
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 by the Court
9 in *Davis v. Washington*, 547 U.S. 813 (2006) and *Michigan v.*
10 *Bryant*, 562 U.S. 344 (2011). However, a 2017 article in the
11 Boston College Journal of Law and Social Justice noted that
12 Oregon's hearsay exception adequately safeguards a defendant's
13 confrontation right by setting a clear time limit for the
14 admissible hearsay statement to be made, and that in a domestic
15 violence context, victim statements made within twenty-four
16 hours of an incident are the most reliable. After this window,
17 the willingness of victims to cooperate diminishes, the
18 potential for coercion increases, and memories become less
19 clear.

20 The legislature further notes that Oregon's hearsay
21 exception is premised on a policy approach that treats domestic



1 violence cases as a form of "ongoing emergency". That is, given
2 the statistics showing that incidents of domestic violence tend
3 to escalate over time and sometimes culminate in the victim's
4 death, the mere fact that a single domestic violence attack has
5 ended does not necessarily mean that the emergency has ended.
6 The legislature believes that recognition of a domestic violence
7 incident as being part of a larger "ongoing emergency" is what
8 distinguishes, and makes admissible in certain circumstances,
9 what may otherwise be considered an inadmissible hearsay
10 statement under *Davis v. Washington*; *Michigan v. Bryant*; and
11 *State v. Fields*, 115 Hawaii 503 (2007), a Hawaii supreme court
12 opinion that discussed the holdings of the aforementioned
13 federal cases. The legislature further believes that to
14 effectively prosecute domestic violence cases and hold offenders
15 accountable, the Hawaii rules of evidence must strike a balance
16 between protecting the constitutional rights of defendants while
17 promoting the safety of domestic violence victims and the larger
18 society. In striking this balance, the legislature realizes
19 that there may be constitutional problems with Oregon's hearsay
20 exception, and thus has added features to further protect
21 defendants' rights and maintain constitutionality under *Michigan*



1 v. *Bryant* while also preserving the intent of Oregon's
2 exception.

3 Accordingly, the purpose of this Act is to allow a narrow
4 hearsay exception for statements made by a domestic violence
5 victim to a government official within twenty-four hours of a
6 domestic violence incident and prior to the defendant being
7 arrested regardless of the availability of the declarant, even
8 if the statement is testimonial in nature, as long as the
9 statement bears sufficient indicia of reliability.

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

13 "(b) Other exceptions.

14 (1) Present sense impression. A statement describing or
15 explaining an event or condition made while the
16 declarant was perceiving the event or condition or
17 immediately thereafter.

18 (2) Excited utterance. A statement relating to a
19 startling event or condition made while the declarant
20 was under the stress of excitement caused by the event
21 or condition.



- 1 (3) Then existing mental, emotional, or physical
2 condition. A statement of the declarant's then
3 existing state of mind, emotion, sensation, or
4 physical condition (such as intent, plan, motive,
5 design, mental feeling, pain, and bodily health), but
6 not including a statement of memory or belief to prove
7 the fact remembered or believed unless it relates to
8 the execution, revocation, identification, or terms of
9 declarant's will.
- 10 (4) Statements for purposes of medical diagnosis or
11 treatment. Statements made for purposes of medical
12 diagnosis or treatment and describing medical history,
13 or past or present symptoms, pain, or sensations, or
14 the inception or general character of the cause or
15 external source thereof insofar as reasonably
16 pertinent to diagnosis or treatment.
- 17 (5) Reserved.
- 18 (6) Records of regularly conducted activity. A
19 memorandum, report, record, or data compilation, in
20 any form, of acts, events, conditions, opinions, or
21 diagnoses, made in the course of a regularly conducted



1 activity, at or near the time of the acts, events,
2 conditions, opinions, or diagnoses, as shown by the
3 testimony of the custodian or other qualified witness,
4 or by certification that complies with rule 902(11) or
5 a statute permitting certification, unless the sources
6 of information or other circumstances indicate lack of
7 trustworthiness.

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

18 (8) Public records and reports. Records, reports,
19 statements, or data compilations, in any form, of
20 public offices or agencies, setting forth (A) the
21 activities of the office or agency, or (B) matters



1 observed pursuant to duty imposed by law as to which
2 matters there was a duty to report, excluding,
3 however, in criminal cases matters observed by police
4 officers and other law enforcement personnel, or (C)
5 in civil proceedings and against the government in
6 criminal cases, factual findings resulting from an
7 investigation made pursuant to authority granted by
8 law, unless the sources of information or other
9 circumstances indicate lack of trustworthiness.

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

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



- 1 search failed to disclose the record, report,
2 statement, or data compilation, or entry.
- 3 (11) Records of religious organizations. Statements of
4 births, marriages, divorces, deaths, legitimacy,
5 ancestry, relationship by blood or marriage, or other
6 similar facts of personal or family history, contained
7 in a regularly kept record of a religious
8 organization.
- 9 (12) Marriage, baptismal, and similar certificates.
10 Statements of fact contained in a certificate that the
11 maker performed a marriage or other ceremony or
12 administered a sacrament, made by a clergyman, public
13 official, or other person authorized by the rules or
14 practices of a religious organization or by law to
15 perform the act certified, and purporting to have been
16 issued at the time of the act or within a reasonable
17 time thereafter.
- 18 (13) Family records. Statements of fact concerning
19 personal or family history contained in family Bibles,
20 genealogies, charts, engravings on rings, inscriptions



- 1 on family portraits, engravings on urns, crypts, or
2 tombstones, or the like.
- 3 (14) Records of documents affecting an interest in
4 property. The record of a document purporting to
5 establish or affect an interest in property, as proof
6 of the content of the original recorded document and
7 its execution and delivery by each person by whom it
8 purports to have been executed, if the record is a
9 record of a public office and an applicable statute
10 authorizes the recording of documents of that kind in
11 that office.
- 12 (15) Statements in documents affecting an interest in
13 property. A statement contained in a document
14 purporting to establish or affect an interest in
15 property if the matter stated was relevant to the
16 purpose of the document, unless the circumstances
17 indicate lack of trustworthiness.
- 18 (16) Statements in ancient documents. Statements in a
19 document in existence twenty years or more the
20 authenticity of which is established.



- 1 (17) Market reports, commercial publications. Market
2 quotations, tabulations, lists, directories, or other
3 published compilations, generally used and relied upon
4 by the public or by persons in particular occupations.
- 5 (18) Learned treatises. To the extent called to the
6 attention of an expert witness upon cross-examination
7 or relied upon by the witness in direct examination,
8 statements contained in published treatises,
9 periodicals, or pamphlets on a subject of history,
10 medicine, or other science or art, established as a
11 reliable authority by the testimony or admission of
12 the witness or by other expert testimony or by
13 judicial notice. If admitted, the statements may be
14 read into evidence but may not be received as
15 exhibits.
- 16 (19) Reputation concerning personal or family history.
17 Reputation among members of the person's family by
18 blood, adoption, or marriage, or among the person's
19 associates, or in the community, concerning a person's
20 birth, adoption, marriage, divorce, death, legitimacy,
21 relationship by blood, adoption, or marriage,



- 1 ancestry, or other similar fact of the person's
2 personal or family history.
- 3 (20) Reputation concerning boundaries or general history.
4 Reputation in a community, arising before the
5 controversy, as to boundaries of or customs affecting
6 lands in the community, and reputation as to events of
7 general history important to the community or state or
8 nation in which located.
- 9 (21) Reputation as to character. In proving character or a
10 trait of character under rules 404 and 405, reputation
11 of a person's character among the person's associates
12 or in the community.
- 13 (22) Judgment of previous conviction. Evidence of a final
14 judgment, entered after a trial or upon a plea of
15 guilty (but not upon a plea of nolo contendere),
16 adjudging a person guilty of a crime punishable by
17 death or imprisonment in excess of one year, to prove
18 any fact essential to sustain the judgment, but not
19 including, when offered by the government in a
20 criminal prosecution for purposes other than
21 impeachment, judgments against persons other than the



1 accused. The pendency of an appeal may be shown but
2 does not affect admissibility.

3 (23) Judgment as to personal, family or general history, or
4 boundaries. Judgments as proof of matters of
5 personal, family or general history, or boundaries,
6 essential to the judgment, if the same would be
7 provable by evidence of reputation.

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

9 (A) A statement that purports to narrate, describe,
10 report, or explain an incident of domestic
11 violence, as defined in section 321-471, made by
12 a victim of that domestic violence within
13 twenty-four hours after the incident occurred and
14 prior to the defendant being arrested, regardless
15 of the availability of the declarant, if the
16 statement:

17 (i) Was recorded, either electronically or in
18 writing, or was made to a law enforcement
19 officer as defined in section 139-1,
20 corrections officer, youth correction
21 officer, parole or probation officer,



H.B. NO. 1326

1 emergency medical services provider, or
2 firefighter; and
3 (ii) Has sufficient indicia of reliability;
4 provided that the statement shall not be
5 admissible if, when objectively considered, the
6 primary purpose of the statement was not to
7 enable assistance to meet an ongoing emergency,
8 including any statement given at a later time or
9 any statement made solely for the purpose of
10 producing trial evidence.
11 (B) In determining whether a statement has sufficient
12 indicia of reliability, the court shall consider
13 all circumstances surrounding the statement. In
14 determining whether a statement has sufficient
15 indicia of reliability, the court may consider:
16 (i) The personal knowledge of the declarant;
17 (ii) Whether the statement is corroborated by
18 evidence other than statements that are
19 subject to admission only pursuant to this
20 paragraph, if the evidence exists;
21 (iii) The timing of the statement; and



1 (iv) Whether the statement was elicited by
2 leading questions.

3 Recantation by a declarant is not a sufficient reason
4 for denying admission of a statement under this
5 paragraph in the absence of other factors indicating
6 unreliability.

7 [~~24~~] (25) Other exceptions. A statement not specifically
8 covered by any of the exceptions in this paragraph (b)
9 but having equivalent circumstantial guarantees of
10 trustworthiness, if the court determines that:

11 (A) [~~the~~] The statement is more probative on the
12 point for which it is offered than any other
13 evidence which the proponent can procure through
14 reasonable efforts~~[-]~~; and

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

18 However, a statement may not be admitted under this
19 exception unless the proponent of it makes known to
20 the adverse party sufficiently in advance of the trial
21 or hearing to provide the adverse party with a fair



H.B. NO. 1326

1 opportunity to prepare to meet it, the proponent's
2 intention to offer the statement and the particulars
3 of it, including the name and address of the
4 declarant."

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11

INTRODUCED BY:



JAN 27 2021



H.B. NO. 1326

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 and prior to the arrest of the defendant, even if the statement is testimonial in nature, as long as the statement bears sufficient indicia of reliability.

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

