

CHAPTER 51 - HEARSAY

GENERAL PROVISIONS

SECTION 51.015	Definitions.
SECTION 51.025	“Declarant” defined.
SECTION 51.035	“Hearsay” defined.
SECTION 51.045	“Statement” defined.
SECTION 51.055	“Unavailable as a witness” defined.
SECTION 51.065	General rule.
SECTION 51.067	Hearsay within hearsay.
SECTION 51.069	Credibility of declarant.

EXCEPTIONS

AVAILABILITY OF DECLARANT IMMATERIAL

SECTION 51.075	General exception; other exceptions illustrative.
SECTION 51.085	Present sense impressions.
SECTION 51.095	Excited utterances.
SECTION 51.105	Then existing mental, emotional or physical condition.
SECTION 51.115	Statements for purposes of medical diagnosis or treatment.
SECTION 51.125	Recorded recollection.
SECTION 51.135	Record of regularly conducted activity.
SECTION 51.145	Absence of entry in records of regularly conducted activity.
SECTION 51.155	Public records and reports.
SECTION 51.165	Required reports.
SECTION 51.175	Absence of public record or entry.
SECTION 51.185	Records of religious organizations.
SECTION 51.195	Marriage, baptismal and similar certificates.
SECTION 51.205	Family records.
SECTION 51.215	Records of documents affecting interest in property.
SECTION 51.225	Statement in document affecting interest in property.
SECTION 51.235	Statements in ancient documents.
SECTION 51.245	Market reports; commercial publications.
SECTION 51.255	Learned treatises.
SECTION 51.265	Reputation concerning personal or family history.
SECTION 51.275	Reputation concerning boundaries or general history.
SECTION 51.285	Reputation as to character.
SECTION 51.295	Judgment of previous conviction.
SECTION 51.305	Judgment as to boundaries or personal, family or general history.

DECLARANT UNAVAILABLE

SECTION 51.315	General exception; other exceptions illustrative.
SECTION 51.325	Former testimony.
SECTION 51.335	Statement under belief of impending death.
SECTION 51.345	Statement against interest.
SECTION 51.355	Statement of personal or family history.

STATEMENT OF CHILD DESCRIBING SEXUAL CONDUCT OR PHYSICAL ABUSE

SECTION 51.385	Admissibility; notice of unavailability or inability of child to testify.
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GENERAL PROVISIONS

SECTION 51.015 Definitions. As used in this chapter, unless the context otherwise requires, the words and phrases defined in [SECTION 51.025](#) to [51.055](#), inclusive, have the meanings ascribed to them in such sections.

SECTION 51.025 “Declarant” defined. “Declarant” means a person who makes a statement.

SECTION 51.035 “Hearsay” defined. “Hearsay” means a statement offered in evidence to prove the truth of the matter asserted unless:

1. The statement is one made by a witness while testifying at the trial or hearing;
2. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:
 - (a) Inconsistent with his testimony;
 - (b) Consistent with his testimony and offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive;
 - (c) One of identification of a person made soon after perceiving him; or
 - (d) A transcript of testimony given under oath at a trial or hearing or before a grand jury; or
3. The statement is offered against a party and is:
 - (a) His own statement, in either his individual or a representative capacity;
 - (b) A statement of which he has manifested his adoption or belief in its truth;
 - (c) A statement by a person authorized by him to make a statement concerning the subject;
 - (d) A statement by his agent or servant concerning a matter within the scope of his agency or employment, made before the termination of the relationship; or
 - (e) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

SECTION 51.045 “Statement” defined. “Statement” means:

1. An oral or written assertion; or
2. Nonverbal conduct of a person, if it is intended by him as an assertion.

SECTION 51.055 “Unavailable as a witness” defined.

1. A declarant is “unavailable as a witness” if he is:
 - (a) Exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of his statement;
 - (b) Persistent in refusing to testify despite an order of the judge to do so;
 - (c) Unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
 - (d) Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent of his statement has exercised reasonable diligence but has been unable to procure his attendance or to take his deposition.
2. A declarant is not “unavailable as a witness” if his exemption, refusal, inability or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

SECTION 51.065 General rule.

1. Hearsay is inadmissible except as provided in this chapter, title 14 of the Nevada Revised Statutes and the Nevada Rules of Civil Procedure.
2. This section constitutes the hearsay rule.

SECTION 51.067 Hearsay within hearsay. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms to an exception to the hearsay rule provided in this chapter.

SECTION 51.069 Credibility of declarant.

1. When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked or supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness.

2. Evidence of a statement or conduct by the declarant at any time, which is inconsistent with his hearsay statement, is not subject to any requirement that he must have been afforded an opportunity to deny or explain.

3. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party may examine the witness on that statement as if the witness were under cross-examination.

EXCEPTIONS

Availability of Declarant Immaterial

SECTION 51.075 General exception; other exceptions illustrative.

1. A statement is not excluded by the hearsay rule if its nature and the special circumstances under which it was made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness, even though he is available.

2. The provisions of [SECTION 51.085](#) to [51.305](#), inclusive, are illustrative and not restrictive of the exception provided by this section.

SECTION 51.085 Present sense impressions. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not inadmissible under the hearsay rule.

SECTION 51.095 Excited utterances. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule.

SECTION 51.105 Then existing mental, emotional or physical condition.

1. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, is not inadmissible under the hearsay rule.

2. A statement of memory or belief to prove the fact remembered or believed is inadmissible under the hearsay rule unless it relates to the execution, revocation, identification or terms of declarant's will.

SECTION 51.115 Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof are not inadmissible under the hearsay rule insofar as they were reasonably pertinent to diagnosis or treatment.

SECTION 51.125 Recorded recollection.

1. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately is not inadmissible under the hearsay rule if it is shown to have been made when the matter was fresh in his memory and to reflect that knowledge correctly.

2. The memorandum or record may be read into evidence but may not itself be received unless offered by an adverse party.

SECTION 51.135 Record of regularly conducted activity. A memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony or affidavit of the custodian or other qualified person, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

SECTION 51.145 Absence of entry in records of regularly conducted activity. Evidence that a matter is not included in the memoranda, reports, records or data compilations, in any form, of a regularly conducted activity is not inadmissible under the hearsay rule to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record or data compilation was regularly made and preserved.

SECTION 51.155 Public records and reports. Records, reports, statements or data compilations, in any form, of public officials or agencies are not inadmissible under the hearsay rule if they set forth:

1. The activities of the official or agency;
2. Matters observed pursuant to duty imposed by law; or
3. In civil cases and against the Tribe in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law,
↳ unless the sources of information or the method or circumstances of the investigation indicate lack of trustworthiness.

SECTION 51.165 Required reports. Records or data compilations, in any form, of births, fetal deaths, deaths or marriages are not inadmissible under the hearsay rule if the report thereof was made to a public office pursuant to requirements of law.

SECTION 51.175 Absence of public record or entry. To prove:

1. The absence of a record, report, statement or data compilation, in any form; or
2. The nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation, in any form, was regularly made and preserved by a public officer, agency or official,
↳ evidence in the form of a certificate of the custodian or other person authorized to make the certification, or testimony, that diligent search failed to disclose the record, report, statement, data compilation or entry is not inadmissible under the hearsay rule.

SECTION 51.185 Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization, are not inadmissible under the hearsay rule.

SECTION 51.195 Marriage, baptismal and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter, are not inadmissible under the hearsay rule.

SECTION 51.205 Family records. Statements of fact contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, or the like, are not inadmissible under the hearsay rule.

SECTION 51.215 Records of documents affecting interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, is not inadmissible under the hearsay rule if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office.

SECTION 51.225 Statement in document affecting interest in property. A statement contained in a document purporting to establish or affect an interest in property is not inadmissible under the hearsay rule if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

SECTION 51.235 Statements in ancient documents. Statements in a document more than 20 years old whose authenticity is established are not inadmissible under the hearsay rule.

SECTION 51.245 Market reports; commercial publications. Market quotations, tabulations, lists, directories or other published compilations, generally used and relied upon by the public or by persons in particular occupations, are not inadmissible under the hearsay rule.

SECTION 51.255 Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, a statement contained in a published treatise, periodical or pamphlet on a subject of history, medicine or other science or art, is not inadmissible under the hearsay rule if such book is established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

SECTION 51.265 Reputation concerning personal or family history. Reputation among members of a person's family by blood or marriage, or among his associates, or in the community, is not inadmissible under the hearsay rule if it concerns his birth, marriage, divorce, death, legitimacy, relationship by blood or marriage, ancestry or other similar fact of his personal or family history.

SECTION 51.275 Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to:

1. Boundaries of or customs affecting lands in the community; and
 2. Events of general history important to the community or to the State or nation in which the community is located,
- ↪ are not inadmissible under the hearsay rule.

SECTION 51.285 Reputation as to character. Reputation of a person's character among his associates or in the community is not inadmissible under the hearsay rule.

SECTION 51.295 Judgment of previous conviction.

1. Evidence of a final judgment, entered after trial or upon a plea of guilty or guilty but mentally ill, but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of 1 year is not inadmissible under the hearsay rule to prove any fact essential to sustain the judgment.

2. This section does not make admissible, when offered by the State in a criminal prosecution for purposes other than impeachment, a judgment against a person other than the accused.
3. The pendency of an appeal may be shown but does not affect admissibility.

SECTION 51.305 Judgment as to boundaries or personal, family or general history. A judgment is not inadmissible under the hearsay rule as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the matters would be provable by evidence of reputation.

Declarant Unavailable

SECTION 51.315 General exception; other exceptions illustrative.

1. A statement is not excluded by the hearsay rule if:
 - (a) Its nature and the special circumstances under which it was made offer strong assurances of accuracy; and
 - (b) The declarant is unavailable as a witness.
2. The provisions of [SECTION 51.325](#) to [51.355](#), inclusive, are illustrative and not restrictive of the exception provided by this section.

SECTION 51.325 Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, is not inadmissible under the hearsay rule if:

1. The declarant is unavailable as a witness; and
2. If the proceeding was different, the party against whom the former testimony is offered was a party or is in privity with one of the former parties and the issues are substantially the same.

SECTION 51.335 Statement under belief of impending death. A statement made by a declarant while believing that his death was imminent is not inadmissible under the hearsay rule if the declarant is unavailable as a witness.

SECTION 51.345 Statement against interest.

1. A statement which at the time of its making:
 - (a) Was so far contrary to the pecuniary or proprietary interest of the declarant;
 - (b) So far tended to subject the declarant to civil or criminal liability;
 - (c) So far tended to render invalid a claim by the declarant against another; or
 - (d) So far tended to make the declarant an object of hatred, ridicule or social disapproval,↳ that a reasonable person in the position of the declarant would not have made the statement unless the declarant believed it to be true is not inadmissible under the hearsay rule if the declarant is unavailable as a witness. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
2. This section does not make admissible a statement or confession offered against the accused made by a codefendant or other person implicating both himself and the accused.

SECTION 51.355 Statement of personal or family history.

1. A statement concerning the declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, ancestry or other similar fact of personal or family history is not inadmissible under the hearsay rule if the declarant is unavailable as a witness, even though declarant had no means of acquiring personal knowledge of the matter stated.
2. A statement concerning the matters enumerated in subsection 1, and death also, of another person is not inadmissible under the hearsay rule if the declarant:

- (a) Was related to the other by blood or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared; and
- (b) Is unavailable as a witness.

Statement of Child Describing Sexual Conduct or Physical Abuse

SECTION 51.385 Admissibility; notice of unavailability or inability of child to testify.

1. In addition to any other provision for admissibility made by statute or rule of court, a statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act of sexual conduct or physical abuse if:

(a) The court finds, in a hearing out of the presence of the jury, that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness; and

(b) The child testifies at the proceeding or is unavailable or unable to testify.

2. In determining the trustworthiness of a statement, the court shall consider, without limitation, whether:

(a) The statement was spontaneous;

(b) The child was subjected to repetitive questioning;

(c) The child had a motive to fabricate;

(d) The child used terminology unexpected of a child of similar age; and

(e) The child was in a stable mental state.

3. If the child is unavailable or unable to testify, written notice must be given to the defendant at least 10 days before the trial of the prosecution's intention to offer the statement in evidence.