

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 1348

(Delegate Pitkin, *et al.*)

Judiciary

Child Abuse - Out of Court Statement - Requirement for Admissibility

This bill eliminates the requirement that a child victim's out-of-court statement be made to and offered by one of a list of specified professionals in order for the statement to be admitted into evidence in criminal and civil child abuse and neglect proceedings. The listed professionals are: (1) a physician; (2) a psychologist; (3) a nurse; (4) a social worker; or (5) a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

Fiscal Summary

State Effect: This bill is procedural in nature and is not expected to have a material impact on governmental finances.

Local Effect: None -- see above.

Small Business Effect: None.

Analysis

Current Law: A statement made outside of the court and offered in court for its truth is a hearsay statement, and is generally not permitted without certain guarantees of reliability and trustworthiness. There are several exceptions that allow particular types of hearsay to be offered where these guarantees of reliability and trustworthiness have been deemed to be present. Common exceptions used in cases involving child victims include party admissions, statements made during the course of medical diagnosis or treatment, and excited utterances.

Statutory law permits a child victim's hearsay statement to be offered into evidence in criminal cases of child abuse and serious sexual offenses as well as civil child abuse and neglect matters if:

- the child victim is under the age of 12;
- the statement is made to and offered by a physician, psychologist, nurse, social worker, school principal or vice-principal, teacher, or school counselor;
- the statement does not fall within any other hearsay exception; and
- there is corroborative evidence that the alleged perpetrator had the opportunity to commit the alleged act.

The statute also lays out procedural requirements and 12 factors to test whether the statement has "particular guarantees of trustworthiness." A judge must make a finding on the record as to the trustworthiness of the child's statement.

Background: The specified persons in the list of professionals that this bill seeks to eliminate -- those permitted by the statute to offer a child's out-of-court statement into evidence -- are mandated reporters; *i.e.*, they are required by law to report any reasonable suspicions that a child is being abused or neglected to appropriate authorities.

In criminal cases, the defendant has a constitutional (Sixth Amendment) right to confront the defendant's accusers. This same right extends to child respondents in delinquency matters. When a child victim's accusatory statements are repeated in court by someone else, the defendant (or child respondent) cannot confront the accuser. This right is not absolute, and the U.S. Supreme Court has enunciated a two-part test for determining when the right to confrontation must yield to the admissibility of hearsay statements; the proponent must: (1) show the necessity for using the hearsay statement (*e.g.*, unavailability of a witness); and (2) demonstrate the inherent trustworthiness of the declaration. *Ohio v. Roberts*, 448 U.S. 56 (1980). A child's hearsay statement that has particular guarantees of trustworthiness, when viewed in the totality of circumstances surrounding the making of the statement, is sufficiently reliable and therefore admissible. *Idaho v. Wright*, 497 U.S. 805 (1990).

The statute affected by this bill has survived a constitutional challenge. The Court of Special Appeals ruled that the 12-factor test to guarantee the trustworthiness of the child's statements met the above *Wright* analysis. *Prince v. State*, 131 Md. App. 296 (2000). The court further found that the *Roberts* test was met by the trial court's careful following of each of the statutory requirements. *Id.*

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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