



POSITION ON PROPOSED LEGISLATION

BILL: SB 482 – Criminal Procedure – Out of Court Statement of Child Victim – Neglect of a Minor

POSITION: OPPOSE

DATE: February 13, 2020

This bill proposes to allow a court to admit into evidence hearsay statements of certain children of a certain age (“tender years exception”) who are the alleged victim or alleged child in need of assistance in a case concerning criminal neglect of a minor, codified as Criminal Law Article § 3-602.1. The Office of the Public Defender opposes this bill.

The bill classifies “neglect” with much more serious crimes such as physical and sexual child abuse, rape or sexual offense, and attempted first- or second-degree rape. In these other crimes, there is almost always physical evidence that can be relied on to substantiate the child’s statements and provide an indicia of reliability. Additionally, out of court statements relating to these crimes are easier to ascertain. Statements like “Mommy hit me with a belt,” or “Daddy took off my underwear and touched my privates,” are clearly related to certain crimes.

Neglect, on the other hand, is a more difficult crime to define, as it often requires looking at the totality of the circumstances, and can include both actions and inactions of an individual. Furthermore, statements that might tend to concern neglect may also be innocuous. For example, if a child says “I am hungry” at 10 a.m. at school every day for a week, it does not necessarily mean the child is not being fed at home; it could mean the child eats at 7 a.m. and doesn’t eat enough to tide him or her over until lunch. The crime of neglect simply does not lend itself to proof through out of court statements. As the Court of Special Appeals wrote, “It makes sense to think of ‘neglect’ as part of an overarching pattern of

conduct. Although neglect might not involve affirmative conduct (as physical abuse does, for example), the court assesses neglect by assessing the inaction of a parent over time. To the extent that inaction repeats itself, courts can appropriately view that pattern of omission as a predictor of future behavior, active or passive." *In re Priscilla B.*, 214 Md.App. 600, 625 (2013).

Finally, the "tender years exception" is intended to help prevent a young child from being re-traumatized by testifying in open court about a traumatic event, such as a rape or physical beating. This same concern is not present in the majority of cases of neglect, which is often due to poverty or lack of parenting skills.

Admitting out of court statements of certain children concerning neglect would lead to innocuous statements like "I was hungry last night" to be taken out of context and lead to criminal convictions and/or family separation.