family portraits, engravings on urns, crypts, or
16 tombstones, or the like.

17 (14) Records of documents affecting an interest in
18 property. The record of a document purporting to
19 establish or affect an interest in property, as proof
20 of the content of the original recorded document and
21 its execution and delivery by each person by whom it



1 purports to have been executed, if the record is a
2 record of a public office and an applicable statute
3 authorizes the recording of documents of that kind in
4 that office.

5 (15) Statements in documents affecting an interest in
6 property. A statement contained in a document
7 purporting to establish or affect an interest in
8 property if the matter stated was relevant to the
9 purpose of the document, unless the circumstances
10 indicate lack of trustworthiness.

11 (16) Statements in ancient documents. Statements in a
12 document in existence twenty years or more the
13 authenticity of which is established.

14 (17) Market reports, commercial publications. Market
15 quotations, tabulations, lists, directories, or other
16 published compilations, generally used and relied upon
17 by the public or by persons in particular occupations.

18 (18) Learned treatises. To the extent called to the
19 attention of an expert witness upon cross-examination
20 or relied upon by the witness in direct examination,
21 statements contained in published treatises,



1 periodicals, or pamphlets on a subject of history,
2 medicine, or other science or art, established as a
3 reliable authority by the testimony or admission of
4 the witness or by other expert testimony or by
5 judicial notice. If admitted, the statements may be
6 read into evidence but may not be received as
7 exhibits.

8 (19) Reputation concerning personal or family history.
9 Reputation among members of the person's family by
10 blood, adoption, or marriage, or among the person's
11 associates, or in the community, concerning a person's
12 birth, adoption, marriage, divorce, death, legitimacy,
13 relationship by blood, adoption, or marriage,
14 ancestry, or other similar fact of the person's
15 personal or family history.

16 (20) Reputation concerning boundaries or general history.
17 Reputation in a community, arising before the
18 controversy, as to boundaries of or customs affecting
19 lands in the community, and reputation as to events of
20 general history important to the community or state or
21 nation in which located.



- 1 (21) Reputation as to character. In proving character or a
2 trait of character under rules 404 and 405, reputation
3 of a person's character among the person's associates
4 or in the community.
- 5 (22) Judgment of previous conviction. Evidence of a final
6 judgment, entered after a trial or upon a plea of
7 guilty (but not upon a plea of nolo contendere),
8 adjudging a person guilty of a crime punishable by
9 death or imprisonment in excess of one year, to prove
10 any fact essential to sustain the judgment, but not
11 including, when offered by the government in a
12 criminal prosecution for purposes other than
13 impeachment, judgments against persons other than the
14 accused. The pendency of an appeal may be shown but
15 does not affect admissibility.
- 16 (23) Judgment as to personal, family or general history, or
17 boundaries. Judgments as proof of matters of
18 personal, family or general history, or boundaries,
19 essential to the judgment, if the same would be
20 provable by evidence of reputation.
- 21 (24) Statement by a victim of domestic violence.



1 (A) A statement that purports to narrate, describe,
 2 report, or explain an incident of domestic
 3 violence, as defined in section 321-471, made by
 4 a victim of that domestic violence within twenty-
 5 four hours after the incident occurred, if the
 6 statement:

7 (i) Was recorded, either electronically or in
 8 writing, or was made to a law enforcement
 9 officer as defined in section 139-1,
 10 corrections officer, youth correction
 11 officer, parole or probation officer,
 12 emergency medical services provider, or
 13 firefighter; and

14 (ii) Has sufficient indicia of reliability.

15 (B) In determining whether a statement has sufficient
 16 indicia of reliability, the court shall consider
 17 all circumstances surrounding the statement. In
 18 determining whether a statement has sufficient
 19 indicia of reliability, the court may consider:

20 (i) The personal knowledge of the declarant;



1 (ii) Whether the statement is corroborated by
 2 evidence other than statements that are
 3 subject to admission only pursuant to this
 4 paragraph;

5 (iii) The timing of the statement; and

6 (iv) Whether the statement was elicited by
 7 leading questions.

8 Recantation by a declarant is not a sufficient reason
 9 for denying admission of a statement under this
 10 paragraph in the absence of other factors indicating
 11 unreliability.

12 [-(24)] (25) Other exceptions. A statement not specifically
 13 covered by any of the exceptions in this paragraph (b)
 14 but having equivalent circumstantial guarantees of
 15 trustworthiness, if the court determines that:

16 (A) [~~the~~] The statement is more probative on the
 17 point for which it is offered than any other
 18 evidence which the proponent can procure through
 19 reasonable efforts[~~7~~]; and



1 (B) [~~the~~] The general purposes of these rules and the
2 interests of justice will best be served by
3 admission of the statement into evidence.

4 However, a statement may not be admitted under this
5 exception unless the proponent of it makes known to
6 the adverse party sufficiently in advance of the trial
7 or hearing to provide the adverse party with a fair
8 opportunity to prepare to meet it, the proponent's
9 intention to offer the statement and the particulars
10 of it, including the name and address of the
11 declarant."

12 SECTION 3. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Rules of Evidence; Hearsay Exceptions; Domestic Violence

Description:

Allows a narrow hearsay exception for statements made by domestic violence victims to certain government officials within 24 hours of an incident of domestic violence, even if the statement is testimonial in nature, as long as the statement bears sufficient indicia of reliability. Effective 7/1/2050.
(HD1)

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