



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB 274 – Child Victims – Testimony in Child Abuse Cases

Chair Smith, Vice Chair Waldstreicher, Members of JPR:

SB 274 would strike a phrase in statute requiring that a child “cannot reasonably communicate” in order for a child abuse victim to testify outside their abuser’s presence. This phrase is unclear and has effectively rendered unusable the protection the statute was intended to provide to the child.

Maryland law allows a child victim to testify at the trial of their abuser outside the courtroom – shown in the courtroom via closed circuit television – in the presence of a prosecuting attorney, an attorney for each defendant or child respondent, an attorney for the child victim, the tv operator, and, subject to the Maryland rules, any person whose presence, in the opinion of the court, contributes to the well-being of the child. (Crim.Pro. Sec.11-303(b)). In order for this out-of-court testimony to occur, the judge must determine that testimony by the child victim in the defendant’s presence “will result in the child victim’s suffering such serious emotional distress that the child cannot reasonably communicate.”

The problem is the requirement that “the child cannot reasonably communicate” is too high. What does it mean to not be able to reasonably communicate? Must the child be rendered mute? Is it enough that the child is terrified and stutters? What if the child is so traumatized that they hide under a chair and whispers? As a result, prosecutors report that they are unable to successfully use this procedure, and thus the children either are forced to face their abuser and suffer severe emotional distress, or they do not testify at all, hindering the prosecution’s ability to hold the abuser accountable.

Furthermore, requiring the child to be unable to reasonably communicate misses the point of the statute. The purpose of this statute is to protect the child from serious emotional distress while balancing the defendant’s 5th Amendment right to confront their accuser. Eliminating the “cannot reasonably communicate” meets both of these objectives.

For the foregoing reasons, I ask for a favorable report on SB 274.