

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

House Bill 859
Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

Child Abuse - Out of Court Statements of Child Victims

This bill makes several changes to the statute governing the admission of out of court statements made by a child victim in a juvenile court or criminal proceeding.

Fiscal Summary

State Effect: None. The bill is procedural in nature and is not expected to have a material effect on State finances.

Local Effect: None. The bill is procedural in nature and is not expected to have a material effect on local finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes a court to admit an out of court statement made by a victim who is younger than the age of 13 years, rather than the current age limit of 12 years. The bill also adds counselors and therapists who are licensed or certified under Title 17 of the Health Occupations Article to the list of professionals to whom a child victim's out of court statement was made and who may testify concerning the statement.

A child victim must testify as a prerequisite to the admissibility of the child victim's out of court statement in a criminal proceeding or in a juvenile court proceeding other than a child in need of assistance (CINA) proceeding. The prosecuting attorney must serve notice of any audio or visual recording of the statement on the defendant, child respondent, or alleged offender and his/her attorney within statutory time limits. If an

audio or visual recording of the statement is not available, the prosecuting attorney is required to serve notice of the statement's content.

When determining the admissibility of an out of court statement by a child victim, the court is not required to examine the child victim if the court determines that an audio or visual recording of the child victim's statement makes an examination of the child unnecessary.

Current Law: 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 the age of 12 years; 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 first, second, or third degree sexual offense;
- attempted rape or attempted sexual offense in the first degree or in the second degree;
- 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 one of the following individuals while the individual was acting lawfully in the course of the his/her profession: (1) a physician; (2) a psychologist; (3) a nurse; (4) a social worker; or (5) a principal, vice principal, teacher, or counselor at a school.

An out of court statement by a child victim may come into evidence to prove the truth of the matter asserted in the statement regardless of whether the child victim testifies 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 will be admissible only if there is corroborative evidence that: (1) the defendant had the opportunity to commit the alleged crime; or (2) the child respondent or 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 the State's intention to introduce the statement and 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 will testify as to the out of court statement, but must file a notice of deposition at least five 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 the child victim is deceased, 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. 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.

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. In *State v. Snowden*, 385 Md. 64 (2005), the Court of Appeals held that when a child abuse victim's out of court statement made to a health or social worker is testimonial, the statement may only be admitted through the health or social worker without violating the Confrontation Clause of the U.S. Constitution if the declarant is unavailable and defendant had a prior opportunity to cross examine the declarant. The Confrontation Clause does not apply in CINA proceedings.

Additional Information

Prior Introductions: None.

Cross File: SB 768 (Senators Ramirez and Frosh) - Judicial Proceedings.

Information Source(s): Howard County, Department of Human Resources, Maryland State Department of Education, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, Department of Legislative Services

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