

# FINAL BILL REPORT

## SSB 5885

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Synopsis as Enacted

**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).

**Senate Committee on Law & Justice**  
**House Committee on Civil Rights & Judiciary**

**Background:** Hearsay is the legal term for certain statements—offered as evidence during a trial or hearing for the purpose of attempting to prove the truth of the matter asserted in the statements—that were not made while testifying at the trial or hearing itself. Hearsay is not allowed in a court hearing as it is considered to be generally unreliable, and because the person who made the original statement is not available for cross-examination. For example, a police officer cannot testify as to what they heard a witness say while investigating a crime. The witness must testify as to their own observations.

There are various evidentiary exceptions to the hearsay rule. In a criminal case, the U.S. Supreme Court has provided guidance over time under what circumstances hearsay evidence is admissible against a criminal defendant, setting forth a two-part test:

- the declarant generally must be shown to be unavailable; and
- the statement must have been made under circumstances providing sufficient "indicia of reliability."

Further, when statements are directly accusatory, the defense needs an opportunity to explore the accuser's motives. Where statements are the product of police interrogation, there is a need to ensure the testimony is not the product of improper coercion or intimidation.

In Washington, the Legislature has codified an exception to the hearsay rule for the admission of statements in a dependency proceeding, adult criminal proceeding, or juvenile offense adjudication. That exception includes statements made by a child under the age of ten describing any act of sexual contact performed with or on the child by another or any act of physical abuse of the child by another that results in substantial bodily harm if:

- the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

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- the child either (1) testifies at the proceeding, or (2) is unavailable as a witness and there is corroborative evidence of the act.

The adverse party must be given advance notice of the intent to offer the statement with sufficient opportunity to prepare a defense.

Specifically as it relates to a minor, a person will be guilty of trafficking when they recruit, harbor, transport, transfer, provide, obtain, buy, purchase, or receive, by any means, another person who is under the age of eighteen and causes the underage person to engage in a sexually explicit act or a commercial sex act.

**Summary:** A hearsay statement made by a child under the age of sixteen is admissible evidence in a dependency proceeding, adult criminal proceeding, or juvenile offense adjudication if the statement describes one of the following crimes performed with or on the child:

- 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.

The procedures in current law relating to the admission of statements by a child, describing sexual or physical abuse, apply to the admission of statements relating to trafficking or commercial sexual abuse of a minor.

**Votes on Final Passage:**

Senate	48	0
House	95	0

**Effective:** July 28, 2019