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SENATE BILL 5169

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State of Washington

69th Legislature

2025 Regular Session

By Senators Nobles and Dhingra

Prefiled 01/08/25.

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

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.

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