

**Amendment No. 1 to HB1480**

**Lamberth  
Signature of Sponsor**

**AMEND Senate Bill No. 1593**

**House Bill No. 1480\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section:

(a) An out-of-court, non-testimonial statement made by a child who is under twelve (12) years of age at the time of a criminal trial describing any sexual act performed by, with, or on the child or describing any act of physical violence directed against the child shall not be excluded from evidence at the criminal trial as hearsay if all of the following apply:

(1) The court finds that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness that make the statement at least as reliable as statements admitted pursuant to Rules 803 and 804 of the Tennessee Rules of Evidence. The circumstances shall establish that the child was particularly likely to be telling the truth when the statement was made and that the test of cross-examination would add little to the reliability of the statement. In making a determination of the reliability of the statement, the court shall consider all of the circumstances surrounding the making of the statement, including, but not limited to, the spontaneity, internal consistency of the statement, mental state of the child, child's motive or lack of motive to fabricate, child's use of terminology unexpected of a child of similar age, means by which the statement was elicited, and lapse of time between the act and the statement. In making this determination, the court shall not consider whether independent proof exists of the sexual act or act of physical violence;

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(2) The child's testimony is not reasonably obtainable by the proponent of the statement;

(3) Independent proof exists of the sexual act or act of physical violence; and

(4) At least ten (10) days before the trial or hearing, a proponent of the statement has notified all other parties in writing of the content of the statement, the time and place at which the statement was made, the identity of the witness who is to testify about the statement, and the circumstances surrounding the statement that are claimed to indicate trustworthiness of the statement.

(b) The child's testimony is not reasonably obtainable by the proponent of the statement under subdivision (a)(2) only if:

(1) The child refuses to testify concerning the subject matter of the statement or claims a lack of memory of the subject matter of the statement after a person trusted by the child, in the presence of the court, urges the child to both describe the acts described by the statement and to testify; or

(2) The court finds that:

(A) The child is absent from the trial or hearing;

(B) The proponent of the statement has been unable to procure the child's attendance or testimony by process or other reasonable means despite a good faith effort to do so; and

(C) It is probable that the proponent would be unable to procure the child's testimony or attendance if the trial or hearing were delayed for a reasonable time; or

(3) The court finds that:

(A) The child is unable to testify at the trial or hearing because of death or then-existing physical or mental illness or infirmity; and

(B) The illness or infirmity would not improve sufficiently to permit the child to testify if the trial or hearing were delayed for a reasonable time.

(c) The proponent of the statement fails to establish that the child's testimony or attendance is not reasonably obtainable under subdivision (a)(2) if the child's refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the child from attending or testifying.

(d) The court shall make the findings required by this section on the basis of a hearing conducted outside the presence of the jury and shall make findings of fact on the record, as to the basis for the court's ruling.

(e) Nothing in this section shall affect the admissibility of evidence admitted under § 24-7-117 or § 24-7-120.

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it, and shall apply to offenses committed on or after that date.