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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 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 Haw. 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



1 *Michigan 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 during the course of the first interaction with the  
6 responding law enforcement officers and before the defendant is  
7 arrested, regardless of the availability of the declarant, as  
8 long as the statement bears sufficient indicia of reliability.

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

12       "(b) Other exceptions.

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

17       (2) Excited utterance. A statement relating to a  
18 startling event or condition made while the declarant  
19 was under the stress of excitement caused by the event  
20 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[+],  
6           but not including a statement of memory or belief to  
7           prove the fact remembered or believed unless it  
8           relates to the execution, revocation, identification,  
9           or terms of the 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 [7]; or  
5 (C) 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,~~  
13 member of the clergy, public official, or other person  
14 authorized by the rules or practices of a religious  
15 organization or by law to perform the act certified,  
16 and purporting to have been issued at the time of the  
17 act or within a reasonable 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~~] shall 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[  ];  
21          death[  ]; legitimacy[  ]; relationship by blood,



1 adoption, or marriage [7] i; ancestry [7] i; or other  
2 similar fact of the person's personal or family  
3 history.

4 (20) Reputation concerning boundaries or general history.  
5 Reputation in a community, arising before the  
6 controversy, as to boundaries of or customs affecting  
7 lands in the community, and reputation as to events of  
8 general history important to the community [øx] ,  
9 state , or nation in which located.

10 (21) Reputation as to character. In proving character or a  
11 trait of character under rules 404 and 405, reputation  
12 of a person's character among the person's associates  
13 or in the community.

14 (22) Judgment of previous conviction. Evidence of a final  
15 judgment, entered after a trial or upon a plea of  
16 guilty [4]but , not upon a plea of nolo contendere [4] ,  
17 adjudging a person guilty of a crime punishable by  
18 death or imprisonment in excess of one year, to prove  
19 any fact essential to sustain the judgment, but not  
20 including, when offered by the government in a  
21 criminal prosecution for purposes other than



1 impeachment, judgments against persons other than the  
2 accused. The pendency of an appeal may be shown but  
3 does not affect admissibility.

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

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

10 (A) A statement that purports to narrate, describe,  
11 report, or explain an incident of domestic  
12 violence, as defined in section 321-471, made by  
13 a victim of that domestic violence during the  
14 course of the first interaction with the  
15 responding law enforcement officers as defined in  
16 section 139-1 and before the defendant is  
17 arrested, regardless of the availability of the  
18 declarant, if the statement has sufficient  
19 indicia of reliability; provided that the  
20 statement shall not be admissible if, when  
21 objectively considered, the primary purpose of



1           the statement was not to enable assistance to  
2           meet an ongoing emergency, including any  
3           statement given at a later time or any statement  
4           made solely for the purpose of producing trial  
5           evidence.

6           (B) In determining whether a statement has sufficient  
7           indicia of reliability, the court shall consider  
8           all circumstances surrounding the statement. In  
9           determining whether a statement has sufficient  
10           indicia of reliability, the court may consider:

11           (i) The personal knowledge of the declarant;

12           (ii) Whether the statement is corroborated by  
13           evidence other than statements that are  
14           subject to admission only pursuant to this  
15           paragraph, if the evidence exists;

16           (iii) The timing of the statement; and

17           (iv) Whether the statement was elicited by  
18           leading questions.

19           Recantation by a declarant is not a sufficient reason  
20           for denying admission of a statement under this



1           paragraph in the absence of other factors indicating  
2           unreliability.

3       [~~(24)~~] (25) Other exceptions. A statement not specifically  
4       covered by any of the exceptions in this [~~paragraph~~  
5       ~~(b)~~] subsection but having equivalent circumstantial  
6       guarantees of trustworthiness, if the court determines  
7       that:

8           (A) [~~the~~] The statement is more probative on the  
9           point for which it is offered than any other  
10          evidence [~~which~~] that the proponent can procure  
11          through reasonable efforts[~~7~~]; and

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

15       However, a statement [~~may~~] shall not be admitted under  
16       this exception unless the proponent of it makes known  
17       to the adverse party sufficiently in advance of the  
18       trial or hearing to provide the adverse party with a  
19       fair opportunity to prepare to meet it, the  
20       proponent's intention to offer the statement and the



1           particulars of it, including the name and address of  
2           the declarant."

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

6           SECTION 4. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

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



**Report Title:**

Rules of Evidence; Hearsay Exceptions; Domestic Violence

**Description:**

Allows a narrow hearsay exception for statements made by domestic violence victims during the course of the first interaction with the responding law enforcement officers and before the arrest of the defendant, as long as the statement bears sufficient indicia of reliability. (SD1)

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

