

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 1076
Judiciary

(Delegate Dumais)

Criminal Procedure - Out of Court Statements of Victims - Child Neglect and
Abuse or Neglect of a Vulnerable Adult

This bill expands evidentiary rules that authorize the admission of an out of court statement in a juvenile court or criminal proceeding made by a child victim under specified circumstances to include statements made by an alleged victim of the crime of child neglect. The bill also establishes similar provisions to authorize a court to admit into evidence an out of court statement made by a victim who is a vulnerable adult and is the alleged victim in the case before the court concerning abuse or neglect of a vulnerable adult in the first or second degree.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect the workload or finances of the Judiciary or the Office of the Public Defender.

Local Effect: The bill is not anticipated to materially affect the workload or finances of the circuit courts or state's attorneys' offices.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes the court to admit into evidence in a juvenile court proceeding or in a criminal proceeding an out of court statement to prove the truth of the matter asserted in the statement made by a child victim who (1) is younger than age 13 and (2) is the alleged victim or the child alleged to need assistance in the case before the court concerning the crime of child neglect.

Out of Court Statements of a Victim who is a Vulnerable Adult

The bill also establishes provisions for the admission of out of court statements of victims who are vulnerable adults; these provisions generally mirror the definitions and procedures as set forth below for child victims. The statutory provisions regarding these statements do not limit the admissibility of a statement under any other applicable hearsay exception or rule of evidence.

An out of court statement made by a victim may be admissible only if the statement was made to and is offered by one of the following individuals while the individual was acting lawfully in the course of his/her profession: (1) a physician; (2) a psychologist; (3) a nurse; (4) a social worker; or (5) a counselor or a therapist who is licensed or certified under Title 17 of the Health Occupations Article.

An out of court statement by a victim may come into evidence in a criminal proceeding or in a juvenile court proceeding other than a Child in Need of Assistance (CINA) proceeding to prove the truth of the matter asserted in the statement if the victim testifies and if the statement is not admissible under any other hearsay exception.

The prosecuting attorney is required to serve the defendant or alleged offender and the attorney for the defendant or alleged offender with notice of (1) the State's intention to introduce the statement; (2) any audio or visual recording of the statement; and (3) if an audio or visual recording of the statement is not available, the content of the statement. The notice must be served within a reasonable amount of time before a juvenile court proceeding and at least 20 days before the criminal proceeding in which the statement is to be offered into evidence. The defendant or alleged offender may depose a witness who is called to testify as to the out of court statement, as specified.

The out of court statement of a victim is only admissible if it has particularized guarantees of trustworthiness. To determine the trustworthiness of the statement, the court must consider multiple factors, including (1) the victim's personal knowledge of the event; (2) the certainty that the statement was made; (3) any apparent motive to fabricate or exhibit partiality by the victim, including interest, bias, corruption, or coercion; (4) whether the statement was spontaneous or directly responsive to questions; (5) the timing of the statement; (6) the nature and duration of the abuse or neglect; (7) the inner consistency and coherence of the statement; (8) whether the victim was suffering pain or distress when making the statement; (9) whether there is extrinsic evidence to show an opportunity to commit the act complained of in the statement; (10) whether the statement was suggested by the use of leading questions; and (11) the credibility of the person testifying about the statement.

The court must make a finding on the record regarding the trustworthiness of the statement and determine the admissibility of the statement in a hearing outside of the presence of the jury or before the juvenile court proceeding. The bill establishes provisions regarding the examination of a victim in a location not open to the public before making a determination on the admissibility of the statement.

Current Law:

Admissibility of Out of Court Statements Made by Child Victims

A court is authorized to admit into evidence in a juvenile court proceeding or in a criminal proceeding an out of court statement to prove the truth of the matter asserted in the statement made by a child victim who (1) is younger than age 13 and (2) is the alleged victim or the child alleged to need assistance in the case before the court concerning:

- child abuse or sexual abuse of a minor;
- first- or second-degree rape or a third-degree sexual offense;
- attempted rape in the first or second degree; or
- abuse or neglect in a juvenile court proceeding.

“Statement” is defined as (1) an oral or written assertion or (2) nonverbal conduct intended as an assertion, including sounds, gestures, demonstrations, drawings, and similar actions. The statutory provisions regarding these statements do not limit the admissibility of a statement under any other applicable hearsay exception or rule of evidence.

An out of court statement made by a child victim may be admissible only if the statement was made to and is offered by specified individuals, including physicians, nurses, teachers, or social workers, while the individual was acting lawfully in the course of his/her profession.

An out of court statement by a child victim may come into evidence in a criminal proceeding or in a juvenile court proceeding other than a CINA proceeding to prove the truth of the matter asserted in the statement if the child victim testifies and if the statement is not admissible under any other hearsay exception. An out of court statement by a child victim may come into evidence in a CINA proceeding to prove the truth of the matter asserted in the statement regardless of whether the child victim testifies and if the statement is not admissible under any other hearsay exception.

If the child victim does not testify, the child victim’s out of court statement is admissible only if there is corroborative evidence that the alleged offender had the opportunity to commit the alleged abuse or neglect.

The prosecuting attorney is required to serve on the defendant, child respondent, or alleged offender and the attorney for the defendant, child respondent, or alleged offender with notice of (1) the State's intention to introduce the statement and the content of the statement; (2) any audio or visual recording of the statement; and (3) if an audio or visual recording of the statement is not available, the content of the statement. The notice must be served within a reasonable amount of time before a juvenile court proceeding and at least 20 days before the criminal proceeding in which the statement is to be offered into evidence. The defendant, child respondent, or alleged offender may depose a witness who is called to testify as to the out of court statement but must file a notice of deposition at least 5 days before the date of the deposition in a criminal proceeding or within a reasonable amount of time before the date of a deposition in a juvenile court proceeding. However, an alternative notice requirement deadline may be ordered by the court or agreed to by the State and the defense.

The out of court statement of a child victim is only admissible if it has particularized guarantees of trustworthiness. To determine the trustworthiness of the statement, the court must consider multiple factors, including (1) the child victim's personal knowledge of the event; (2) the certainty that the statement was made; (3) any apparent motive to fabricate or exhibit partiality by the child victim, including interest, bias, corruption, or coercion; (4) whether the statement was spontaneous or directly responsive to questions; (5) the timing of the statement; (6) whether the child victim's young age makes it unlikely that the child victim fabricated the statement that represents a graphic, detailed account beyond the child victim's expected knowledge and experience; (7) the age appropriateness of the terminology used by the victim in the statement; (8) the nature and duration of the abuse or neglect; (9) the inner consistency and coherence of the statement; (10) whether the child victim was suffering pain or distress when making the statement; (11) whether there is extrinsic evidence to show that the defendant or child respondent had an opportunity to commit the act complained of in the statement; (12) whether the statement was suggested by the use of leading questions; and (13) the credibility of the person testifying about the statement.

The court is required to make a finding on the record regarding the trustworthiness of the statement and determine the admissibility of the statement in a hearing outside of the presence of the jury or before the juvenile court proceeding. The court is required to examine the child victim in a location not open to the public before making a determination on the admissibility of the statement. The court is not required to conduct this examination if (1) the child victim is deceased; (2) the child victim is absent from the jurisdiction for good cause shown or the State has been unable to procure the child victim's presence by subpoena or other reasonable means; or (3) the court determines that an audio or visual recording of the child victim's statement makes an examination of the child victim unnecessary. When the court conducts this examination, the defendant/child respondent may not be present. However, one attorney for each defendant/child respondent,

one attorney for the child victim, and one prosecuting attorney may be present at the examination.

Child Neglect

A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect the minor. “Neglect” is the intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor’s physical health or a substantial risk of mental injury to the minor. Neglect does not include the failure to provide necessary assistance and resources when the failure is due solely to a lack of financial resources or homelessness. A violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or a \$5,000 fine. A sentence imposed under this provision must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Vulnerable Adult

A vulnerable adult is an adult who lacks the physical or mental capacity to provide for the adult’s daily needs. Sections 3-604 and 3-605 of the Criminal Law Article prohibit the abuse or neglect of a vulnerable adult. “Abuse” means the sustaining of physical pain or injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the vulnerable adult’s health or welfare is harmed or threatened. “Abuse” includes the sexual abuse of a vulnerable adult. “Abuse” does not include an accepted medical or behavioral procedure ordered by a health care provider authorized to practice under the Health Occupations Article or emergency medical personnel acting within the scope of the health care provider’s practice.

A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member. A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000.

Under the second-degree prohibition, a caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult. A household member or family member may not cause abuse or neglect of a vulnerable adult. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a \$5,000 fine. The second-degree prohibition does not apply to sexual abuse of a vulnerable adult.

A sentence imposed under these provisions must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Background: The provision for out of court statements of child victims, sometimes referred to as the “tender years statute,” is a statutory exception to the hearsay rule, which generally prohibits the admission into evidence of an out of court statement offered to prove the truth of the matter asserted in the statement.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Maryland Department of Health; Department of Human Services; Department of Juvenile Services; Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510