

SENATE BILL 20

E2

(2lr0762)

ENROLLED BILL

— *Judicial Proceedings/Judiciary* —

Introduced by **Senator Lee**

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 **Criminal Procedure – Out of Court Statements – Child Victims and Witnesses**

3 FOR the purpose of authorizing the court to admit into evidence in certain criminal
4 proceedings certain out of court statements made by a child victim who is under a
5 certain age and a victim or a witness in a case concerning a crime of violence, subject
6 to certain requirements; and generally relating to the admissibility of out of court
7 statements of child victims and witnesses in criminal proceedings.

8 BY repealing and reenacting, with amendments,

9 Article – Criminal Procedure

10 Section 11–304

11 Annotated Code of Maryland

12 (2018 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



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

Article – Criminal Procedure

11–304.

(a) In this section, “statement” means:

(1) an oral or written assertion; or

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

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

(1) **(I)** is under the age of 13 years; and

~~[(2)] **(II)** is the alleged victim or the child alleged to need assistance in the case before the court concerning~~ **is [the] AN alleged victim or [the] A child alleged to need assistance in the case before the court concerning:**

[(i)] 1. child abuse under § 3–601 or § 3–602 of the Criminal Law Article;

[(ii)] 2. rape or sexual offense under §§ 3–303 through 3–307 of the Criminal Law Article;

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

[(iv)] 4. in a juvenile court proceeding, abuse or neglect as defined in § 5–701 of the Family Law Article; **OR**

5. NEGLECT OF A MINOR UNDER § 3–602.1 OF THE CRIMINAL LAW ARTICLE; OR

(2) (I) IS UNDER THE AGE OF 13 YEARS; AND

(II) IS ~~THE~~ AN ALLEGED VICTIM OR A WITNESS IN A CASE BEFORE THE COURT CONCERNING A CRIME OF VIOLENCE AS DEFINED UNDER § 14–101 OF THE CRIMINAL LAW ARTICLE.

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

4 (1) a physician;

5 (2) a psychologist;

6 (3) a nurse;

7 (4) a social worker;

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

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

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

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

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

20 (ii) if the child victim OR WITNESS testifies.

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

24 1. if the statement is not admissible under any other hearsay
25 exception; and

26 2. regardless of whether the child victim testifies.

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

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

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

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

9 (iii) if an audio or visual recording of the statement is not available,
10 the content of the statement.

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

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

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

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

20 (iii) Except where inconsistent with this paragraph, Maryland Rule
21 4-261 applies to a deposition taken under this paragraph.

22 (e) (1) A child victim's **OR WITNESS'S** out of court statement is admissible
23 under this section only if the statement has particularized guarantees of trustworthiness.

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

27 (i) the child victim's **OR WITNESS'S** personal knowledge of the
28 event;

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

30 (iii) any apparent motive to fabricate or exhibit partiality by the child
31 victim **OR WITNESS**, including interest, bias, corruption, or coercion;

1 (iv) whether the statement was spontaneous or directly responsive to
2 questions;

3 (v) the timing of the statement;

4 (vi) whether the child victim's OR WITNESS'S young age makes it
5 unlikely that the child victim OR WITNESS fabricated the statement that represents a
6 graphic, detailed account beyond the child victim's OR WITNESS'S expected knowledge and
7 experience;

8 (vii) the appropriateness of the terminology of the statement to the
9 child victim's OR WITNESS'S age;

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

11 (ix) the inner consistency and coherence of the statement;

12 (x) whether the child victim OR WITNESS was suffering pain or
13 distress when making the statement;

14 (xi) whether extrinsic evidence exists to show the defendant or child
15 respondent had an opportunity to commit the act complained of in the child victim's OR
16 WITNESS'S statement;

17 (xii) whether the statement was suggested by the use of leading
18 questions; and

19 (xiii) the credibility of the person testifying about the statement.

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

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

24 (2) determine the admissibility of the statement.

25 (g) (1) In making a determination under subsection (f) of this section, the court
26 shall examine the child victim OR WITNESS in a proceeding in the judge's chambers, the
27 courtroom, or another suitable location that the public may not attend unless:

28 (i) the child victim OR WITNESS:

29 1. is deceased; or

