

SB298-Senate Bill 298 Criminal Procedure Out of C

Uploaded by: Kathryn Gravely

Position: FAV



Date: January 30, 2025

To: Chair Smith, Vice Chair Waldstreicher, and the Judicial Processing Committee

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

Position: FAVORABLE

Dear Chair Smith and Committee Members:

On behalf of LifeBridge Health's Center for Hope, we thank you for this opportunity to provide information on Senate Bill 298. Center for Hope provides intervention and prevention for: child abuse, domestic violence, community violence, and elder justice for survivors, caregivers, and communities. At LifeBridge Health, we recognize the devastating impact of violence in our communities and the growing number of victims of all ages. This is a public health issue, and we need to help our communities by partnering with the people in them, to break the cycle of violence. We need to partner alongside community leaders, stand shoulder to shoulder with parents and caregivers, and help provide survivors of violence and crime with support and healing, in order to grow a collective hope for a better city and a better world.

The Center for Hope **strongly supports Senate Bill 298 – Criminal Procedure – Out of Court Statements – Vulnerable Adult Victims and Witnesses**. The legislation is consistent with the recommendations of the Task Force on Preventing and Countering Elder Abuse's 168-page report released in December of 2024.¹ This bill would help prosecutors admit into evidence out of court statements made by a vulnerable adult victim of abuse, assault, neglect, financial exploitation, as well as a vulnerable adult who witnessed a crime of violence (such as a homicide or a shooting) as defined by Criminal Law 14-101. The bill recognizes the importance of covering two different vulnerable groups: (1) adults of any age that cannot care for themselves, including protect themselves from abuse/exploitation, due to a mental or physical condition, or (2) adults that are 68 or older. These statements tend to be offered by way of a video recording and are imperative when a case relies on the testimony of those whose live, in-court testimony may be hindered by physical or cognitive conditions.

Center for Hope, a subsidiary of LifeBridge Health, helps clients heal from incidents of violence such as child abuse, domestic violence, community gun violence, and elder abuse through integrated, evidence-based programs that extend beyond hospital walls. Center for Hope provides trauma-informed crisis intervention, forensic interviews, medical exams, mental health, wraparound case management, family advocacy and workforce development services. Our Elder Justice Program at Center for Hope includes engaging with a multidisciplinary team of experts to respond to allegations of vulnerable and older adult abuse and exploitation. Forensic interviewers are critical parts of that team working directly with vulnerable adults that have been victims of abuse, neglect, and exploitation. Forensic interviewers are trained to ask neutral, open-ended questions to elicit narrative responses in the victim's own words. This interview practice is frequently used in interviewing child victims of abuse and sexual abuse as well as adult survivors of abuse and victims of vulnerable adult neglect, abuse and exploitation. These interviews

¹ List of Recommendations includes "Establish a comprehensive statutory scheme, including modernizing important definitions, in order that the various community supports work together to investigate and protect Older Adult victims of abuse."

are audibly and visually recorded in their entirety. Our interview team, trained in multiple models of interviewing including our nationally recognized Forensic Interview Toolbox protocol, obtains a definitive response in over 90% of the interviews we conduct, thereby enhancing reliable investigations by our partners.

Center for Hope's Forensic Interview Research and Education program was created to engage in forensic interview research and educates forensic interviewers and other professionals nationally on how to obtain both reliable and exhaustive information from children and vulnerable adults. Our program teaches best practices from a multi-disciplinary collaborate, culturally competent, research and trauma informed perspective. We give professionals the tools and resources necessary to maintain a high level of practice in the field and to transition competently and confidently to the courtroom.

Prosecutorial efforts to prosecute cases involving the abuse, neglect, and exploitation of vulnerable adult victims often fall short when crucial evidence relies on the in-court testimony of the vulnerable adult alone. When a case involves a vulnerable adult with declining cognitive abilities, a vulnerable adult that was able to competently explain what happened to them at the beginning of an investigation may no longer be able to do so when it comes time to testify in court following a lengthy investigation and judicial process. Similarly, the stress of speaking in public and/or in front of their abuser can exacerbate symptoms of underlying conditions, impeding their ability to testify cohesively. While SB 298 still requires that a witness be available for testimony if their out-of-court statement is introduced, the bill allows fact finders at trial to watch the forensic interview and hear the vulnerable adult's statement while they were in a calm, controlled, and safe environment before any further changes in their cognitive functioning has impacted their memory of the events in question.

In Criminal Procedure 11-304 – Out of Court Statements – Child Victims and Witnesses, the legislature has already recognized the importance of protecting a different vulnerable group in this manner while simultaneously recognizing the safeguards forensic interviewing provides in obtaining reliable statements. CP 11-304 applies to forensic interviews and other out of court statements for children under the age of 13 creating the "Tender Years" hearsay exception. Senate Bill 298 directly mirrors Criminal Procedure 11-304 but expands to include vulnerable adults of all ages.

For all the above stated reasons, we request a favorable report for Senate Bill 298.

For more information, please contact:

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vulnerable adults - senate - 2025 - MCASA SB298 FA

Uploaded by: Lisae C Jordan

Position: FAV



violence in Maryland

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Working to end sexual

For more information contact:
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Testimony Supporting Senate Bill 298 Lisae C. Jordan, Executive Director & Counsel January 30, 2025

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 (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 298.

Senate Bill 298 – Out of Court Statements - Vulnerable Adult Victims and Witnesses

This bill would create a hearsay exception permitting judges and fact finders to hear evidence of statements by vulnerable adults. This is similar to Maryland's current tender years statute permitting judges and fact finders to hear statements of children under age 13, see Crim.Pro. §11-304.

The Office of the Attorney General provides a clear description of the issue SB298 addresses, noting that 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.

MCASA concurs with the Attorney General and emphasizes that testifying regarding sexual assault and abuse can be particularly traumatic and difficult for vulnerable adults. The challenges these survivors face create significant barriers to seeking justice in these cases and endanger the community by permitting sex offenders to go free.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 298**

Final OAG Testimony - Hearsay.pdf

Uploaded by: Zak Shirley

Position: FWA

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**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL**

ANTHONY G. BROWN
Attorney General

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CHRISTIAN E. BARRERA
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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

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Uploaded by: Dara Johnson

Position: UNF



Testimony for the Senate Judicial Proceedings Committee

January 30, 2025

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

DARA JOHNSON
INTERIM POLICY
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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



sb298.pdf

Uploaded by: Will Vormelker

Position: UNF

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 298
Criminal Procedure – Out of Court Statements – Vulnerable Adult
Victims and Witnesses
DATE: January 23, 2025
(1/30)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes Senate Bill 298, as drafted.

The Judiciary's opposition is to the provision found on page 2, lines 14 through 17, which mandates certain judiciary action. This action falls within the Judiciary's core functions and should not be mandated, but rather, more appropriately left to the discretion of the Judiciary.

This provision dictates that the court shall hold a hearing. The Judiciary would request that the word "shall" be amended to "may." A decision as to whether to hold a hearing, and the overall management of court dockets, should remain within the authority of the Judiciary. In addition, there are mechanisms in place for the court to determine a witness' competency.

The Judiciary is also concerned with the provision on page 2, line 7, which defines a "vulnerable adult" as any person who is at least 68 years of age. This would place the court in the position of determining the mental and physical fitness of every witness solely based on their age and not whether any facts exist to warrant such a determination.

cc. Hon. Jeff Waldstreicher
Judicial Council
Legislative Committee
Kelley O'Connor

SB0298_INFO_DHS.pdf

Uploaded by: Rachel Sledge Government Affairs

Position: INFO



DEPARTMENT OF HUMAN SERVICES

Wes Moore, Governor · Aruna Miller, Lt. Governor · Rafael López, Secretary

January 30, 2025

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

**RE: TESTIMONY ON SB 298 - CRIMINAL PROCEDURE - OUT OF COURT STATEMENTS
- VULNERABLE ADULT VICTIMS AND WITNESSES - POSITION: INFORMATIONAL
ONLY**

Dear Chair Smith and Members of the Senate Judicial Proceedings Committee:

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide information on Senate Bill 298 (SB 298).

With offices in every one of Maryland's jurisdictions, DHS empowers Marylanders to reach their full potential by providing preventative and supportive services, economic assistance, and meaningful connections to employment development and career opportunities. Our Office of Adult Services (OAS) oversees Adult Protective Services (APS) serving the adults impacted by SB 298. OAS focuses on the protection of "vulnerable adults," defined in Family Law Article § 14-101 as "an adult who lacks the physical or mental capacity to provide for the adult's daily needs." The adults we serve through OAS rely on our department to promote their safety, stability and independence. APS conducts investigations into the maltreatment of the adults we serve, many of whom are elderly or disabled.

SB 298 defines "vulnerable adult" using the APS statute or anyone 68 years old or older. As such, SB 298 provides for admitting into evidence out of court statements made by vulnerable adults to prove the truth of the matter asserted in a criminal proceeding. It is particularly important to admit out of court statements made by vulnerable adults closer to the time of the crime alleged because vulnerable adults may be less capable of recalling past events and providing reliable testimony at trial,

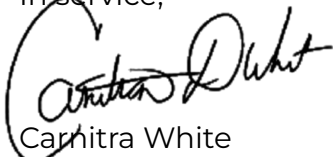
despite having recounted events in great detail previously and as part of an investigation.

Criminal proceedings can be delayed from the date of the investigation and are very often lengthy, creating challenges for recalling details when the victim is a “vulnerable adult” as defined in the bill. Adult maltreatment often goes unaddressed in the criminal context because, at the time of trial, the adult may have limited recollection of the events and be unable to provide consistent, detailed, and reliable witness testimony. The proposed change would assist prosecutors to hold adult maltreators accountable, even in situations where the adult’s capacity has declined in the period between the crime and the trial.

The bill would create an exception to the general rule against admitting hearsay evidence. The bill would strengthen legal protections for vulnerable adults by admitting out of court statements at trial while also ensuring the statements withstand an evaluation prior to entry into evidence. SB 298 could create an evaluation hearing process for assessing the appropriateness of permitting out of court statements as evidence if the statement concerns one of the following: assault or reckless endangerment, rape or sexual offenses, attempted rape, abuse or neglect of a vulnerable adult in the first or second degree, theft, identity fraud, financial crimes against a vulnerable adult, or a crime of violence. SB 298 would enable vulnerable adults to provide their most vivid recollection of events in pursuit of justice, and would mitigate any inequity caused by diminished ability to recall past events.

We appreciate the opportunity to offer information to the Committee for consideration during your deliberations. If you require additional information, please contact Rachel Sledge, Director of Government Affairs, at rachel.sledge@maryland.gov.

In service,

A handwritten signature in black ink, appearing to read "Carnitra White", written over a circular stamp or seal.

Carnitra White
Principal Deputy Secretary