



**STATE OF CONNECTICUT
JUDICIAL BRANCH**

EXTERNAL AFFAIRS DIVISION

231 Capitol Avenue
Hartford, Connecticut 06106
(860) 757-2270 Fax (860) 757-2215

**Testimony of Stephen N. Ment
Judiciary Committee Public Hearing
April 4, 2007**

Senate Bill 1458, An Act Concerning Jessica's Law

Good morning. Thank you for the opportunity to submit written testimony on behalf of the Judicial Branch in opposition to section 9 of **Senate Bill 1458, *An Act Concerning A Tender Years Exception to the Hearsay Rule***. This section would establish a tender years exception to the hearsay rule.

As many of you may know, the Judicial Branch has established a Code of Evidence Oversight Committee, chaired by Justice Joette Katz. In addition to Justice Katz, the committee is comprised of:

*Attorney Robert B. Adelman
Honorable Thomas Bishop
Attorney Joseph J. Bruckmann
Honorable Thomas J. Corradino
Attorney Susann E. Gill
Honorable John F. Kavanewsky, Jr.*

*Honorable Joseph Q. Koletsky
Attorney Joseph Rubin
Honorable Michael Sheldon
Attorney Jack G. Steigelfest
Professor Colin Tait
Attorney Eric Wiechmann*

The Committee is charged with reviewing Connecticut's Code of Evidence and proposing amendments to it as needed.

The Committee has been thoughtfully and deliberately reviewing the issue of a tender years exception to the hearsay rule for several months. Extensive research and review has been conducted, resulting in a proposed recommendation that is attached to my testimony. Once the Committee finalizes the proposal, it will be noticed and subject to a public hearing before it is voted upon by the judges of the Superior Court.

In light of the Committee's action on this sensitive issue, it respectfully requests for deference to it and asks the legislature not to enact a tender years exception.

Thank you for the opportunity to submit written testimony.

(NEW) Hearsay Exception: Tender Years

(a) A statement made by a child, twelve years of age or under at the time of the statement, concerning any alleged act of sexual assault or other sexual misconduct of which the child is the alleged victim is admissible in evidence in criminal and juvenile proceedings if: (1) The court finds, in a hearing conducted outside the presence of the jury, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness; (2) The statement was not made in preparation for a legal proceeding; and (3) The child either: (A) Testifies and is subject to cross-examination in the proceeding, either by appearing at the proceeding in person or by video telecommunication or by submitting to a recorded video deposition for that purpose; or (B) Is unavailable as a witness, provided that: (i) There is independent corroborative evidence of the alleged act. Independent corroboration does not include hearsay admitted pursuant to this section; and (ii) The statement was made prior to the defendant's arrest in connection with the act described in the statement.

(b) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement, the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that indicate its reliability. Notice must be given sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare to meet the statement except for good cause shown.

(c) This section does not prevent admission of any statement under another hearsay exception. Courts, however, are prohibited from (1) applying broader definitions in other hearsay exceptions for statements made by children twelve years of age or under at the time of the statement concerning any alleged act than they do for other declarants and (2) admitting by way of a residual hearsay exception statements that satisfy the description in the first paragraph of section (a).