

# Issues Involving Child Witnesses, Statements of Children and Confrontation

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# Four Primary Issues

1. FRE 404/ FRE 414 Character
2. FRE 702: Use of Experts
3. FRE 801-7: Hearsay and the Confrontation Clause
4. FRE 601/ FRE 603: Competency and Oath

# Character Evidence

- FRE 404(b): Other Act: Traditional FRE 404(b) purposes or to show propensity for unusual or abnormal sexual relations
- FRE 414: Evidence of Similar Crimes in Child Molestation Cases
- FRE 415: Evidence in Civil Cases concerning Sexual Assault or Child Molestation
- Potential Conflict in Michigan CJI2nd

# FRE 702: Experts

- FRE 702 and Daubert v. Merrell Dow 509 U.S. 579 (1993)
- New formula: Qualifications + (relevance + reliability) = admissibility
- Types of Testimony: PTSD, Rape Trauma Syndrome, Child Abuse Accommodation Syndrome, Medical testimony from treating physician or rape trauma expert
- Problem: Vouching for the Witness

# Hearsay and Confrontation

- Hearsay
  - Non-hearsay purpose
  - Hearsay Exclusions
  - Hearsay Exceptions
  - Hearsay and Confrontation Clause
    - Issues:
      - Testimonial v. Non-testimonial
      - The “emergency” exception
      - Governmental v. non-governmental
      - State Tender Years Exceptions: No federal equivalent
      - State Statutes which permit child’s recorded statements

# Competency and Oath

- FRE 601: All witnesses including children competent. Burden rests with challenger
- FRE 603: Oath
- *Wheeler v. United States* 159 U.S. 523 (1895)
  - Child's capacity and intelligence
  - Whether child understands difference between telling the truth and falsity
  - Whether child appreciates duty to tell the truth
- The competency hearing

# For More Information

- Ryan, *Ryan's Essential Evidence Outlines, Practitioner and Student Handbook*, 2<sup>nd</sup> Edition (iUniverse 2007) ISBN 0-595-42798-7 (Available at [barnesandnoble.com](http://barnesandnoble.com) and [amazon.com](http://amazon.com))