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POSITION ON PROPOSED LEGISLATION

BILL: SB333 - Criminal Procedure- Victims and Witnesses- Out of Court Statement of a Child to Forensic Interviewer

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 1/30/2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on SB333.

Parenting a child is a fundamental right. So when that right is being challenged by a government agency, due process is of the utmost importance to protect the parent and the child. Not only is the right to a hearing and an attorney important, so is Due Process. Due process should be protected through the rules of evidence to ensure the credibility and reliability of evidence being presented to the court.

In Child in Need of Assistance (CINA) cases, there is often a knee jerk reaction to limit due process and violate the rights of parents and children whose families are under investigation. These limitations and due process violations are committed in ways not done in any other area of the law including criminal court. Often they are done under the guise of protecting children, but in practice it harms and traumatizes children by permitting a case to end in unnecessary separation from their parents and family because it lowers the standard and procedures for which the Department of Social Services (DSS) has to prove their case. In short, this bill would violate the due process rights of children and parents.

Senate Bill 333 attempts to expand the list of people who can testify to out-of-court statements made by a child in a court proceeding where abuse or neglect is being alleged by the Department of Social Services (DSS). These out of court statements would be considered hearsay and currently only come in if they satisfy certain evidentiary rules aimed towards reliability. This bill undermines

current protections by seeking to add “Forensic Interviewers” to the class of individuals that can testify as to what a child said that would not otherwise be admissible in court.

There are no real professional qualifications/standards listed for a "Forensic Interviewer". As a result a Forensic Interviewer could be anyone that is employed or works at a Child Advocacy Center. This includes a DSS caseworker, Court Appointed Special Advocate (CASA) or Intake Employee. Often, forensic interviewers are acting as law enforcement or law enforcement adjacent aimed at eliciting incriminating information, which exacerbates due process concerns.

Under the current statute, MD Criminal Procedure §11-304 lists people who are qualified to testify to out of court statements made by a child. The list is limited in such a way that makes the intent clear to allow spontaneous statements made by children to a trusted person. The limited occupations listed are intentionally narrow to ensure that the statements made are likely to be made in absence of particularized intent of prosecution and rather aimed at seeking help. This neutral position makes it more likely that the statement would be more likely to be true. Professionals like a physician, psychologist, nurse, educator or other school personnel, counselors, therapists and social workers are generally providing specific treatment to children. A statement made to one of these professionals would generally be made as an excited utterance or in the course of treatment, which the rules of evidence determine are likely to be more credible.

During Child Protective Services (CPS) investigations, DSS case workers (who are not licensed social workers) often interrogate children as part of their investigation. If SB333 were to pass, this would allow caseworkers who do not fall into the above mentioned category to testify to what a child said during said investigation. This would undermine the intent of 11-304 by allowing these case workers to call themselves “Forensic Interviewers” and testify to unreliable hearsay, especially in CINA cases in which the child is never required to testify, unlike in criminal matters.

Lastly, CAC’s are not independent third parties that would be subject to spontaneous statements made by a child. They are a part of the Department of Human Services and thereby run under the same agency as the investigating DSS. In Child In Need of Assistance cases, forensic interviews are often done as part of the investigation. These are interviews done for the sole purposes of determining abuse or neglect. Because these agencies are often relied upon by DSS to prove their cases, this subjects the results of these interviews to party bias. In some jurisdictions, regardless of the case, certain forensic interviewers determine abuse in 100% of the CINA cases they are involved

in, even when there is no evidence to support it. Again putting into question the reliability and credibility of the evidence that would be presented to a court by someone who is designated a Forensic Interviewer with no further qualifications.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB333.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
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