

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 19-0295.01 Jacob Baus x2173

SENATE BILL 19-071

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A BILL FOR AN ACT

101 **CONCERNING EXPANDING THE ADMISSION OF OUT-OF-COURT**
102 **STATEMENTS OF A CHILD.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill amends the statutory exception to the hearsay rule to admit an out-of-court statement made by a child if certain conditions are satisfied:

- ! Any criminal or delinquency proceeding in which the child (a person under 13 years of age) is alleged to have been a victim; or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 12, 2019

SENATE
Amended 2nd Reading
February 11, 2019

! Any criminal, delinquency, or civil proceeding in which the child describes all or part of an offense of unlawful sexual behavior.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 13-25-129 as
3 follows:

4 **13-25-129. Statements of a child - hearsay exception.** (1) AN
5 OUT-OF-COURT STATEMENT MADE BY A PERSON UNDER THIRTEEN YEARS
6 OF AGE, NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE THAT
7 PROVIDES AN EXCEPTION TO THE HEARSAY OBJECTION, IS ADMISSIBLE IN
8 ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IN WHICH THE
9 PERSON IS ALLEGED TO HAVE BEEN A VICTIM IF THE CONDITIONS OF
10 SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

11 ~~(1)~~ (2) An out-of-court statement made by a child, as child is
12 defined under the statutes ~~which~~ THAT are the subject of the action, OR A
13 PERSON UNDER FIFTEEN YEARS OF AGE IF CHILD IS UNDEFINED UNDER THE
14 STATUTES THAT ARE THE SUBJECT OF THE ACTION, describing ~~any act or~~
15 ~~attempted act of sexual contact, intrusion, or penetration, as defined in~~
16 ~~section 18-3-401, C.R.S.~~, ALL OR PART OF AN OFFENSE OF UNLAWFUL
17 SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9), performed or
18 attempted to be performed with, by, on, or in the presence of the child
19 declarant, AND THAT IS not otherwise admissible by a statute or court rule
20 ~~which~~ THAT provides an exception to the ~~objection of~~ hearsay OBJECTION,
21 is admissible in evidence in any criminal, delinquency, or civil
22 proceedings ~~in which a child is a victim of an unlawful sexual offense, as~~
23 ~~defined in section 18-3-411 (1), C.R.S., or is a victim of incest or~~
24 ~~attempted incest, as defined in section 18-6-301, C.R.S., when the victim~~

1 ~~was less than fifteen years of age at the time of the commission of the~~
2 ~~offense, or in which a child is the subject of a proceeding alleging that a~~
3 ~~child is neglected or dependent under section 19-1-104 (1)(b), C.R.S., and~~
4 PROCEEDING IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE
5 SATISFIED.

6 (3) An out-of-court statement by a child, as child is defined under
7 the statutes ~~which~~ THAT are the subject of the action, describing any act
8 of child abuse, as defined in section 18-6-401, ~~C.R.S.~~, to which the child
9 declarant was subjected or ~~which~~ THAT the child declarant witnessed, AND
10 THAT IS not otherwise admissible by a statute or court rule ~~which~~ THAT
11 provides an exception to the ~~objection of~~ hearsay OBJECTION, is
12 admissible in evidence in any criminal, delinquency, or civil ~~proceedings~~
13 PROCEEDING in which a child is a victim of child abuse or the subject of
14 a proceeding alleging that a child is neglected or dependent under section
15 19-1-104 (1)(b), ~~C.R.S.~~, and IF THE CONDITIONS OF SUBSECTION (5) OF
16 THIS SECTION ARE SATISFIED.

17 (4) An out-of-court statement made by a person under thirteen
18 years of age describing all or part of an offense contained in part 1 of
19 article 3 of title 18, ~~C.R.S.~~, or describing an act of domestic violence as
20 defined in section 18-6-800.3 (1), ~~C.R.S.~~, AND THAT IS not otherwise
21 admissible by statute or court rule ~~which~~ THAT provides an exception to
22 the ~~objection of~~ hearsay OBJECTION, is admissible in evidence in any
23 criminal, delinquency, or civil proceeding if THE CONDITIONS OF
24 SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

25 (5) (a) THE EXCEPTIONS TO THE HEARSAY OBJECTION DESCRIBED
26 IN SUBSECTIONS (1) TO (4) OF THIS SECTION APPLY ONLY IF the court finds
27 in a PRETRIAL hearing conducted outside the presence of the jury that the

1 time, content, and circumstances of the statement provide sufficient
2 safeguards of reliability; and

3 (b) The child either:

4 (I) Testifies at the proceedings; or

5 (II) Is unavailable as a witness and there is corroborative evidence
6 of the act which is the subject of the statement.

7 ~~(2)~~ (6) If a statement is admitted pursuant to this section, the court
8 shall instruct the jury in the final written instructions that during the
9 proceeding the jury heard evidence repeating a child's out-of-court
10 statement and that it is for the jury to determine the weight and credit to
11 be given the statement and that, in making the determination, the jury
12 shall consider the age and maturity of the child, the nature of the
13 statement, the circumstances under which the statement was made, and
14 any other relevant factor.

15 ~~(3)~~ (7) The proponent of the statement shall give the adverse party
16 reasonable notice of ~~his~~ THE PROPONENT'S intention to offer the statement
17 and the particulars of the statement.

18 **SECTION 2.** In Colorado Revised Statutes, 18-3-411, **amend** (3)
19 as follows:

20 **18-3-411. Sex offenses against children - definition - limitation**
21 **for commencing proceedings - evidence - statutory privilege.**

22 ~~(3) Out-of-court statements~~ AN OUT-OF-COURT STATEMENT made by a
23 child, AS CHILD IS DEFINED UNDER THE STATUTES THAT ARE THE SUBJECT
24 OF THE ACTION, OR A PERSON UNDER FIFTEEN YEARS OF AGE IF CHILD IS
25 UNDEFINED UNDER THE STATUTES THAT ARE THE SUBJECT OF THE ACTION,
26 describing ~~any act or attempted act of sexual contact, intrusion, or~~
27 ~~penetration, as defined in section 18-3-401~~ ALL OR PART OF AN OFFENSE

1 OF UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9),
2 performed or attempted to be performed with, by, ~~or~~ on, OR IN THE
3 PRESENCE OF the child declarant, AND THAT IS not otherwise admissible
4 by a statute or court rule ~~which~~ THAT provides an exception to the
5 ~~objection of hearsay~~ OBJECTION, may be admissible ~~in any proceeding in~~
6 ~~which the child is a victim of an unlawful sexual offense~~ pursuant to the
7 ~~provisions of section 13-25-129 (2). C.R.S.~~

8 **SECTION 3.** In Colorado Revised Statutes, 18-6-401.1, **amend**
9 (3) as follows:

10 **18-6-401.1. Child abuse - limitation for commencing**
11 **proceedings - evidence - statutory privilege.** (3) ~~Out-of-court~~
12 ~~statements~~ AN OUT-OF-COURT STATEMENT made by a child, AS CHILD IS
13 DEFINED UNDER THE STATUTES THAT ARE THE SUBJECT OF THE ACTION,
14 describing any act of child abuse ~~performed on the child declarant~~ TO
15 WHICH THE CHILD DECLARANT WAS SUBJECTED OR THAT THE CHILD
16 DECLARANT WITNESSED, AND THAT IS not otherwise admissible by a
17 statute or court rule ~~which~~ THAT provides an exception to the ~~objection~~
18 ~~of hearsay~~ OBJECTION, may be admissible ~~in any proceeding in which the~~
19 ~~child is a victim of an act of child abuse~~ pursuant to the provisions of
20 section 13-25-129 (3). ~~C.R.S.~~

21 **SECTION 4. Effective date - applicability.** This act takes effect
22 on July 1, 2019, and applies to proceedings occurring on or after said
23 date.

24 **SECTION 5. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.