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Evidence - Sexual Abuse of Children: The Justification for a New Hearsay Exception

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INTRODUCTION

Child sexual abuse has accelerated into public awareness during the past five years.[1] The legal system failed to contemplate the emergence of this relatively recent development. The limited evidence available in child sex abuse cases has caused an erratic application of the present hearsay exceptions.[2]

This Note will explore the evidentiary problem of admitting a victim's out-of-court statements in the prosecution of a child sex abuse crime. The judiciary, in recognition of the limited available evidence in such crimes,[3] has contorted the present hearsay exceptions to allow the admittance of the child's out-of-court statements.[4] In an effort to prevent further uncertainty in the admittance of a child's hearsay statement, the Colorado legislature has enacted a statute providing for a new hearsay exception.[5] The assessment presented by this Note of the Colorado statute will demonstrate its compatability with the traditional hearsay exceptions and its constitutionality as determined by the latest Supreme Court interpretation of the confrontation clause.

BACKGROUND

A. *The Hearsay Rule and Its Exceptions*

Hearsay has been defined as an out-of-court statement that is introduced for the truth contained in it.[6] This out-of-court statement may be oral or written[7] or in the form of conduct.[8] Courts generally have held hearsay testimony inadmissible,[9] predicated on the want of cross-examination of the declarant[10] and the lack of any opportunity on the part of the jury to observe the demeanor

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1. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE AND NEGLECT 177, 178 (1983). *See also* Galdstein *Investigating Child Sexual Exploitation: Law Enforcement Role*, FBI LAW ENFORCEMENT BULLETIN, 22, 26 (Jan. 1984).

2. *See infra* notes 32-38 and accompanying text.

3. *Id.*

4. *See infra* notes 50-64 and accompanying text.

5. COLO. REV. STAT. § 13-25-129 (Supp. 1985).

6. Key Life Insurance Co. v. Byrd, 312 So. 2d 450 (Miss. 1975); FED. R. EVID. 801(c).

7. Kelly v. State, 278 So. 2d 400 (Miss. 1973); Spears v. State, 241 So. 2d 148 (Miss. 1970); FED. R. EVID. 801(a)(1).

8. *See* Fells v. State, 345 So. 2d 618 (Miss. 1977) (out-of-court identification); FED. R. EVID. 801(a)(2).

9. Pevey v. Alexander Pool Co., 244 Miss. 25, 31, 139 So. 2d 847, 850 (1967) (citing 20 Am. Jur. *Evidence* § 452). *See also* FED. R. EVID. 802 ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to Statutory Authority or by Act of Congress.").

10. California v. Green, 399 U.S. 149, 154 (1970). "Declarant" will be used throughout the Note denoting the one who has made the out-of-court statement.

of the declarant contemporaneously with his enunciation of the statement.[11]

This judicial rule prohibiting hearsay evidence is not absolute but is, of course, riddled with exceptions.[12] These well recognized exceptions have as their premise necessity and a guarantee of trustworthiness.[13] In criminal proceedings, the creation of a new exception that is found to meet the requisites of necessity and trustworthiness will often raise questions of compatibility with the defendant's constitutional right to confrontation.[14]

B. *Compatibility of the Confrontation Clause with the Hearsay Exceptions*

The confrontation clause of the sixth amendment reads, "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ."[15] Literally taken, the confrontation clause could be argued to require as constitutionally indispensable the presence of the witness before the tribunal.[16] This untenable interpretation[17] would vitiate any exception to the hearsay rule as unconstitutional.[18] However, this *prima facie* conflict was confronted in *California v. Green*,[19] where the Supreme Court stated that the hearsay rule with its exceptions and the confrontation clause are generally designed to protect similar values.[20]

In *Green*, a witness's previous out-of-court statement made at a preliminary hearing was admitted pursuant to state statute over an objection to the statute as a violation of the confrontation clause.[21] The Supreme Court intimated that the "Confrontation Clause is not violated by admitting a declarant's out-of-court state-

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11. Ohio v. Roberts, 448 U.S. 56, 63-64 (1980) (quoting Mattox v. United States, 156 U.S. 237, 242-43 (1895)).

12. Ohio v. Roberts, 448 U.S. at 62; E. CLEARY, MCCORMICK ON EVIDENCE § 245 (3d ed. 1984); *see also* FED. R. EVID. 803. A nonexclusive list of twenty-three exceptions to the rule against hearsay is recognized by the federal courts. *Id.*

13. Hercules, Inc. v. Walters, 434 So. 2d 723, 727 (Miss. 1983); *cf.* FED. R. EVID. 803 (24). The residual exception of the federal rule is premised on necessity and probative value.

14. California v. Green, 399 U.S. 149 (1970).

15. U.S. CONST. amend. VI: The confrontation clause was made applicable to the states via the fourteenth amendment. Pointer v. Texas, 380 U.S. 400 (1965).

16. 5 J. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 1397 (J. Chadbourn *rev.* 1974) [hereinafter cited as WIGMORE, EVIDENCE].

17. Ohio v. Roberts, 448 U.S. at 63.

18. *See supra* notes 12-14 and accompanying text.

19. 399 U.S. 149 (1970).

20. *Id.* at 155.

21. 399 U.S. 149 (1970).

ments, as long as the declarant is testifying as a witness and subject to *full* and *effective* cross-examination."[22]

This requisite cross-examination was becoming an impractical confrontation clause mandate[23] until the decision pronounced in *Ohio v. Roberts*.[24] In *Roberts*, the Supreme Court held admissible the testimony of an unavailable witness given at the defendant's preliminary hearing.[25] The confrontation clause was interpreted to restrict the range of admissible hearsay in two fashions.[26] First, the exception must arise from the establishment of necessity and second, it must be supported by indicia of reliability.[27] Satisfaction of the requirement of necessity entails that the prosecution must either produce, or demonstrate the unavailability of, the declarant whose statement it wishes to use against the defendant.[28] However, upon a showing of unavailability, a finding of indicia of reliability is required, and is determined adequate when the statement falls within a firmly rooted hearsay exception.[29] Absent this characteristic, a search for particularized guarantees of trustworthiness must be undertaken.[30] The Court in *Ohio v. Roberts* found the requisite indicia of reliability predicated on the fact that the prior testimony was subject to what amounted, in effect, to cross-examination.[31]

THE ADMISSIBILITY OF A VICTIM'S HEARSAY STATEMENTS IN CHILD SEX ABUSE CASES

A. *The Need and Reliability of the Statements*

In the usual child sex abuse case there exists a relationship of trust between the perpetrator and the victim.[32] In this relationship of trust a sexual assault may not give rise to an immediate

22. *Id.* at 158 (emphasis added). "[N]either evidence nor reason convinces us that contemporaneous cross-examination before the ultimate trier of fact is so much more effective than subsequent examination that it must be made the touchstone of the Confrontation Clause." *Id.* at 161. The Court chose not to consider what constitutes full and effective cross-examination in affording confrontation clause compliance.

23. *Cf.* Dutoon v. Evans, 400 U.S. 74 (1970) Cross-examination could not have possibly revealed unreliable the hearsay statement. It was the reliability of the hearsay which got it over the confrontation hurdle. Younger, *Confrontation*, 24 WASHBURN L.J. 1 (1984).

24. 448 U.S. 56 (1980).

25. *Id.*

26. *Id.* at 65.

27. Ohio v. Roberts, 448 U.S. at 65, 66 (1980).

28. *Id.*

29. *Id.* at 66.

30. *Id.*

31. Ohio v. Roberts, 448 U.S. at 70, 71-73. The Court went further to dispel any suggestion left by its decision in California v. Green, 399 U.S. 149 (1970) that the opportunity to cross-examine at the preliminary hearing – when absent actual cross-examination – satisfies the confrontation clause. The Court chose not to reach a decision on this issue, for in *Green*, as well as, in effect, *Roberts*, the defendants exercised their right of cross-examination at the preliminary hearing.

32. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 CHILD ABUSE AND NEGLECT 177 (1983).

complaint.[33] The voicing of the complaint may be delayed because the abused child may not comprehend that the invasion is wrongful.[34] Moreover, threats of retaliation by physical harm, blackmail or peer pressure, the "pledge of silence," obedience to the authority figure,[35] and guilt or fear of exposure all can establish a virtually tight, impervious bond between the accused and the victim, delaying the disclosure of the offense.[36] Dissipation of any physical evidence precipitates from this delay of disclosure.[37] A further evidentiary problem arising from this relationship of trust is the usual absence of any third party witness.[38]

However, once disclosure has finally been made, the child is often met with disbelief.[39] This disbelief is supported by an examination of the complaining child.[40] Young children often fail to distinguish between subjective and objective experiences, between events they dream or imagine and events that happen in the external world.[41] In affirming this disbelief of a child's incriminating statement, one court has intimated that childhood illusions and vagaries are oftentimes bizarre.[42] Furthermore, some clinical specialists tend to reinforce the comforting belief that most sexual abuse complaints can be dismissed as fantasy, confusion, or a displacement of the child's own wish for power or seductive conquest.[43]

However, most nonabused children are not knowledgeable in the details of sexual encounters.[44] When a young child can relate explicit details of sexual activity, the validity of the communication rises to a level of greater acceptability.[45] Therefore, the more illogical and incredible the initiation scene appears to adults, the

33. S. SGROIA, HANDBOOK OF CLINICAL INTERVENTION IN CHILD SEXUAL ABUSE 114 (5th printing 1983). *See also* Reifen, *Legal Protection of Children in Sexual Assault Cases*, CHILD ABUSE 141, 149 (A. Carmi & H. Zimrin 1984).

34. *See* People v. Baker, 251 Mich. 322, 232 N.W. 381 (1930) A child would have no sense of outrage at such acts by her own father. *Id.*

35. Reference made to the offender.

36. Burgess, *Child Sex Initiation Rings*, 51 AMERICAN JOURNAL OF ORTHOPSYCHIATRY 111, 114 (Jan. 1981). *See also* S. SGROIA, *supra*, note 33, at 115-21 (stating similar reasons for delay); Summit, *supra* note 32, at 186 (most ongoing sexual abuse is never disclosed, at least not outside the immediate family).

37. Summit, *supra* note 32, at 179.

38. Summit, *supra* note 32, at 179 (usually the invasion discreetly occurs when the victim and the perpetrator are alone).

39. Summit, *supra* note 32, at 186-88.

40. Summit, *supra* note 32, at 179.

41. Brown v. United States, 152 F.2d 138 (D.C. Cir. 1945).

42. Robinson v. State, 235 Miss. 100, 108 So. 2d 583 (1959) (where the accusation of a two and one-half year old child did not support an admission by silence).

43. Summit, *supra* note 32, at 179.

44. S. SGROIA, *supra* note 33, at 43. *See also* Kempe, *Incest and Other Forms of Sexual Abuse*, THE BATTERED CHILD 204 (C. Kempe & R. Helfer ed. 1980).

45. S. SGROIA, *supra* note 33, at 39-79.

more likely it is that the child's description accurately recounts an actual experience.[46]

Furthermore, a child's statement may prove more accurate when made nearer to the alleged assault. This follows from the fact that a child's retentive capabilities dramatically decline with the passage of time.[47]

The forbidding atmosphere of the courtroom and the embarassing questions posed by authorities place the child witness in a stressful environment.[48] The resultant interference with a child witness's power of recollection and narration[49] often causes contradictions and inconsistencies to appear in the child's testimony.

B. *Application of the Spontaneous Utterance Exception*

The spontaneous utterance exception to the hearsay rule requires that the declarant be under the excitement of the event at the time the statement is made.[50] In determining whether this excitement existed contemporaneously with the making of the statement, the demeanor,[51] age,[52] and mentality[53] of the victim should be considered, in addition to the lapse of time between the act and the utterance.[54]

The spontaneous utterance exception to the hearsay rule has been variedly applied in admitting a child's hearsay statement in sex abuse cases.[55] Statements made up to twenty-four hours after the

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46. Summit, *supra* note 32, at 179.

47. *Cf.* Parker, *The Rights of Child Witnesses: Is the Court a Protector or Perpetrator?*, 17 NEW ENG. L. REV. 643, 670 (1981-82) ("[t]he spontaneous statements of a child to the hospital staff are likely to be more accurate than the child's later memory."). *Id.*

48. Globe Newspaper Co. v. Superior Court, 401 N.E.2d 360, 369 (1980) (citing Libai, *The Protection of the Child Victim of a Sexual Offense in the Criminal Justice System*, 15 WAYNE L. REV. 977, 1021 (1969), (quoting *Hallech, Emotional Effects of Victimization*, SEX BEHAVIOR AND THE LAW 684 (R. Slovenko ed. 1965))). *See also* Arthur, *Should Children be as Equal as People?*, 45 N.D.L. REV. 204, 208 (1969). "Children talk best in their native habitat. What they say when pressure of emotion and strangeness are absent is more apt to be true . . . ." *Id.*

49. Globe Newspaper Co. v. Superior Court, 401 N.E.2d at 369.

50. FED. R. EVID. 803(2).

51. State v. Ritchey, 107 Ariz. 552, 555, 490 P.2d 558, 561 (1971) (change from a characteristically rowdy to a subdued disposition).

52. Smith v. State, 6 Md. App. 581, 587-88, 252 A.2d 277, 281 (1969); United States v. Iron Shell, 633 F.2d 77, 86 (8th Cir. 1980).

53. State v. Wilson, 20 Or. App. 553, 554-57, 532 P.2d 825, 827-28 (1975).

54. *Id.*

55. *See infra* notes 56-58 and accompanying text.

attack have been admitted under this exception.[56] Although spontaneity is required, elicited statements have also fallen within this expanding exception.[57] In many of these cases allowing the hearsay statements to be admitted under the spontaneous utterance exception, physical corroboration existed, reinforcing the reliability of the statement.[58]

C. *Other Judicially Created Exceptions*

The Mississippi Supreme Court in *Williams v. State*[59] has expressed acceptance of the "tender years" exception stated in the Michigan decision of *People v. Mikula*,[60] which admitted the hearsay testimony of a sexually abused child of "tender years" upon a showing that the statement was "spontaneous and without indication of manufacture, and if any delay in making the complaint is excusable insofar as it is caused by fear or other equally effective circumstances."[61]

A different approach was taken by the Wisconsin court in *Bertrang v. State*.[62] The court admitted the statements of a sexually abused child, notwithstanding the hearsay rule, by considering the age of the child, the nature of the assault, the physical evidence, the relationship of the child to the defendant, the contemporaneity and spontaneity of the assertions to the assault, the reliability of the assertions to the assault, the reliability of the assertions themselves, and the reliability of the testifying witness.[63] In admitting the statements the court placed its authorization on

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56. Bertrang v. State, 50 Wis. 2d 702, 184 N.W.2d 867 (1971) (admitted under res gestae, of which the key elements are contemporaneity and spontaneity). Res gestae used in this capacity will hereinafter be referred to as a spontaneous utterance. *See, e.g.*, Wheeler v. United States, 211 F.2d 19 (D.C. Cir. 1953) (ten-year-old's statement made within one hour), *cert. denied*, 347 U.S. 1019 (1954); State v. Ritchey, 107 Ariz. 552, 490 P.2d 558 (1971) (six-year-old's statement made within 25 minutes); *see also* United States v. Iron Shell, 633 F.2d 77 (8th Cir. 1980) (nine-year-old's statement made one hour after assault), *cert. denied*, 450 U.S. 1001 (1981); People v. Stewart, 39 Colo. App. 142, 568 P.2d 65 (1977) (six-year-old girl's statement made two hours after the attack); Smith v. State, 6 Md. App. 581, 252 A.2d 277 (1969) (four-year-old's statement given four hours later); *cf.* State v. Hummel, 132 N.J. Super. 412, 334 A.2d 52 (1975). The fact of the complaint, absent any details, was admitted though given three years subsequent to the attack. *But see* Brown v. United States, 152 F.2d 138 (D.C. Cir. 1945) (four-year-old's statement made three hours later inadmissible); Ketcham v. State, 240 Ind. 107, 162 N.E.2d 247 (1959) (five-year-old's statement made two hours later inadmissible).

57. Purdy v. State, 343 So. 2d 4 (Fla. 1977), *cert. denied*, 434 U.S. 847 (1977); People v. Miller, 58 Ill. App. 3d 156, 373 N.E.2d 1077 (1978).

58. *See* State v. Boodry, 96 Ariz. 259, 394 P.2d 196 (1964); Purdy v. State, 343 So. 2d 4 (Fla. 1977), *cert. denied*, 434 U.S. 847 (1977); Smith v. State, 6 Md. App. 581, 252 A.2d 277 (1969); *cf.* Brown v. United States, 152 F.2d 138 (D.C. Cir. 1945). The spontaneous statement exception to the hearsay rule has commonly been applied only when there has been independent evidence of an exciting event. *Id.*

59. 427 So. 2d 100 (Miss. 1983). An eleven-year-old child's statements made to her sister the day following the assault were admitted. *Id.*

60. 84 Mich. App. 108, 269 N.W.2d 195 (1978).

61. Williams v. State, 427 So. 2d at 102-03.

62. 50 Wis. 2d 702, 184 N.W.2d 867 (1971).

63. *Id.* at 708, 184 N.W.2d at 870.

the residual hearsay exception noted in sections 908.03(24) and 908.045(6) of the Wisconsin Rules of Evidence.[64]

ANALYSIS

A. *The Adequacy of the Present Exceptions as Applied*

The spontaneous utterance exception has been liberally applied to out-of-court statements of children involved in sex abuse crimes.[65] This application has expanded the exception to cover statements made in a placid and calm disposition hours after the assault.[66] Although the court in *Smith v. State*[67] acknowledged that no emotional distress was manifest when the statement of the child was made, it determined that upon consideration of her age the child was under emotional strain.[68] Other courts have admitted the child's hearsay statements only upon the admission of some corroborating physical evidence.[69] However, in applying this requirement, there is a failure to recognize the peculiar circumstances of child sex abuse cases.

A delay in the making of the complaint by a child causes physical evidence to disappear.[70] Moreover, in this crime there is the usual absence of any third party eyewitness.[71] In this light, the requirement of corroborating evidence evinces a type of "Catch 22" proposition. This "Catch 22" predicament and the liberal search for a mental state of excitement demonstrate that the spontaneous utterance exception is an unacceptable means of admitting a sexually abused child's hearsay statement.

The "tender years" exception employed in *Williams v. State*[72] and *People v. Mikula*[73] is equally unworkable because it does not provide any guidelines for establishing a guarantee of trustworthiness or reliability. This is a creation of a new exception which is of questionable constitutionality.[74] There is no guidance given in searching for particularized guarantees of trustworthiness.[75]

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64. WIS. STAT. ANN. §§ 908.03(24) and 908.045(6) (West 1975). "A statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness." *Id.* These residual exceptions closely parallel sections 803(24) and 804(b)(5) of the Federal Rules of Evidence.

65. People v. Stewart, 39 Colo. App. 142, 568 P.2d 65 (1977).

66. Smith v. State, 6 Md. App. 581, 252 A.2d 277 (1969). *But see* Ketcham v. State, 240 Ind. 107, 162 N.E.2d 247 (1959); Brown v. United States, 152 F.2d 138 (D.C. Cir. 1945).

67. 6 Md. App. 581, 252 A.2d 277 (1969).

68. *Id.*

69. *See supra* note 58 and accompanying text.

70. Summit, *supra* note 32 and accompanying text.

71. Summit, *supra* note 38 and accompanying text.

72. 427 So. 2d 100 (Miss. 1983).

73. 84 Mich. App. 108, 269 N.W.2d 195 (1978).

74. *See supra* notes 15-31 and accompanying text.

75. Guidance must be provided upon which the court's discretion in admitting the evidence may be predicated.

Hence, many situations where the hearsay statements are admitted may be found constitutionally infirm.

The Wisconsin remedy espoused in *Bertrang v. State*[76] was not intended to become a firmly rooted exception. The residual exceptions were provided to compensate for the seldom and unusual circumstance where the hearsay statement is found reliable but lies outside the commonly recognized exceptions.[77] The invocation of this residual statute was to be the exception, not the rule.

The inadequacy of the present exceptions as applied to child abuse victims' hearsay statements militates against their continued use[78] and has led the Colorado legislature to create a new exception addressing this problem:

> 13-25-129. Statement of child victim of unlawful sexual offense against a child or of child abuse - hearsay exception. (1) An out-of-court statement made by a child, as child is defined under the statutes which are the subject of the action, describing any act of sexual contact, intrusion, or penetration, as defined in section 18-3-401, C.R.S., performed with, by, or on the child declarant, not otherwise admissible by a statute or court rule which provides an exception to the objection of hearsay, is admissible in evidence in any criminal, deliquency, or civil proceedings in which the child is a victim of an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S., or the subject of a proceeding alleging that the child is neglected or dependent under section 19-1-104 (1) (c), C.R.S., and an out-of-court statement by a child, as child is defined under the statutes which 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, not otherwise admissible by a statute or court rule which provides an exception to the objection of hearsay, is admissible in evidence in any criminal, deliquency, or civil proceedings in which the child is a victim of child abuse or the subject of a proceeding alleging that the child is neglected or dependent under section 19-1-104 (1) (c), C.R.S., if:
>
> (a) The court finds in a 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) If a statement is admitted pursuant to this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement and that, in making the determination, it 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.

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76. 50 Wis. 2d 702, 184 N.W.2d 867 (1971).

77. *See supra* notes 62-64 and accompanying text. FED. R. EVID. 803(24) (advisory comment). It is intended that the residual hearsay exceptions will be used very rarely, and only in exceptional circumstances. *Id.*

78. *But see* Ketcham v. State, 240 Ind. 107, 162 N.E.2d 247 (1959), where the court stated:

> We recognize that some crimes are committed and the evidence so concealed that it is sometimes impossible to present legal evidence to sustain a conviction, but such instances do not warrant waiving or changing well settled principles of evidence which determine what is and what is not credible or competent upon which the liberty or life of one charged with a crime is at stake.

Id. at 113-14, 162 N.E.2d at 250.

(3) The proponent of the statement shall give the adverse party reasonable notice of his intention to offer the statement and the particulars of the statement.[79]

B. *The Constitutionality of the Colorado Statute*

The Colorado statute provides guidelines for the court to determine in a proceeding conducted outside the hearing of the jury if there exists particularized indicia of reliability of the hearsay statement.[80] This search for sufficient reliability must be undertaken whether or not the child testifies.[81] And if the child is unavailable, there must be corroborative evidence of the assertion made in the hearsay statement.[82] This appears well within the confrontation clause, which has been interpreted in *Ohio v. Roberts*[83] to mandate a search for particularized guarantees of trustworthiness only when the declarant is unavailable.[84] Colorado is more restrictive in that it requires this search whether or not the declarant is available, and, if not available, there must be corroborative evidence of the statement.[85]

The Colorado statute also requires the court to instruct the jury on the weight that should be given to the statement by considering relevant factors concerning the child's mental capacity as well as the circumstances under which the statement was made.[86] This will help to prevent any undue weight given by the jury to a child's statement when related through an adult witness. These requisites and considerations of the Colorado statute far exceed the confrontation clause interpretation espoused in *Ohio v. Roberts*.[87]

CONCLUSION

The Colorado statutory exception to the hearsay rule of admitting a sexually abused child's hearsay statement, instead of contorting the existing exceptions to accommodate the hearsay statements,[88] rectifies the peculiar evidentiary problems involved

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79. COLO. REV. STAT. § 13-25-129 (Supp. 1985). Similar statutes have been enacted in several other states: KAN. STAT. ANN. § 60-460dd (1983), IND. CODE ANN. § 35-37-4-6 (Burns Supp. 1984), MINN. STAT. ANN. § 595.2(3) (Supp. 1984), S.D. CODIFIED LAWS ANN. § 19-16-38 (Supp. 1984), UTAH CODE ANN. § 76-5-411 (Supp. 1983), WASH. REV. CODE § 9A.44.120 (1982). For an analysis of the Washington statutory exception *see* Note, *A Comprehensive Approach to Child Hearsay Statements in Sex Abuse Cases*, 83 COLUM. L. REV. 1745 (1983).

80. COLO. REV. STAT. § 13-25-129(1)(a) (Supp. 1985).

81. COLO. REV. STAT. § 13-25-129(1)(a) and (b) (Supp. 1985).

82. COLO. REV. STAT. § 13-25-129(1)(b)(II) (Supp. 1985).

83. 448 U.S. 56 (1980).

84. *See supra* notes 25-31 and accompanying text.

85. COLO. REV. STAT. § 13-25-129(1) (Supp. 1985).

86. *Id.* § 13-25-129(2) (Supp. 1985).

87. *See supra* notes 25-31 and accompanying text.

88. *See supra* notes 50-64 and accompanying text.

in a child sex abuse crime.[89] The statutory exception comports with the premises of reliability and need upon which the present hearsay exceptions are predicated.[90] The need for this exception should be recognized by other states and remedied by similar legislation.

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89. *See supra* notes 32-49 and accompanying text.
90. Hercules, Inc. v. Walters, 434 So. 2d 723 (Miss. 1983); *see also* FED. R. EVID. 803(24).