
By: Senators Forehand, Kelley, Hughes, Roesser, and Jimeno

Introduced and read first time: January 31, 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 alleged offenses against certain child victims to be admitted
5 in certain court proceedings by allowing these statements to be offered in civil
6 proceedings and by any person under certain circumstances; and generally relating
7 to the use of certain out of court statements concerning certain offenses in court
8 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, IN A CIVIL
25 PROCEEDING, or in a criminal proceeding an out of court statement, to prove the truth
26 of the matter asserted in the statement, made by a child [victim] under the age of 12
27 years, who is EITHER the alleged victim or the child alleged to need assistance in the case
28 before the court, concerning an alleged offense against the child, OR A WITNESS TO
29 SUCH AN OFFENSE AGAINST ANOTHER CHILD, of:

30 (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 OR CIVIL court proceeding, abuse or neglect as
6 defined in § 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) (I) An out of court statement may be admissible under this
19 section only if [the statement possesses particularized guarantees of trustworthiness.]
20 THE COURT FINDS, IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE
21 JURY OR, IN THE COURT'S DISCRETION, BEFORE THE SEATING OF A JURY, THAT THE
22 TIME, CONTENT, AND CIRCUMSTANCE OF THE STATEMENT PROVIDE SUFFICIENT
23 INDICIA OF RELIABILITY TO PERMIT ITS ADMISSION INTO EVIDENCE.

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

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

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

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

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

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

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

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1 (3) In order to provide [the defendant with] an opportunity to prepare a
 2 response to the statement, the prosecutor shall serve on the defendant in a criminal
 3 proceeding or on the alleged offender in a juvenile court proceeding and the alleged
 4 offender's attorney, a reasonable time before the juvenile court proceeding and at least 20
 5 days before the criminal proceeding in which the statement is to be offered into evidence,
 6 notice of:

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

8 (ii) The content of the statement.

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

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

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

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

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

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

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

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

26 (5) The timing of the statement;

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

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

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

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

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

36 (11) (10) Whether the SUBSTANCE OF THE statement [is suggestive due
 37 to] WAS SUGGESTED AS A RESULT OF the use of leading questions; and

