

2020 Regular Session

HOUSE BILL NO. 451

BY REPRESENTATIVE HILFERTY

EVIDENCE: Provides relative to hearsay exceptions in domestic abuse cases

1 AN ACT

2 To amend and reenact Code of Evidence Article 804(B)(6) and (7) and to enact Code of
3 Evidence Article 804(B)(8), relative to hearsay exceptions; to provide relative to
4 statements made by victims of abusive behavior by a family member, household
5 member, or dating partner; to provide relative to statements offered against a party
6 who engaged in wrongdoing to prevent the availability of a declarant as a witness;
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Evidence Article 804(B)(6) and (7) are hereby amended and
10 reenacted and Code of Evidence Article 804(B)(8) is hereby enacted to read as follows:

11 Art. 804. Hearsay exceptions; declarant unavailable

12 * * *

13 B. Hearsay exceptions. The following are not excluded by the hearsay rule
14 if the declarant is unavailable as a witness:

15 * * *

16 (6) Complaint of domestic abuse or dating partner violence. A
17 contemporaneous statement made by a person alleging abusive behavior by a family
18 member, household member, or dating partner, as those terms are defined by Article
19 412.4 of this Code, and captured upon a body-worn camera or otherwise audio and
20 visually recorded.

1 ~~(6)~~(7) Other exceptions. In a civil case, a statement not specifically covered
2 by any of the foregoing exceptions if the court determines that considering all
3 pertinent circumstances in the particular case the statement is trustworthy, and the
4 proponent of the evidence has adduced or made a reasonable effort to adduce all
5 other admissible evidence to establish the fact to which the proffered statement
6 relates and the proponent of the statement makes known in writing to the adverse
7 party and to the court his intention to offer the statement and the particulars of it,
8 including the name and address of the declarant, sufficiently in advance of the trial
9 or hearing to provide the adverse party with a fair opportunity to prepare to meet it.
10 If, under the circumstances of a particular case, giving of this notice was not
11 practicable or failure to give notice is found by the court to have been excusable, the
12 court may authorize a delayed notice to be given, and in that event the opposing
13 party is entitled to a recess, continuance, or other appropriate relief sufficient to
14 enable him to prepare to meet the evidence.

15 ~~(7)~~(8)(a) Forfeiture by wrongdoing. A statement offered against a party that
16 has engaged or acquiesced in wrongdoing that was intended to, and did, procure the
17 unavailability of the declarant as a witness.

18 (b) A party seeking to introduce statements under the forfeiture by
19 wrongdoing hearsay exception shall establish, by a preponderance of the evidence,
20 that the party against whom the statement is offered, engaged or acquiesced in the
21 wrongdoing.

22 (c) Notwithstanding the provisions of Item (b) of this Subsubparagraph, in
23 a criminal case, the failure to appear, pursuant to actual service of subpoena, by a
24 victim of the abusive behavior of a family member, household member, or dating
25 partner, as those terms are defined by Article 412.4 of this Code, shall be presumed
26 to be a result of wrongdoing on the part of the defendant.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 451 Original

2020 Regular Session

Hilferty

Abstract: Adds a hearsay exception for certain recorded statements made by persons alleging domestic or dating partner abuse and adds a presumption that the failure to appear pursuant to a subpoena by a victim of domestic or dating partner abuse is a result of wrongdoing on the part of the defendant.

Present law lists certain exceptions to the hearsay rule when the declarant is unavailable.

Proposed law adds an exception to the hearsay rule for a contemporaneous statement made by a person alleging abusive behavior by a family member, household member, or dating partner, as those terms are defined by present law, and captured upon a body-worn camera or otherwise audio and visually recorded.

Present law provides that a statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did procure the unavailability of the declarant as a witness is not excluded by the hearsay rule.

Proposed law adds a presumption that the failure to appear pursuant to a subpoena by a victim of the abusive behavior of a family member, household member, or dating partner, as those terms are defined by present law, is a result of wrongdoing on the part of the defendant.

(Amends C.E. Art. 804(B)(6) and (7); Adds C.E. Art. 804(B)(8))