

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 192

(Delegates Atterbeary and Wilson)

Judiciary

**Criminal Procedure - Victims and Witnesses - Out of Court Statement of Child
Victim**

This bill alters the statute governing the admission of an out of court statement made by a child victim younger than age 13 in a juvenile court or criminal proceeding. Under the bill, a court may authorize the admission of an out of court statement made by a child victim if the statement describes the charged offense, was made to the first adult other than the defendant to whom the child victim made a statement about the offense, was promptly reported in accordance with § 5-704 or § 5-705 of the Family Law Article, and was documented in writing or by audio or video recording.

Fiscal Summary

State Effect: None. The bill is procedural in nature and is not expected to materially affect State finances.

Local Effect: None. The bill is procedural in nature and is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

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 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; (5) a principal, vice principal, teacher, or counselor at a school; or (6) 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 child 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 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 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 (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.

Reporting of Abuse or Neglect of a Child

Sections 5-704 and 5-705 of the Family Law Article address reporting of abuse or neglect of a child by various individuals.

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An “educator or human service worker” includes any teacher, counselor, social worker, caseworker, and parole or probation officer. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee.

A worker who notifies the appropriate authorities must make an oral report by telephone or direct communication as soon as possible to the local department or the appropriate law enforcement agency if the worker has reason to believe the child has been subjected to abuse or neglect. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the worker to believe that the child had been subjected to abuse or neglect. A copy of the written report must be provided to the local State’s Attorney. An agency that receives an oral report of suspected abuse or neglect must immediately notify the other agency.

As far as reasonably possible, a worker who makes a report must include the name, age, and home address of the child; the name and home address of the child’s parent or other person responsible for the child’s care; the whereabouts of the child; and the nature and extent of the child abuse or neglect. The report must include any available evidence about previous instances of abuse or neglect, any information that would help to determine the cause of the suspected abuse or neglect, and the identity of any person responsible for the abuse or neglect.

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute.

Individuals who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

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. Texas has enacted a similar provision regarding out of court statements by a child victim that applies to children age 14 and younger.

Additional Information

Prior Introductions: HB 483 of 2017 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Legislative Services

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