

CORROBORATION OF A CHILD'S OUT OF COURT STATEMENTS

(Caseworker Training)

- Corroboration-defn.: evidence which tends to support a statement, theory, or finding; confirmation.
- Pursuant to Family Court Act § 1046(a)(6) previous statements made by the child relating to allegations of abuse or neglect shall be admissible in evidence, but if *uncorroborated*, such statements shall not be sufficient to make a fact-finding of abuse or neglect. Any other evidence tending to support the reliability of the previous statements . . . shall be sufficient corroboration. The testimony of the child shall not be necessary to make a fact-finding of abuse or neglect.
- A relatively low degree of corroborative evidence is sufficient to meet this threshold, and the reliability of the corroboration, as well as issues of credibility, are matters entrusted to the sound discretion of Family Court. *Matter of Kimberly Z. [Jason Z.]*, 88 A.D.39 1181, 1182 [2011], *internal citations omitted*.
- The standard of proof is preponderance of the evidence.

What may constitute corroboration?

- Observations of marks or bruises
 - e.g. hand-print consistent with child's statement that they were slapped.
- Unusual behavior of the child at the time of the act of abuse/neglect.
 - e.g. child flees the home in the middle of the night to seek help from a neighbor.
- Uncharacteristic behavior subsequent to the incident of abuse/neglect.
 - e.g. child develops anxiety/depression after act of abuse/neglect, no other reason for anxiety/depression identified.
 - e.g. child has age-inappropriate knowledge of adult subjects (could be about sex, drugs, etc.)
 - If the child is seeking medical/mental health care following the act of abuse/neglect. Likely you will need a medical release.

- Cross-corroboration by statements of other children.
 - e.g. Child 1 and Child 2, interviewed *separately*, give similar accounts of what happened. Can be talking about a specific event or a general course of conduct.
 - Details may be important. This is case specific.
- Medical records can corroborate in 2 ways:
 - Diagnosis contained in the medical records are, in themselves, corroborative.
 - E.g. physical injuries where NAT R/O
 - E.g. findings consistent with sex abuse
 - Statements made for the purposes of diagnosis or treatment. → This one is tricky. If a child makes statements pertaining to abuse/neglect, consult with Legal about them.
- 9-1-1 calls/statements made to law enforcement or others
 - If made contemporaneous with the act of abuse/neglect, may be corroboration.
 - e.g. Child on the phone with 9-1-1 says “My dad is choking my mom!”
- Consistency of the child’s out-of-court statements pertaining to abuse/neglect.
 - This is another tricky one. While the Courts have suggested that some degree of corroboration can be found in the consistency of the out of Court statements, they also note that mere repetition of an accusation, by itself, is NOT corroboration.
 - Is there consistency b/c it’s true? Or was the child coached?
 - Look at whether the child’s is talking in terms that are appropriate for their age.
 - e.g. Child’s repeated statements that “Dad touched him inappropriately” was found to be mere repetition. Child offered little detail re: dates/times/places/acts & Court notes parents were in the middle of a heated custody case.