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**By: Delegates Krysiak and Goldwater**

Requested: June 26, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Child Abuse - Out of Court Statements**

3 FOR the purpose of expanding a provision of law that allows certain out of court  
4 statements concerning certain alleged offenses against certain child victims to be  
5 admitted in certain court proceedings by allowing these statements to be offered by  
6 any person under certain circumstances; and generally relating to the use of certain  
7 out of court statements concerning certain offenses in court proceedings.

8 BY repealing and reenacting, with amendments,  
9 Article 27 - Crimes and Punishments  
10 Section 775  
11 Annotated Code of Maryland  
12 (1996 Replacement Volume)

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

15 **Article 27 - Crimes and Punishments**

16 775.

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

18 (1) An oral or written assertion; or

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

21 (b) (1) Subject to the provisions of [paragraphs (2) and (3)] PARAGRAPH (2)  
22 of this subsection, if a court finds that the requirements of subsection (c) of this section  
23 are satisfied, a court may admit into evidence in a juvenile court proceeding or in a  
24 criminal proceeding an out of court statement, to prove the truth of the matter asserted  
25 in the statement, made by a child victim under the age of 12 years, who is the alleged  
26 victim or the child alleged to need assistance in the case before the court, concerning an  
27 alleged offense against the child of:

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

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

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

5 (iv) In a juvenile court proceeding, abuse or neglect as defined in §  
6 5-701 of the Family Law Article.

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

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

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

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

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

15 4. A teacher; and

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

18 [(3)] (2) An out of court statement may be admissible under this section  
19 only if [the statement possesses particularized guarantees of trustworthiness] THE  
20 COURT FINDS, IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE JURY  
21 THAT THE TIME, CONTENT, AND CIRCUMSTANCE OF THE STATEMENT PROVIDE  
22 SUFFICIENT INDICIA OF RELIABILITY.

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

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

27 (ii) Regardless of whether the child testifies.

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

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

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

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

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1 days before the criminal proceeding in which the statement is to be offered into evidence,  
2 notice of:

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

4 (ii) The content of the statement.

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

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

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

13 (d) In order to determine if a child's statement possesses particularized  
14 guarantees of trustworthiness under this section, the court shall consider, but is not  
15 limited to, the following factors:

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

17 (2) The certainty that the statement was made;

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

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

22 (5) The timing of the statement;

23 (6) Whether the child's young age makes it unlikely that the child fabricated  
24 the statement that represents a graphic, detailed account beyond the child's knowledge  
25 and experience and the appropriateness of the terminology to the child's age;

26 (7) The nature and duration of the abuse;

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

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

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

32 (11) Whether the statement is suggestive due to the use of leading questions;  
33 and

34 (12) The credibility of the person testifying about the statement.

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

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

6 (2) Determine the admissibility of the statement.

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

10 (i) Has died; or

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

13 (2) (i) Except as provided in subparagraph (ii)2 of this paragraph, any  
14 defendant, any defendant's attorney, and the prosecutor shall have the right to be present  
15 when the court hears testimony on whether to admit into evidence an out of court  
16 statement of a child under this section.

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

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

21 2. The judge may not permit a defendant to be present at the in  
22 camera examination.

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

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

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