

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 688

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 3 through 8, inclusive, and substitute:

“FOR the purpose of allowing out of court statements concerning certain alleged offenses against a child victim under a certain age to be admitted in certain court proceedings if the statements were made to and are offered by certain persons; repealing a requirement that the out of court statements be made to and be offered by certain individuals who possess certain occupational licenses; authorizing certain individuals to offer the out of court statements if the individuals were lawfully acting in the course of their professions when the statements were made; repealing the right of an alleged offender to take the deposition of certain witnesses; defining a certain term; and generally relating to the admissibility of out of court statements concerning certain alleged offenses in court proceedings.”;

and in line 11, strike “775” and substitute “775(a), (b), and (c)”.

AMENDMENT NO. 2

On pages 1 through 4, strike in their entirety the lines beginning with line 17 on page 1 through line 36 on page 4, inclusive, and substitute:

“775.

(a) (1) In this section ["statement"] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “HUMAN SERVICE WORKER” MEANS AN INDIVIDUAL PERFORMING A SOCIAL WORK FUNCTION UNDER THE SUPERVISION OF A LICENSED PROFESSIONAL.

(Over)

(3) "STATEMENT" means:

[(1)] (I) An oral or written assertion; or

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

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

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

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

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

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

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

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

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

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

3. A NURSE;

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

5. A HUMAN SERVICE WORKER; OR

[4.] 6. A PRINCIPAL, VICE PRINCIPAL, teacher, OR TEACHER'S AIDE AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY, OR SECONDARY SCHOOL; and

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

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

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

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

(ii) Regardless of whether the child testifies.

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

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

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

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

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

(ii) The content of the statement.

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

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

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