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01/28/2025

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 298 – Criminal Procedure - Out of Court Statements - Vulnerable Adult Victims and Witnesses

Dear Chair Smith:

The Office of the Attorney General (OAG) supports Senate Bill 298 – Criminal Procedure - Out of Court Statements - Vulnerable Adult Victims and Witnesses. SB 298 is one of the four priority bills of the OAG this 2024 Session of the Maryland General Assembly

Every year in courts across Maryland there are criminal cases involving the abuse of vulnerable adults that are dismissed or cannot be prosecuted because the vulnerable adult victim has memory loss by the time of trial. This loss can be due to aging, dementia, or worsening mental disability and therefore they are unable to testify. Allowing the statements that the victim makes near the time of the alleged crime to a trusted individual to be considered as admissible evidence would greatly improve the ability to prosecute these crimes and achieve justice for Maryland's most vulnerable victims. Several other states already have similar exceptions, and Maryland has a similar exception for child victims/witnesses.

Since 1979, the OAG, through its Medicaid Fraud and Vulnerable Victims Unit (MFVVU), has stood guard against the abuse of Maryland's vulnerable populations, and MFVVU is able to perform this guardian role due in large part to the resources and authorities provided by the General

Assembly. Due to their disabilities and frailties, vulnerable adults are often targeted by abusers, scammers, and sexual predators. It is the goal of the MFVVU and the OAG to improve prosecutions and enforcements of current laws by utilizing this statute to preserve the statements of victims who may be unable to testify at the time of trial.

If the provisions of SB 298 had already been enacted, they would have proven beneficial in several prior cases. In these instances, the MFVVU could have successfully pursued prosecutions but was unable to do so without the provisions of SB 298 due to challenges such as the death or memory loss of key individuals. In one case, an elderly nursing home resident was seriously injured by a caregiver. There was police body camera footage of the victim explaining what happened and photos of her injury, but the evidence couldn't be used in court because the victim had died before the trial. The case was dismissed, and the caregiver was allowed to work again in the long-term care industry, potentially putting others at risk. In another recent case, a young man with severe developmental disabilities reported physical abuse by his caregiver to his social worker. However, because he had limited verbal skills and was nervous around the alleged abuser, he couldn't testify in court. His social worker was also not allowed to share what he had said, and the investigation was closed. If this law had been in place, both cases could have moved forward, and the abusive caregivers would not still be working with vulnerable individuals.

SB 298, while respecting Constitutional protections, would still require that the victim be available to testify. The vulnerable adult would attend an evaluation hearing, where the content of their statement could be presented under this exception. At the hearing, the victim would appear, potentially remotely, as allowed by Section (g). The Court could ask the victim questions to help make a decision and would hear from the person testifying about the statement (e.g., a doctor, nurse, or caregiver). Once the court determines the statement is admissible under this exception, the case would proceed to trial. During trial, the victim would testify to the best of their ability, and after cross-examination, the statement could be admitted through a trusted witness. If the evaluation hearing and cross-examination occur before trial, even if the victim has passed away, the statement would still be admissible. This would allow trusted caregivers, such as doctors and nurses, to testify about statements made to them regarding abuse. SB 298 would be an essential tool for prosecutors across the state, helping provide courts and juries with a clearer picture of the abuse vulnerable adult victims endure

For the foregoing reasons, the Office of the Attorney General urges a favorable report on SB 298, with the proposed amendments. These amendments are designed to bring the language of the proposed bill into uniformity with the existing Child Hearsay statute found in § 11-304 of the Criminal Procedure Article.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Zak Shirley", written over a horizontal line.

W. Zak Shirley