

SENATE BILL 20

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(PRE-FILED)

2lr0762
CF 2lr0884

By: **Senator Lee**

Requested: October 15, 2021

Introduced and read first time: January 12, 2022

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Out of Court Statements – Child Victims**

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 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)

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

15 **Article – Criminal Procedure**

16 11–304.

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

18 (1) an oral or written assertion; or

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

5 [(2)] (II) is the alleged victim or the child alleged to need assistance in the
6 case before the court concerning:

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

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

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

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

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

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

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

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

24 (1) a physician;

25 (2) a psychologist;

26 (3) a nurse;

27 (4) a social worker;

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

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

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

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

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

11 (ii) if the child victim testifies.

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

15 1. if the statement is not admissible under any other hearsay
16 exception; and

17 2. regardless of whether the child victim testifies.

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

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

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

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

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

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

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

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

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

8 (iii) Except where inconsistent with this paragraph, Maryland Rule
9 4–261 applies to a deposition taken under this paragraph.

10 (e) (1) A child victim’s out of court statement is admissible under this section
11 only if the statement has particularized guarantees of trustworthiness.

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

15 (i) the child victim’s personal knowledge of the event;

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

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

19 (iv) whether the statement was spontaneous or directly responsive to
20 questions;

21 (v) the timing of the statement;

22 (vi) whether the child victim’s young age makes it unlikely that the
23 child victim fabricated the statement that represents a graphic, detailed account beyond
24 the child victim’s expected knowledge and experience;

25 (vii) the appropriateness of the terminology of the statement to the
26 child victim’s age;

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

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

29 (x) whether the child victim was suffering pain or distress when
30 making the statement;

1 (xi) whether extrinsic evidence exists to show the defendant or child
2 respondent had an opportunity to commit the act complained of in the child victim's
3 statement;

4 (xii) whether the statement was suggested by the use of leading
5 questions; and

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

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

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

11 (2) determine the admissibility of the statement.

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

15 (i) the child victim:

16 1. is deceased; or

17 2. is absent from the jurisdiction for good cause shown or the
18 State has been unable to procure the child victim's presence by subpoena or other
19 reasonable means; or

20 (ii) the court determines that an audio or visual recording of the
21 child victim's statement makes an examination of the child victim unnecessary.

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

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

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

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

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

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2022.