

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 442
Judiciary

(Delegate Simpson, *et al.*)

Judicial Proceedings

Criminal Procedure - Victims and Witnesses - Out of Court Statement of Child
to Forensic Interviewer

This bill generally expands statutory evidentiary provisions that authorize the admission of an out of court statement in a juvenile court or criminal proceeding made by a child victim or witness to certain professionals under specified circumstances to also be applicable to statements made to a forensic interviewer. The bill defines “forensic interviewer” as a professional who (1) is trained in child forensic interviewing protocols and techniques that allow for neutral, legally sound, nonleading, and developmentally appropriate interviews with children to gather information without influencing the information provided by the child; (2) is not a law enforcement officer; and (3) is employed by or works under contract with a child advocacy center or an entity in another jurisdiction that would qualify as a child advocacy center in the State.

Fiscal Summary

State Effect: The bill is procedural and is not anticipated to materially affect State finances or operations.

Local Effect: The bill is procedural and is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: The provision for out of court statements of child victims or witnesses, 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.

Admissibility of Out of Court Statements Made by Child Victims and Witnesses

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 or witness who is younger than age 13 and (1) is an alleged victim or a witness in a case before the court concerning a crime of violence, as specified by the Criminal Law Article, or (2) is the alleged victim or the child alleged to need assistance in the case before the court concerning certain matters, as specified (*e.g.*, child abuse, rape or sexual offense, neglect of a minor, etc.).

“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 or witness under these provisions 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 the person’s profession.

An out of court statement by a child victim or witness 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 or witness 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 (1) regardless of whether the child victim testifies and (2) 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. Statutory provisions specify additional requirements regarding notice and depositions.

The out of court statement of a child victim or witness is only admissible if it has particularized guarantees of trustworthiness. To determine the trustworthiness of the statement, the court must consider multiple factors, as specified in statute, including (1) the child victim or witness'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 or witness, including interest, bias, corruption, or coercion; and (4) whether the statement was spontaneous or directly responsive to questions.

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. Statute includes additional requirements regarding the court's examination of a child victim or witness.

Child Advocacy Center

Title 13 of the Health General Article defines a "child advocacy center" as a child-focused entity within or outside a health care facility that investigates, diagnoses, and treats children who may have been abused or neglected that (1) includes local law enforcement officers, local criminal prosecutors, and the local department of social services and (2) may include child mental health service providers and other children and family service providers.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 333 (Senator West) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2025
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