
By: Senator Forehand

Introduced and read first time: January 10, 1997

Assigned to: Judicial Proceedings

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 or
5 children in need of assistance to be admitted in certain judicial proceedings by
6 allowing these statements to be offered by any person under certain circumstances;
7 providing for the application of this Act; and generally relating to the admissibility
8 of certain out of court statements in certain proceedings.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 775
12 Annotated Code of Maryland
13 (1996 Replacement Volume)

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

16 **Article 27 - Crimes and Punishments**

17 775.

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

19 (1) An oral or written assertion; or

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

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

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

2

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.

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

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

24 (ii) Regardless of whether the child testifies.

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

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

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

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

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

3

1 (ii) The content of the statement.

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

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

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

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

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

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

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

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

19 (5) The timing of the statement;

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

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

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

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

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

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

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

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

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

4

1 (2) Determine the admissibility of the statement.

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

5 (i) Has died; or

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

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

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

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply in all
23 trials and hearings commenced on or after the effective date of this Act. Any trial or
24 hearing commenced prior to October 1, 1997 shall continue to be governed by the law and
25 rules in effect on September 30, 1997. An out of court statement may not be admitted
26 against a defendant in a criminal action in proof of a crime committed before October 1,
27 1997 unless that statement would have been admissible under the law and rules in effect
28 September 30, 1997.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 1997.