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# 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 opinion in *Crawford*  
8 *v. Washington*, 541 U.S. 36 (2004), and clarified by the Court in  
9 *Davis v. Washington*, 547 U.S. 813 (2006). However, a 2017  
10 article in the Boston College Journal of Law and Social Justice  
11 noted that Oregon's hearsay exception adequately safeguards a  
12 defendant's confrontation right by setting a clear time limit  
13 for the admissible hearsay statement to be made, and that in a  
14 domestic violence context, victim statements made within twenty-  
15 four hours of an incident are the most reliable. After this  
16 window, the willingness of victims to cooperate diminishes, the  
17 potential for coercion increases, and memories become less  
18 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 (2007), a 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 non-testimonial statements made by a  
20 domestic violence victim within not more than a twenty-four hour  
21 period of a domestic violence attack and prior to the defendant



1 being arrested regardless of the availability of the declarant,  
2 if the statement is non-testimonial in nature, provided that the  
3 statement is determined to bear sufficient indicia of  
4 reliability.

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

8 "(b) Other exceptions.

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

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

17 (3) Then existing mental, emotional, or physical  
18 condition. A statement of the declarant's then  
19 existing state of mind, emotion, sensation, or  
20 physical condition (such as intent, plan, motive,  
21 design, mental feeling, pain, and bodily health), but



1 not including a statement of memory or belief to prove  
2 the fact remembered or believed unless it relates to  
3 the execution, revocation, identification, or terms of  
4 declarant's will.

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

12 (5) Reserved.

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



1 of information or other circumstances indicate lack of  
2 trustworthiness.

3 (7) Absence of entry in records kept in accordance with  
4 the provisions of paragraph (6). Evidence that a  
5 matter is not included in the memoranda, reports,  
6 records, or data compilations, in any form, kept in  
7 accordance with the provisions of paragraph (6), to  
8 prove the nonoccurrence or nonexistence of the matter,  
9 if the matter was of a kind of which a memorandum,  
10 report, record, or data compilation was regularly made  
11 and preserved, unless the sources of information or  
12 other circumstances indicate lack of trustworthiness.

13 (8) Public records and reports. Records, reports,  
14 statements, or data compilations, in any form, of  
15 public offices or agencies, setting forth (A) the  
16 activities of the office or agency, or (B) matters  
17 observed pursuant to duty imposed by law as to which  
18 matters there was a duty to report, excluding,  
19 however, in criminal cases matters observed by police  
20 officers and other law enforcement personnel, or (C)  
21 in civil proceedings and against the government in



1 criminal cases, factual findings resulting from an  
2 investigation made pursuant to authority granted by  
3 law, unless the sources of information or other  
4 circumstances indicate lack of trustworthiness.

5 (9) Records of vital statistics. Records or data  
6 compilations, in any form, of births, fetal deaths,  
7 deaths, or marriages, if the report thereof was made  
8 to a public office pursuant to requirements of law.

9 (10) Absence of public record or entry. To prove the  
10 absence of a record, report, statement, or data  
11 compilation, in any form, or the nonoccurrence or  
12 nonexistence of a matter of which a record, report,  
13 statement, or data compilation, in any form, was  
14 regularly made and preserved by a public office or  
15 agency, evidence in the form of a certification in  
16 accordance with rule 902, or testimony, that diligent  
17 search failed to disclose the record, report,  
18 statement, or data compilation, or entry.

19 (11) Records of religious organizations. Statements of  
20 births, marriages, divorces, deaths, legitimacy,  
21 ancestry, relationship by blood or marriage, or other



1 similar facts of personal or family history, contained  
2 in a regularly kept record of a religious  
3 organization.

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

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

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

18 (14) Records of documents affecting an interest in  
19 property. The record of a document purporting to  
20 establish or affect an interest in property, as proof  
21 of the content of the original recorded document and





1 its execution and delivery by each person by whom it  
2 purports to have been executed, if the record is a  
3 record of a public office and an applicable statute  
4 authorizes the recording of documents of that kind in  
5 that office.

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

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

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

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



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

9 (19) Reputation concerning personal or family history.

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

17 (20) Reputation concerning boundaries or general history.

18 Reputation in a community, arising before the  
19 controversy, as to boundaries of or customs affecting  
20 lands in the community, and reputation as to events of



1           general history important to the community or state or  
2           nation in which located.

3           (21) Reputation as to character. In proving character or a  
4           trait of character under rules 404 and 405, reputation  
5           of a person's character among the person's associates  
6           or in the community.

7           (22) Judgment of previous conviction. Evidence of a final  
8           judgment, entered after a trial or upon a plea of  
9           guilty (but not upon a plea of nolo contendere),  
10          adjudging a person guilty of a crime punishable by  
11          death or imprisonment in excess of one year, to prove  
12          any fact essential to sustain the judgment, but not  
13          including, when offered by the government in a  
14          criminal prosecution for purposes other than  
15          impeachment, judgments against persons other than the  
16          accused. The pendency of an appeal may be shown but  
17          does not affect admissibility.

18          (23) Judgment as to personal, family or general history, or  
19          boundaries. Judgments as proof of matters of  
20          personal, family or general history, or boundaries,



1 essential to the judgment, if the same would be  
2 provable by evidence of reputation.

3 (24) Statement by a victim of domestic violence.

4 (A) A statement that purports to narrate, describe,  
5 report, or explain an incident of domestic  
6 violence, as defined in section 321-471, made by  
7 a victim of that domestic violence within a  
8 period of not more than twenty-four hours after  
9 the incident occurred and prior to the defendant  
10 being arrested regardless of the availability of  
11 the declarant, if the statement:

12 (i) Is non-testimonial and made during an  
13 ongoing emergency;

14 (ii) Was recorded, either electronically or in  
15 writing, or was made to a law enforcement  
16 officer as defined in section 139-1,  
17 corrections officer, youth correction  
18 officer, parole or probation officer,  
19 emergency medical services provider, or  
20 firefighter; and

21 (iii) Has sufficient indicia of reliability.



1           (B) In determining whether a statement has sufficient  
2           indicia of reliability, the court shall consider  
3           all circumstances surrounding the statement. In  
4           determining whether a statement has sufficient  
5           indicia of reliability, the court may consider:

6           (i) The personal knowledge of the declarant;

7           (ii) Whether the statement is corroborated by  
8           evidence other than statements that are  
9           subject to admission only pursuant to this  
10           paragraph;

11           (iii) The timing of the statement; and

12           (iv) Whether the statement was elicited by  
13           leading questions.

14           Recantation by a declarant is not a sufficient reason  
15           for denying admission of a statement under this  
16           paragraph in the absence of other factors indicating  
17           unreliability.

18       ~~[-(24)]~~ (25) Other exceptions. A statement not specifically  
19           covered by any of the exceptions in this paragraph (b)  
20           but having equivalent circumstantial guarantees of  
21           trustworthiness, if the court determines that:



1 (A) [~~the~~] The statement is more probative on the  
2 point for which it is offered than any other  
3 evidence which the proponent can procure through  
4 reasonable efforts[~~er~~]; and

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

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

16 SECTION 3. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19 SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 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 non-testimonial statements made by domestic violence victims to certain government officials within 24 hours of an incident of domestic violence and prior to the arrest of the defendant, as long as the statement bears sufficient indicia of reliability. Effective 7/1/2050. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

