

SENATE BILL 688

Unofficial Copy
E2

1998 Regular Session
(8r1965)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senators Forehand, Kelley, Roesser, Colburn, and Jimeno**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

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

3 ~~FOR the purpose of allowing certain out of court statements concerning certain~~
4 ~~alleged offenses against child victims to be admitted in certain court proceedings~~
5 ~~under certain circumstances if the court finds that the time, content, and~~
6 ~~circumstances of the statements provide sufficient indicia of reliability; and~~
7 ~~generally relating to the use of certain out of court statements concerning~~
8 ~~certain offenses in court proceedings.~~

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

1 to the ~~admissibility~~ use of out of court statements concerning certain alleged
 2 offenses in court proceedings.

3 BY repealing and reenacting, without amendments,
 4 Article 27 - Crimes and Punishments
 5 Section 775(a) and (c)
 6 Annotated Code of Maryland
 7 (1996 Replacement Volume and 1997 Supplement)

8 BY repealing and reenacting, with amendments,
 9 Article 27 - Crimes and Punishments
 10 Section ~~775~~ 775(a), (b), and (e) ~~775(b)~~
 11 Annotated Code of Maryland
 12 (1996 Replacement Volume and 1997 Supplement)

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
 23 section are satisfied, a court may admit into evidence in a juvenile court proceeding or
 24 in a criminal proceeding an out of court statement, to prove the truth of the matter
 25 asserted in the statement, made by a child victim under the age of 12 years, who is
 26 the alleged victim or the child alleged to need assistance in the case before the court,
 27 concerning an alleged offense against the child of:

28 (i) Child abuse OR ASSAULT, as defined in [~~§ 35C~~] §§ 35C AND 12 of
 29 this article;

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

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

34 (iv) In a juvenile court proceeding, abuse or neglect as defined in §
 35 5-701 of the Family Law Article.

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

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

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

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

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

10 4. A teacher; and

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

13 ~~[(3)]~~ (2) An out of court statement may be admissible under this section
14 only if [the statement possesses particularized guarantees of trustworthiness] THE
15 COURT FINDS THAT THE TIME, CONTENT, AND CIRCUMSTANCES OF THE STATEMENT
16 PROVIDE SUFFICIENT INDICIA OF RELIABILITY.

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

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

21 (ii) Regardless of whether the child testifies.

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

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

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

28 (3) In order to provide [the defendant] ALL PARTIES with an opportunity
29 to prepare a response to the statement, [the prosecutor] THE PARTY SEEKING TO
30 INTRODUCE THE STATEMENT shall serve on the [defendant in a criminal proceeding
31 or on the alleged offender in a juvenile court proceeding and the alleged offender's
32 attorney] OPPOSING PARTY, a reasonable time before the juvenile court proceeding
33 and at least 20 days before the criminal proceeding in which the statement is to be
34 offered into evidence, notice of:

35 (i) The [State's] PARTY'S intention to introduce the statement; and

- 1 (ii) ~~The content of the statement.~~
- 2 [(4) (i) The alleged offender shall have the right to take the deposition
3 of 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
9 of 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~~] SUFFICIENT INDICIA OF RELIABILITY under this
12 section, the court shall consider, but is not 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
21 fabricated the statement that represents a graphic, detailed account beyond the
22 child's knowledge and experience and the appropriateness of the terminology to the
23 child's age;~~
- 24 (7) ~~The nature and duration of the abuse;~~
- 25 (8) ~~The inner consistency and coherence of the statement;~~
- 26 (9) ~~Whether the child was suffering pain or distress when making the
27 statement;~~
- 28 (10) ~~[Whether extrinsic evidence exists to show the defendant's
29 opportunity to commit the act complained of in the child's statement] THE CHILD'S
30 ABILITY TO DISTINGUISH TRUTH FROM FALSEHOOD;~~
- 31 (11) ~~Whether the SUBSTANCE OF THE statement[is suggestive due to]
32 WAS SUGGESTED AS A RESULT OF the use of leading questions; and~~
- 33 (12) ~~The credibility of the person testifying about the statement.~~

1 (e) The court, in determining whether a statement is admissible under this
 2 section, ~~[in a hearing] SHALL CONDUCT A PRETRIAL HEARING~~ outside the presence
 3 of the jury, or before the juvenile court proceeding AND shall:

4 (1) Make a finding on the record as to the ~~[specific guarantees of~~
 5 ~~trustworthiness]~~ INDICIA OF RELIABILITY 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
 8 court shall conduct an INFORMAL in camera examination of a child prior to
 9 determining the admissibility of the statement, except where the child:

10 (i) Has died; or

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

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

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

20 1. ~~[One attorney for each defendant, one attorney for the~~
 21 ~~child, and one] ANY PARTY'S ATTORNEY AND THE prosecutor shall have the right to~~
 22 ~~be present at the in camera examination; and~~

23 2. The judge may not permit a defendant OR ALLEGED
 24 ABUSER to be present at the in camera examination.

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

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

29 ~~775.~~

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

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

34 (3) "STATEMENT" means:

35 (1) (1) An oral or written assertion; or

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

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

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

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

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

15 (iv) ~~In a juvenile court proceeding, abuse or neglect as defined in §~~
 16 ~~5-701 of the Family Law Article.~~

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

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

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

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

24 3. ~~A NURSE;~~

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

27 5. ~~A HUMAN SERVICE WORKER; OR~~

28 [4.] 6. ~~A PRINCIPAL, VICE PRINCIPAL, teacher, OR~~
 29 ~~TEACHER'S AIDE AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY, OR~~
 30 ~~SECONDARY SCHOOL; and~~

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

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

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

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

5 ~~(ii)~~ Regardless of whether the child testifies.

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

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

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

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

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

19 ~~(ii)~~ The content of the statement.

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

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

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

28 775.

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

30 (1) An oral or written assertion; or

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

33 (b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection,
 34 if a court finds that the requirements of subsection (c) of this section are satisfied, a
 35 court may admit into evidence in a juvenile court proceeding or in a criminal

1 proceeding an out of court statement, to prove the truth of the matter asserted in the
 2 statement, made by a child victim under the age of 12 years, who is the alleged victim
 3 or the child alleged to need assistance in the case before the court, concerning an
 4 alleged offense against the child of:

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

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

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

10 (iv) In a juvenile court proceeding, abuse or neglect as defined in §
 11 5-701 of the Family Law Article.

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

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

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

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

18 3. A NURSE;

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

21 [4.] 5. A PRINCIPAL, VICE PRINCIPAL, teacher, OR SCHOOL
 22 COUNSELOR AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY SCHOOL, OR
 23 SECONDARY SCHOOL; and

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

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

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

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

33 (ii) Regardless of whether the child testifies.

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

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

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

7 (3) In order to provide the defendant with an opportunity to prepare a
8 response to the statement, the prosecutor shall serve on the defendant in a criminal
9 proceeding or on the alleged offender in a juvenile court proceeding and the alleged
10 offender's attorney, a reasonable time before the juvenile court proceeding and at least
11 20 days before the criminal proceeding in which the statement is to be offered into
12 evidence, notice of:

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

14 (ii) The content of the statement.

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 1998.