

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1480 – SB 1593

March 6, 2018

SUMMARY OF ORIGINAL BILL: Allows an out of court statement made by a child 12 years of age or younger to be admitted into evidence during a criminal trial if that statement describes sexual acts performed on the child by the defendant or describes an act of physical violence directed against the child. Establishes certain determinations that a judge must make before admitting the testimony.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (014479): Clarifies that the out of court statement permitted by the proposed legislation must also be non-testimonial and applies the provisions of the proposed legislation to offenses committed after July 1, 2018, instead of trials currently occurring.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Hearsay is a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Tenn. R. Evid. 801(c).
- Hearsay is not admissible except as provided by the rules of evidence or otherwise by law. Tenn. R. Evid. 802.
- Tennessee Rule of Evidence 803 provides 21 exceptions to the general rule that hearsay is not admissible.
- Rule 803 (25) establishes an exception for statements made by a child under the age of 12 relative to being sexually or physically abused to be admitted into evidence in a civil trial that relates to custody, shared parenting, or visitation.
- The proposed legislation would provide a statutory exception to the hearsay rule by allowing a non-testimonial statement made out of court by a child under the age of 12

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relative to being sexually or physically abused to be admitted into evidence in a criminal trial.

- The proposed legislation requires a judge to admit the out of court and non-testimonial statements of the child during a criminal trial, (1) if those statements relate to any sexual act performed by, with, or on the child or if that statement describes any physical violence against the child, and (2) if the judge makes certain determinations established in the legislation (e.g., the statement provides guarantees of trustworthiness, the child's testimony is not reasonably obtainable by the proponent, and there is independent evidence of the sexual act or physical violence).
- The proposed legislation may result in evidence being admitted in a criminal trial that would otherwise be inadmissible. However, such statements are more likely to be admitted under the exceptions provided under the Tennessee Rules of Evidence. The passage of this legislation is not likely to increase the probability of conviction at trial. Therefore, the proposed legislation is not anticipated to impact state or local incarceration costs.
- The proposed legislation changes current rules of evidence, and it does not create any new cases for the courts, public defenders, or district attorneys. Any impact to the operations of the courts, public defenders, and district attorneys can be accommodated within their existing resources.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Handwritten signature of Krista M. Lee in blue ink, with the initials "RNC" written in the bottom right corner of the signature.

Krista M. Lee, Executive Director

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