

# HOUSE BILL 1076

E2

9lr2758

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By: **Delegate Dumais**

Introduced and read first time: February 8, 2019

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Out of Court Statements of Victims – Child Neglect and**  
3 **Abuse or Neglect of a Vulnerable Adult**

4 FOR the purpose of authorizing a court to admit into evidence in a certain proceeding an  
5 out of court statement made by a certain child who is the alleged victim of a certain  
6 crime of child neglect; authorizing a court to admit into evidence in a certain  
7 proceeding a certain statement made by a certain alleged victim of a certain crime of  
8 abuse or neglect of a vulnerable adult; providing that a certain statement may be  
9 admissible only if the statement was made to and is offered by a certain person;  
10 providing that a certain statement may come into evidence in a certain proceeding  
11 for a certain purpose if certain requirements are met; requiring a certain prosecuting  
12 attorney to serve a certain notice on certain parties at a certain time for a certain  
13 purpose; authorizing certain parties to depose a certain witness; requiring a certain  
14 party to file a certain notice of deposition at a certain time, with a certain exception;  
15 providing that a certain provision of law applies to a certain deposition; providing  
16 that a certain victim's statement is admissible only if the statement has certain  
17 guarantees of trustworthiness; requiring the court to consider certain factors when  
18 making a certain determination; requiring the court to make a certain finding and  
19 determine the admissibility of a certain statement in a certain hearing; requiring the  
20 court to examine a certain victim in a certain proceeding in making a certain  
21 determination unless a certain victim is deceased or absent for a certain reason or  
22 the court makes a certain determination; authorizing a certain party to be present  
23 at a certain time, with certain exceptions; providing that this Act does not limit the  
24 admissibility of a certain statement under a certain other exception or rule;  
25 providing that this Act does not prohibit a certain court from hearing testimony in a  
26 certain location; defining a certain term; and generally relating to admissibility of  
27 out of court statements of victims.

28 BY repealing and reenacting, without amendments,

29 Article – Criminal Law

30 Section 3–604(a)(1) and (10)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2012 Replacement Volume and 2018 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article – Criminal Procedure  
5 Section 11–304(b)  
6 Annotated Code of Maryland  
7 (2018 Replacement Volume)

8 BY adding to  
9 Article – Criminal Procedure  
10 Section 11–304.1  
11 Annotated Code of Maryland  
12 (2018 Replacement Volume)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
14 That the Laws of Maryland read as follows:

15 **Article – Criminal Law**

16 3–604.

17 (a) (1) In this section and §§ 3–605 and 3–606 of this subtitle the following  
18 words have the meanings indicated.

19 (10) “Vulnerable adult” means an adult who lacks the physical or mental  
20 capacity to provide for the adult’s daily needs.

21 **Article – Criminal Procedure**

22 11–304.

23 (b) Subject to subsections (c), (d), and (e) of this section, the court may admit into  
24 evidence in a juvenile court proceeding or in a criminal proceeding an out of court statement  
25 to prove the truth of the matter asserted in the statement made by a child victim who:

26 (1) is under the age of 13 years; and

27 (2) is the alleged victim or the child alleged to need assistance in the case  
28 before the court concerning:

29 (i) child abuse under § 3–601 or § 3–602 of the Criminal Law Article;

30 **(ii) CHILD NEGLECT UNDER § 3–602.1 OF THE CRIMINAL LAW**  
31 **ARTICLE;**

32 **[(ii)] (iii) rape or sexual offense under §§ 3–303 through 3–307 of**

1 the Criminal Law Article;

2                    [(iii)] (IV) attempted rape in the first degree or in the second degree  
3 under §§ 3-309 and 3-310 of the Criminal Law Article; or

4                    [(iv)] (V) in a juvenile court proceeding, abuse or neglect as defined  
5 in § 5-701 of the Family Law Article.

6 **11-304.1.**

7            (A) IN THIS SECTION, "STATEMENT" MEANS:

8                    (1) AN ORAL OR WRITTEN ASSERTION; OR

9                    (2) NONVERBAL CONDUCT INTENDED AS AN ASSERTION, INCLUDING  
10 SOUNDS, GESTURES, DEMONSTRATIONS, DRAWINGS, AND SIMILAR ACTIONS.

11            (B) SUBJECT TO SUBSECTIONS (C), (D), AND (E) OF THIS SECTION, THE  
12 COURT MAY ADMIT INTO EVIDENCE IN A JUVENILE COURT PROCEEDING OR IN A  
13 CRIMINAL PROCEEDING AN OUT OF COURT STATEMENT TO PROVE THE TRUTH OF  
14 THE MATTER ASSERTED IN THE STATEMENT MADE BY A VICTIM WHO:

15                    (1) IS A VULNERABLE ADULT, AS DEFINED IN § 3-604 OF THE  
16 CRIMINAL LAW ARTICLE; AND

17                    (2) IS THE ALLEGED VICTIM IN THE CASE BEFORE THE COURT  
18 CONCERNING:

19                    (I) ABUSE OR NEGLECT OF A VULNERABLE ADULT IN THE FIRST  
20 DEGREE UNDER § 3-604 OF THE CRIMINAL LAW ARTICLE; OR

21                    (II) ABUSE OR NEGLECT OF A VULNERABLE ADULT IN THE  
22 SECOND DEGREE UNDER § 3-605 OF THE CRIMINAL LAW ARTICLE.

23            (C) AN OUT OF COURT STATEMENT MAY BE ADMISSIBLE UNDER THIS  
24 SECTION ONLY IF THE STATEMENT WAS MADE TO AND IS OFFERED BY A PERSON  
25 ACTING LAWFULLY IN THE COURSE OF THE PERSON'S PROFESSION WHEN THE  
26 STATEMENT WAS MADE WHO IS:

27                    (1) A PHYSICIAN;

28                    (2) A PSYCHOLOGIST;

29                    (3) A NURSE;

1           **(4) A SOCIAL WORKER;**

2           **(5) A COUNSELOR LICENSED OR CERTIFIED IN ACCORDANCE WITH**  
3 **TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE; OR**

4           **(6) A THERAPIST LICENSED OR CERTIFIED IN ACCORDANCE WITH**  
5 **TITLE 17 OF THE HEALTH OCCUPATIONS ARTICLE.**

6           **(D) (1) UNDER THIS SECTION, AN OUT OF COURT STATEMENT BY A VICTIM**  
7 **MAY COME INTO EVIDENCE IN A CRIMINAL PROCEEDING OR IN A JUVENILE COURT**  
8 **PROCEEDING OTHER THAN A CHILD IN NEED OF ASSISTANCE PROCEEDING UNDER**  
9 **TITLE 3, SUBTITLE 8 OF THE COURTS ARTICLE TO PROVE THE TRUTH OF THE**  
10 **MATTER ASSERTED IN THE STATEMENT:**

11                   **(I) IF THE STATEMENT IS NOT ADMISSIBLE UNDER ANY OTHER**  
12 **HEARSAY EXCEPTION; AND**

13                   **(II) IF THE VICTIM TESTIFIES.**

14           **(2) TO PROVIDE THE DEFENDANT OR ALLEGED OFFENDER WITH AN**  
15 **OPPORTUNITY TO PREPARE A RESPONSE TO THE STATEMENT, THE PROSECUTING**  
16 **ATTORNEY SHALL SERVE ON THE DEFENDANT OR ALLEGED OFFENDER AND THE**  
17 **ATTORNEY FOR THE DEFENDANT OR ALLEGED OFFENDER, WITHIN A REASONABLE**  
18 **TIME BEFORE THE JUVENILE COURT PROCEEDING AND AT LEAST 20 DAYS BEFORE**  
19 **THE CRIMINAL PROCEEDING IN WHICH THE STATEMENT IS TO BE OFFERED INTO**  
20 **EVIDENCE, NOTICE OF:**

21                   **(I) THE STATE'S INTENTION TO INTRODUCE THE STATEMENT;**

22                   **(II) ANY AUDIO OR VISUAL RECORDING OF THE STATEMENT;**  
23 **AND**

24                   **(III) IF AN AUDIO OR VISUAL RECORDING OF THE STATEMENT IS**  
25 **NOT AVAILABLE, THE CONTENT OF THE STATEMENT.**

26           **(3) (I) THE DEFENDANT OR ALLEGED OFFENDER MAY DEPOSE A**  
27 **WITNESS WHO WILL TESTIFY UNDER THIS SECTION.**

28                   **(II) UNLESS THE STATE AND THE DEFENDANT OR ALLEGED**  
29 **OFFENDER AGREE OR THE COURT ORDERS OTHERWISE, THE DEFENDANT OR**  
30 **ALLEGED OFFENDER SHALL FILE A NOTICE OF DEPOSITION:**

1                   1.    IN A CRIMINAL PROCEEDING, AT LEAST 5 DAYS  
2 BEFORE THE DATE OF THE DEPOSITION; OR

3                   2.    IN A JUVENILE COURT PROCEEDING, WITHIN A  
4 REASONABLE TIME BEFORE THE DATE OF THE DEPOSITION.

5                   (III) EXCEPT WHERE INCONSISTENT WITH THIS PARAGRAPH,  
6 MARYLAND RULE 4-261 APPLIES TO A DEPOSITION TAKEN UNDER THIS  
7 PARAGRAPH.

8           (E)   (1)   A VICTIM'S OUT OF COURT STATEMENT IS ADMISSIBLE UNDER  
9 THIS SECTION ONLY IF THE STATEMENT HAS PARTICULARIZED GUARANTEES OF  
10 TRUSTWORTHINESS.

11                   (2)   TO DETERMINE WHETHER THE STATEMENT HAS  
12 PARTICULARIZED GUARANTEES OF TRUSTWORTHINESS UNDER THIS SECTION, THE  
13 COURT SHALL CONSIDER, BUT IS NOT LIMITED TO, THE FOLLOWING FACTORS:

14                   (I)   THE VICTIM'S PERSONAL KNOWLEDGE OF THE EVENT;

15                   (II)  THE CERTAINTY THAT THE STATEMENT WAS MADE;

16                   (III) ANY APPARENT MOTIVE TO FABRICATE OR EXHIBIT  
17 PARTIALITY BY THE VICTIM, INCLUDING INTEREST, BIAS, CORRUPTION, OR  
18 COERCION;

19                   (IV)  WHETHER THE STATEMENT WAS SPONTANEOUS OR  
20 DIRECTLY RESPONSIVE TO QUESTIONS;

21                   (V)   THE TIMING OF THE STATEMENT;

22                   (VI)  THE NATURE AND DURATION OF THE ABUSE OR NEGLECT;

23                   (VII) THE INNER CONSISTENCY AND COHERENCE OF THE  
24 STATEMENT;

25                   (VIII) WHETHER THE VICTIM WAS SUFFERING PAIN OR DISTRESS  
26 WHEN MAKING THE STATEMENT;

27                   (IX)  WHETHER EXTRINSIC EVIDENCE EXISTS TO SHOW THE  
28 DEFENDANT OR CHILD RESPONDENT HAD AN OPPORTUNITY TO COMMIT THE ACT  
29 COMPLAINED OF IN THE VICTIM'S STATEMENT;

1                   **(X) WHETHER THE STATEMENT WAS SUGGESTED BY THE USE OF**  
2 **LEADING QUESTIONS; AND**

3                   **(XI) THE CREDIBILITY OF THE PERSON TESTIFYING ABOUT THE**  
4 **STATEMENT.**

5           **(F) IN A HEARING OUTSIDE THE PRESENCE OF THE JURY OR BEFORE THE**  
6 **JUVENILE COURT PROCEEDING, THE COURT SHALL:**

7                   **(1) MAKE A FINDING ON THE RECORD AS TO THE SPECIFIC**  
8 **GUARANTEES OF TRUSTWORTHINESS THAT ARE IN THE STATEMENT; AND**

9                   **(2) DETERMINE THE ADMISSIBILITY OF THE STATEMENT.**

10           **(G) (1) IN MAKING A DETERMINATION UNDER SUBSECTION (F) OF THIS**  
11 **SECTION, THE COURT SHALL EXAMINE THE VICTIM IN A PROCEEDING IN THE**  
12 **JUDGE'S CHAMBERS, THE COURTROOM, OR ANOTHER SUITABLE LOCATION THAT**  
13 **THE PUBLIC MAY NOT ATTEND UNLESS:**

14                   **(I) THE VICTIM:**

15                           **1. IS DECEASED; OR**

16                           **2. IS ABSENT FROM THE JURISDICTION FOR GOOD**  
17 **CAUSE SHOWN OR THE STATE HAS BEEN UNABLE TO PROCURE THE VICTIM'S**  
18 **PRESENCE BY SUBPOENA OR OTHER REASONABLE MEANS; OR**

19                   **(II) THE COURT DETERMINES THAT AN AUDIO OR VISUAL**  
20 **RECORDING OF THE VICTIM'S STATEMENT MAKES AN EXAMINATION OF THE VICTIM**  
21 **UNNECESSARY.**

22                   **(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,**  
23 **ANY DEFENDANT OR CHILD RESPONDENT, ATTORNEY FOR A DEFENDANT OR CHILD**  
24 **RESPONDENT, AND THE PROSECUTING ATTORNEY MAY BE PRESENT WHEN THE**  
25 **COURT HEARS TESTIMONY ON WHETHER TO ADMIT INTO EVIDENCE THE OUT OF**  
26 **COURT STATEMENT OF A VICTIM UNDER THIS SECTION.**

27                   **(3) WHEN THE COURT EXAMINES THE VICTIM AS PARAGRAPH (1) OF**  
28 **THIS SUBSECTION REQUIRES:**

29                   **(I) ONE ATTORNEY FOR EACH DEFENDANT OR CHILD**  
30 **RESPONDENT, ONE ATTORNEY FOR THE VICTIM, AND ONE PROSECUTING ATTORNEY**  
31 **MAY BE PRESENT AT THE EXAMINATION; AND**

1                   **(II) THE COURT MAY NOT ALLOW A DEFENDANT OR CHILD**  
2 **RESPONDENT TO BE PRESENT AT THE EXAMINATION.**

3           **(H) (1) THIS SECTION DOES NOT LIMIT THE ADMISSIBILITY OF A**  
4 **STATEMENT UNDER ANY OTHER APPLICABLE HEARSAY EXCEPTION OR RULE OF**  
5 **EVIDENCE.**

6                   **(2) THIS SECTION DOES NOT PROHIBIT THE COURT IN A JUVENILE**  
7 **COURT PROCEEDING FROM HEARING TESTIMONY IN THE JUDGE'S CHAMBERS.**

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2019.