

Georgia's Child Hearsay Statute

Under Georgia law (O.C.G.A. § 24-8-820), a statement made by a child under the age of 16 "describing any act of sexual contact or physical abuse performed with or on the child by another or performed with or on another in the presence of the child" shall be admissible as an exception to the general rule prohibiting hearsay at trial. In order to introduce the statements at trial, the State must provide notice to the defense prior to trial of its intent to introduce the child hearsay statements. The child must be called to testify at trial unless the defendant forfeits or waives the right to the child's testimony. In any event, the witness testifying regarding the child's statements must be subject to cross-examination.

At trial, the State will routinely introduce child hearsay statements through the testimony of family members, outcry witnesses, forensic interviewers, physicians, nurse examiners and investigators who had dealings with the child during the course of the investigation. The testimony of the forensic interviewers and nurse examiners becomes so critical as they will often testify as experts and give their opinion that the child's statements and demeanor were consistent with a child who has been abused. For this reason, it is essential for the defense to counter these witnesses with experts who can refute these assertions. In every child molestation case that we handle, we will retain experts to review every interview and the circumstances surrounding every statement made by the child.

The statute was amended in 2013 and the most important change was the elimination of the requirement that the circumstances of the statement provide sufficient indicia of reliability. The removal of this language means that the statements will now be admissible without regard to the interview techniques, improper influences or other factors affecting the reliability of the child's statements. The new statute will apply to cases with alleged offenses occurring on or after July 1, 2013. In cases where the offense is alleged to have occurred prior to that date, the old statute applies. Thus, in some cases, the defense will still be able to object to the admissibility of child hearsay statements on grounds that they lack sufficient indicia of reliability.