

SENATE BILL 776

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By: **Senator Lee**

Introduced and read first time: February 5, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Out of Court Statements – Child and Vulnerable Adult**
3 **Victims**

4 FOR the purpose of authorizing the court to admit into evidence in certain criminal
5 proceedings certain out of court statements made by a child victim or a vulnerable
6 adult victim under certain circumstances and subject to certain requirements;
7 making certain stylistic changes; defining a certain term; and generally relating to
8 the admissibility of out of court statements of child or vulnerable adult victims in
9 criminal proceedings.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Procedure
12 Section 11–304
13 Annotated Code of Maryland
14 (2018 Replacement Volume and 2020 Supplement)

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

17 **Article – Criminal Procedure**

18 11–304.

19 (a) **(1)** In this section[, “statement”] **THE FOLLOWING WORDS HAVE THE**
20 **MEANINGS INDICATED.**

21 **(2)** **“STATEMENT”** means:

22 **[(1)] (1)** an oral or written assertion; or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 [(2)] (II) nonverbal conduct intended as an assertion, including sounds,
2 gestures, demonstrations, drawings, and similar actions.

3 (3) **“VULNERABLE ADULT” MEANS AN ADULT WHO LACKS THE**
4 **PHYSICAL OR MENTAL CAPACITY TO PROVIDE FOR THE ADULT’S DAILY NEEDS.**

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

8 (1) is **A CHILD** under the age of 13 years **OR A VULNERABLE ADULT**; and

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

11 (i) child abuse under § 3–601 or § 3–602 of the Criminal Law Article;

12 (ii) rape or sexual offense under §§ 3–303 through 3–307 of the
13 Criminal Law Article;

14 (iii) attempted rape in the first [degree] or [in the] second degree
15 under §§ 3–309 and 3–310 of the Criminal Law Article; [or]

16 (iv) in a juvenile court proceeding, abuse or neglect as defined in §
17 5–701 of the Family Law Article;

18 (V) **NEGLECT OF A MINOR UNDER § 3–602.1 OF THE CRIMINAL**
19 **LAW ARTICLE;**

20 (VI) **ABUSE OR NEGLECT OF A VULNERABLE ADULT IN THE FIRST**
21 **OR SECOND DEGREE UNDER §§ 3–604 AND 3–605 OF THE CRIMINAL LAW ARTICLE;**
22 **OR**

23 (VII) **A CRIME OF VIOLENCE AS DEFINED UNDER § 5–101 OF THE**
24 **PUBLIC SAFETY ARTICLE.**

25 (c) An out of court statement may be admissible under this section only if the
26 statement was made to and is offered by a person acting lawfully in the course of the
27 person’s profession when the statement was made who is:

28 (1) a physician;

29 (2) a psychologist;

30 (3) a nurse;

1 (4) a social worker;

2 (5) a principal, vice principal, teacher, or school counselor at a public or
3 private preschool, elementary school, or secondary school;

4 (6) a counselor licensed or certified in accordance with Title 17 of the
5 Health Occupations Article; or

6 (7) a therapist licensed or certified in accordance with Title 17 of the
7 Health Occupations Article.

8 (d) (1) Under this section, an out of court statement by a child **OR**
9 **VULNERABLE ADULT** victim may come into evidence in a criminal proceeding or in a
10 juvenile court proceeding other than a child in need of assistance proceeding under Title 3,
11 Subtitle 8 of the Courts Article to prove the truth of the matter asserted in the statement:

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

14 (ii) if the child **OR VULNERABLE ADULT** victim testifies.

15 (2) (i) In a child in need of assistance proceeding in the juvenile court
16 under Title 3, Subtitle 8 of the Courts Article, an out of court statement by a child victim
17 may come into evidence to prove the truth of the matter asserted in the statement:

18 1. if the statement is not admissible under any other hearsay
19 exception; and

20 2. regardless of whether the child victim testifies.

21 (ii) If the child victim does not testify, the child victim's out of court
22 statement will be admissible only if there is corroborative evidence that the alleged offender
23 had the opportunity to commit the alleged abuse or neglect.

24 (3) To provide the defendant, child respondent, or alleged offender with an
25 opportunity to prepare a response to the statement, the prosecuting attorney shall serve on
26 the defendant, child respondent, or alleged offender and the attorney for the defendant,
27 child respondent, or alleged offender within a reasonable time before the juvenile court
28 proceeding and at least 20 days before the criminal proceeding in which the statement is to
29 be offered into evidence, notice of:

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

31 (ii) any audio or visual recording of the statement; and

32 (iii) if an audio or visual recording of the statement is not available,

1 the content of the statement.

2 (4) (i) The defendant, child respondent, or alleged offender may depose
3 a witness who will testify under this section.

4 (ii) Unless the State and the defendant, child respondent, or alleged
5 offender agree or the court orders otherwise, the defendant, child respondent, or alleged
6 offender shall file a notice of deposition:

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

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

11 (iii) Except where inconsistent with this paragraph, Maryland Rule
12 4-261 applies to a deposition taken under this paragraph.

13 (e) (1) A child **OR VULNERABLE ADULT** victim's out of court statement is
14 admissible under this section only if the statement has particularized guarantees of
15 trustworthiness.

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

19 (i) the child **OR VULNERABLE ADULT** victim's personal knowledge
20 of the event;

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

22 (iii) any apparent motive to fabricate or exhibit partiality by the child
23 **OR VULNERABLE ADULT** victim, including interest, bias, corruption, or coercion;

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

26 (v) the timing of the statement;

27 (vi) **IN THE INSTANCE OF A CHILD VICTIM**, whether the child
28 victim's young age makes it unlikely that the child victim fabricated the statement that
29 represents a graphic, detailed account beyond the child victim's expected knowledge and
30 experience;

31 (vii) the appropriateness of the terminology of the statement to the
32 child victim's age **OR THE VULNERABLE ADULT VICTIM'S CAPACITY**;

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

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

- 13 (1) make a finding on the record as to the specific guarantees of
14 trustworthiness that are in the statement; and
- 15 (2) determine the admissibility of the statement.

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

- 20 (i) the child **OR VULNERABLE ADULT** victim:
- 21 1. is deceased; or
- 22 2. is absent from the jurisdiction for good cause shown or the
23 State has been unable to procure the child **OR VULNERABLE ADULT** victim's presence by
24 subpoena or other reasonable means; or

25 (ii) the court determines that an audio or visual recording of the
26 child **OR VULNERABLE ADULT** victim's statement makes an examination of the child **OR**
27 **VULNERABLE ADULT** victim unnecessary.

28 (2) Except as provided in paragraph (3) of this subsection, any defendant
29 or child respondent, attorney for a defendant or child respondent, and the prosecuting
30 attorney may be present when the court hears testimony on whether to admit into evidence
31 the out of court statement of a child **OR VULNERABLE ADULT** victim under this section.

1 (3) When the court examines the child **OR VULNERABLE ADULT** victim as
2 paragraph (1) of this subsection requires:

3 (i) one attorney for each defendant or child respondent, one attorney
4 for the child **OR VULNERABLE ADULT** victim, and one prosecuting attorney may be present
5 at the examination; and

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

8 (h) (1) This section does not limit the admissibility of a statement under any
9 other applicable hearsay exception or rule of evidence.

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2021.