

SENATE BILL REPORT

SB 5169

As of January 23, 2025

Title: An act relating to testimony of children.

Brief Description: Concerning testimony of children.

Sponsors: Senators Nobles, Dhingra, Trudeau and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/23/25.

Brief Summary of Bill

- Permits statements made by children under the age of 18 that describe certain offenses to be admissible as evidence in certain proceedings.
- Clarifies that closed-circuit television may be used to conduct testimony of children that describe attempted acts of trafficking, sexual exploitation of children, or violent offenses.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Statements Made by Children. Hearsay is an out-of-court statement offered in court as evidence to prove the truth of the matter asserted. When a witness' testimony includes hearsay, the truth and accuracy of those statements cannot be tested by cross-examination, such as when the declarant of the statement is not available to testify in court. Under the rules of evidence, hearsay is generally not admissible. Exceptions to the hearsay rule exist in court rules and statutes.

For example, a statement not otherwise admissible but made by a child is admissible evidence in dependency proceedings, adult criminal proceedings, and juvenile offense

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

adjudications under the following circumstances:

- if the statement is made by a child under the age of ten and describes any sexual contact or attempted sexual contact performed with or on the child, or describes any act of physical abuse of the child that results in substantial bodily harm; or
- if the statement is made by a minor under the age of 18 and describes trafficking, commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for the commercial sexual abuse of a minor performed with or on the child.

Closed-Circuit Television. In a criminal proceeding, the court may order that a child under the age of 18 may testify in a room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's testimony so the defendant and the jury can watch and hear the child testify if, among other requirements, the testimony of the child describes the following:

- an act or attempted act of sexual contact against the child or another child;
- an act or attempted act of physical abuse against the child or another child;
- a violation of trafficking or sexual exploitation of children offense; or
- a violent offense committed against or by a person known by or familiar to the child.

Summary of Bill: Statements Made by Children. A statement not otherwise admissible but made by a child under the age of 18 is admissible evidence in dependency proceedings, adult criminal proceedings, and juvenile offense adjudications if the statement describes one of the following:

- acts or attempted acts of sexual contact performed with or on either the child or another child;
- acts or attempted acts of physical abuse against either the child or another child;
- trafficking or sexual exploitation of children violations or attempted violations; or,
- violent offenses or attempted violent offenses committed against or by a person known by or familiar to the child.

Closed-Circuit Television. Closed-circuit television may be used to conduct the testimony of a child under the age of 18 if the testimony will describe attempted acts of trafficking, sexual exploitation of children, or violent offenses.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Prosecutions are limited by current child hearsay rules. Under current law, out-of-court statements from children cannot be used as

evidence unless the child was the direct victim. Many children are required to testify even when it re-traumatizes them. The state is often forced to decide whether to allow a child to testify years later, possibly in front of the person who threatened or hurt them, or have a defendant plead to a lower charge. This bill builds on existing protections for children by allowing out-of-court statements, such as those made during child forensic interviews, to be admitted as evidence when a child witnesses violence against another child or someone they know such as a parent or caregiver.

CON: Because of the accused's Sixth Amendment right to cross-examine their accuser, and the inherent unreliability of hearsay, Washington limits use of hearsay. This bill poses an unprecedented expansion of child hearsay exceptions. The exceptions are very broad, would make Washington an extreme outlier compared to other states, and raises significant constitutional changes. The bill is a solution in search of a problem and will result in more post-conviction appeals that will drag these cases out in the appellate process.

Persons Testifying: PRO: Senator T'wina Nobles, Prime Sponsor; Lindsay Chenelia, Pierce County Prosecuting Attorney's Office; Sarah Park, Pierce County Prosecuting Attorney's Office; Beth Warner.

CON: Kate Benward, King County Department of Public Defense.

Persons Signed In To Testify But Not Testifying: No one.