

Hearsay Issues in Child Victim Cases

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Objectives:

After this session you will be able to:

- (1) Identify common hearsay issues that arise in cases involving child witnesses
- (2) Effectively rule on those issues

Key Hearsay Issues in Child Victim Cases

- (1) Excited utterance exception 
- (2) Purposes of medical diagnosis & treatment exception
- (3) Residual exceptions
- (4) Is it really hearsay?

Excited Utterances by Children –
803(2)

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition

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Excited Utterances by Children –
803(2)

- Statement to Grandmother
- Statement to Pediatrician I
- Statement to Social Worker
- Statement to Pediatrician II
- Statement to Psychologist

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Excited Utterances by Children –
803(2)

- More flexibility regarding length of time between event & statement than with adult cases
- Statements made 4-5 days after event held to be excited

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Excited Utterances by Children –
803(2)

- Proper foundation required

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Excited Utterances by Children –
803(2)

- Distinguished from:
Present Sense Impression [803(1)]:

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Excited Utterances by Children – 803(2)

Present Sense Impression [803(1)]:

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter

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Doesn't need to be startling

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Excited Utterances by Children – 803(2)

- Distinguished from:
Then Existing Mental, Emotional, or Physical Condition [803(3)]

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Excited Utterances by Children – 803(2)

Then Existing Condition Exception:

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, & bodily health), but not including a statement of memory or belief to prove the fact remembered or believed . . .

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For Purposes of Medical Diagnosis & Treatment – 803(4)

[s]tatements made for purposes of medical diagnosis or treatment & describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment

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For Purposes of Medical Diagnosis & Treatment – 803(4)



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For Purposes of Medical Diagnosis & Treatment – 803(4)

Hinnant test

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Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.

- Factors:
- (1) Whether adult explained need for treatment/importance of truthfulness
 - (2) With whom/what circumstances made
 - (3) Setting
 - (4) Nature of questions

Prong (2): Statement reasonably pertinent to medical diagnosis & treatment.

Does a child victim's identification of the perpetrator satisfy this prong?

Yes

No

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Does Child's statement to Pediatrician I fall within this exception?

1. Yes
2. No
3. Need more information

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Do Child's statements to Social Worker fall within this exception?

1. Yes
2. No
3. Not sure

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Do Child's statements to Pediatrician II fall within this exception?

1. Yes
2. No
3. Not sure

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Do Child's statements to Grandmother fall within this exception?

1. Yes
2. No
3. Not sure

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Residual Exceptions

- 803(24)
- 804(b)(5) (declarant unavailable)

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- (1) proper written notice given
- (2) not covered by another exception
- (3) circumstantial guarantees of trustworthiness 
- (4) evidence of a material fact
- (5) more probative than other evidence
- (6) serves general purposes of the rules & interests of justice

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(1) declarant's personal knowledge
(2) declarant's motivation to speak the truth
(3) whether declarant recanted
(4) practical availability of declarant at trial for cross examination

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Child found to be incompetent because she cannot distinguish truth from fiction.

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Child found to be incompetent because she is too frightened to testify.

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- (2) not covered by another exception
- (3) circumstantial guarantees of trustworthiness
- (4) evidence of a material fact
- (5) more probative than other evidence
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Child's Statements to Social Worker

Do I really have a hearsay problem?

If it's not being admitted for the truth of the matter asserted, its not hearsay.

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