



Testimony for the Senate Judicial Proceedings Committee

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SB 298 – Criminal Procedure – Out of Court Statements – Vulnerable Adult Victims and Witnesses

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UNFAVORABLE

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The ACLU of Maryland and our undersigned partners oppose SB 298, which would create a hearsay exception for the admission of out-of-court statements by “vulnerable adult” victims and witnesses in select cases. While certain accommodations for incapacitated or dependent individuals are undoubtedly justifiable, the overreaching provisions proposed by this bill pose an untenable risk of eroding fundamental constitutional protections that are vital to the integrity of the trial process.

Under this bill, otherwise inadmissible hearsay statements by a “vulnerable adult” victim or witness could be allowed into evidence concerning certain criminal charges following a court evaluation hearing. Similar to the existing “tender years” statute¹ providing a hearsay exception for certain child victim statements, SB 298 lists various court factors for determining whether the statement’s reliability is evidenced by “particularized guarantees of trustworthiness.” However, unlike the tender years statute, this bill does not limit this exception to out-of-court statements made within certain professional contexts, and fails to articulate a right for the defense to attend the evaluation hearing (even though this is the only proceeding where this bill would require testimony by the “vulnerable adult” victim or witness).

With such a lack of safeguards and no clear provision for cross examination, SB 298 would open a wide door to the potential admission of out-of-court statements that could be testimonial in nature² and lack

¹ See MD Code, Criminal Procedure, § 11-304.

² In reviewing prior U.S. Supreme Court formulations for defining the core class of statements considered “testimonial,” the Maryland Supreme Court summarized that “...these standards share a common nucleus in that each involves a formal or official

any prior opportunity for cross-examination – a flagrant violation of an individual’s right to confront their accusers under the Confrontation Clause of the Sixth Amendment to the U.S. Constitution and Article 21 of the Maryland Declaration of Rights. As echoed by Maryland’s highest court in ruling against the “tender years” admissibility of certain hearsay statements by child victims to their social worker, the Confrontation Clause requires “not that evidence be reliable, but that reliability be assessed in a particular manner: by testing the crucible of cross-examination.” *State v. Snowden*, 384 Md. 64, 79 (2005) (quoting *Crawford v. Washington*, 541 U.S. 36, 61 (2004)).

Moreover, SB 298’s failure to account for this predominating constitutional requirement is not outweighed by its targeted interest in the protection of “vulnerable adults,” as exemplified by the balancing considerations raised in *Snowden*:

Even though there are sound public policy reasons for limiting a child victim’s exposure to a potentially traumatizing courtroom experience, we nonetheless must be faithful to the Constitution’s deep concern for the fundamental rights of the accused. Although the Supreme Court has recognized that the interest of protecting victims may triumph over some rights protected by the Confrontation Clause, it also has concluded that such interests may never outweigh the explicit guarantees of the Clause, including the “right to *meet face to face* all those who appear and give evidence *at trial*.”

Id. at 90 (quoting *Coy v. Iowa*, 487 U.S. 1012, 1019-21 (1988)).

The lack of sufficient interests justifying an individual’s foreclosure from such bedrock constitutional protections is further elicited by the extremely broad range of victims, witnesses, and charges that fall under this bill. By allowing this exception in non-violent cases for hearsay statements by individuals who may be considered “vulnerable” solely because they are age 68 or older, this bill invites a disproportionate risk of prejudicing the accused where the harm may be relatively minor, and the victim or witness does not necessarily lack capacity in a manner compelling such an extraordinary exception. With the clear danger of prosecutorial overreach that may extend from the absence of incorporated safeguards constraining SB 298’s expansive provisions,

statement made or elicited with the purpose of being introduced at a criminal trial.” *Snowden*, 385 Md. at 81 (citing *Crawford*, 541 U.S. at 57, n. 7).

this bill is incompatible with the basic constitutional principles afforded to all Marylanders.

For the foregoing reasons, we urge an unfavorable report on SB 298.

Sincerely,

The ACLU of Maryland



AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND



The University of Baltimore
Center for Criminal Justice Reform

