

HOUSE BILL REPORT

SSB 5885

As Passed House:

April 10, 2019

Title: An act relating to the admissibility of testimony of children in criminal and dependency proceedings.

Brief Description: Creating an exemption to hearsay for child sex trafficking victims.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Dhingra, O'Ban, Wilson, C. and Nguyen).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/26/19, 3/28/19 [DP].

Floor Activity:

Passed House: 4/10/19, 95-0.

Brief Summary of Substitute Bill

- Allows for admissibility at trial, and provides a process and criteria for determining admissibility, of a statement made by a child victim when under the age of 16 describing certain sex offenses.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Jenkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez and Walen.

Staff: Cece Clynch (786-7195).

Background:

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is not admissible except as provided by the court Rules of Evidence, other court rules, or by statute. There are several reasons for this rule:

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- the statement was not made under oath;
- the demeanor of the declarant cannot be observed;
- the declarant is not subject to cross-examination; and
- what is reported to be the statement of the declarant may not be reported accurately.

A statute codified in the sex offenses chapter of the criminal code makes admissible, in dependency and criminal proceedings, including juvenile offense adjudications, a statement not otherwise admissible made by a child when under the age of 10 describing:

- any act of sexual contact with or on the child by another;
- any attempted act of sexual contact with or on the child by another; or
- any act of physical abuse of the child by another that results in substantial bodily harm. "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

Under this statute, the child's statement is admissible in evidence if:

- the court finds in a hearing, conducted outside of the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and
- the child either:
 - testifies at the proceedings; or
 - is unavailable as a witness. If the child is unavailable as a witness, the statement may be admitted only if there is corroborative evidence of the act. Under the court Rules of Evidence, unavailability includes situations in which the declarant:
 - is exempted by ruling of the court on the ground of privilege;
 - persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
 - testifies to a lack of memory of the subject matter of the declarant's statement;
 - is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
 - is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance.

A statement may not be admitted under this statute unless the proponent of the statement provides the adverse party with prior notice of the intention to offer the statement and provides particulars of the statement sufficiently in advance of the proceedings to allow the adverse party a fair opportunity to prepare to meet the statement.

Summary of Bill:

The statute providing for admissibility is amended to provide an additional exception for a statement made by a child when under the age of 16 describing any of the following criminal acts or attempted acts performed with or on the child:

- Trafficking;
- Commercial Sexual Abuse of a Minor;

- Promoting Commercial Sexual Abuse of a Minor; or
- Promoting Travel for Commercial Sexual Abuse of a Minor.

The same criteria for admissibility apply to this new exception.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will allow prosecutors to pursue pimps and slaveholders who are involved in trafficking. Often, the overwhelming trauma experienced by a victim makes it so that the victim is unable to testify. In other instances, the victim is unavailable. The Senate heard powerful testimony in support of this bill from a behavioral health specialist from Kent Youth and Family Services. It is recommended that persons listen to her testimony. Prosecutors are well aware of the Crawford case. Former United States Representative (and former Washington Representative and Senator) Linda Wilson, who is the Founder and President of Shared Hope International, expresses her support of the bill. These victims need to be supported, offenders need to be held accountable, and these crimes must be prevented. Older minors face the same vulnerabilities that younger children do, which increases their risk of retraumatization when participating in the criminal justice process. This bill will allow prosecutors to bring cases without having to rely too heavily on the testimony of the minor. Comprehensive protections for child survivors are needed to curtail the risk of revictimization that can occur during investigations and prosecutions of trafficking perpetrators. Washington has a good record for having a set of strong laws that address child sex trafficking. This bill is in line with that record of being a national leader in developing innovative, forward-thinking policies and practices related to addressing the commercial sexual exploitation of minors. It is urged that the bill's protections be extended further to apply to cases involving 16- and 17-year-old victims, as well.

(Opposed) None.

(Other) Sex trafficking is horrific; however, this bill limits the right of a defendant to confront his or her accuser. It would also limit the ability of counsel on behalf of the defendant to cross-examine the person accusing the defendant regarding other relevant information, such as other trauma experienced by that person, that may shed light on the larger story of that person. Other relevant information may include abuse in the home, drug related problems, and homelessness. This information is relevant in order to provide a proper defense to defendants.

Persons Testifying: (In support) Senator Padden, prime sponsor; and Timothy Heffer, Shared Hope International.

(Other) Neil Beaver, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.