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USE WITH CAUTION: THE ILLINOIS HEARSAY EXCEPTION FOR CHILD VICTIMS OF SEXUAL ABUSE

INTRODUCTION

In 1985, Nancy and Cindy\(^1\) accused their father, Paul, of sexually abusing them.\(^2\) Twenty-three years later—after they grew up without a father—the girls came forward and admitted it was all a lie.\(^3\) Nancy and Cindy's mother originally accused Paul of abusing the girls amidst a heated custody dispute.\(^4\) She claimed the girls told her that Paul abused them.\(^5\) Despite Paul's insistence that he was innocent, the court tried and convicted him.\(^6\) After his conviction, he did not see or speak to his daughters for twenty years.\(^7\) Once a successful lawyer, he struggled to earn a living as a truck driver.\(^8\) The girls grew up thinking their father abandoned their family.\(^9\) They did not even know he went to prison.\(^10\) After the truth came out, the court exonerated Paul, but the damage had already been done.\(^11\) False accusations rather than facts deprived a man of his freedom and deprived two children of a father.\(^12\)

Studies indicate that, in cases coinciding with a divorce or custody dispute, allegations of child sexual abuse are false in as many as 20% of cases.\(^13\) The current law in Illinois fails to adequately address this risk or deal with the problems and complexities of sexual abuse cases. It does not properly equip courts to reach accurate and consistent verdicts because it is based solely on discretion and provides no uniform standard for trial courts. Protecting children from abuse, especially

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1. Names have been changed to protect privacy.
3. Id.
4. Id.
5. Id.
6. Id.
7. Id.
8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
sexual abuse, has become a paramount concern in the past twenty
years.\textsuperscript{14} In response, the Illinois legislature provided statutory excep-
tions to the rule against using out-of-court statements as evidence (the
hearsay exception statutes).\textsuperscript{15} These exceptions make children's out-
of-court statements admissible when those statements concern abuse
or neglect.\textsuperscript{16} The exceptions are intended to provide heightened pro-
tection to child victims\textsuperscript{17} and to address some of the difficulties associ-
ated with proving these "secretive" crimes.\textsuperscript{18} To protect the interests
of the accused, the statutes provide that no judgment finding abuse
occurred can be based solely on a child's out-of-court statements;
some independent evidence must corroborate the statements.\textsuperscript{19} The
hearsay exception statutes typically become important in civil cases
when a parent is accused of abusing a child and the court must deter-
mine whether to suspend custody or parental rights.

Issues arise because the statutes provide no standard for implemen-
tation. The danger is that courts will resolve doubts in favor of finding
that abuse did occur. Doing so ignores the risk that a finding of abuse
will be based on false allegations. An erroneous finding of abuse can
separate a child from a parent and destroy the life of an alleged
abuser.\textsuperscript{20} To account for the risks on both sides, and to ensure accu-
rracy of verdicts, courts should use a formulaic test to decide cases in-
volving a child's out-of-court statements admitted under the hearsay
exception statutes. Because courts evaluate each case individually,\textsuperscript{21}
they retain discretion to consider the totality of the evidence and
make a final determination. A two-part test will aid the court in exer-

\begin{enumerate}
\item See, e.g., John E.B. Myers, \textit{Expert Testimony in Child Sexual Abuse Litigation: Consensus
and Confusion}, 14 U.C. DAVIS J. JUV. L. & POL'y 1, 3 (2010) (noting the alarming prevalence
of sexual abuse among children); Mary Ellen Reilly, Note, \textit{Expert Testimony on Sexually Abused
Child Syndrome in a Child Protective Proceeding: More Hurtful Than Helpful}, 3 CARDOZO PUB.
L. POL'y & ETHICS J. 419, 419 (2005); Michelle M. Zehnder, Comment, \textit{A Step Forward: Rule
803(25), A New Approach to Child Hearsay Statements}, 20 WM. MITCHELL L. REV. 875, 876-77
(1994).
\item 705 ILL. COMP. STAT. 405/2-18(4)(c) (2008); 750 ILL. COMP. STAT. 5/606(e) (2008).
\item 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
\item See 750 ILL. COMP. STAT. 5/606.
\item Reilly, \textit{supra} note 14, at 426; see also Mary Ann Mason, \textit{The Child Sex Abuse Syndrome:
The Other Major Issue in State of New Jersey v. Margaret Kelly Michaels}, 1 PSYCHOL. PUB.
L. POL'y & L. 399, 399 (1995) ("Prosecutors often must prove a case with no corroborative evi-
dence, no witnesses, and a victim who is reluctant or unable to testify.").
\item See 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
\item See Jennings, \textit{supra} note 2, at 1A.
\item See \textit{In re A.P.}, 688 N.E.2d 642, 650, 652 (Ill. 1997) ("Of course, whether there is sufficient
corroboration . . . is a determination that must be made on a case-by-case basis. . . . The [trial]
court was in the best position to determine the credibility and weight of the witnesses' testimony
. . . .").
\end{enumerate}
cising that discretion. It will provide a guide for conducting the analysis and will ensure a thorough adjudication of the evidence.

Part II of this Comment discusses the Illinois statutes that provide the exception to the general hearsay rule. Part III analyzes the problems with how courts apply the hearsay exception statutes. Part III also proposes a new, two-part test based on reliability factors and forms of corroborating evidence; the test gives the court discretion to weigh the two parts. Part IV shows how the proposed test will solve problems in future cases.

II. BACKGROUND

A. The Illinois Hearsay Exception Statutes for Minor Victims of Abuse or Neglect

The Illinois legislature has enacted three statutory provisions to provide an exception to the hearsay rule for minor victims of abuse or neglect. Generally, hearsay evidence is not admissible in criminal or civil proceedings. Under certain exceptions, however, a witness may testify about a statement made out of court. The Illinois hearsay exception statutes discussed herein provide such an exception in civil proceedings that involve allegations of abuse or neglect to a child under thirteen years old.

22. See infra notes 25–155 and accompanying text.
23. See infra notes 156–282 and accompanying text.
24. See infra notes 283–89 and accompanying text.
27. See Rugani, supra note 26, at 875.
28. Section 8-2601 of the Illinois Code of Civil Procedure provides, in part,

(a) An out-of-court statement made by a child under the age of 13 describing any act of child abuse or any conduct involving an unlawful sexual act performed in the presence of, with, by, or on the declarant child, or testimony by such of an out-of-court statement made by such child that he or she complained of such acts to another, is admissible in any civil proceeding, if: (1) the court conducts a hearing outside the presence of the jury and finds that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and (2) the child either: (i) testifies at the proceeding; or (ii) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.

(b) 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 credibility to be given to the statement and that, in making its 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 factors.
The statutes are codified in the Illinois Code of Civil Procedure (the Code),29 the Illinois Juvenile Court Act (the Juvenile Act),30 and the Illinois Marriage and Dissolution of Marriage Act (the IMDMA).31 All three hearsay exception statutes provide that out-of-court statements made by minors in abuse or neglect cases are admissible evidence.32 Each one constitutes a statutorily created exception to the rule precluding hearsay evidence. The Juvenile Act and the IMDMA provide substantively identical provisions.33 Under those two provisions, out-of-court statements by a child under thirteen “relating to” allegations of abuse or neglect are automatically admissible as evidence.34 Although the Code provides a similar hearsay exception, it differs because it requires the court to bifurcate its analysis by conducting a reliability hearing before admitting statements into evidence; the court has discretion, and the statements are not automatically admissible.35

735 ILL. COMP. STAT. 5/8-2601. Under this statute, the judge must first conduct a hearing to determine whether the out-of-court statements are reliable. Id. If they satisfy the reliability test, the judge may admit the statements and the jury will weigh their credibility. Id. The judge may properly admit statements if the child testifies or is “unavailable” to testify. Id. A court may consider a child unavailable when he is too young to testify in court. Reilly, supra note 14, at 429.

Section 606(e) of the Illinois Marriage and Dissolution of Marriage Act provides,

Previous statements made by the child relating to any allegations that the child is an abused or neglected child within the meaning of the Abused and Neglected Child Reporting Act, or an abused or neglected minor within the meaning of the Juvenile Court Act of 1987, shall be admissible in evidence in a hearing concerning custody of or visitation with the child. No such statement, however, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect.

750 ILL. COMP. STAT. 5/606(e) (footnotes omitted). Under this provision, the court admits any out-of-court statements and determines reliability as part of its final adjudication. Id. A separate hearing is not necessary. Id. Typically, this statute will apply in bench trials, rather than cases involving juries. Id.

Section 2-18(4)(c) of the Juvenile Court Act provides, “Previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. However, no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect.” 705 ILL. COMP. STAT. 405/2-18(4)(c). This section is substantively identical to the IMDMA provision described above. Both statutes provide that the statements “shall be admissible,” meaning that the trial judge does not have discretion to exclude relevant out-of-court statements. The IMDMA typically applies in cases regarding custody of children in conjunction with divorce, while the Juvenile Act applies in custody or visitation situations outside of divorce.

29. See 735 ILL. COMP. STAT. 5/8-2601(a).
30. See 705 ILL. COMP. STAT. 405/2-18(4)(c).
31. See 750 ILL. COMP. STAT. 5/606(e).
32. See 705 ILL. COMP. STAT. 405/2-18(4)(c); 735 ILL. COMP. STAT. 5/8-2601(a); 750 ILL. COMP. STAT. 5/606(e).
33. Compare 705 ILL. COMP. STAT. 405/2-18(4)(c), with 750 ILL. COMP. STAT. 5/606(e).
34. See 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
35. See 735 ILL. COMP. STAT. 5/8-2601(a).
The most significant provision, which all three hearsay exception statutes share, is the corroboration requirement. Under the Code, a judge cannot admit statements that are not supported by corroborating evidence. Under the Juvenile Act and the IMDMA, the judge must admit the statements but cannot rest an ultimate finding that abuse occurred on out-of-court statements alone. Those two statutes require corroborating evidence for the hearsay statements before the court can make a final adjudication that abuse occurred. The Code provision applies more to jury trials while the Juvenile Act and the IMDMA are appropriate for bench trials. This Comment focuses on civil bench trials that decide custody and visitation rights; therefore, the terms of the Juvenile Act and the IMDMA are most relevant for this discussion.

B. Justifications for the Hearsay Exception Statutes

Two chief justifications drive the hearsay exception statutes: necessity and protection. The necessity justification is based on two grounds: children cannot testify effectively, and a child’s statements are often the most important evidence. The first aspect of the necessity justification is the general belief that children should not testify against an abuser in open court. Studies show that both testifying in court and confronting an abuser are traumatic experiences for a child.

36. See 705 ILL. COMP. STAT. 405/2-18(4)(c) ("[N]o such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect."); 735 ILL. COMP. STAT. 5/8-2601(a) ("An out-of-court statement . . . is admissible in any civil proceeding, if . . . the child either: (i) testifies at the proceeding; or (ii) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement."); 750 ILL. COMP. STAT. 5/606(e) ("No such statement . . . if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect.").
37. 735 ILL. COMP. STAT. 5/8-2601(a).
38. See 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
39. See 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
40. The hearsay exception statutes do not explicitly dictate the situations in which each is applicable. Which statute applies to which types of cases is a subject of some uncertainty. For a full explanation of the three statutes and when each applies, see generally Thomas A. Else, Hearsay Statements of Abused Children in Order of Protection Cases: An Analysis of Alternate Statutory Interpretations, 19 DuPage County B. Ass'n BRIEF 14 (2006) (describing the material differences between the three hearsay exception statutes and analyzing when courts apply each one).
42. See id. ("Requiring a child victim to testify in a sex abuse case adversely affects his or her perception and memory and yields poor and unconvincing evidence. The courtroom experience is extremely traumatic and stressful for most children . . . ." (footnotes omitted)).
43. See Myers, supra note 14, at 3-4 (discussing the difficulty of proving sexual crimes against children due to lack of witnesses and physical evidence); Zehnder, supra note 14, at 883.
44. See Yun, supra note 41, at 1751.
who has suffered abuse.\textsuperscript{45} Courts seek to protect a child from such trauma, particularly when he is in the process of recovering from the psychological effects of abuse.\textsuperscript{46} Not only does testifying have an adverse effect on the child, the testimony might be inaccurate or skewed.\textsuperscript{47} Children are extremely susceptible to manipulation or confusion, and they are ill-equipped to handle the pressures of cross-examination.\textsuperscript{48} More likely than not, a child will change his story in court,\textsuperscript{49} agree with a cross-examiner,\textsuperscript{50} or provide incomplete or incoherent answers simply because the pressure is great.\textsuperscript{51} For these reasons, children are often unfit to handle the stress of testifying and are undesirable as witnesses.\textsuperscript{52}

The second aspect of the necessity justification recognizes the reality that sexual abuse is difficult, if not impossible, to prove without evidence of the child's out-of-court statements.\textsuperscript{53} Courts and commentators call sexual abuse of children a "secret crime."\textsuperscript{54} Often, the abuser is a parent, stepparent, teacher, or other adult close to the child.\textsuperscript{55} A close relationship provides opportunity to perpetrate abuse and makes it easy to conceal that abuse from others.\textsuperscript{56} Eyewitness accounts are rare.\textsuperscript{57} Due to the secret nature of sexual crimes against children, the child's accusations are usually the most probative and the most relevant evidence.\textsuperscript{58} As discussed above, it may be impossible

\textsuperscript{45} See Marks, supra note 13, at 225 ("A number of researchers have suggested that some children are traumatized by the courtroom experience." (footnote omitted)).

\textsuperscript{46} See id.

\textsuperscript{47} See Yun, supra note 41, at 1752 ("[C]hildren, if they reply at all, often give confused and inaccurate answers." (footnote omitted)).

\textsuperscript{48} See id. ("Children are susceptible to leading questions and often tailor their replies to appease the examining attorney." (footnotes omitted)); see also Jean Montoya, Something Not So Funny Happened on the Way to Conviction: The Pretrial Interrogation of Child Witnesses, 35 Ariz. L. Rev. 927, 933 (1993) (indicating that high suggestibility in children creates a strong risk of fabricated allegations).


\textsuperscript{50} See Yun, supra note 41, at 1752.

\textsuperscript{51} Id.; see also Montoya, supra note 48, at 934.

\textsuperscript{52} See Yun, supra note 41, at 1752.

\textsuperscript{53} See Myers, supra note 14, at 3–4; Zehnder, supra note 14, at 883 ("Child sexual abuse is a 'secret' crime and one typically not involving discernible signs of physical violence. Therefore, the child's statements may be the only evidence of the crime." (footnote omitted)).

\textsuperscript{54} See, e.g., Myers, supra note 14, at 3–4; Yun, supra note 41, at 1745 ("The crimes committed . . . almost always occur in secrecy, with the child usually being the only witness." (footnote omitted)).

\textsuperscript{55} Yun, supra note 41, at 1745 ("[M]ore often than not, the offender is a parent, relative, or an acquaintance of the child." (footnote omitted)).

\textsuperscript{56} See id. at 1745–46.

\textsuperscript{57} See id. at 1745; see also Myers, supra note 14, at 3–4.

\textsuperscript{58} See Yun, supra note 41, at 1745–46.
for the child victim to testify live.\footnote{59} Therefore, without the hearsay exceptions, the child's statements would be completely excluded from evidence.\footnote{60} The hearsay exception statutes preclude this undesirable result and allow litigation to proceed with all the facts in evidence.\footnote{61}

The second main justification for the hearsay statutes is child protection.\footnote{62} The protection justification invokes a balancing test that ultimately values a child's safety over the need to exclude questionable evidence.\footnote{63} Although a child's out-of-court statements carry all the problems with reliability that the prohibition on hearsay generally seeks to prevent,\footnote{64} the goal of protecting children from abuse is so important that the legislature chose to overlook the reliability issues.\footnote{65} This reflects a policy decision that protecting children from abuse is important enough to allow courts to rely upon evidence that is typically considered unreliable.\footnote{66}

C. How Courts Apply the Hearsay Exception Statutes

One Illinois Supreme Court case\footnote{67} and several Illinois appellate cases\footnote{68} have employed and interpreted the hearsay exception statutes. Through these cases, courts have established some generally accepted rules of application.\footnote{69} However, the cases have also created questions that have yet to be answered and some inconsistencies have arisen. Courts typically examine two aspects of cases involving out-of-court

\footnote{59. See id. at 1751–53.}
\footnote{60. See Jee, supra note 49, at 563 ("[S]ome noteworthy, but untrustworthy, evidence may be inevitably lost.").}
\footnote{61. See Myers, supra note 14, at 3–4; see also Reilly, supra note 14, at 430 ("Historically, if, for whatever reason, the State does not put the child on the stand and there is no additional evidence of abuse, then the petition must be dismissed." (footnote omitted)).}
\footnote{62. See In re A.P., 688 N.E.2d 642, 649 (Ill. 1997) ("In section 1-2 of the Act, the legislature directed that the purpose and policy of the Act is to serve and protect the best interests of minors.").}
\footnote{63. See id. ("In section 2-18(4)(c), the legislature sought to balance the welfare interests of minors and the rights of those accused of abuse or neglect.").}
\footnote{64. See Montoya, supra note 48, at 933; Marks, supra note 13, at 225 ("[C]hild hearsay, especially hearsay not subject to cross-examination, may not be reliable.").}
\footnote{65. See A.P., 688 N.E.2d at 649.}
\footnote{66. Illinois courts have not yet considered the impact of the Confrontation Clause on the hearsay exception statutes. In A.P., the Illinois Supreme Court explicitly declined to face the question. Id. at 652. A discussion of the Confrontation Clause is outside the scope of this Comment.}
\footnote{67. See id.}
\footnote{69. See, e.g., A.P., 688 N.E.2d at 649–50 (holding that, as long as the occurrence of abuse is corroborated, the identity of the abuser can be established by out-of-court statements alone).}
statements: the reliability of the statements and the evidence that corroborates them. This Section discusses the factors that typically define that analysis.

I. Reliability: Factors That Affect the Weight of Out-of-Court Statements

Reliability is always a concern when one witness testifies to prove the assertions of another. Illinois courts have not established a minimum standard for reliability of out-of-court statements admitted under the hearsay exception statutes. Even without a uniform standard, courts always consider the reliability of out-of-court statements. Statements that are more reliable carry more evidentiary value. The following factors typically add to or detract from reliability.

The first factor courts often consider when determining whether a child’s out-of-court statement is reliable is the circumstances under which the child made the statement. In In re A.P., the court relied heavily upon the fact that the child’s statements were spontaneous to hold that they were reliable enough to support a finding of abuse. Courts consider spontaneous statements to be much more reliable than those that are responses to questions. Prompting degrades the statements’ evidentiary value because children are extremely susceptible to suggestion and will perpetuate a fantasy if they think doing so will please an adult.

70. See id. at 652 (relying on the consistency of the child’s statements as well as her doctor’s testimony).
71. See id.
72. See, e.g., id. at 651 (“The totality of the circumstances surrounding the making of A.P.’s statements indicates that the statements were sufficiently reliable to be used to support a finding of abuse.”); Gilbert, 822 N.E.2d at 122 (“[T]he trial judge is presumed to have considered the time, content and circumstances under which the statement was made in determining the reliability of the statements.”); K.L.M., 496 N.E.2d at 1266 (“[T]his hearsay evidence bore a high likelihood of being reliable.”).
73. Many states have hearsay exception statutes similar to those in Illinois; courts in those states also emphasize reliability. See Linda D. Elrod & Timothy B. Walker, Family Law in the Fifty States, 27 Fam. L.Q. 515, 680–82 (1994).
75. A.P., 688 N.E.2d at 651 (“The totality of the circumstances surrounding the making of A.P.’s statements indicates that the statements were sufficiently reliable to be used to support a finding of abuse.”).
76. Some states with similar statutes preclude admission of statements made in response to any questioning or prompting. See Marks, supra note 13, at 222–25.
77. Id. at 222; see also Montoya, supra note 48, at 933 (indicating that children are highly suggestible).
Courts also consider the timing of the statements an important factor: statements the child made before an investigation commenced are typically considered more reliable. To combat bias concerns, some states allow admission of out-of-court statements made before an investigation commenced but refuse to admit statements made after allegations arose. Illinois does not follow that rule, and the Illinois hearsay exception statutes encompass any out-of-court statement by a child relating to abuse or neglect. Often, the child makes relevant statements in the course of an interview designed to investigate an allegation, in a psychological evaluation ordered by a court after allegations arose, or to a law enforcement officer. These statements are admissible under the hearsay exception statutes.

Another factor courts consider is the frequency with which the statements were made. Courts typically reason that repetition makes statements more reliable. Experts agree because children are unlikely to persist in telling a fabricated story. Repeated statements are only valuable, however, if they are repeated without leading or encouragement. Studies show that a child’s inaccurate description of an incident might develop over time in response to encouragement by an adult questioning him. Overall, when a child persists in repeating statements, courts generally consider the statements more reliable.

Consistency is another important factor courts consider when determining the reliability of a child’s statements. Statements can be consistent as to the details contained therein. They can also be consistent with respect to a child’s continued insistence that he has been abused. Courts rely heavily on the consistency of the child’s statements when determining whether a finding of abuse is war-

78. Marks, supra note 13, at 243-44.
79. Id.
82. See, e.g., Daria W. v. Bradley W., 738 N.E.2d 974, 977 (Ill. App. Ct. 2000) (relying on a court-appointed psychologist who questioned the child and later testified as to statements the child made in a counseling session).
83. Id.
84. See, e.g., In re A.P., 688 N.E.2d 642, 651 (Ill. 1997) (noting that the statements were “spontaneous, repeated and consistent”).
85. Yun, supra note 41, at 1751.
86. See Marks, supra note 13, at 244.
87. See id.; see also Montoya, supra note 48, at 933.
88. See, e.g., A.P., 688 N.E.2d at 651.
The accounts of abuse do not have to be exactly the same each time, but courts value general consistency. For example, in *Daria W. v. Bradley W.*, the court cited consistency as support for the child's statements despite the fact that "details of the occurrence varied.”

The age of the child is another factor that courts commonly consider to determine reliability. Some experts opine that children below a certain age are incapable of fabricating accounts of sexual abuse. In contrast, other experts assert that children of a young age are predisposed to fantasize and tell stories and, therefore, their accounts are not inherently reliable. Typically, courts doubt that a young child will fabricate abuse allegations because they simply do not know enough about sexual matters to do so.

Accuracy of the statements is a factor courts often mention when analyzing whether the child’s statements are reliable. A court’s accuracy analysis often depends on a child’s ability to describe the sexual anatomy of the alleged abuser, semen, or other sexual matters typically unknown to a child. Some courts have relied heavily on this evidence to support a finding of abuse. Courts typically state

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90. See A.P., 688 N.E.2d at 651 (“A.P.’s accounts of the abuse were consistent as to both the act and as to the identity of the abuser.”); *In re K.O.*, 782 N.E.2d 835, 844 (Ill. App. Ct. 2002) (“C.W.’s statements to Dorfman and Nelis that she was sexually abused by respondent were consistent as to both the act and the identity of the [abuser] . . . .”).

91. See, e.g., *Daria W.*, 738 N.E.2d at 979 (“Although details of the occurrence varied, her rendition of the specific act of abuse was consistent.”); see also Nancy E. Walker, *Forensic Interviews of Children: The Components of Scientific Validity and Legal Admissibility*, 65 LAW & CONTEMP. PROBS. 149, 158–59 (2002) (asserting that inconsistency is common for recollections by children but does not necessarily indicate fabrication).

92. *Daria W.*, 738 N.E.2d at 979; see also Walker, *supra* note 91, at 158.

93. See Walker, *supra* note 91, at 156–58 (noting that, because children’s brains are not fully developed, they have trouble distinguishing reality from fiction); Yun, *supra* note 41, at 1751 (indicating that some scholars argue that statements by young children are inherently unreliable due to a tendency to fantasize in early years).

94. See Yun, *supra* note 41, at 1751.

95. See id.

96. See, e.g., *In re K.L.M.*, 496 N.E.2d 1262, 1266 (Ill. App. Ct. 1986) (“She would have to have been a child of great, natural theatrical talent to have concocted such a tale and presented it as she did.”).


98. See *K.O.*, 782 N.E.2d at 844 (“An eight year old child would not have been able to describe semen unless she had seen it, which is unlikely unless the events C.W. described had actually taken place.”).

99. See *C.C.*, 586 N.E.2d at 503 (“Another highly probative fact was C.C.’s ability to describe semen.” (emphasis added)).
that children would be unable to describe sexual details unless they had suffered some form of abuse or inappropriate exposure.\textsuperscript{100} Illinois appellate courts took this view in both \textit{In re K.O.}\textsuperscript{101} and \textit{In re C.C.}\textsuperscript{102} two cases that relied on the accuracy of the children’s description of semen as proof that abuse occurred.

Courts also look to the number of witnesses testifying to the same statements. For example, multiple witnesses might observe the child discussing abuse with an examiner in an interview.\textsuperscript{103} Normally, duplicative evidence is inadmissible as irrelevant.\textsuperscript{104} However, more witnesses testifying to a child’s statements can provide different descriptions of those statements.\textsuperscript{105} They can also provide different perspectives on the child’s demeanor. These multiple perspectives can help the trier of fact get a fuller picture of what the child said and how she said it. Furthermore, testimony by multiple witnesses reduces the possibility that a hearsay witness is fabricating the story, which is one concern with hearsay evidence.\textsuperscript{106} This is particularly important when the hearsay witness is a parent, as prompting is always a concern when evaluating statements made by children.\textsuperscript{107} If the child said the same thing to two different people on different occasions, each person who heard the statements may testify. The two hearsay witnesses may not serve as independent corroboration for one another, but they can bolster one another’s credibility and show that the out-of-court statements are more reliable.

Coaching is an important consideration in determining the validity of any child abuse allegations.\textsuperscript{108} The risk of both intentional and unintentional coaching is high.\textsuperscript{109} The dangers associated with coaching

\begin{thebibliography}{9}
\bibitem{100} Id.
\bibitem{101} \textit{See K.O.}, 782 N.E.2d at 844 (holding that the child’s accurate description of semen was “highly probative”).
\bibitem{102} \textit{See C.C.}, 586 N.E.2d at 503 (stating that the child’s accusations were almost certainly true because he accurately described semen).
\bibitem{103} \textit{See In re Gilbert}, 822 N.E.2d 116, 119 (Ill. App. Ct. 2004) (involving a detective and DCFS worker who observed the victim interview through one-way glass).
\bibitem{104} \textit{Fed. R. Evid.} 403.
\bibitem{105} \textit{See Reilly, supra} note 14, at 427 (arguing that children alter their stories based on the bias of the person to whom they are speaking).
\bibitem{106} \textit{See Marks, supra} note 13, at 221 (“Hearsay testimony may be erroneous because it is based upon . . . an intentional falsification by either the declarant or the person to whom the statement was made.” (footnote omitted)).
\bibitem{107} \textit{See Reilly, supra} note 14, at 427.
\bibitem{108} \textit{Id.}
\bibitem{109} \textit{See Marks, supra} note 13, at 221–22; \textit{see also Walker, supra} note 91, at 158 (“For children, . . . information obtained from parents and other sources is “real” . . . .”) (quoting \textit{Debra A. Poole & Michael Lamb, Investigative Interviews of Children: A Guide for Helping Professionals} 45 (1998)).
\end{thebibliography}
are very real; see Marks, supra note 13, at 222. The court must evaluate the reliability of the out-of-court statements admitted under the hearsay exception statutes. The court decides how much evidentiary weight those statements receive as a result of their reliability. The reliability analysis, however, is only half of the story. Because the hearsay exception statutes specifically require that a finding of abuse cannot rest on out-of-court statements alone, the court must determine whether there is sufficient evidence to corroborate the statements.

2. Corroboration: The "Independent Evidence" Requirement

In determining a verdict in a sexual abuse case, the court considers the child's statements along with any outside evidence corroborating those statements. The hearsay exception statutes mandate that the court may not rest a finding of abuse on out-of-court statements alone. The amount and validity of the corroborating evidence is essential to the verdict. The Illinois Supreme Court defined corroboration in A.P. using a plain language approach. The essential aspect of the definition is that the corroborating evidence must be independent.

110. See Marks, supra note 13, at 222.
111. See id. at 223–24; see also Walker, supra note 91, at 158.
112. See Marks, supra note 13, at 222.
113. See Jee, supra note 49, at 561.
114. See Marks, supra note 13, at 224.
116. See 705 ILL. COMP. STAT. 405/2-18(4)(c) (2008) (“However, no such statement, if uncorroborated . . . shall be sufficient in itself to support a finding of abuse or neglect.”); 750 ILL. COMP. STAT. 5/606(e) (2008) (“No such statement, however, if uncorroborated . . . shall be sufficient in itself to support a finding of abuse or neglect.”).
118. Id.
Courts have sought to determine the parameters of the corroboration requirement, which states that "no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect." The term "corroborate" is not defined by any of the three hearsay exception statutes. In A.P., the Illinois Supreme Court reasoned that, because the term is not defined in the statutes, it is appropriate to "rely on its plain and ordinary meaning." As a starting point, the court cited the dictionary definition for "corroboration," which states, "To corroborate means to add weight or credibility to a thing by additional and confirming facts or evidence, and 'corroborating evidence' means evidence supplementary to that already given and tending to strengthen or confirm it."

The Illinois Supreme Court has stated that corroborating evidence must be independent evidence that makes it more probable than not that abuse occurred. The court's holding accords with the clear mandate in the hearsay exception statutes that an out-of-court statement cannot, "in itself," support a finding of abuse. In other words, some evidence outside the statement, standing on its own, must tend to confirm the facts alleged. This independent evidence framework is an important aspect of the corroboration requirement.

Corroborating evidence can be physical or circumstantial. Trial judges have discretion to admit any relevant evidence that is not unfairly prejudicial. Any admitted evidence can serve to corroborate the statements of a minor. The Illinois Supreme Court acknowledged that "[t]he form of corroboration will vary depending on the facts of each case." This interpretation recognizes the factual varia-

120. See A.P., 688 N.E.2d at 650.
121. Id.
122. Id. (quoting Black's Law Dictionary 344-45 (6th ed. 1990)).
123. Id.
124. See 705 Ill. Comp. Stat. 405/2-18(4)(c) ("However, no such statement, if uncorroborated . . . shall be sufficient in itself to support a finding of abuse or neglect." (emphasis added)); 750 Ill. Comp. Stat. 5/606(e) ("No such statement, however, if uncorroborated . . . shall be sufficient in itself to support a finding of abuse or neglect." (emphasis added)).
125. See A.P., 688 N.E.2d at 650.
126. Id.
127. Id.
128. See id. at 652.
129. See id. at 650.
130. Id.
tion from case-to-case and preserves the trial court’s discretion. The supreme court definitively established that, while the occurrence of abuse must be corroborated, the identity of the abuser need not be corroborated by independent evidence. The following types of evidence arise most often in civil sexual abuse cases to corroborate child hearsay statements.

Medical testing is often used in child sexual abuse cases. Pediatricians examine a child to look for evidence of trauma, scarring or bruising, physical abnormalities, or injuries consistent with sexual abuse. If a physician performs an examination, DNA matches can prove abuse. Physical evidence is not always available because sexual crimes against children are often not invasive and cause no physical damage. For this reason, courts must often rely on circumstantial evidence to corroborate out-of-court allegations.

Courts often entertain evidence of behavioral changes in a child as corroboration for abuse allegations. Typically, the child’s parent or caretaker will testify about changes in the child’s behavior and an expert will offer an opinion as to the meaning of those changes. Courts and commentators recognize the limitations of behavioral evidence. Sometimes, the same behavior can either prove or disprove abuse. For instance, in In re Brunken, an expert testified that a child who had suffered abuse by a parent would want to spend time with that parent. However, children who are not abused also want to spend time with their parents. Other types of behavioral changes are not always so ambiguous. When children have trouble in school, develop fears or phobias, become anxious or depressed, begin wetting

133. See, e.g., id. at 647 (relying in part on testimony from a pediatrician that the victim sustained vaginal injuries that were most likely caused by abuse).
134. See, e.g., id. at 646-47.
135. See Myers, supra note 14, at 7–9; see also Jessica D. Gabel, Probable Cause from Probable Bonds: A Genetic Tattle Tale Based on Familial DNA, 21 Hastings Women’s L.J. 3, 11–16 (2010) (discussing the process of matching perpetrators to DNA samples and calling DNA evidence the “gold standard” of proof).
136. See Reilly, supra note 14, at 426.
137. See id. at 435–37.
138. See, e.g., In re K.O., 782 N.E.2d 835, 844 (Ill. App. Ct. 2002) (citing testimony by the child’s caretaker that the child began wetting the bed, developed behavioral issues at school and home, and became fearful of men following the alleged abuse).
139. See Mason, supra note 14, at 402; see also Myers, supra note 14, at 25–31; Reilly, supra note 14, at 419.
141. See id.
the bed, regress in their development, or come to fear normal activities, a problem clearly exists.142 The issue then becomes whether the problem causing the changes is sexual abuse or another trauma in the child's life.143

Courts often look to the actions of the accused as well as those of the child.144 Prior convictions for sexual crimes or registration as a sex offender can be valuable corroboration.145 Evidence that the accused violated a court order can also serve as corroboration. Of course, this is circumstantial evidence, but it is valid because it may tend to show that abuse is more or less likely to have occurred.146 Further evidence that the accused has acted inappropriately absent the mandate of a court order can also serve as corroborative, albeit circumstantial, evidence. Courts have relied upon the reactions of an accused in response to allegations to either support or refute those allegations.147 Parties may also present witnesses who testify as to the nature of interactions between the accused and the child.148 For example, in Brunken, the accused's parents testified that they had never observed any inappropriate behavior by their son towards his child.149

The final important form of evidence courts rely on to corroborate out-of-court statements is expert testimony. Experts usually render opinions based on two factors: their interactions and observations of the child and their general experience in the field.150 Opinions can be general or specific to the child; the same expert may provide both.151

143. See Reilly, supra note 14, at 444. "[T]he same attributes observed in known victims of child sexual abuse may also be characteristic of a child who has suffered through a different trauma." Id. Particularly in divorce cases, the source of the trauma is often family discord as a result of the dissolution of the marriage. Id. Compounded with the higher incidence of false reporting in divorce cases, behavioral changes are particularly suspect in this context. See id.
144. See, e.g., In re K.O., 782 N.E.2d 835, 844 (Ill. App. Ct. 2002) ("[H]earsay testimony of C.W.'s sexual abuse was corroborated by respondent's indictment and conviction for predatory criminal sexual assault . . . and C.W.'s medical assessment . . ."); see also Myers, supra note 14, at 27.
145. K.O., 782 N.E.2d at 844.
146. See In re A.P., 688 N.E.2d 642, 650 (Ill. 1997) ("The form of corroboration will vary depending on the facts of each case and can include physical or circumstantial evidence.").
147. See In re Brunken, 487 N.E.2d 397, 400 (Ill. App. Ct. 1985) ("In House's opinion Barry's reactions were appropriate . . . . House expressed doubts whether the allegations against Barry were true.").
148. See, e.g., In re C.C., 586 N.E.2d 498, 502 (Ill. App. Ct. 1991) (considering testimony by the family's long-time pastor that he had never observed unusual behavior among family members); Brunken, 487 N.E.2d at 400 (allowing testimony of the respondent's parents that the victim never complained of abuse to them and that the victim behaved normally in their presence).
149. Brunken, 487 N.E.2d at 400.
151. Id.; see generally Myers, supra note 14, at 1.
Because abuse often occurs between family members and involves conflicting accusations, experts may be needed to intervene, evaluate a situation, and report to the court.\textsuperscript{152} They are also necessary for their capacity to decipher the words and behavior of the child.\textsuperscript{153} In cases that are factually complex, ongoing, or particularly difficult, courts can also appoint examiners or guardians \textit{ad litem} to conduct an investigation and offer an impartial recommendation based on the child's best interest.\textsuperscript{154} Experts can testify to the typical reaction of a child suffering abuse and compare that general testimony to the behavior of the specific child in the case.\textsuperscript{155}

As stated, the basic rules for applying the hearsay exception statutes have evolved largely through case law decided by the Illinois appellate courts. The above list describes the types of evidence that courts typically examine when adjudicating cases involving the hearsay exception statutes. Trial courts also typically consider basic indicators of reliability to determine how much weight to grant the out-of-court statements. Therefore, rulings in sexual abuse cases invoking the hearsay exception statutes involve two significant factors: reliability of out-of-court statements and corroborative evidence for those statements.

\section*{III. Analysis}

In a sexual abuse case, the court must wade through murky legal analysis that often results in uncertainty. One Illinois appellate court stated, "We have found no cases indicating what is sufficient corroboration under [a hearsay exception statute]."\textsuperscript{156} Courts need an established standard to ensure both consistency and accuracy of verdicts. This Comment focuses on the particular issues that trial judges face when they determine whether a child has been abused. The goal is to create a more concrete analytical framework that judges can apply in bench trials. To reach that goal, this Part proposes a new test that addresses how to analyze different types of corroborating evidence in accord with the hearsay exception statutes. The proposed test contains a bifurcated analysis that emphasizes the need to distinguish the reliability of a child's accusations from the corroboration for those accusations.

\begin{itemize}
\item \textsuperscript{152} See Reilly, \textit{supra} note 14, at 426.
\item \textsuperscript{153} Id. at 437.
\item \textsuperscript{154} See id. at 438–39.
\item \textsuperscript{155} See id. at 435–36.
\item \textsuperscript{156} \textit{In re Brunken}, 487 N.E.2d 397, 401 (Ill. App. Ct. 1985).
\end{itemize}
A. Balancing Risks in Sexual Abuse Cases

In the context of sexual abuse, the most obvious risk is that abuse will continue as a result of an incorrect judicial decision. However, a countervailing risk exists in every case: the risk that a child will be forever separated from a parent due to false allegations. The Illinois Supreme Court has recognized the state legislature's effort to protect children by enacting the hearsay exception statutes. It also recognized the interests of the accused by pointing out that courts must consider those interests "without severely diminishing the welfare interests of the minor." Every sexual abuse case is a balancing process.

Due to the serious nature of sexual abuse allegations, a court might be inclined to resolve doubts in favor of a finding that abuse occurred. It would then impose a restriction on the parental rights of the accused. Such a solution seems, at first blush, safer because it leaves no question that the accused will no longer abuse the child. However, it exposes the child to another serious risk: losing an important person in his life. As the court in Brunken stated, "Parent and child have an inherent and valuable right to each other's society." Because there is no uniform standard for adjudicating sexual abuse cases, courts are left to balance the risks without any structure.

B. Problems with Current Jurisprudence Involving the Hearsay Exception Statutes

1. Differentiating Corroboration from Reliability and the Independent Evidence Requirement

Illinois appellate courts have interpreted the corroboration requirement of the hearsay statutes differently; a consistent standard for analyzing the evidence is lacking. Compounding the problem is the fact that courts do not agree on how much corroboration is required or about what types of evidence can serve as corroboration. The Illinois Supreme Court case In re A.P. interpreted the hearsay exception statutes but failed to resolve the discrepancy between corroboration and reliability.

157. See generally Jennings, supra note 2, at 1A; see also Myers, supra note 14, at 4 ("[G]reat care must be taken to safeguard the innocent against false accusation.").
159. Id.
The lack of a corroboration standard creates problems because courts tend to conflate the concept of reliability with that of corroboration.\textsuperscript{162} Although reliability and corroboration are both important aspects of the final analysis in sexual abuse cases, they should remain separate. A child's out-of-court accusations are reliable if they are believable or trustworthy. Corroboration is independent evidence that supports the accusations. The statutes clearly require corroboration.

The hearsay exception statutes state that the court cannot rely on out-of-court statements alone to support a finding that abuse occurred.\textsuperscript{163} This Comment calls that framework the "independent evidence requirement." No matter how reliable a child's statement is, it cannot support a finding that abuse occurred if no independent evidence corroborates it.\textsuperscript{164} The relevant hearsay exception statutes both state that "no such statement, if uncorroborated . . . , shall be sufficient in itself to support a finding of abuse or neglect."\textsuperscript{165} The words "in itself" are a small but essential part of the corroboration requirement. They require that some evidence outside the statement confirm the facts alleged before a court can find that abuse occurred.\textsuperscript{166}

The Illinois Supreme Court echoed the independent evidence requirement in \textit{A.P.}. Using a plain-language approach to interpreting the hearsay exception statutes, the court sought to define the corroboration requirement.\textsuperscript{167} As a starting point, it cited the dictionary definition, which states, "'To corroborate' means to add weight or credibility to a thing by additional and confirming facts or evidence, and 'corroborating evidence' means evidence supplementary to that already given and tending to strengthen or confirm it."\textsuperscript{168} By relying on these definitions, the court solidified the independence requirement for corroborating evidence.\textsuperscript{169}

Courts do not always honor the independent evidence framework. They have found corroboration based on indicators of reliability contained within the child's out-of-court statements.\textsuperscript{170} For example, in

\begin{itemize}
\item 162. \textit{See, e.g., In re K.O.}, 782 N.E.2d 835, 844 (III. App. Ct. 2002) ("[T]he totality of the circumstances surrounding the making of C.W.'s statements indicates sufficient reliability to support a finding of abuse.").
\item 163. 705 ILL. COMP. STAT. 405/2-18(4)(c) (2008); 750 ILL. COMP. STAT. 5/606(e) (2008).
\item 164. \textit{See} 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
\item 165. 705 ILL. COMP. STAT. 405/2-18(4)(c) (emphasis added); \textit{accord} 750 ILL. COMP. STAT. 5/606(e).
\item 166. \textit{A.P.}, 688 N.E.2d at 650.
\item 167. \textit{id}.
\item 168. \textit{id}. (quoting BLACK'S LAW DICTIONARY 344–45 (6th ed. 1990)).
\item 169. \textit{See id}.
\end{itemize}
In re K.O., the child made statements accusing her father of sexual abuse.\textsuperscript{171} One of the factors that the court cited for corroboration was the child’s accurate description of semen.\textsuperscript{172} The court stated, “[T]he totality of the circumstances surrounding the making of [the child’s] statements indicates sufficient reliability to support a finding of abuse.”\textsuperscript{173} The court reached a similar result in In re C.C., noting that the accuracy of the description constituted a “highly probative fact.”\textsuperscript{174} The accuracy of a child’s statements makes her statements more reliable; it does not, however, provide corroboration for those statements. Holding otherwise ignores the statutory mandate that no statement “in itself” is sufficient to support a finding of abuse.\textsuperscript{175}

A recent appellate opinion, In re Alexis H., made the same mistake. In Alexis H., a man was accused of sexually abusing A.H., a young girl, and R.H., her brother.\textsuperscript{176} The court quoted A.P.’s interpretation of the hearsay exception statute, but the quote omitted one essential word: independent.\textsuperscript{177} The court then went on to affirm the trial court’s ruling that abuse occurred because the children “described the physical acts of sexual abuse committed . . . in a detailed fashion that would be unexpected of children of their age.”\textsuperscript{178}

In In re Gilbert, the court relied almost exclusively on the child’s out-of-court statements. The trial court held, and the appellate court affirmed, that a child’s father sexually abused her.\textsuperscript{179} The court cited the child’s young age as proof that she would not have the motive or means to fabricate her story.\textsuperscript{180} Because the appellate court found no evidence that the child fabricated her story, it upheld the trial court’s ruling that abuse occurred.\textsuperscript{181}

Unlike the Gilbert court, others have recognized that internal aspects of a child’s statement cannot corroborate that statement. For example, in In re Brunken, the State argued that the child’s statements were corroborated because they contained “internal consistence.”\textsuperscript{182} The court rejected that argument, holding that corroboration must

\textsuperscript{171} Id. at 839.
\textsuperscript{172} Id. at 844 (“Another highly probative fact was C.W.’s ability to describe semen.”).
\textsuperscript{173} Id.
\textsuperscript{175} 705 ILL. COMP. STAT. 405/2-18(4)(c) (2008); 750 ILL. COMP. STAT. 5/606(e) (2008).
\textsuperscript{176} In re Alexis H., 929 N.E.2d 552, 558 (Ill. App. Ct. 2010).
\textsuperscript{177} Id. at 568 (“[Corroborating evidence] . . . is ‘evidence that makes it more probable that a minor was abused or neglected.’” (quoting In re A.P., 668 N.E.2d 642, 650 (Ill. 1997))).
\textsuperscript{178} Id.
\textsuperscript{180} Id.
\textsuperscript{181} Id.
take the form of some independent evidence. These cases show that the problem is two-fold: courts are failing to honor the independent evidence requirement, and they are not approaching every case uniformly.

Though reliability should not be substituted for corroboration, the two concepts are not wholly unrelated. In C.C., for example, the appellate court's instinct to consider the accuracy of the child's description of semen was not erroneous. The court only erred by allowing the accuracy of the statement to serve as corroboration for that same statement. The corroborative evidence must be wholly independent from the statement at issue. A very reliable statement should require less corroboration because it carries more weight. Statements holding more weight have more evidentiary value than others. However, even the most reliable statement that is offered as hearsay evidence under the exceptions must be corroborated by evidence outside that statement to support a finding of abuse. To hold otherwise would be to ignore the corroboration requirement and the independent evidence framework completely.

2. Hearsay Evidence as Corroboration for Out-of-Court Statements

One problem that arises in cases involving the hearsay exception statutes is whether evidence that is itself hearsay can corroborate the child's statements. Courts have held that multiple hearsay witnesses cannot corroborate one another. In Brunken, the child's mother, a DCFS worker, and a counselor testified about statements the child made claiming abuse. The appellate court rejected the State's argument that the testimony of four different witnesses as to similar statements provided sufficient corroboration. The court based its decision on the definition of corroboration; it considered corroborative evidence to be any evidence that would make the facts alleged more probable. The court stated, "We do not believe that two or more witnesses' testimony as to what the child said renders it more

183. Id. at 401 (emphasis added).
186. 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
187. See 705 ILL. COMP. STAT. 405/2-18(4)(c); 750 ILL. COMP. STAT. 5/606(e).
189. Id. at 402–03.
190. Id. at 401 ("We have found no cases indicating what is sufficient corroboration under [the hearsay statute]. However, 'corroborate' has been defined as 'to add weight or credibility to a thing by additional and confirming facts or evidence.'" (quoting BLACK'S LAW DICTIONARY 414 (4th ed. 1951))).
probable that the matters allegedly asserted by [the child] were true."  

In contrast, other courts have allowed hearsay statements of multiple children to corroborate one another. In *K.O.*, two girls—K.O. and C.W.—lived with a man who was K.O.’s father and C.W.’s stepfather. The State accused the man of abusing C.W. At trial, neither child testified, but a detective testified to statements that C.W. made indicating that the stepfather abused her. A DCFS caseworker testified to statements that K.O. made describing sexual contact between the stepfather and C.W. The trial court found that C.W. was an abused minor, and the appellate court affirmed, stating that the allegations “were corroborated by K.O., who witnessed the abuse.” Similarly, an appellate court recently held that a trial court’s ruling that abuse occurred was proper because “the children’s statements of sexual abuse corroborated each other’s statements.” Therefore, the court allowed hearsay statements to corroborate other hearsay statements.

Courts also grapple with the issue of whether a psychologist’s expert testimony about what occurred in a victim’s interview can constitute corroboration. Experts can testify to their opinion based on their experience with the child in an interview. The problem is that the content of the interview constitutes hearsay itself; therefore, it is illogical to allow this type of evidence to serve as independent corroboration of the other hearsay evidence. The result has been that courts split as to their valuation of interview evidence.

For instance, in *C.C.*, the court allowed testimony that the child victim correctly demonstrated the abuse he suffered on anatomically correct dolls to serve as corroboration of the child’s statements that such
abuse occurred. In re Alba reached the opposite result. In that case, the child created a drawing depicting a sexual scene between herself and her father in an interview. The trial court relied on the drawing to corroborate the child’s out-of-court statements, but the appellate court reversed the trial court’s ruling and held that “[c]learly, evidence which is in itself hearsay cannot provide the corroboration required by the statute.” Therefore, the court concluded, corroborating evidence was completely lacking and no grounds existed to support a finding of abuse. A child’s description of abuse, whether accompanied by demonstration with dolls or not, is an out-of-court statement and cannot provide corroboration for other out-of-court statements.

Courts should recognize that statements accompanying play in a counseling session or interview do not constitute independent evidence that makes those accusations more likely to be true. Allowing hearsay evidence to corroborate a child’s out-of-court statements fails to address the core issue with which the corroboration requirement is concerned: namely, that the out-of-court statements alone are too unreliable to support a finding of abuse. Therefore, courts should no longer allow hearsay evidence to corroborate a child’s out-of-court statements.


A second inconsistency in sexual abuse cases involves the varying approaches courts take with regard to expert testimony. Courts take differing views about the evidentiary value of an expert’s opinion. Expert testimony and opinion evidence are complicated but important aspects of many sexual abuse cases. Although expert testimony is

201. C.C., 586 N.E.2d at 503 (“The children’s testimony in the instant case was corroborated by the fact that . . . C.C.’s social worker, Jeanette Jungst, observed C.C. playing with anatomically correct puppets where he recreated the secret game he played with his father . . . ”).
203. Id.
204. Id.
205. Id. at 1118–19.
often useful, it is also somewhat dangerous.\textsuperscript{209} Because the truth in sexual abuse cases is difficult to decipher and child psychology is very complicated, courts must use this type of evidence.\textsuperscript{210} However, they should use caution when relying on expert testimony as determinative.\textsuperscript{211} Expert opinion is simply too vague and too unreliable to completely support a finding that abuse has occurred.\textsuperscript{212} Expert testimony is inexact because no two scientists agree about how sexual abuse affects a child, and no two children react the same way to abuse.\textsuperscript{213} Additionally, "there is no psychological test that can tell whether a child was sexually abused."\textsuperscript{214}

Some courts have recognized the imprecise nature of expert testimony and have accounted for it in their consideration of cases,\textsuperscript{215} while other courts have allowed for findings of abuse based solely on out-of-court statements corroborated by the opinion of an expert.\textsuperscript{216} This disparate treatment of expert testimony should be resolved in favor of downplaying the significance of expert testimony because of its inherent unreliability.\textsuperscript{217}

Some courts have recognized the dangers of relying on expert opinion testimony.\textsuperscript{218} In \textit{Brunken}, the only corroborating evidence on the record was an expert's testimony.\textsuperscript{219} The State argued that the victim's desire to see her father was behavior characteristic of an abused child and that his denial that abuse had occurred was characteristic of an abuser.\textsuperscript{220} A DCFS worker stated that children who are abused by parents usually desire to spend time with their abusers.\textsuperscript{221} The appellate court recognized that the factual support for the child's statements was "weak."\textsuperscript{222} The court correctly concluded that there was

\begin{itemize}
  \item \textsuperscript{209} See generally Reilly, supra note 14, at 419.
  \item \textsuperscript{210} See id. at 442–43.
  \item \textsuperscript{211} See generally id. at 419.
  \item \textsuperscript{212} See Myers, supra note 14, at 28; see generally DeSarbo, supra note 208, at 276.
  \item \textsuperscript{213} See Reilly, supra note 14, at 436.
  \item \textsuperscript{214} Myers, supra note 14, at 28.
  \item \textsuperscript{216} See, e.g., \textit{In re C.C.}, 586 N.E.2d 498, 504 (Ill. App. Ct. 1991) ("Based on the testimony of the boys' case workers, teachers, [and] doctors . . . it was more likely than not that the father sexually abused his children.").
  \item \textsuperscript{217} See Myers, supra note 14, at 37–39 (opining that many psychologists rely only on what the child told them and that therefore these experts can become nothing more than an authority on whether the child is telling the truth).
  \item \textsuperscript{218} See \textit{Brunken}, 487 N.E.2d at 401.
  \item \textsuperscript{219} Id. at 400.
  \item \textsuperscript{220} Id.
  \item \textsuperscript{221} Id.
  \item \textsuperscript{222} Id. at 402.
\end{itemize}
not sufficient corroboration to prove that it was more likely than not that abuse occurred.\textsuperscript{223}

C. A Proposed Two-Part Analysis for Deciding Cases Involving Out-of-Court Statements

To allow courts to duly consider both the reliability of the hearsay statements and the corroborative evidence, the Illinois Supreme Court should adopt a two-part analysis. Both considerations are important and courts should not conflate them. Separating the two parts ensures that trial courts require independent corroborative evidence.\textsuperscript{224} A description of the proposed test and how courts should apply it follows.

After trial, when all the evidence is on the record, the court begins its analysis. The first part of the analysis considers the reliability of the out-of-court statements. The court should consider the following factors: (1) the circumstances under which the statements were made; (2) the frequency of the statements; (3) the consistency of the child's account; (4) the age of the child; (5) the accuracy of the child's statements; (6) how many witnesses testified to the statements; and (7) the possibility that a parent coached the child. Courts are considering these factors already, but a structured test can formalize the process of considering reliability while ensuring that reliability does not serve as a substitute for the corroboration requirement.

After it has thoroughly considered the reliability factors, the court can address the corroboration issue. The corroborative evidence, in conjunction with the out-of-court statements, must be sufficient to prove that abuse occurred by a preponderance of the evidence.\textsuperscript{225} To decide whether there is sufficient corroboration, the court should consider the following factors: (1) any medical or forensic tests finding physical evidence; (2) behavioral changes in the child; (3) evidence that the accused violated a court order; (4) evidence that the accused acted improperly absent a court order; and (5) an expert opinion that the child has likely been abused. Importantly, accuracy of a child's description of anatomy or semen is part of the reliability analysis and

\textsuperscript{223} Id. at 403.

\textsuperscript{224} 705 ILL. COMP. STAT. 405/2-18(4)(c) (2008); 750 ILL. COMP. STAT. 5/606(e) (2008). The hearsay exception statute contained in the Illinois Code of Civil Procedure already mandates a two-prong analysis for admitting out-of-court statements in abuse cases. See 735 ILL. COMP. STAT. 5/8-2601(a)–(b) (2008). Under this statute, the judge must first conduct a hearing to determine whether the out-of-court statements are reliable. Id. If the judge finds the statements sufficiently reliable, the judge may admit them and the jury weighs their credibility. Id.

\textsuperscript{225} In re A.P., 688 N.E.2d 642, 652 (Ill. 1997).
not the corroboration analysis; aspects of the statements themselves cannot serve to corroborate those same statements.

After considering each step separately, the court should determine whether abuse occurred based on a totality of the evidence. At that point, the court balances the two prongs of the test. A strong showing of reliability will lead to a lesser requirement for corroboration. Evidence that statements are not highly reliable will lead to a heightened standard for corroboration. Even if the statements are so unreliable that they have no probative value whatsoever, a strong showing of corroboration can support a finding that abuse occurred. Importantly, there must be some showing of corroboration in all cases because the hearsay exception statutes mandate the corroboration requirement.226 It is essential that courts do not disregard the corroboration requirement or substitute reliability of statements for corroboration in light of the independent evidence framework.227

1. Prong One: Reliability of Out-of-Court Statements

Many factors can contribute to the reliability of a child's statements. Courts must and do consider the weight they give to the out-of-court statements in the same way they evaluate the credibility of a live witness.228 Each factor included in the test can increase or decrease the reliability of the statements.229 Some factors carry more weight than others. A discussion of the factors and the way in which courts should analyze them follows.

Possibly the most significant factor for reliability is the circumstances under which the out-of-court statements were made. Spontaneity is a major aspect of this factor.230 Statements are more reliable when made without prompting because children are extremely susceptible to suggestion from an adult.231 A child might answer a question about abuse affirmatively merely because he believes that the adult

227. See A.P., 688 N.E.2d at 650.
228. See In re Gilbert, 822 N.E.2d 116, 122 (Ill. App. Ct. 2004) ("[T]he trial judge is presumed to have considered the time, content and circumstances under which the statement was made in determining the reliability of the statements.").
229. See A.P., 688 N.E.2d at 651 (identifying several factors that made a child's statements reliable, including that they were consistent, were not made in response to any question, were repeated, were spontaneous, and consistently identified the same abuser and described the same abuse).
230. See Walker, supra note 91, at 167 (stating that a child's spontaneous statements are typically more accurate).
231. See Montoya, supra note 48, at 933; Yun, supra note 41, at 1752 ("Children are susceptible to leading questions and often tailor their replies to appease the examining attorney." (footnotes omitted)).
wants to hear that answer. But because children are extremely susceptible to suggestion, a statement made without any questioning or encouragement is the most reliable.

Repetition is the second factor in the reliability prong of the proposed test. The more often a child repeats a statement, the more likely that statement is true. Children are not inclined to persist in telling the same lie without encouragement. If a child is adamant about suffering specific abuse or is willing to repeat the same story, his statements are more reliable. Repetition is not always genuine, however, because as soon as an adult suspects abuse has occurred, the adult might instinctively encourage the child to repeat the story or question the child further, leading the child to repeat a false statement. To combat this, Florida endeavors to admit only out-of-court statements that a child makes in one interview; Rhode Island allows admission only of statements made shortly after the alleged abuse occurred. Illinois has not adopted such a rule and allows for admission of statements made at any time. Even under this rule, courts should keep in mind that if a child repeats an accusation without prompting, the probative value will be higher than if he repeats the accusation in response to investigatory questions.

Consistency of the out-of-court statements is the third factor in the proposed test. Consistent statements are more reliable. A child's statements are consistent if the details of his story are substantially similar each time he makes a statement. Courts often focus on the consistency of a child's statements to prove that they are reliable. As with any witness, a child is more likely to change details of his story if that story is untrue. Consistency is an important factor; however, courts must take care to avoid assuming that consistent accounts

234. Yun, supra note 41, at 1751 (“It is highly unlikely that children persist in lying to their parents or other figures of authority about sex abuse.” (footnote omitted)).
235. Id.
236. Id.
237. Marks, supra note 13, at 222–23.
238. See Jee, supra note 49, at 579, 583.
240. See Reilly, supra note 14, at 427.
241. See Yun, supra note 41, at 1751.
242. See Daria W. v. Bradley W., 738 N.E.2d 974, 979 (Ill. App. Ct. 2000) (“Although details of the occurrence varied, her rendition of the specific act of abuse was consistent.”).
243. Id.; see also In re K.O., 782 N.E.2d 835, 844 (Ill. App. Ct. 2002) (“C.W.'s statements... that she was sexually abused by respondent were consistent as to both the act and the identity of the [abuser]...’'”).
are true while inconsistent stories are not. Some experts opine that a child who is abused is more likely to change his story out of confusion or fear. Conversely, a child is certainly capable of repeating the same false allegations. Although inconsistencies do not invalidate an accusation, they weigh on reliability. Finally, minor inconsistencies do not prove that a child's statements are fabricated. Courts should overlook minor inconsistencies more for children than they do for adults because a child's memory is not as focused as an adult's memory.

Age is the fourth reliability factor under the proposed test. Generally, as a child's age increases, the reliability of his statements increases; as a child's brain develops, that child gains a better grasp on reality and is less susceptible to fantasy, prompting, or memory loss. Some courts have suggested that young children cannot fabricate allegations of sexual abuse because they have no knowledge of sexual matters. This view is oversimplified, however, because studies show that children can pick up on sexual matters easily. Illinois courts generally put too much stock in the belief that a young child is unable to lie or is unfamiliar with sexual matters. For instance, in In re K.L.M., the court stated, "[The victim] would have been most unlikely to describe semen unless she had seen it, and it would have been unlikely she had seen it unless the events she related had actually taken place." Finally, when a court considers the age factor, it should assign more weight to statements by older children because suggestibility is a bigger problem for younger children.

Accuracy of the child's description is the next factor under the proposed test; increased accuracy means increased reliability. When a child accurately describes semen or an adult's anatomy, this knowledge is significant and should speak strongly in favor of reliability.
However, this evidence is not conclusive. Children are unlikely to learn about sexual matters without inappropriate exposure, but they might gain such knowledge from the media or from an adult questioning them about abuse.\footnote{256 See Reilly, supra note 14, at 427.}

The number of hearsay witnesses is the sixth factor indicating reliability under the proposed test. When more than one witness testifies that a child made a statement out of court, that statement is more reliable. If a parent is the hearsay witness, others testifying to the same statement can combat the possibility that the parent fabricated the allegations or coached the child. Multiple witnesses can increase the weight of the out-of-court statements. Of course, both witnesses could be lying, could have coached the child, or could have heard the same fantasized accusation.\footnote{257 See Yun, supra note 41, at 1751-52 (noting that some experts believe there is a “well-established tendency of children to fantasize and tell stories”).} Therefore, courts should give statements more weight when multiple witnesses hear them, but this factor is not determinative.

Coaching is the final reliability factor. Courts should always consider the possibility that a child has been coached by a parent. This is an extremely important consideration because the potential for coaching is high in sexual abuse cases.\footnote{258 See Marks, supra note 13, at 221-24.} Courts should particularly consider this factor in sexual abuse cases that arise in conjunction with a divorce or custody action because false allegations are much more common in that context.\footnote{259 See Rugani, supra note 26, at 871-72.} Courts should always consider coaching, but it is less likely to have occurred in cases that do not involve a custody battle.\footnote{260 Id.}

The above factors comprise the reliability prong of the proposed test. Courts evaluating statements admitted under the hearsay exception statutes should consider the reliability of the statements before considering whether they are sufficiently corroborated. After the court determines how much weight to give the statements standing alone, the analysis of those statements in conjunction with the other evidence will be more effective. After considering reliability, the court moves on to the corroboration prong of the test.
2. Prong Two: Corroboration and the Value of Different Forms of Independent Evidence

The second prong of the test formalizes the corroboration analysis. At this point in the analysis, the court examines all evidence outside the out-of-court statements. The second prong incorporates several factors, which represent the typical forms of corroborative evidence offered in sexual abuse cases. Corroborating evidence can be physical or circumstantial. Some types of corroborating evidence are more probative than others. A discussion of the corroboration factors and their value for supporting a finding of abuse follows.

The first factor is medical and forensic test results. Medical and forensic tests revealing physical evidence are one of the best types of corroborating evidence. These tests constitute direct evidence, are not subject to interpretation, and are not based on a subjective opinion. If a child’s medical exam reveals injuries consistent with sexual abuse, it is highly probative. This evidence can also take the form of a DNA match or a positive result of a sexually transmitted disease test on the child. Out-of-court accusations by a child plus medical evidence should usually be sufficient to support a finding of abuse because medical evidence is compelling. DNA evidence found on the child that matches the accused is the most telling and is strong evidence that abuse occurred.

The second corroboration factor concerns behavioral abnormalities in the child. Case law shows that courts often rely on evidence of a child’s behavior to corroborate allegations of abuse. Courts should certainly consider this evidence when determining whether corroboration exists but should not assign it as much weight as they assign physical evidence. Behavioral reactions to abuse can vary widely from child to child, and psychology is not an exact science; therefore, behavioral evidence is helpful but rarely definitive. Additionally, other factors besides abuse might be influencing the child’s behavior. A child may be experiencing emotional trauma because his parents are divorcing or because he is involved in court proceedings. Not-

262. See id.
263. See Myers, supra note 14, at 9–11.
264. See Reilly, supra note 14, at 432–34.
265. Id. at 436.
266. See Mason, supra note 18, at 402.
267. Reilly, supra note 14, at 442.
268. See id.
269. Id. at 444 (“[T]he same attributes observed in known victims of child sexual abuse may also be characteristic of a child who has suffered through a different trauma.”).
withstanding these problems, courts must often consider evidence of behavior. It can be probative provided that the court takes its shortcomings into account and avoids giving it too much weight. Behavior is probably most helpful when considered in the context of a timeline; for instance, dramatic behavioral changes or regression in development can be probative evidence of abuse.\(^\text{270}\) Specific examples of behavioral changes include sexualized behavior, withdrawal, depression, hypervigilance, and anxiety.\(^\text{271}\)

The third form of evidence courts should consider is the behavior of the accused. Evidence that the accused has a prior conviction for a sexual crime is significant. Courts should also consider whether the accused has violated a previously imposed court order. Such a violation shows that the accused has broken judicially set boundaries. Inappropriate actions by an accused not subject to a court order are also probative, although they are less helpful. Without a clearly drawn line to show what is and is not appropriate, a court is left to determine for itself whether an accused acted improperly. This is a discretionary and less certain method. Some jurisdictions examine the mental or emotional state of the accused.\(^\text{272}\) This factor encompasses that type of evidence. Courts should not allow evidence of improper behavior by the accused to determine the outcome of a case completely because it is extremely circumstantial in nature. However, this evidence can tend to show that the occurrence of abuse or identity of the abuser is more or less likely.

The final form of corroborating evidence a court examines under the proposed test is expert testimony. Experts often play an important role in child sexual abuse cases.\(^\text{273}\) However, courts have historically relied too heavily on the opinion of an expert in determining that a child has been abused.\(^\text{274}\) Out-of-court statements plus an expert's opinion should rarely be enough to support a finding of abuse. Expert opinions are not reliable because child psychology is extremely complicated and a perfect answer is impossible to reach.\(^\text{275}\) Experts often disagree as to the meaning of the same behavior in a child.\(^\text{276}\)

\(^{270}\) Myers, supra note 14, at 25–26.

\(^{271}\) Reilly, supra note 14, at 436; see also Mason, supra note 18, at 402 (noting the typical characteristics of sexually abused children).

\(^{272}\) Reilly, supra note 14, at 433.

\(^{273}\) See id. at 420.

\(^{274}\) See, e.g., In re Alba, 540 N.E.2d 1116, 1118 (Ill. App. Ct. 1989) (overturning a trial court's ruling that a father abused his child when the only evidence presented at trial was out-of-court statements and expert testimony).

\(^{275}\) Reilly, supra note 14, at 442.

\(^{276}\) Further, one commentator indicates that experts might tailor their explanation of child abuse syndrome to suit the child at issue. Mason, supra note 18, at 402.
example, some experts opine that retraction, delayed reporting, and inconsistencies are typical in abused children, while others assert the opposite.\textsuperscript{277} Courts should not rest the outcome of the case on the opinion of a psychology expert because too many variables affect a child’s psychology.\textsuperscript{278} Additionally, expert witnesses often use criteria designed for \textit{treatment} of children known to have suffered abuse—rather than criteria designed to \textit{diagnose} abuse—to corroborate a child’s allegations.\textsuperscript{279}

The above discussion summarizes the essential aspects of each prong of the proposed test. Neither list of factors is exhaustive. Each case will have different facts and will include different forms of evidence.\textsuperscript{280} The proposed test merely reflects the types of evidence and indicators of reliability seen most commonly in sexual abuse cases.\textsuperscript{281} Of course, the trial court retains its capacity to weigh the credibility of witnesses and evidence.\textsuperscript{282} The proposed test incorporates the reliability factors and corroborative evidence that courts must consider, while ensuring a structured analysis that prevents confusion. The test relies on a bifurcated analysis that provides guidance without stripping the judge of her discretion. The remainder of this Comment shows why the proposed test is a necessary solution to a serious problem.

\section*{IV. Impact}

Without a standardized analysis, courts will continue to make judgments without engaging in an in-depth analysis of the facts. The risk that courts will find that abuse occurred “just in case” the allegations are true will go unchecked. The proposed test will create consistency among Illinois courts and lead to more uniform verdicts. It will protect children above any other party involved in a sexual abuse case.

\subsection*{A. Preponderance, Not Presumption: Weighing the Evidence Fairly and Thoroughly Under the Proposed Test}

The proposed test will combat any inclination of the courts to determine that a defendant is guilty of sexual abuse when a case presents a

\begin{footnotesize}
\textsuperscript{277} Id.
\textsuperscript{278} Id. at 442-45.
\textsuperscript{279} Id. at 441; see also Mason, \textit{supra} note 18, at 402.
\textsuperscript{280} See \textit{In re Brunken}, 487 N.E.2d 397, 401 (Ill. App. Ct. 1985) (“What facts or evidence will serve as confirming or corroborative facts will necessarily vary depending on the facts to be corroborated.”).
\textsuperscript{282} \textit{In re A.P.}, 688 N.E.2d 642, 652 (Ill. 1997) (“The circuit court [is] in the best position to determine the credibility and weight of the witnesses’ testimony.”).
\end{footnotesize}
close question. Cases of sexual abuse in which a minor victim's statements constitute evidence can be far more complex than they initially seem. An assumption that most allegations of sexual abuse are founded is far from accurate. Some experts estimate that, in cases coinciding with a divorce or custody dispute, allegations of child sexual abuse are unfounded in 20% of cases. Weighing evidence in favor of an accuser does nothing to acknowledge that fact and does nothing to reduce the risk that this statistic illustrates. The current approach requires trial judges to determine final verdicts without guidance and based solely on discretion; the incentive to incline verdicts toward finding that abuse occurred is real because it might seem like the safer approach.

The proposed test, by setting up an established standard, both provides comfort for a judge and ensures a full and fair legal analysis of the evidence. In Alba, the reversed trial court ruled that the defendant committed the alleged abuse based solely on the child's out-of-court statements and a vague expert opinion. Under the proposed test, the risk of this situation recurring is far less likely. Firstly, the judge will know not to reach a finding merely because out-of-court statements are reliable and will recognize the importance of the corroboration requirement because the test requires him to consider both separately. Secondly, under the proposed test, the judge will recognize that expert testimony is merely one small piece of the list of factors to consider and should not be conclusive.

B. Structure Meets Discretion: Consistency of Verdicts Under the Proposed Test

It is essential that verdicts are determined properly at the trial level because the standard of review on appeal is deferential. An appellate court will not overturn a verdict unless it is “contrary to the manifest weight of the evidence,” a highly deferential standard of review. Wrongfully convicted defendants face an uphill battle, assuming they can afford to go through the appeals process. The amount of power

283. Marks, supra note 13, at 224; see also Jee, supra note 49, at 566 (reporting that as many as 65% of “reported sexual abuse cases are estimated to be unfounded” (footnote omitted)).
284. Marks, supra note 13, at 224.
285. Alba, 540 N.E.2d at 1118.
286. See In re Gilbert, 822 N.E.2d 116, 130 (Ill. App. Ct. 2004) (Reid, J., dissenting) (“I believe the trial court improperly determined that the hearsay statements in question had been corroborated. The trial court made this erroneous determination because it only relied on further hearsay to corroborate the original hearsay statements.”).
287. A.P., 688 N.E.2d at 652.
vested in the trial court is necessary, but it increases the need to ensure verdicts are accurate the first time. The proposed test accounts for the need to reach a correct ruling at trial and makes doing so possible. The proposed test will have two important benefits at the trial level: it will increase the number of correct rulings and ensure consistency of verdicts from case to case and from court to court.

The proposed test will increase correct rulings because the rulings will be based on a fair and thorough analysis. Under the current law, judges rely on their own judgment and their own standards because there is no uniform formula for deciding sexual abuse cases. Providing a uniform formula will help judges understand the value of different types of evidence more thoroughly. It is unrealistic to expect every judge to do independent research to discover the value of each form of evidence. A codified test, however, provides that information for them because it lays out and explains the different forms of evidence. The uniform test will also ensure that the analysis is exhaustive in every case. The danger that judges will ignore, or consider only briefly, relevant evidence is greatly reduced if they follow the step-by-step procedure under the proposed test. The proposed test guarantees that the court will consider all evidence and will be empowered to make an informed decision as to how much weight each piece of evidence deserves.

The proposed test will ensure consistency because all courts will conduct the same analysis. The facts of each case will necessarily differ; however, the proposed test is flexible enough to apply in varying fact patterns. The uniform analysis will provide a guide to the courts that is relevant for any situation presented. It will also lead to unanimity among courts about how to determine whether out-of-court statements are reliable and how much weight to give the statements themselves. Most importantly, the proposed test will prevent courts from conflating reliability and corroboration. Because the system of analysis is bifurcated, completely separating the reliability analysis from the corroboration analysis, courts must consider the two prongs individually and will avoid the error of basing their verdicts on reliability alone.

288. The rule that the trial court is “in the best position to determine the credibility and weight of the witnesses’ testimony and to resolve conflicts in their testimony because” it has “the opportunity to observe their demeanor and conduct” is well established. Id.

289. See, e.g., Gilbert, 822 N.E.2d at 131 (Reid, J., dissenting) (“[T]he trial court failed to adequately consider Bradley’s allegations that before their divorce, Lynette had threatened to use his family history of sexual abuse . . . against him with regards to the custody of their children.”).
The results of sexual abuse cases involving children are too important to leave to chance. The legislature enacted the hearsay exception statutes to provide heightened protection to child victims of sexual abuse. Failing to provide an adequate way to utilize those protections in practice does a disservice to child victims and accused parties. Although stricter application of evidentiary standards in sexual abuse cases might appear, at first blush, to benefit only defendants, the opposite is true. The function of the courts must be to seek out truth in potentially abusive situations, particularly those involving families. The discrepancies among cases reveal that courts are applying evidentiary standards differently and that they often conflate a reliability analysis with the corroboration requirement. The proposed test will provide more protection for children because it empowers courts to truly find their best interests. Certainly, when a child suffers abuse, removal from the abusive situation is in his best interest. However, automatic removal from any suspicious situation is not in his best interest. The proposed test provides children the lengthy and thorough investigations that their cases deserve.

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