

Child Abuse - closed circuit - testimony - house -

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting House Bill 141
Lisae C. Jordan, Executive Director & Counsel
January 25, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute which provides direct legal services for survivors across the State of Maryland. We urge the Judiciary Committee to report favorably on House Bill 141.

House Bill 141 – Child Abuse Victim – Testimony Outside the Courtroom

This bill would modify Maryland's current statute, Criminal Procedure §11-303, and create a rebuttable presumption that child abuse victim-witnesses under age 13 will testify via two-way closed-circuit television. For child victim-witnesses age 13 and over, closed circuit testimony would be permitted only if testimony will result in the child victim's suffering serious emotional distress such that the child victim cannot reasonably communicate. Court interpretations of the current statute have limited the utility of the law. See, *Wildermuth v State*, 310 Md. 496 (1987)

Child abuse victims who would be protected by HB141 include victims of child sexual abuse. 28.4% of the child abuse or neglect that occurred in Maryland in 2020 was sexual abuse, meaning at least 2,059 Maryland children experienced sexual abuse.¹ This is an increase of 3.4% from 2019. It is important that Maryland continue to improve its response to these children.

Testifying in court and being subject to cross examination is inherently traumatizing for many survivors of sexual crimes, but especially for child victims of sexual abuse. These children are often ashamed, embarrassed, scared, and conflicted about their abuse. Countless cases are pled down so children can avoid being on the stand, and others are lost when children are unable to articulate what happened while sitting near their abuser. When children do testify, they are retraumatized.

Providing testimony via closed circuit TV helps reduce (but not eliminate) re-traumatization, and will increase cases where children can provide important information to juries and judges in both criminal cases and child protective services cases. The prevalence of on-line platforms and video

¹ U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau. (2020) Child maltreatment 2020. Retrieved from: <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>

communication has also increased factfinders' familiarity with this media and reduces past concerns about fairness.

Potential amendment: MCASA notes that the Committee may wish to consider amending the bill to include any sexual crime against a child under Title 3, Subtitle 3 of the Criminal Law Article and protect a wider group of child victims.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 141**

Testimony in support of HB0141.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

1/25/2024

Richard Keith Kaplowitz
Frederick, MD 21703

TESTIMONY ON HB#/0141 - POSITION: FAVORABLE

Criminal Procedure - Child Abuse Victim - Testimony Taken Outside the Courtroom

TO: Chair Clippinger, Vice Chair Bartlett, and members of the Judiciary Committee

FROM: Richard Keith Kaplowitz

My name is Richard Keith Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of HB#/0141, Criminal Procedure - Child Abuse Victim - Testimony Taken Outside the Courtroom

I am proud of my two Frederick County legislators for their sponsorship of this important bill. An abused child has been damaged not only in body but in mind and soul. The trauma of that abuse can often last a lifetime and destroy the child's happiness and sense of self-worth. To then make that child be in the presence of their abuser compounds all of the damages the abuse has inflicted upon them. The abuser's manipulation of the child's trust could create a situation in which, viewing that abuser directly, threats and warnings from their abuser become primary motivators in a child's testimony against the individual.

Childhood and children are precious. My Jewish faith teaches me how to treat a child who has suffered damage, as Isaiah 1:17 says "Learn to do good, seek justice, strengthen the robbed, perform justice for the orphan, plead the case of the widow." An abused child must have justice having been robbed of that childhood. It is incumbent upon us then to strengthen them by protecting them from their abuser and this bill will help the justice system to accomplish that end.

The protection of the life, health, and safety of children in is a primary responsibility of every adult in Maryland. This bill expands the capability of the criminal justice system to meet that responsibility. **I respectfully urge this committee to return a favorable report on HB#/0141.**

2024-01-25 HB 141 (Support).pdf

Uploaded by: Tiffany Clark

Position: FAV

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January 25, 2023

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: House Bill 141 – Criminal Procedure – Child Abuse Victim – Testimony
Taken Outside the Court Room – **Support**

The Office of the Attorney General urges the Judiciary Committee to give House Bill 141 - Criminal Procedure – Child Abuse Victim – Testimony Taken Outside the Court Room a favorable report.

Courtroom testimony, including speaking about abuse in front of one's abuser, can be traumatizing for any victim-survivor, especially for a child. House Bill 141 creates a rebuttable presumption that a child victim under the age of 13 shall be taken outside of court, unless there is "clear and convincing evidence" that the testimony "will not result in the child victim suffering severe emotional distress." House Bill 141 properly balances the defendant's right to confrontation with the technological advances that allow for physical distance between the victim-survivor and the defendant.

Ordinarily, witnesses in criminal cases, including victims, must appear in-person on the witness stand in order to fulfill the constitutional obligation that a criminal defendant be "confronted" by the witnesses against them. However, under Section 11-303 of the Criminal Procedure Article, in the case of a victim in a case of child abuse or sexual abuse of a minor, a judge may permit the victim to remain outside of the courtroom, and have their testimony live-streamed in the courtroom via CCTV, if the judge determines that the child being physically in the courtroom will cause the child to "suffer such emotional distress that the child cannot reasonably communicate."

An earlier version of CP § 11-303 was upheld, against a challenge that it violated defendants' constitutional right to confrontation, in *Maryland v. Craig*, 497 U.S. 836 (1990). In *Craig*, the U.S. Supreme Court held: "if the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently

important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant.” *Id.* at 855.

The Office of the Attorney General would like to alert the Committee, however, that by alleviating the State’s burden to make an “adequate showing of necessity”, as required in *Craig*, House Bill 141 could invite a constitutional challenge in a criminal appeal.

For the foregoing reasons, the Office of the Attorney General urges the Committee to vote favorably on House Bill 141.

Cc: Delegate Jesse Pippy

MCA HB141.docx.pdf

Uploaded by: Wendy Myers

Position: FAV



January 25, 2024

**The Honorable Luke Clippinger, Chair
Maryland House Judiciary Committee
Lowe House Office Building Room 121
6 Bladen Street
Annapolis, Maryland 21401**

HB141 – Criminal Procedure – Child Abuse Victim – Testimony Taken Outside the Courtroom

POSITION: Support

Dear Chairman Clippinger:

On behalf of the Maryland Children's Alliance (MCA), thank you for the opportunity to support legislation which will better support the health of child victims of abuse. MCA is a private nonprofit organization that functions as a State Chapter within the National Children's Alliance and serves as a convener of the 24 children's advocacy centers (CACs) across Maryland. We are in support of HB141 which establishes a presumed standard of practice for court testimony for child victims under the age of 13 in Maryland.

CACs are child-focused facilities that help abused children heal by coordinating the investigation and treatment of child abuse through the multi-disciplinary team response. CACs also provide children and families with advocacy and case coordination. The multi-disciplinary teams in CACs are made up of forensic interviewers, family advocates, medical providers, law enforcement, child protective services, trauma therapists, and prosecutors. Every jurisdiction in the state of Maryland now has the ability to respond to allegations of child maltreatment in a way which best supports healing for children who are survivors of abuse.

CACs enable victims to share their trauma to trained professionals who are part of a multidisciplinary team which works collaboratively to provide the best outcomes for children and communities. When police or child protective services believe a child is being abused, the child is brought by a caregiver or other "safe" adult to the CAC: a safe, child-focused environment. At the CAC, the child participates in an interview with a uniquely-trained forensic interviewer who provides a trauma-informed, non-leading, but fact-finding interview. Then, based on the interview, the team makes decisions together about how to help the child. This team response is the backbone of the CAC.

In 2022, Maryland's 24 CACs served 5,565 children. During the first 6 months of 2023, Maryland CACs provided services to more than 2,800 children. The mission of our CACs is to reduce the trauma of abuse

for this vulnerable population. HB141 will provide an opportunity to reduce the trauma associated with providing testimony in the presence of the alleged maltreater. Child victims will still be required to provide information related to their abuse, but in a way which assists in reducing the long-term impact of the requirement thereby providing a trauma-informed response to child victimization.

Thank you again for your support of MCA and Maryland's CACs, and for the opportunity to provide testimony on this vitally important issue. Maryland Children's Alliance requests a favorable report on HB141 to support Maryland's child victims of abuse, assault, neglect, exploitation and trafficking.

Respectfully,

A handwritten signature in black ink, appearing to read 'Wendy Myers', written in a cursive style.

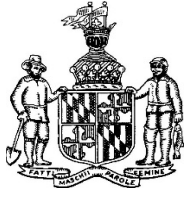
Wendy Myers, Executive Director

Maryland Children's Alliance

Feinstein Letter of Support HB0141.pdf

Uploaded by: Debbie Feinstein

Position: FWA



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January 23, 2024

The Honorable Luke Clippinger
Chairman, House Judiciary Committee
6 Bladen Street
Annapolis, MD 21401

Dear Chairperson Clippinger and Members of the Judiciary Committee:

I write in support of HB0141—Criminal Law—Child Victim—Testimony in Child Abuse Cases (with amendments). I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and a member of the Montgomery County's Child Advocacy Center's Multidisciplinary Team. I have personally prosecuted and/or supervised hundreds of child sexual abuse cases over the last seventeen years. I also co-chair the Maryland State's Attorneys Association's Special Victims Legislative Subcommittee, which is comprised of child abuse and domestic violence prosecutors from all over our state.

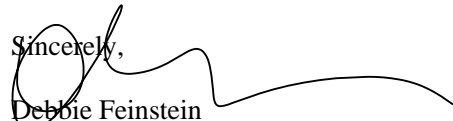
Section 11-303 of the Criminal Procedure Article currently allows a child abuse victim to testify via closed circuit television if the court determines that "testimony by the child victim in the presence of the defendant or a child respondent will result in the child victim suffering serious emotional distress such that the child victim cannot reasonably communicate." The section then outlines the procedure the court must follow before allowing the child to testify in another room in the presence of one prosecuting attorney, one attorney for the child victim, the operators of the television equipment, and a person whose presence contributes to the well-being of the child victim.

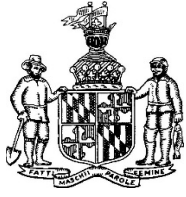
Over the last seventeen years, I cannot think of an instance where a prosecutor in my office successfully utilized this closed circuit television procedure. In the few instances that I have tried to use the process, the child's treatment provider could testify that the child would suffer serious emotional distress in the presence of the defendant, but could not say that the child victim would be unable to speak. Linking the ability to speak (or lack thereof) with the emotional impact misses the point of this intended allowance for child abuse victims. If we are seeking to protect the welfare of the child with this alternative process, minimizing serious emotional distress is an appropriate standard. HB0141 (with amendment) appropriately separates the child's ability to speak from the child suffering serious emotional distress.

Over the last several years, the court has determined that video testimony via such platforms as Zoom or Microsoft Teams, satisfies the defendant's right to confrontation. Section 11-303 similarly satisfies that right. This process may only be used where the defendant is represented by counsel and where defendant's counsel is in the room with the child. The statute specifically allows for communication between the defendant and their counsel.

The process outlined in HB0141 (with amendment) allows child victims greater access to justice without forgoing the defendant's constitutional right to confrontation. I urge a favorable report on HB0141.

Sincerely,


Debbie Feinstein
Chief, Special Victims Division
Senior Assistant State's Attorney



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HB 141 Crim Pro – Child Abuse Victim – Testimony T

Uploaded by: Jeremy Zacker

Position: UNF



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PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: HB 141 Criminal Procedure – Child Abuse Victim – Testimony Taken Outside the Courtroom

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 23, 2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 141.

The Confrontation Clause of the Sixth Amendment to the United States Constitution guarantees criminal defendants the right to confront witnesses against them. “The Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact.” *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988).

However, in criminal cases involving child sexual abuse, this face-to-face contact can be traumatic for child victims of sexual abuse. As one writer expressed:

Child victims of sexual abuse may experience difficulty testifying while in the same room as their abuser. Confronting a child in order to learn whether or not sexual abuse has taken place is inevitably traumatizing to the child. Whether the inquiry takes place on the witness stand, in the judge’s chambers, in the prosecutor’s or lawyer’s office, or in the office of a mental health professional, the child is going to be psychologically traumatized. The procedures are strange and frightening to the child. Interviewers, whether they go slowly or quickly, inevitably wish to focus on issues which are embarrassing, anxiety provoking, and laden with tension.

Brief of Richard A. Gardner, M.D., Amicus Curiae, in Support of Respondent, *Maryland v. Craig*, 497 U.S. 836 (1990).

In recognition of the trauma experienced by child victims of sexual abuse, Maryland has fashioned a process whereby child victims may testify “outside the courtroom by closed circuit television if 1) the court determines that testimony by the child victim in the presence of a defendant or a child respondent will result in the child victim’s suffering serious emotional

distress such that the child victim cannot reasonably communicate; and 2) the testimony is taken during the proceeding.” MD. CRIM. PRO. § 11-303(b). In determining whether the child victim may testify outside the courtroom, the court may question the child victim and hear testimony from anyone who has relevant information, including a parent, guardian, or therapist. MD. CRIM. PRO. § 11-303(c).

Maryland’s procedure for determining whether a child victim could testify outside the courtroom was upheld by the United State Supreme Court in *Maryland v. Craig*, 497 U.S. 836 (1990). In *Craig*, the U.S. Supreme Court reasoned that the Confrontation Clauses’ “central purpose, [was] to ensure the reliability of the evidence against a defendant by subjecting it to rigorous testing in an adversary proceeding before the trier of fact [and] by the combined effects of the elements of confrontation: physical presence, oath, cross-examination, and observation of demeanor by the trier of fact.” *Craig*, 497 U.S. at 837. The U.S. Supreme Court also recognized that the Confrontation Clause “must be interpreted in a manner sensitive to its purpose and to the necessities of trial and the adversary process.” *Id.* The U.S. Supreme Court concluded that confrontation is satisfied “absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the testimony’s reliability is otherwise assured.” *Id.*

In *Craig*, the U.S. Supreme Court found that Maryland’s procedure for permitting child victims to testify outside the courtroom was “sufficiently important to outweigh, at least in some cases, a defendant’s right to face his or her accusers in court.” *Id.* However, the U.S. Supreme Court stressed that “[t]he requisite necessity finding must be case specific. The trial court must hear evidence and determine whether the procedure’s use is necessary to protect the particular child witness’ welfare; find that the child would be traumatized, not by the courtroom generally, but by the defendant’s presence; and find that the emotional distress suffered by the child in the defendant’s presence is more than *de minimis*.” *Id.* at 838.

House Bill 141 violates the Confrontation Clause of the Sixth Amendment and violates the U.S. Supreme Court’s ruling in *Maryland v. Craig* because the bill creates a presumption that a child victim under the age of 13 shall testify outside the courtroom. In *Craig*, the U.S. Supreme Court found that the determination regarding whether a child victim testifies outside the courtroom must be ‘case specific.’ Thus, any presumptions created by statute would run afoul of the Sixth Amendment.

Moreover, House Bill 141 creates a requirement to prove a negative — that testimony by the child victim in the presence of the defendant or child respondent will not result in the child victim suffering severe emotional distress put in place. Requiring proof of a negative fact is contrary to the ruling in *Craig* wherein the U.S. Supreme Court stated that the trial court “must hear evidence [and] find that the child would be traumatized....” *Craig*, 497 U.S. at 838.

Maryland law currently provides ample protections for child victims while also protecting the constitutional rights of the accused. House Bill 141 attempts to correct a non-problem by violating the Sixth Amendment and U.S. Supreme Court case law.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 141.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
Authored by: Jeremy Zacker, Assistant Public Defender, jeremy.zacker@maryland.gov**

hb141.pdf

Uploaded by: Linda Miller

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 141
Criminal Procedure – Child Abuse Victim – Testimony Taken
Outside the Courtroom
DATE: January 18, 2024
(1/25)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 141. The bill creates a presumption that the testimony of a child victim’s testimony be given outside the courtroom and shown in the courtroom by closed-circuit television. The presumption can be rebutted only by a showing of clear and convincing evidence that testifying in the courtroom will not result in the child victim suffering severe emotional distress. The bill would also amend certain existing provisions of § 11-303 to specify that they apply to child victims who are at least 13 years old.

Although this bill is well intended, it could create operational and logistical issues within the courthouse. The space and technology requirements for outside-courtroom testimony and closed circuit television is not always feasible and it is unclear what would happen in those cases being that this bill creates a rebuttable presumption. Further, the bill provides that the presumption may be rebutted if it will not result in the child victim suffering severe emotional distress. This provision inappropriately puts the judge in the shoes of a child psychology expert or would require an additional hearing to hear from an expert. Finally, the bill’s rebuttable presumption also raises due process issues by placing an improper burden on defendants.

cc. Hon. Jesse Pippy
Judicial Council
Legislative Committee
Kelley O’Connor

HB0141 - MSBA Opposition Letter (2024.01.23).pdf

Uploaded by: Shaoli Katana

Position: UNF



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To: Members of the House Judiciary Committee
From: Maryland State Bar Association (MSBA) - Shaoli Katana, Advocacy Director
Subject: HB 141 – Criminal Procedure – Child Abuse Victim – Testimony Taken Outside
the Courtroom
Date: January 23, 2024
Position: Oppose

The Maryland State Bar Association (MSBA) respectfully opposes **House Bill 141 - Criminal Procedure - Child Abuse Victim - Testimony Taken Outside the Courtroom**. HB 141 establishes a rebuttable presumption that the testimony of a certain child victim who is under the age of 13 years be taken outside the courtroom and shown in the courtroom by closed circuit television; establishes a way for the defendant or child respondent to overcome the rebuttable presumption; and applies a certain provision of law authorizing a court to order a certain child victim to give testimony outside the courtroom to be shown in the courtroom by closed circuit television to children who are at least 13 years.

MSBA represents more attorneys than any other organization across the state in all practice areas. Through its advocacy committees and various practice-specific sections, MSBA monitors and takes positions on legislation that protects the legal profession, preserves the integrity of the judicial system, and ensures access to justice for Marylanders.

Judges in child abuse matters currently have discretion to determine when it is necessary and appropriate to order out-of-court testimony for a child victim of any age. The proposed legislation infringes on judicial authority through the implementation of a rebuttable presumption, rather than allowing the court to consider the particular circumstances and facts that may warrant the out-of-court testimony.

The proposed rebuttable presumption requires a clear and convincing standard of proof, removes a consideration of whether a child victim can “reasonably communicate” given serious emotional distress, and elevates the judge’s review of a child victim’s suffering from a finding of “serious” to “severe” emotional distress in the presence of the defendant or child respondent. The proposed high standard raises concerns about the presumption of innocence and the potential impact on juries.

MSBA has concerns with the details of this legislation and respectfully requests an unfavorable report. For additional information, please contact Shaoli Katana at MSBA (shaoli@msba.org).