

CHAPTER 42

COURTS

SENATE BILL 19-071

BY SENATOR(S) Fields, Cooke, Court, Crowder, Fenberg, Gardner, Ginal, Lee, Lundeen, Marble, Moreno, Pettersen, Smallwood, Story, Tate, Todd, Winter, Woodward, Garcia;
 also REPRESENTATIVE(S) Roberts, Bird, Buckner, Carver, Froelich, Galindo, Gonzales-Gutierrez, Gray, Jackson, Sandridge, Snyder, Soper, Tipper, Valdez D.

AN ACT**CONCERNING EXPANDING THE ADMISSION OF OUT-OF-COURT STATEMENTS OF A CHILD.**

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~is neglected or dependent under section 19-1-104 (1)(b), C.R.S., and~~ PROCEEDING IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

(3) An out-of-court statement by a child, as child is defined under the statutes ~~which~~ THAT are the subject of the action, describing any act of child abuse, as defined in section 18-6-401, ~~C.R.S.~~; to which the child declarant was subjected or ~~which~~ THAT the child declarant witnessed, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE ~~which~~ THAT PROVIDES AN EXCEPTION TO THE ~~objection of~~ hearsay OBJECTION, is admissible in evidence in any criminal, delinquency, or civil ~~proceedings~~ PROCEEDING in which a child is a victim of child abuse or the subject of a proceeding alleging that a child is neglected or dependent under section 19-1-104 (1)(b), ~~C.R.S.~~, and IF THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

(4) An out-of-court statement made by a person under thirteen years of age describing all or part of an offense contained in part 1 of article 3 of title 18, ~~C.R.S.~~; or describing an act of domestic violence as defined in section 18-6-800.3 (1), ~~C.R.S.~~; AND THAT IS NOT OTHERWISE ADMISSIBLE BY STATUTE OR COURT RULE ~~which~~ THAT PROVIDES AN EXCEPTION TO THE ~~objection of~~ hearsay OBJECTION, is admissible in evidence in any criminal, delinquency, or civil proceeding if THE CONDITIONS OF SUBSECTION (5) OF THIS SECTION ARE SATISFIED.

(5)(a) THE EXCEPTIONS TO THE HEARSAY OBJECTION DESCRIBED IN SUBSECTIONS (1) TO (4) OF THIS SECTION APPLY ONLY IF THE COURT FINDS IN A PRETRIAL HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE JURY THAT THE TIME, CONTENT, AND CIRCUMSTANCES OF THE STATEMENT PROVIDE SUFFICIENT SAFEGUARDS OF RELIABILITY; and

(b) The child either:

(I) Testifies at the proceedings; or

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

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

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

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

18-3-411. Sex offenses against children - definition - limitation for commencing proceedings - evidence - statutory privilege. (3) ~~Out-of-court statements~~ AN OUT-OF-COURT STATEMENT made by a child, AS CHILD IS DEFINED

UNDER THE STATUTES THAT ARE THE SUBJECT OF THE ACTION, OR A PERSON UNDER FIFTEEN YEARS OF AGE IF CHILD IS UNDEFINED UNDER THE STATUTES THAT ARE THE SUBJECT OF THE ACTION, ~~describing any act or attempted act of sexual contact, intrusion, or penetration, as defined in section 18-3-401~~ ALL OR PART OF AN OFFENSE OF UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102(9), performed or attempted to be performed with, by, or on, OR IN THE PRESENCE OF the child declarant, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE WHICH THAT PROVIDES AN EXCEPTION TO THE ~~objection of hearsay~~ OBJECTION, may be admissible ~~in any proceeding in which the child is a victim of an unlawful sexual offense pursuant to the provisions of section 13-25-129 (2).~~ C.R.S.

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

18-6-401.1. Child abuse - limitation for commencing proceedings - evidence - statutory privilege. (3) ~~Out-of-court statements~~ AN OUT-OF-COURT STATEMENT made by a child, AS CHILD IS DEFINED UNDER THE STATUTES THAT ARE THE SUBJECT OF THE ACTION, describing any act of child abuse ~~performed on the child declarant~~ TO WHICH THE CHILD DECLARANT WAS SUBJECTED OR THAT THE CHILD DECLARANT WITNESSED, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE WHICH THAT PROVIDES AN EXCEPTION TO THE ~~objection of hearsay~~ OBJECTION, may be admissible ~~in any proceeding in which the child is a victim of an act of child abuse pursuant to the provisions of section 13-25-129 (3).~~ C.R.S.

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

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

Approved: March 21, 2019