



State of South Carolina Department of Social Services

Policies and Procedures: Child Welfare Manual

Subject:	752.02 Out of Court Statements by Certain Children
Chapter:	Family Preservation
Effective Date:	03/26/2009
Standards:	Guiding Principles and Standards (GPS) Practice Model
Application:	Child Welfare Services Staff

POLICY:

SECTION 19-1-180. Out-of-court statements by certain children.

A. An out-of-court statement made by a child who is under twelve years of age or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of a family court proceeding brought pursuant to Title 63 concerning an act of alleged abuse or neglect as defined by Section 63-7-20 is admissible in the family court proceeding if the requirements of this section are met regardless of whether the statement would be otherwise inadmissible.

B. An out-of-court statement may be admitted as provided in subsection (A) if:

1. the child testifies at the proceeding or testifies by means of videotaped deposition or closed-circuit television, and at the time of the testimony the child is subject to cross-examination about the statement; or

2. (a) the child is found by the court to be unavailable to testify on any of these grounds:

- i. the child's death;
- ii. the child's physical or mental disability;
- iii. the existence of a privilege involving the child;
- iv. the child's incompetency, including the child's inability to communicate about the offense because of fear;
- v. substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of videotaped deposition or closed-circuit television; and

(b) the child's out-of-court statement is shown to possess particularized guarantees of trustworthiness.

C. The proponent of the statement shall inform the adverse party of the proponent's

intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the defendant with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered. If the child is twelve years of age or older, the adverse party may challenge the professional decision that the child functions cognitively, adaptively, or developmentally under the age of twelve.

- D. In determining whether a statement possesses particularized guarantees of trustworthiness under subsection (B)(2)(b), the court may consider, but is not limited to, the following factors:
- the child's personal knowledge of the event;
 - the age and maturity of the child;
 - certainty that the statement was made, including the credibility of the person testifying about the statement;
 - any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
 - whether more than one person heard the statement;
 - whether the child was suffering pain or distress when making the statement;
 - the nature and duration of any alleged abuse;
 - whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
 - whether the statement has a ring of verity, has internal consistency or coherence, and uses terminology appropriate to the child's age;
 - whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.
- E. The court shall support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness of the out-of-court statement.
- F. Any hearsay testimony admissible under this section shall not be admissible in any other proceeding.
- G. If the parents of the child are separated or divorced, the hearsay statement shall be inadmissible if (1) one of the parents is the alleged perpetrator of the alleged abuse or neglect and (2) the allegation was made after the parties separated or divorced. Notwithstanding this subsection, a statement alleging abuse or neglect made by a child to a law enforcement official, an officer of the court, a licensed family counselor or therapist, a physician or other health care provider, a teacher, a school counselor, a Department of Social Services staff member, or to a childcare worker in a regulated childcare facility is admissible under this section.

Referenced Documents

Revision Comments

This revision creates a unique subsection for this information to be consistent with manual format. Content has not changed.