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

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Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

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CHAPTER ____

1 AN ACT concerning

2 ~~Child Abuse Evidence~~ **Evidence - 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~~ children
5 to be admitted in certain court proceedings by allowing these statements to be
6 offered ~~in civil proceedings and~~ by any person under certain circumstances;
7 requiring the court to make a certain finding on the record; authorizing the
8 admission into evidence under certain circumstances of certain out of court
9 statements made by certain children who are witnesses to certain offenses against
10 another child; repealing a condition that certain statements not be admissible under
11 any other hearsay statement; repealing a certain factor that a court is required to
12 consider in making a certain determination; making certain technical and stylistic
13 changes; and generally relating to the use ~~use~~ admissibility of certain out of court
14 statements concerning certain offenses in court proceedings.

15 BY repealing and reenacting, with amendments,
16 Article 27 - Crimes and Punishments
17 Section 775
18 Annotated Code of Maryland
19 (1996 Replacement Volume)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 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)] PARAGRAPH (2)
8 of this subsection, if a court finds that the requirements of subsection (c) of this section
9 are satisfied, a court may admit into evidence in a juvenile court proceeding, ~~IN A CIVIL~~
10 ~~PROCEEDING~~, or in a criminal proceeding an out of court statement, to prove the truth
11 of the matter asserted in the statement, made by a child [victim] under the age of 12
12 years, who is EITHER the alleged victim or the child alleged to need assistance in the case
13 before the court, concerning an alleged offense against the child, OR A WITNESS TO
14 SUCH AN OFFENSE AGAINST ANOTHER CHILD, of:

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

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

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

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

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

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

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

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

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

30 4. A teacher; and

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

33 (3) (2) (I) An out of court statement may be admissible under this
34 section only if [the statement possesses particularized guarantees of trustworthiness.]
35 THE COURT FINDS, IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE
36 JURY OR, IN THE COURT'S DISCRETION, BEFORE THE SEATING OF A JURY, THAT THE
37 TIME, CONTENT, AND CIRCUMSTANCE OF THE STATEMENT PROVIDE SUFFICIENT
38 INDICIA OF RELIABILITY TO PERMIT ITS ADMISSION INTO EVIDENCE.

3

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

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

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

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

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

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

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

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

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

22 (ii) The content of the statement.

23 {4} (i) The alleged offender shall have the right to take the deposition of
24 a witness who will testify under this section;

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

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

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

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

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

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

4

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

3 (5) The timing of the statement;

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

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

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

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

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

13 (11) (10) Whether the SUBSTANCE OF THE statement [is suggestive due
14 to] WAS SUGGESTED AS A RESULT OF the use of leading questions; and

15 [(12)] (11) The credibility of the person testifying about the statement.

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

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

21 (2) Determine the admissibility of the statement.

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

25 (i) Has died; or

26 (ii) Is absent from the jurisdiction for good cause shown or the State
27 ~~OR CIVIL PARTY OFFERING THE EVIDENCE~~ has been unable to procure the child's
28 presence by subpoena or other reasonable means.

29 (2) (i) Except as provided in subparagraph (ii)2 of this paragraph, any
30 [defendant] PARTY, any [defendant's] PARTY'S attorney, and the prosecutor shall have
31 the right to be present when the court hears testimony on whether to admit into evidence
32 an out of court statement of a child under this section.

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

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

