
By: **Senators Forehand, Kelley, Roesser, Colburn, and Jimeno**

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Assigned to: Rules

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 1998

CHAPTER _____

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 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; repealing a requirement that the out of court statements be made to
13 and be offered by certain individuals who possess certain occupational licenses;
14 authorizing certain individuals to offer the out of court statements if the
15 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
18 to the admissibility of out of court statements concerning certain alleged
19 offenses in court proceedings.

20 BY repealing and reenacting, with amendments,
21 Article 27 - Crimes and Punishments
22 Section ~~775~~ 775(a), (b), and (c)
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 1997 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article 27 - Crimes and Punishments**

4 ~~775.~~

5 (a) ~~In this section "statement" means:~~

6 (1) ~~An oral or written assertion; or~~

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

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

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

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

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

22 (iv) ~~In a juvenile court proceeding, abuse or neglect as defined in §~~
23 ~~5-701 of the Family Law Article.~~

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

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

27 1. ~~A licensed physician, as defined in § 14-101 of the Health~~
28 ~~Occupations Article;~~

29 2. ~~A licensed psychologist, as defined in § 18-101 of the~~
30 ~~Health Occupations Article;~~

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

33 4. ~~A teacher; and~~

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

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

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

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

11 (ii) Regardless of whether the child testifies.

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

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

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

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

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

26 (ii) The content of the statement.

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

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

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

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

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

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

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

8 (4) Whether the statement was spontaneous or directly responsive to
9 questions;

10 (5) The timing of the statement;

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

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

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

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

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

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

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

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

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

30 (2) Determine the admissibility of the statement.

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

34 (i) Has died; or

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

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

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

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

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

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

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

19 775.

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

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

24 (3) "STATEMENT" means:

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

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

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

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

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

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

5 (iv) In a juvenile court proceeding, abuse or neglect as defined in §
6 5-701 of the Family Law Article.

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

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

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

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

14 3. A NURSE;

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

17 5. A HUMAN SERVICE WORKER; OR

18 [4.] 6. A PRINCIPAL, VICE PRINCIPAL, teacher, OR
19 TEACHER'S AIDE AT A PUBLIC OR PRIVATE PRESCHOOL, ELEMENTARY, OR
20 SECONDARY SCHOOL; and

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

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

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

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

30 (ii) Regardless of whether the child testifies.

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

33 (i) The defendant in a criminal proceeding had the opportunity to
34 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 with an opportunity to prepare a
4 response to the statement, the prosecutor shall serve on the defendant in a criminal
5 proceeding or on the alleged offender in a juvenile court proceeding and the alleged
6 offender's attorney, a reasonable time before the juvenile court proceeding and at
7 least 20 days before the criminal proceeding in which the statement is to be offered
8 into evidence, notice of:

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

10 (ii) The content of the statement.

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

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

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

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