
By: **Delegates Pitkin, Conroy, Hubbard, and Rosso**
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Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Child Abuse - Out of Court Statement - Requirement for Admissibility**

3 FOR the purpose of removing a certain requirement for the admissibility of a certain
4 out of court statement concerning certain offenses against a child victim under a
5 certain age to be admitted in certain court proceedings; eliminating the
6 requirement that the child victim made the statement to and the statement is
7 offered by a certain physician, psychologist, nurse, social worker, or certain
8 school personnel; making stylistic changes; and generally relating to the use of
9 out of court statements concerning certain alleged offenses in court proceedings.

10 BY repealing and reenacting, with amendments,
11 Article - Criminal Procedure
12 Section 11-304
13 Annotated Code of Maryland
14 (2001 Volume)

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

17 **Article - Criminal Procedure**

18 11-304.

19 (a) In this section, "statement" means:

20 (1) an oral or written assertion; or

21 (2) nonverbal conduct intended as an assertion, including sounds,
22 gestures, demonstrations, drawings, and similar actions.

23 (b) Subject to subsections [(c), (d), and (e)] (C) AND (D) of this section, the court
24 may admit into evidence in a juvenile court proceeding or in a criminal proceeding an
25 out of court statement to prove the truth of the matter asserted in the statement
26 made by a child victim who:

27 (1) is under the age of 12 years; and

1 (2) is the alleged victim or the child alleged to need assistance in the case
2 before the court concerning:

3 (i) child abuse under Article 27, § 35C of the Code;

4 (ii) rape or sexual offense under Article 27, §§ 462 through 464B of
5 the Code;

6 (iii) attempted rape or attempted sexual offense in the first degree
7 or in the second degree under Article 27, § 464F of the Code; or

8 (iv) in a juvenile court proceeding, abuse or neglect as defined in §
9 5-701 of the Family Law Article.

10 (c) [An out of court statement may be admissible under this section only if the
11 statement was made to and is offered by a person acting lawfully in the course of the
12 person's profession when the statement was made who is:

13 (1) a physician;

14 (2) a psychologist;

15 (3) a nurse;

16 (4) a social worker; or

17 (5) a principal, vice principal, teacher, or school counselor at a public or
18 private preschool, elementary school, or secondary school.

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

21 (i) if the statement is not admissible under any other hearsay
22 exception; and

23 (ii) regardless of whether the child victim testifies.

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

26 (i) the defendant OR CHILD RESPONDENT had the opportunity to
27 commit the alleged crime; or

28 (ii) the [child respondent] ALLEGED OFFENDER had the
29 opportunity to commit the alleged abuse or neglect.

30 (3) To provide the defendant or child respondent with an opportunity to
31 prepare a response to the statement, the prosecuting attorney shall serve on the
32 defendant or child respondent and the attorney for the defendant or child respondent,
33 within a reasonable time before the juvenile court proceeding and at least 20 days

1 before the criminal proceeding in which the statement is to be offered into evidence,
2 notice of:

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

4 (ii) the content of the statement.

5 (4) (i) The defendant or child respondent may depose a witness who
6 will testify under this section.

7 (ii) Unless the State and the defendant or child respondent agree or
8 the court orders otherwise, the defendant or child respondent shall file a notice of
9 deposition:

10 1. in a criminal proceeding, at least 5 days before the date of
11 the deposition; or

12 2. in a juvenile court proceeding, within a reasonable time
13 before the date of the deposition.

14 (iii) Except where inconsistent with this paragraph, Maryland Rule
15 4-261 applies to a deposition taken under this paragraph.

16 [(e)] (D) (1) A child victim's out of court statement is admissible under this
17 section only if the statement has particularized guarantees of trustworthiness.

18 (2) To determine whether the statement has particularized guarantees of
19 trustworthiness under this section, the court shall consider, but is not limited to, the
20 following factors:

21 (i) the child victim's personal knowledge of the event;

22 (ii) the certainty that the statement was made;

23 (iii) any apparent motive to fabricate or exhibit partiality by the
24 child victim, including interest, bias, corruption, or coercion;

25 (iv) whether the statement was spontaneous or directly responsive
26 to questions;

27 (v) the timing of the statement;

28 (vi) whether the child victim's young age makes it unlikely that the
29 child victim fabricated the statement that represents a graphic, detailed account
30 beyond the child victim's expected knowledge and experience;

31 (vii) the appropriateness of the terminology of the statement to the
32 child victim's age;

33 (viii) the nature and duration of the abuse or neglect;

- 1 (ix) the inner consistency and coherence of the statement;
- 2 (x) whether the child victim was suffering pain or distress when
3 making the statement;
- 4 (xi) whether extrinsic evidence exists to show the defendant or child
5 respondent had an opportunity to commit the act complained of in the child victim's
6 statement;
- 7 (xii) whether the statement was suggested by the use of leading
8 questions; and
- 9 (xiii) the credibility of the person testifying about the statement.

10 [(f)] (E) In a hearing outside of the presence of the jury or before the juvenile
11 court proceeding, the court shall:

12 (1) make a finding on the record as to the specific guarantees of
13 trustworthiness that are in the statement; and

14 (2) determine the admissibility of the statement.

15 [(g)] (F) (1) In making a determination under subsection [(f)] (E) of this
16 section, the court shall examine the child victim in a proceeding in the judge's
17 chambers, the courtroom, or another suitable location that the public may not attend
18 unless the child victim:

19 (i) is deceased; or

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

23 (2) Except as provided in paragraph (3) of this subsection, any defendant
24 or child respondent, attorney for a defendant or child respondent, and the prosecuting
25 attorney may be present when the court hears testimony on whether to admit into
26 evidence the out of court statement of a child victim under this section.

27 (3) When the court examines the child victim as paragraph (1) of this
28 subsection requires:

29 (i) one attorney for each defendant or child respondent, one
30 attorney for the child victim, and one prosecuting attorney may be present at the
31 examination; and

32 (ii) the court may not allow a defendant or child respondent to be
33 present at the examination.

34 [(h)] (G) (1) This section does not limit the admissibility of a statement
35 under any other applicable hearsay exception or rule of evidence.

1 (2) This section does not prohibit the court in a juvenile court proceeding
2 from hearing testimony in the judge's chambers.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect October 1, 2002.