

SENATE BILL 688

Unofficial Copy
E2
SB 658/97 - JPR

1998 Regular Session
8r1965

By: **Senators Forehand, Kelley, Roesser, Colburn, and Jimeno**
Introduced and read first time: February 12, 1998
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

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 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 775
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1997 Supplement)

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

- 1 (i) Child abuse OR ASSAULT, as defined in [§ 35C] §§ 35C AND 12 of
 2 this article;
- 3 (ii) Rape or sexual offense, as defined in §§ 462 through 464B of
 4 this article;
- 5 (iii) Attempted rape or attempted sexual offense in the first or
 6 second degree, as defined in § 464F of this article; or
- 7 (iv) In a juvenile court proceeding, abuse or neglect as defined in §
 8 5-701 of the Family Law Article.

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

- 11 (i) The statement was made to and is offered by:
- 12 1. A licensed physician, as defined in § 14-101 of the Health
 13 Occupations Article;
- 14 2. A licensed psychologist, as defined in § 18-101 of the
 15 Health Occupations Article;
- 16 3. A licensed social worker, as defined in § 19-101 of the
 17 Health Occupations Article; or
- 18 4. A teacher; and
- 19 (ii) The individual described under item (i) of this paragraph was
 20 acting in the course of the individual's profession when the statement was made.]

21 [(3)] (2) An out of court statement may be admissible under this section
 22 only if [the statement possesses particularized guarantees of trustworthiness] THE
 23 COURT FINDS THAT THE TIME, CONTENT, AND CIRCUMSTANCES OF THE STATEMENT
 24 PROVIDE SUFFICIENT INDICIA OF RELIABILITY.

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

- 27 (i) If the child's statement is not admissible under any other
 28 hearsay exception; and
- 29 (ii) Regardless of whether the child testifies.

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

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

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

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

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

11 (ii) The content of the statement.

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

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

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

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

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

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

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

27 (4) Whether the statement was spontaneous or directly responsive to
28 questions;

29 (5) The timing of the statement;

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

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

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

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

3 (10) [Whether extrinsic evidence exists to show the defendant's
4 opportunity to commit the act complained of in the child's statement] THE CHILD'S
5 ABILITY TO DISTINGUISH TRUTH FROM FALSEHOOD;

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

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

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

12 (1) Make a finding on the record as to the [specific guarantees of
13 trustworthiness] INDICIA OF RELIABILITY that are present in the statement; and

14 (2) Determine the admissibility of the statement.

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

18 (i) Has died; or

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

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

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

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

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

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

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

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