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(PRE-FILED)

HB 193/96 - JUD

CF 7r1944

By: Delegates Goldwater, Grosfeld, and Krysiak

Requested: August 14, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 1997

CHAPTER ____

1 AN ACT concerning

2 **Child Abuse - Out of Court Statements - ~~Licensed Registered~~ Nurses**

3 FOR the purpose of allowing out of court statements concerning alleged offenses against
4 a child victim under a certain age to be admitted in certain court proceedings if the
5 statements were made to and are offered by a ~~licensed registered~~ nurse; repealing a
6 requirement that the out of court statements be made to and be offered by certain
7 individuals who possess certain occupational licenses; authorizing certain
8 individuals to offer the out of court statements if the individuals were lawfully acting
9 in the course of their professions when the statements were made; and generally
10 relating to the use of out of court statements concerning certain alleged offenses in
11 court proceedings.

12 BY repealing and reenacting, without amendments,

- 13 Article 27 - Crimes and Punishments
- 14 Section 775(a) and (c)
- 15 Annotated Code of Maryland
- 16 (1996 Replacement Volume)

17 BY repealing and reenacting, with amendments,

- 18 Article 27 - Crimes and Punishments
- 19 Section 775(b)
- 20 Annotated Code of Maryland
- 21 (1996 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

23 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article 27 - Crimes and Punishments**

2 775.

3 (a) In this section "statement" means:

4 (1) An oral or written assertion; or

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

7 (b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, if
8 a court finds that the requirements of subsection (c) of this section are satisfied, a court
9 may admit into evidence in a juvenile court proceeding or in a criminal proceeding an out
10 of court statement, to prove the truth of the matter asserted in the statement, made by a
11 child victim under the age of 12 years, who is the alleged victim or the child alleged to
12 need assistance in the case before the court, concerning an alleged offense against the
13 child of:

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

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

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

19 (iv) In a juvenile court proceeding, abuse or neglect as defined in §
20 5-701 of the Family Law Article.

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

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

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

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

27 3. A ~~LICENSED REGISTERED NURSE, AS DEFINED IN §~~
28 ~~8-101(G) OF THE HEALTH OCCUPATIONS ARTICLE;~~

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

31 [4.] 5. A teacher; and

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

35 (3) An out of court statement may be admissible under this section only if
36 the statement possesses particularized guarantees of trustworthiness.

3

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

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

5 (ii) Regardless of whether the child testifies.

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

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

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

12 (3) In order to provide the defendant with an opportunity to prepare a
13 response to the statement, the prosecutor shall serve on the defendant in a criminal
14 proceeding or on the alleged offender in a juvenile court proceeding and the alleged
15 offender's attorney, a reasonable time before the juvenile court proceeding and at least 20
16 days before the criminal proceeding in which the statement is to be offered into evidence,
17 notice of:

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

19 (ii) The content of the statement.

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

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

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

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1997.