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January 28, 2022

The Honorable William C. Smith, Jr.
Chairperson, Senate Judicial Proceedings Committee
101 House Office Building
6 Bladen Street
Annapolis, MD 21401

Dear Chairperson Smith:

I write in support of SB20—Criminal Procedure—Out of Court Statements—Child Victims and Witnesses. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office, Chair of the Montgomery County Domestic Violence Coordinating Council, and a member of the Tree House Child Advocacy Center multidisciplinary team. My division prosecutes child abuse, child neglect, domestic violence, human trafficking, sexual assault, and vulnerable adult abuse cases, as well as any homicides associated with any of those crimes.

Criminal Procedure Article, Section 11-304 currently sets forth a specific statutory scheme for the admissibility of reliable out-of-court statements made by child abuse victims who are under the age of thirteen. The statute requires that the child make the statement to either a physician, social worker, teacher, or therapist. Before the State can introduce the out-of-court statement at trial, the State must notify the defendant of its intent to introduce the statement at trial. The defendant is entitled to depose the statement-taker. The Court then holds a pretrial hearing to determine if the statement is trustworthy. At trial, the child must testify and be subject to cross examination. The statement-taker then testifies, and the State offers the child's out of court statement as substantive evidence.

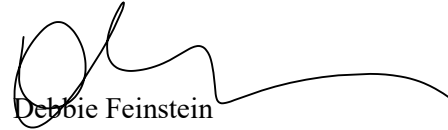
SB20 proposes extending the hearsay exception in section 11-304 to statements made by (1) child victims of neglect, and (2) child victims of, and witnesses to, crimes of violence as defined by Section 14-101 of the Criminal Law Article. The remainder of the statutory scheme would remain the same. Specifically, the child victim or witness must testify at trial for this hearsay exception to apply. Moreover, the addition of child witnesses only applies in criminal cases. The exception for child victims and witnesses to crimes of violence does not apply in civil child in need of assistance cases.

The reasons that support the current 11-304 exceptions apply to statements made by child victims of, and witnesses to, other crimes. The purpose of the statute is to allow the Court to admit trustworthy statements into evidence so that the finder of fact—judge or jury—can have the best evidence of the events relating to the criminal charges. Statements made by children under the age of thirteen in a safe environment, to a trusted adult, and close in time to the commission of the crime or the initial disclosure, carry indicia of reliability. The perpetrator is not in the room, and the purpose of the statement is typically for medical treatment or support purposes, or is gathered by a forensic interviewer, who is trained to ask nonleading questions in a structured and evidence-based manner. These indicia of reliability do not change based on the nature of the crime or whether the child is a victim or witness.

As noted above, before the Court admits any statement under this statutory scheme, the Court must first determine that the statement is trustworthy. The current statutory scheme includes thirteen factors that the Court may consider when making this determination. These factors include whether the child had any motive to fabricate, the inner consistency and coherence of the statement, whether the statement was suggested by the use of leading questions, the child's personal knowledge, and the timing of the statement. These factors provide a layer of protection to the defendant by creating a scheme to exclude unreliable statements, even when those statements are made to a social worker, medical professional, teacher, or therapist.

By passing SB20, the General Assembly will provide greater access to justice for those most vulnerable in our community. I urge a favorable report on SB20.

Sincerely,

A handwritten signature in black ink, appearing to read "Debbie Feinstein", with a long horizontal flourish extending to the right.

Debbie Feinstein
Chief, Special Victims Division
Senior Assistant State's Attorney