

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL NO. 34

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Child Abuse” and substitute “Evidence”; in the same line, strike the second dash; in the same line, strike “Nurses”; strike beginning with “allowing” in line 3 down through “proceedings” in line 11 and substitute “expanding a provision of law that allows certain out of court statements concerning certain alleged offenses against certain children to be admitted in certain court proceedings by allowing these statements to be offered by any person under certain circumstances; requiring the court to make a certain finding on the record; authorizing the admission into evidence under certain circumstances of certain out of court statements made by certain children who are witnesses to certain offenses against another child; repealing a condition that certain statements not be admissible under any other hearsay exception; repealing a certain factor that a court is required to consider in making a certain determination; making certain technical and stylistic changes; and generally relating to the admissibility of certain out of court statements concerning certain offenses in court proceedings”; strike in their entirety lines 12 through 16, inclusive; and in line 19, strike “(b)”.

AMENDMENT NO. 2

On pages 2 and 3, strike in their entirety the lines beginning with line 1 on page 2 through line 27 on page 3, inclusive, and substitute:

“Article 27 - Crimes and Punishments

775.

(a) In this section “statement” means:

(1) An oral or written assertion; or

(Over)

(2) Nonverbal conduct, if it is intended as an assertion, including sounds, gestures, demonstrations, drawings, or similar actions.

(b) (1) Subject to the provisions of [paragraphs (2) and (3)] PARAGRAPH (2) of this subsection, if a court finds that the requirements of subsection (c) of this section are satisfied, a court may admit into evidence in a juvenile court proceeding or in a criminal proceeding an out of court statement, to prove the truth of the matter asserted in the statement, made by a child [victim] under the age of 12 years, who is EITHER the alleged victim or the child alleged to need assistance in the case before the court, concerning an alleged offense against the child, OR A WITNESS TO SUCH AN OFFENSE AGAINST ANOTHER CHILD, of:

(i) Child abuse, as defined in § 35C of this article;

(ii) Rape or sexual offense, as defined in §§ 462 through 464B of this article;

(iii) Attempted rape or attempted sexual offense in the first or second degree, as defined in § 464F of this article; or

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

[(2) An out of court statement may be admissible under this section only if:

(i) The statement was made to and is offered by:

1. A licensed physician, as defined in § 14-101 of the Health Occupations Article;

2. A licensed psychologist, as defined in § 18-101 of the Health Occupations Article;

3. A licensed social worker, as defined in § 19-101 of the Health Occupations Article; or

4. A teacher; and

(ii) The individual described under item (i) of this paragraph was acting in the course of the individual's profession when the statement was made.

(3)] (2) (I) An out of court statement may be admissible under this section only if [the statement possesses particularized guarantees of trustworthiness.] THE COURT FINDS, IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE JURY OR, IN THE COURT'S DISCRETION, BEFORE THE SEATING OF A JURY, THAT THE TIME, CONTENT, AND CIRCUMSTANCE OF THE STATEMENT PROVIDE SUFFICIENT INDICIA OF RELIABILITY TO PERMIT ITS ADMISSION INTO EVIDENCE.

(II) THE COURT SHALL MAKE A FINDING ON THE RECORD AS TO THE SPECIFIC INDICIA OF RELIABILITY, SET FORTH IN SUBSECTION (D) OF THIS SECTION, THAT ARE PRESENT OR ABSENT IN THE STATEMENT.

(c) (1) Under this section, an out of court statement by a child may come into evidence to prove the truth of the matter asserted in the statement[:

(i) If the child's statement is not admissible under any other hearsay exception;
and

(ii) Regardless] REGARDLESS of whether the child testifies.

(2) If the child does not testify, the child's out of court statement will be admissible only if there is corroborative evidence that:

(i) The defendant in a criminal proceeding had the opportunity to commit the alleged offense; or

(ii) The alleged offender in a juvenile court proceeding had the opportunity to commit the alleged abuse or neglect.

(3) In order to provide [the defendant with] an opportunity to prepare a response to the statement, the prosecutor shall serve on the defendant in a criminal proceeding or on the alleged offender in a juvenile court proceeding and the alleged offender's attorney, a reasonable time before the juvenile court proceeding and at least 20 days before the criminal proceeding in which the

(Over)

statement is to be offered into evidence, notice of:

(i) The State's intention to introduce the statement; and

(ii) The content of the statement.

(4) (i) The alleged offender shall have the right to take the deposition of a witness who will testify under this section;

(ii) Unless the State and the defendant or respondent agree, or the court orders otherwise, the defendant in a criminal proceeding shall file a notice of deposition at least 5 days before, or in a juvenile court proceeding within a reasonable time before, the date of the deposition; and

(iii) Except where inconsistent with this paragraph, the provisions of Maryland Rule 4-261 shall apply to a deposition taken under this paragraph.

(d) In order to determine if a child's statement possesses [particularized guarantees of trustworthiness] SUFFICIENT INDICIA OF RELIABILITY under this section, the court shall consider, but is not limited to, the following factors:

(1) The child's personal knowledge of the event;

(2) The certainty that the statement was made;

(3) Any apparent motive to fabricate or exhibit partiality by the child, including interest, bias, corruption, or coercion;

(4) Whether the statement was spontaneous or directly responsive to questions;

(5) The timing of the statement;

(6) Whether the child's young age makes it unlikely that the child fabricated the statement that represents a graphic, detailed account beyond the child's knowledge and experience

and the appropriateness of the terminology to the child's age;

(7) The nature and duration of the abuse;

(8) The inner consistency and coherence of the statement;

(9) Whether the child was suffering pain or distress when making the statement;

(10) [Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement;

(11) Whether the SUBSTANCE OF THE statement [is suggestive due to] WAS SUGGESTED AS A RESULT OF the use of leading questions; and

[(12)] (11) The credibility of the person testifying about the statement.

[(e) The court, in determining whether a statement is admissible under this section, in a hearing outside the presence of the jury, or before the juvenile court proceeding shall:

(1) Make a finding on the record as to the specific guarantees of trustworthiness that are present in the statement; and

(2) Determine the admissibility of the statement.

(f) (E) (1) In making a determination under subsection [(e)] (B)(2) of this section, the court shall conduct an in camera examination of a child prior to determining the admissibility of the statement, except where the child:

(i) Has died; or

(ii) Is absent from the jurisdiction for good cause shown or the State has been unable to procure the child's presence by subpoena or other reasonable means.

(2) (i) Except as provided in subparagraph (ii)2 of this paragraph, any [defendant]

(Over)

PARTY, any [defendant's] PARTY'S attorney, and the prosecutor shall have the right to be present when the court hears testimony on whether to admit into evidence an out of court statement of a child under this section.

(ii) If the court is required to observe or question the child in connection with the determination to admit into evidence the out of court statement:

1. Any defendant's attorney and the prosecutor shall have the right to be present at the in camera examination; and

2. The judge may not permit a defendant OR ALLEGED ABUSER to be present at the in camera examination.

[(g)] (F) (1) This section may not be construed to limit the admissibility of a statement under any other applicable hearsay exception or rule of evidence.

(2) This section may not be construed to prohibit the court in a juvenile court proceeding from hearing testimony in the judge's chambers.”.