



February 16, 2016

TO: Rep. Maxine Grad, Chair
Rep. Willem Jewett, Vice-Chair
House Judiciary Committee

FROM: Auburn Watersong, Associate Director of Public Policy

RE: H.523 – evidentiary rules regarding child victims of physical violence

Thank you for the opportunity to speak to you about H.523, a bill that focuses upon the well-being of children involved with our justice system. Because the court system is often viewed as providing protection and justice for victims, few recognize the potential for damage that exists within many common court procedures and practices. H.523 supports the prevention of system-induced trauma which occurs when systems designed to *assist* trauma victims inadvertently *cause* trauma.

As you have heard from Legislative Counsel, this bill proposes to

1. expand the hearsay exception to include statements made by a child or person with a psychiatric, intellectual, or developmental disability who is a victim of physical violence;
2. expand Rule 807 of the Rules of Evidence which allows for two-way closed-circuit television or recorded testimony of a child to include cases of physical violence;
3. prohibit the taking of a deposition of a child who is a victim of a physical assault except by agreement of the parties or after court approval; and
4. require a hearing before a court may issue a subpoena for a victim's personal records, thereby protecting the victim's privacy and potentially preventing re-traumatization by the release, review and possible publicity of her/his records.

Some children cannot testify in court, as it can be difficult to cope with the task of recalling and recounting traumatic events in the context of the adversarial process; even more so if forced to recount occurrences in the presence of their abuser. When a child appears not to remember, he or she may be using denial as protection from the stress of recalling the event. Some children simply are not developmentally ready for the task.

Court involvement can trigger trauma reactions in many ways.

- Before court proceedings even begin, the first glimpse of the accused or the review of a written or video-recorded statement can be extremely triggering.
- During examination or cross examination, merely thinking about the events associated with the traumatic event can trigger a flood of emotions - the witness may have to go over those events again, and possibly in greater detail (children find this frustrating at the best of times). The witness may feel blamed for being victimized or feel cast in the role of a liar.
- A verdict of acquittal may trigger feelings of helplessness and the fear that no one believes them (which is often associated with delayed disclosure in children), or they may have feelings of guilt and self-blame for the offence (sometimes ideas planted on purpose by the accused to prevent disclosure).ⁱ

Consider these case examples:ⁱⁱ

Young children who are not competent to testify

Joey, age four, was attending pre-court preparation sessions. His mother reported that he “never listens and never sits still, except when watching his favorite TV shows.” Using a model courtroom with toy figures, the sessions focused on learning about the court process, developing listening skills and practicing age-appropriate question and answer activities. It was extremely difficult to engage Joey in any activity. His attention span for any task was less than two minutes. He would not be separated from his mother, even for a short period. During a court orientation visit, he refused to sit at the table in the testimony room.

A child is emotionally unable to testify

At age five, Lola was interviewed by a police officer. She gave detailed information about sexual abuse by her grandfather. One year later, the matter came to trial. Closed-circuit televised testimony, with a designated support person, was arranged. Lola confidently answered questions about herself, but did not give any information about the offenses before the court. She began to cry and stopped responding to questions. After a recess, Lola put her head on the table and remained silent. An adjournment was ordered and, four weeks later, Lola returned to the courthouse. She began weeping upon entering the testimony room and remained silent.

Testifying would be traumatic

Six-year-old Sonia saw her father kill her mother. She told her grandmother what she witnessed and gave a statement to the investigating officer. She has not spoken of the event since that time. She is on a waiting list for therapy.

The child is at risk

Thirteen-year-old Leah was sexually assaulted by her step-father. The abuse escalated in intrusiveness and violence over five years, until she disclosed to the school principal. Leah was hospitalized on several occasions for self-harming behavior and was diagnosed with post-traumatic stress disorder. The weekend before the trial, she made a serious attempt to take her own life. At the trial, she was emotionally distraught and could not testify. The case was adjourned to May 30th. On May 29th, Leah was hospitalized again.

Victims of trauma, both sexual and physical violence, need to be protected from the additional trauma that can occur within the court system. H.523 helps adjust policies and practices to be more trauma-responsive to child victims of physical violence.

The provisions in this bill serve to reduce the potential negative impacts of court processes on physically abused children. The Network strongly supports passage of H. 523. Thank you for your time and consideration.

ⁱ Cunningham, Alison, M.A., and Hurley, Pamela, “A Full and Candid Account: Testimony Outside the Courtroom”, Centre for Children and Families in the Justice System, 2007.

ⁱⁱ Cunningham, Alison, M.A., and Hurley, Pamela, “A Full and Candid Account: Hearsay Evidence and Children”, Centre for Children and Families in the Justice System, 2007.