

AMENDED IN ASSEMBLY APRIL 9, 1996
AMENDED IN ASSEMBLY FEBRUARY 21, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2068

Introduced by Assembly Member Richter

January 12, 1996

~~An act to add Article 16 (commencing with Section 1360)~~
An act to add Article 17 (commencing with Section 1370) to Chapter 2 of Division 10 of the Evidence Code, relating to hearsay.

LEGISLATIVE COUNSEL'S DIGEST

AB 2068, as amended, Richter. Hearsay: exceptions.

Existing law, known as the "hearsay rule," provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible. Several exceptions to the hearsay rule permit the admission of certain kinds of such evidence, including dying declarations, declarations against interest, and statements of the declarant's then existing mental or physical state if offered for specified purposes.

This bill would create a new exception to the hearsay rule for *evidence of a statement, made by an unavailable declarant*, that purports to narrate, describe, or explain an act, condition, or event purportedly perceived by the declarant where that act, condition, or event is the infliction or threat

of physical harm, *as specified*, upon the declarant by the party against whom the statement is offered. ~~The bill would require that the party against whom the statement is offered has been held civilly liable for, or has been convicted of or has entered a plea of no contest to any crime based upon, any incident of infliction or threat of infliction of physical harm upon the declarant, as specified.~~ *The bill would also prohibit the admission of the evidence under certain conditions.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Article 16 (commencing with Section~~
2 ~~1360) Article 17 (commencing with Section 1370) is~~
3 added to Chapter 2 of Division 10 of the Evidence Code,
4 to read:

5
6 Article ~~16~~-17. Physical Abuse

7
8 ~~1360.~~—

9 1370. (a) Evidence of a statement by a declarant is
10 not made inadmissible by the hearsay rule if all of the
11 following conditions are met:

12 ~~(a)~~

13 (1) The statement purports to narrate, describe, or
14 explain an act, condition, or event purportedly perceived
15 by the declarant.

16 ~~(b)~~

17 (2) The act, condition, or event referred to in
18 ~~subdivision (a) is the paragraph (1) is the past, present,~~
19 ~~or future~~ infliction or threat of physical harm upon the
20 declarant by the party against whom the statement is
21 offered.

22 ~~(c) The party against whom the statement is offered~~
23 ~~has been held civilly liable for, or has been convicted of~~
24 ~~or has entered a plea of no contest to any crime based~~
25 ~~upon, any incident of infliction or threat of infliction of~~
26 ~~physical harm upon the declarant.~~

27 (3) *The declarant is unavailable as a witness.*



1 (b) Evidence of a statement is inadmissible under this
2 section if the statement was made under circumstances
3 that would indicate its lack of trustworthiness.

4 (c) Evidence of a statement is inadmissible under this
5 section unless the proponent of the evidence makes
6 known to the adverse party the intention to offer the
7 evidence of the statement and the circumstances
8 concerning the statement sufficiently in advance of the
9 proceedings in order to provide the adverse party with a
10 fair opportunity to prepare to meet the evidence.

