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## Civil Rights & Judiciary Committee

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### SSB 5885

**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 Summary of Substitute Bill

- Allows for admissibility, 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.

**Hearing Date:** 3/26/19

**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:

- 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

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

- 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.