
SUBSTITUTE SENATE BILL 5169

State of Washington

69th Legislature

2025 Regular Session

By Senate Law & Justice (originally sponsored by Senators Nobles, Dhingra, Trudeau, and C. Wilson)

READ FIRST TIME 02/03/25.

1 AN ACT Relating to testimony of children; amending RCW 9A.44.120
2 and 9A.44.150; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.44.120 and 2024 c 298 s 17 are each amended to
5 read as follows:

6 (1) A statement not otherwise admissible by statute or court
7 rule, is admissible in evidence in dependency proceedings under Title
8 13 RCW and criminal proceedings, including juvenile offense
9 adjudications, in the courts of the state of Washington if:

10 (a) ~~((i))~~ It is made by a child when under the age of ~~((ten~~
11 ~~describing any act of sexual contact performed with or on the child~~
12 ~~by another, describing any attempted act of sexual contact with or on~~
13 ~~the child by another, or describing any act of physical abuse of the~~
14 ~~child by another that results in substantial bodily harm as defined~~
15 ~~by RCW 9A.04.110; or~~

16 ~~(ii) It is made by a child when under the age of 18 describing~~
17 ~~any of the following acts or attempted acts performed with or on the~~
18 ~~child: Trafficking under RCW 9A.40.100; commercial sexual abuse of a~~
19 ~~minor under RCW 9.68A.100; promoting commercial sexual abuse of a~~
20 ~~minor under RCW 9.68A.101; or promoting travel for commercial sexual~~
21 ~~abuse of a minor under RCW 9.68A.102)) 18 and:~~

1 (i) Describes an act or attempted act of sexual contact performed
2 with or on the child witness by another person or with or on a child
3 other than the child witness by another person;

4 (ii) Describes an act or attempted act of physical abuse against
5 the child witness by another person or against a child other than the
6 child witness by another person;

7 (iii) Describes a violation or attempted violation of RCW
8 9A.40.100 (trafficking) or any offense identified in chapter 9.68A
9 RCW (sexual exploitation of children); or

10 (iv) Describes a violent offense or an attempted violent offense
11 committed against a person known by or familiar to the child witness
12 or by a person known by or familiar to the child witness. For
13 purposes of this subsection (1)(a)(iv), "violent offense" has the
14 same meaning as defined in RCW 9.94A.030;

15 (b) The court finds, in a hearing conducted outside the presence
16 of the jury, that the time, content, and circumstances of the
17 statement provide sufficient indicia of reliability; and

18 (c) The child either:

19 (i) Testifies at the proceedings; or

20 (ii) Is unavailable as a witness, except that when the child is
21 unavailable as a witness, such statement may be admitted only if
22 there is corroborative evidence of the act.

23 (2) A statement may not be admitted under this section unless the
24 proponent of the statement makes known to the adverse party his or
25 her intention to offer the statement and the particulars of the
26 statement sufficiently in advance of the proceedings to provide the
27 adverse party with a fair opportunity to prepare to meet the
28 statement.

29 **Sec. 2.** RCW 9A.44.150 and 2024 c 298 s 18 are each amended to
30 read as follows:

31 (1) On motion of the prosecuting attorney in a criminal
32 proceeding, the court may order that a child under the age of 18 may
33 testify in a room outside the presence of the defendant and the jury
34 while one-way closed-circuit television equipment simultaneously
35 projects the child's testimony into another room so the defendant and
36 the jury can watch and hear the child testify if:

37 (a) The testimony will:

1 (i) Describe an act or attempted act of sexual contact performed
2 with or on the child witness by another person or with or on a child
3 other than the child witness by another person;

4 (ii) Describe an act or attempted act of physical abuse against
5 the child witness by another person or against a child other than the
6 child witness by another person;

7 (iii) Describe a violation or attempted violation of RCW
8 9A.40.100 (trafficking) or any offense identified in chapter 9.68A
9 RCW (sexual exploitation of children); or

10 (iv) Describe a violent offense (~~(as defined by RCW 9.94A.030)~~)
11 or an attempted violent offense committed against a person known by
12 or familiar to the child witness or by a person known by or familiar
13 to the child witness. For purposes of this subsection (1)(a)(iv),
14 "violent offense" has the same meaning as defined in RCW 9.94A.030;

15 (b) The testimony is taken during the criminal proceeding;

16 (c) The court finds by substantial evidence, in a hearing
17 conducted outside the presence of the jury, that:

18 (i) The particular child involved would be traumatized;

19 (ii) The source of the trauma is not the courtroom generally, but
20 the presence of the defendant; and

21 (iii) The emotional or mental distress suffered by the child
22 would be more than de minimis, such that the child could not
23 reasonably communicate at the trial. If the defendant is excluded
24 from the presence of the child, the jury must also be excluded;

25 (d) As provided in (a) and (b) of this subsection, the court may
26 allow a child witness to testify in the presence of the defendant but
27 outside the presence of the jury, via closed-circuit television, if
28 the court finds, upon motion and hearing outside the presence of the
29 jury, that: (i) The particular child involved would be traumatized;
30 (ii) the source of the trauma is not the courtroom generally, but the
31 presence of the jury; and (iii) the emotional or mental distress
32 suffered by the child would be more than de minimis, regardless of
33 whether or not the child could reasonably communicate at the trial in
34 front of the jury. If the child is able to communicate in front of
35 the defendant but not the jury the defendant will remain in the room
36 with the child while the jury is excluded from the room;

37 (e) The court finds that the prosecutor has made all reasonable
38 efforts to prepare the child witness for testifying, including
39 informing the child or the child's parent or guardian about community
40 counseling services, giving court tours, and explaining the trial

1 process. If the prosecutor fails to demonstrate that preparations
2 were implemented or the prosecutor in good faith attempted to
3 implement them, the court shall deny the motion;

4 (f) The court balances the strength of the state's case without
5 the testimony of the child witness against the defendant's
6 constitutional rights and the degree of infringement of the closed-
7 circuit television procedure on those rights;

8 (g) The court finds that no less restrictive method of obtaining
9 the testimony exists that can adequately protect the child witness
10 from suffering emotional or mental distress that would be more than
11 de minimis;

12 (h) When the court allows the child witness to testify outside
13 the presence of the defendant, the defendant can communicate
14 constantly with the defense attorney by electronic transmission and
15 be granted reasonable court recesses during the child's testimony for
16 person-to-person consultation with the defense attorney;

17 (i) The court can communicate with the attorneys by an audio
18 system so that the court can rule on objections and otherwise control
19 the proceedings;

20 (j) All parties in the room with the child witness are on camera
21 and can be viewed by all other parties. If viewing all participants
22 is not possible, the court shall describe for the viewers the
23 location of the prosecutor, defense attorney, and other participants
24 in relation to the child;

25 (k) The court finds that the television equipment is capable of
26 making an accurate reproduction and the operator of the equipment is
27 competent to operate the equipment; and

28 (l) The court imposes reasonable guidelines upon the parties for
29 conducting the filming to avoid trauma to the child witness or abuse
30 of the procedure for tactical advantage.

31 The prosecutor, defense attorney, and a neutral and trained
32 victim's advocate, if any, shall always be in the room where the
33 child witness is testifying. The court in the court's discretion
34 depending on the circumstances and whether the jury or defendant or
35 both are excluded from the room where the child is testifying, may
36 remain or may not remain in the room with the child.

37 (2) During the hearing conducted under subsection (1) of this
38 section to determine whether the child witness may testify outside
39 the presence of the defendant and/or the jury, the court may conduct

1 the observation and examination of the child outside the presence of
2 the defendant if:

3 (a) The prosecutor alleges and the court concurs that the child
4 witness will be unable to testify in front of the defendant or that
5 (i) the particular child involved would be traumatized; (ii) the
6 source of the trauma is not the courtroom generally, but the presence
7 of the defendant; and (iii) the emotional or mental distress suffered
8 by the child would be more than de minimis;

9 (b) The defendant can observe and hear the child witness by
10 closed-circuit television;

11 (c) The defendant can communicate constantly with the defense
12 attorney during the examination of the child witness by electronic
13 transmission and be granted reasonable court recesses during the
14 child's examination for person-to-person consultation with the
15 defense attorney; and

16 (d) The court finds the closed-circuit television is capable of
17 making an accurate reproduction and the operator of the equipment is
18 competent to operate the equipment. Whenever possible, all the
19 parties in the room with the child witness shall be on camera so that
20 the viewers can see all the parties. If viewing all participants is
21 not possible, then the court shall describe for the viewers the
22 location of the prosecutor, defense attorney, and other participants
23 in relation to the child.

24 (3) The court shall make particularized findings on the record
25 articulating the factors upon which the court based its decision to
26 allow the child witness to testify via closed-circuit television
27 pursuant to this section. The factors the court may consider include,
28 but are not limited to, a consideration of the child's age, physical
29 health, emotional stability, expressions by the child of fear of
30 testifying in open court or in front of the defendant, the
31 relationship of the defendant to the child, and the court's
32 observations of the child's inability to reasonably communicate in
33 front of the defendant or in open court. The court's findings shall
34 identify the impact the factors have upon the child's ability to
35 testify in front of the jury or the defendant or both and the
36 specific nature of the emotional or mental trauma the child would
37 suffer. The court shall determine whether the source of the trauma is
38 the presence of the defendant, the jury, or both, and shall limit the
39 use of the closed-circuit television accordingly.

1 (4) This section does not apply if the defendant is an attorney
2 pro se unless the defendant has a court-appointed attorney assisting
3 the defendant in the defense.

4 (5) This section may not preclude the presence of both the child
5 witness and the defendant in the courtroom together for purposes of
6 establishing or challenging the identification of the defendant when
7 identification is a legitimate issue in the proceeding.

8 (6) The Washington supreme court may adopt rules of procedure
9 regarding closed-circuit television procedures.

10 (7) All recorded tapes of testimony produced by closed-circuit
11 television equipment shall be subject to any protective order of the
12 court for the purpose of protecting the privacy of the child witness.

13 (8) Nothing in this section creates a right of the child witness
14 to a closed-circuit television procedure in lieu of testifying in
15 open court.

16 (9) The state shall bear the costs of the closed-circuit
17 television procedure.

18 (10) A child witness may or may not be a victim in the
19 proceeding.

20 (11) Nothing in this section precludes the court, under other
21 circumstances arising under subsection (1)(a) of this section, from
22 allowing a child to testify outside the presence of the defendant and
23 the jury so long as the testimony is presented in accordance with the
24 standards and procedures required in this section.

25 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of
27 the state government and its existing public institutions, and takes
28 effect immediately.

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