

From: [Krakora, Joseph \[OPD\]](#)
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Subject: Proposed amendment to Evidence Rule 803(c)(25) and relocation to 804(b)(3)
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The Office of the Public Defender opposes this proposed amendment to the hearsay exception for statements against interest. We believe that it has the very real potential of denying criminal defendants legitimate and trustworthy exculpatory evidence. A simple example makes the point. Suppose a defendant charged with robbery has a witness prepared to testify that another individual made a statement against interest admitting to the crime for which the defendant is on trial. Under the current rule, the defendant could call that witness regardless of the availability of the declarant. If, however, the declarant is available the defendant cannot call the witness under the proposed amendment. Because it is entirely unrealistic to expect the declarant to come to court and admit under oath that he committed the crime, the defendant will be deprived of exculpatory evidence. If the out of court statement is truly one against interest, the court has determined that the rationale for allowing a hearsay exception for these statements applies and the jury should hear it. Concededly, the prosecutor would not be able to cross-examine the declarant at that time but, if the declarant is in fact available, he/she could call the declarant to deny making the statement or explain the statement was made if not true. In short, the OPD opposes the rule change because of its potential to deprive defendants of exculpatory evidence that the jury should consider.

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