

FINAL REPORT REVISING

The Introductory Comment *Article VIII, Hearsay*

COMMENT CHANGES

The Introductory Comment to Article VIII, Hearsay calls attention to the role of the Sixth Amendment to the United States Constitution in determining the admissibility of hearsay evidence against a defendant in a criminal case.

The proposed change comes about as a result of the decision of the United States Supreme Court in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) interpreting the confrontation clause to prohibit the introduction of “testimonial” hearsay from an unavailable witness against a defendant in a criminal case unless the defendant had an opportunity to confront and cross-examine the declarant. One possible exception would be a dying declaration (Pa.R.E. 804(b)(2)).

Heretofore this issue was governed by the earlier United States Supreme Court in *Ohio v. Roberts*, 446 U.S. 56 (1980), now overruled by the *Crawford* opinion.