

**To: New Jersey Law Revision Commission**  
**From: John Cannel**  
**Re: Hearsay Evidence in Child Abuse and Neglect Proceedings**  
**Date: November 8, 2019**

## **M E M O R A N D U M**

We have not received any additional responses to our outreach after the September meeting. The Tentative Report recommended change to existing law to clarify that the hearsay exception applied to child abuse and neglect proceedings and not to proceedings to terminate parental rights. No one had a problem with that recommendation. The Tentative Report also recommended a change in the Commission's Final Report to apply the hearsay exception to child abuse and neglect proceedings and to proceedings in regard to children in need of services but not to proceedings to terminate parental rights. The controversial issue is allowing the hearsay exception in child in need of services matters. "Child in need of services" is basically a new category. It allows all the remedies available after a child abuse or neglect proceeding but without a finding of fault in the parents. It was created in a Supreme Court opinion to form a basis for the government to provide necessary services without stigmatizing the parents for causing the need.

Commissioner Cornwell disagreed with applying hearsay exception to "child in need of services," correctly noting that many of the available dispositions involve substantial interference with parent child relationship. However, child abuse and neglect proceedings can result in all the same dispositions as well the legal and stigmatizing effects of the child abuse or neglect finding. If the issues are too important to allow a finding based on hearsay in child in need of services, they are certainly more important and too important to allow hearsay in child abuse and neglect proceedings. If it is impractical to require testimony from an expert in one kind of proceeding it is also impractical in the other. Logic would dictate that hearsay should be allowed in neither or both proceedings. But as was carved on one of the entrances of the law school I attended, "The life of the law has not been logic; it has been experience." We cannot remove the hearsay exception from child abuse and neglect proceedings; it has been used and relied upon for a long time. If we have qualms about the merit of the exception and do not wish to extend it, that option is open. The category of "child in need of services" is basically new, and there is no history one way or the other on use of hearsay.