

Testimony Supporting House Bill 495

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The Special Victims Division of the Montgomery County State's Attorney's Office prosecutes all child neglect cases in Montgomery County. Working closely with partners in law enforcement and Child Protective Services, our division participates in all phases of the investigation and prosecution of these crimes. We urge the Judiciary Committee to report favorably on House Bill 495.

House Bill 495: Criminal Procedure – Out-of-Court Statements of Victims – Child Neglect

This bill proposes a positive change to the tender years hearsay exception currently in place in section 11-304 of the Criminal Procedure Article. Section 11-304 currently allows the State to admit statements made by children under the age of thirteen that relate to child physical and sexual abuse when those statements are made to certain individuals, including physicians, social workers, teachers, and therapists. This hearsay exception is a critical tool in the State's prosecution of individuals who abuse young children. The proposed law appropriately extends this tool to Neglect of a Minor (Criminal Law Article § 3-602.1). Maryland is one of thirty-seven states with a statute addressing the admissibility of out of court statements of child victims. Currently, eleven of these states specifically designate neglect as a qualifying crime.

Section 11-304 sets forth a specific scheme for the admissibility of out-of-court statements. First, the State must notify the defendant of its intent to introduce the statement at trial. The defendant is entitled to depose the statement-taker. The Court then holds a pretrial hearing to determine if the statement is trustworthy. At trial, the child must testify and be subject to cross examination. The statement-taker then testifies, and the State offers the child's out of court statement as substantive evidence.

The reasons that justify the current 11-304 exceptions apply equally well to statements made by child neglect victims. These victims have the same relationships to their perpetrators and face the same challenges when it comes to testifying, including their ability to recall specific events and their susceptibility to intimidation. A victim's memory of an event is much stronger closer in time to the precipitating event, which is when most of the statements admissible under section 11-304 are made. Additionally, cases of this nature often involve complex family dynamics that may, over time, result in a child becoming reluctant to speak about the abuse, minimizing the nature of the abuse, or even recanting their allegations of abuse altogether. A child's out-of-court statement made close in time to the event, in a safe, comfortable environment out of the presence of their abuser, and before being subjected to the pressures of other family members, is often more reliable than his or her testimony at trial.

The case of Sheri Marshall illustrates the need for the proposed expansion of section 11-304. In 2017, Sheri Marshall was charged in Montgomery County with nine counts of Neglect of a Minor for abandoning her nine children (all under the age of twelve) in a van for two days in the middle of winter. Due to the Defendant's drug use during her pregnancies and prolonged mistreatment of

her children, most of them suffered from severe emotional and developmental disabilities. Moreover, they were petrified of their mother. Some of the children were able to describe the ordeal to social workers in a safe, child-friendly environment away from their mother, but giving a full account of what happened to them, in front of their mother in court, would have been nearly impossible. Not having 11-304 in our toolbox impacted the strength of the case and denied the prosecution the ability to offer the finder of fact necessary evidence under these circumstances.

Children are defenseless and especially susceptible to abuse and neglect by their caretakers, and this new provision of 11-304 will provide the State with an enhanced tool to root out the perpetrators and hold them accountable.

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