

DHS_FAV_SB0482

Uploaded by: DHS, DHS

Position: FAV

DATE: February 13, 2020

BILL NUMBER: SB 482

COMMITTEE: Judicial Proceedings

BILL TITLE: Criminal Procedure - Out of Court Statements of Child Victims - Child Neglect

DHS POSITION: Support

The Department of Human Services (the Department) respectfully offers this letter of support regarding Senate Bill 482. SB 482 would authorize a court to admit into evidence out of court statements made by a child who is a victim of neglect.

Currently, out of court statements made by children are only permissible in cases of child abuse, sexual abuse, and juvenile court proceedings. Out of court statements are not permitted in cases of criminal child neglect. It is well documented that testifying in a court proceeding can be very intimidating, and result in further trauma for children. The Department feels this is a reasonable accommodation for the child, and mitigates as much additional trauma as possible, while still respecting due process for the accused.

The federal Victims of Child Abuse Act of 1990 recognized the growing body of scientific literature on the psychological and physiologic consequences for children who appear in court. The Act included changes to provide additional federal protections for child victims. SB482 aligns with both federal law, and federal guidance from the 2012 revised U.S. Justice Department guidelines:

“Department personnel should be aware of the trauma that child victims and witnesses may experience when they are asked to relive the crime during the investigation and prosecution of a criminal case, particularly when testifying in court. A primary goal of Department personnel, therefore, shall be to reduce the potential trauma to child victims and witnesses that may result from their contact with the criminal justice system. To that end, Department personnel are required to provide age-appropriate support services to these victims, and referrals for community-based services to parents and guardians as indicated.”¹

These changes at the federal level resulted in modifications to courtroom procedures nationwide. Various accommodations have been developed to decrease the stress experienced by children who appear in courts. These initiatives range from allowing children to hold comforting objects, to being accompanied by a support person while testifying. The Department feels that SB 482 is continuing this national trend in the correct direction.

It is clearly the intent of this legislation to balance the needs of the victim and the accused in response to the growing scientific literature around psychological trauma, the connection to vulnerable populations reliving events through courtroom testimony. Therefore the Department supports this effort as a best practice that aligns with national trends.

For the reasons stated, the Department respectfully requests a favorable report on SB 482.

¹ U.S. Department of Justice. Office of Justice Programs. *Attorney General Guidelines for Witness Assistance*. By Eric H. Holder, Jr. May 2012. Accessed February 26, 2019. https://www.justice.gov/sites/default/files/olp/docs/ag_guidelines2012.pdf.



Lee_FAV_SB482

Uploaded by: Senator Lee, Senator Lee

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MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
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and Biotechnology

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THE SENATE OF MARYLAND
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February 13, 2020

Senate Judicial Proceedings Committee

**Senate Bill 482 - Criminal Procedure - Out of Court Statements of Child
Victims - Child Neglect**

Senate Bill 482 is an addition to the hearsay exception for criminal child neglect. There is already an exception for child abuse, however, not for child neglect. Mandated reporters already have to report neglect, but unlike child abuse, the testimony of the reporters about the out of court statement the child made is not admissible. SB 482 is a logical narrow fix for the tender years expectation, to add criminal neglect of children under 13. This hearsay exception is a critical tool in the State's prosecution of individuals who abuse young children.

When children speak at forensic interviews, we don't want to require them to repeat their traumatic experience at court when not essential. We have heard examples all around the state where this would be helpful. There are many other states that already have this protection, which is determined trustworthy at a pretrial hearing. The child is subjected to cross-examination, but the finder of fact would get the full picture. They can be easily intimidated in court and the victim's memories are stronger closer in time to the precipitating event.

The Montgomery County State's Attorney's Office has an example of a neglect case when nine children were left in a van for two days during winter. The children were afraid of their mother and while they described the full account to the social workers in a safe, child-friendly environment, they were unable to testify in front of their mother in court. SB 482 would have allowed their statements to the social worker to be admitted into evidence, and helped to protect these children from their mother's dangerous neglectful behavior.

For these reasons, I respectfully request a favorable report on SB 482.

OPD_UNF_SB 482

Uploaded by: Villamar, Nena

Position: UNF



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.