

**2024-03-21 HB141 (Support).pdf**

Uploaded by: Adam Spangler

Position: FAV

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**OFFICE OF THE ATTORNEY GENERAL**

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March 21, 2024

TO: The Honorable Will Smith, Jr.  
Chair, Judicial Proceedings Committee

FROM: Tiffany Johnson Clark  
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: House Bill 141 – Criminal Procedure – Child Abuse Victim – Testimony  
Taken Outside the Court Room – **Support**

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The Office of the Attorney General urges the Judicial Proceedings Committee to give House Bill 141 - Criminal Procedure – Child Abuse Victim – Testimony Taken Outside the Court Room a favorable report.

Courtroom testimony, including speaking about abuse in front of one's abuser, can be traumatizing for any victim-survivor, especially for a child. House Bill 141 creates a rebuttable presumption that a child victim under the age of 13 shall be taken outside of court, unless there is "clear and convincing evidence" that the testimony "will not result in the child victim suffering severe emotional distress." House Bill 141 properly balances the defendant's right to confrontation with the technological advances that allow for physical distance between the victim-survivor and the defendant.

Ordinarily, witnesses in criminal cases, including victims, must appear in-person on the witness stand in order to fulfill the constitutional obligation that a criminal defendant be "confronted" by the witnesses against them. However, under Section 11-303 of the Criminal

Procedure Article, in the case of a victim in a case of child abuse or sexual abuse of a minor, a judge may permit the victim to remain outside of the courtroom, and have their testimony live-streamed in the courtroom via CCTV, if the judge determines that the child being physically in the courtroom will cause the child to “suffer such emotional distress that the child cannot reasonably communicate.”

An earlier version of CP § 11-303 was upheld, against a challenge that it violated defendants’ constitutional right to confrontation, in *Maryland v. Craig*, 497 U.S. 836 (1990). In *Craig*, the U.S. Supreme Court held: “if the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant.” *Id.* at 855.

The Office of the Attorney General would like to alert the Committee, however, that by alleviating the State’s burden to make an “adequate showing of necessity”, as required in *Craig*, House Bill 141 could invite a constitutional challenge in a criminal appeal.

For the foregoing reasons, the Office of the Attorney General urges the Committee to vote favorably on House Bill 141.

cc: The Honorable Jesse Pippy  
Judicial Proceedings Committee

# **HB141-Grady-Written.pdf**

Uploaded by: Cheryl Grady

Position: FAV

March 19, 2024

The Honorable Luke Clippinger  
Chairman, House Judiciary Committee  
6 Bladen Street  
Annapolis, MD 21401

Dear Chairperson Clippinger and Members of the Judiciary Committee:

My name is Cheryl Grady and I am a resident of Frederick County (21701). In addition, I am the mother of a child abuse survivor. I am writing to respectfully request the committee to issue a favorable report on House Bill 141 - Criminal Procedure – Child Abuse Victim – Testimony Taken Outside the Courtroom. Thank you for the opportunity to share my testimony in writing.

If this process had been in place several years ago, my young son would not have had to sit in the courtroom to testify against his abuser. As the victim in the trial, my young son had to sit mere feet away from the defendant. My young son had to face the emotional challenge of having to talk about being abused in front of strangers. He also had to face the emotional struggle of testifying against a formerly trusted adult family member. The most tragic thing was that I was unable to be in the courtroom with my young son to support him. This is because I was also a testifying witness in the trial. As a mom, it was the hardest thing in the world to have to tell him to be brave and then have to walk away. To this day, even though he is now a young adult, he continues to say that it was the worst day of his life. He says that it was worse than the actual acts of abuse. In fact, he often asks to take detours away from the courthouse when we are traveling in the vicinity of it. It feels awful that in order to seek justice, we had to subject him to more trauma.

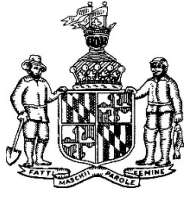
A young child should have the opportunity to testify. In addition, I understand the right of the accused to confront the accuser. However, it is important to understand how much more the process of justice can add to what will already be lifelong trauma. My young son's trauma was intensified by having to testify in front of his abuser. It also required him to receive expanded and extended therapy in order to address it. And as written above, there is, still today, a constant physical reminder of it in the middle of our city.

I appreciate you taking the time to read my son's story and respectfully urge this committee to return a favorable report on HB141.

# **Feinstein Letter of Support HB0141--JPR.pdf**

Uploaded by: Debbie Feinstein

Position: FAV



STATE'S ATTORNEY  
JOHN J. MCCARTHY

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DEPUTY STATE'S ATTORNEYS  
PETER A. FEENEY  
RYAN S. WECHSLER

March 20, 2024

The Honorable Will Smith  
Chair, Judicial Proceedings Committee  
11 Bladen Street  
Annapolis, MD 21401

Dear Chair Smith and Members of the Judicial Proceedings Committee:

I write in support of HB0141—Criminal Law—Child Victim—Testimony in Child Abuse Cases (with amendments). I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office and a member of the Montgomery County's Child Advocacy Center's Multidisciplinary Team. I have personally prosecuted and/or supervised hundreds of child sexual abuse cases over the last seventeen years. I also co-chair the Maryland State's Attorneys Association's Special Victims Legislative Subcommittee, which is comprised of child abuse and domestic violence prosecutors from all over our state.

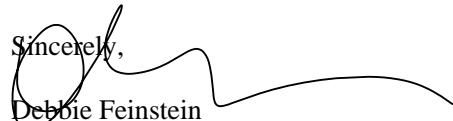
Section 11-303 of the Criminal Procedure Article currently allows a child abuse victim to testify via closed circuit television if the court determines that "testimony by the child victim in the presence of the defendant or a child respondent will result in the child victim suffering serious emotional distress such that the child victim cannot reasonably communicate." The section then outlines the procedure the court must follow before allowing the child to testify in another room in the presence of one prosecuting attorney, one attorney for the child victim, the operators of the television equipment, and a person whose presence contributes to the well-being of the child victim.

Over the last seventeen years, I cannot think of an instance where a prosecutor in my office successfully utilized this closed circuit television procedure. In the few instances that I have tried to use the process, the child's treatment provider could testify that the child would suffer serious emotional distress in the presence of the defendant, but could not say that the child victim would be unable to speak. Linking the ability to speak (or lack thereof) with the emotional impact misses the point of this intended allowance for child abuse victims. If we are seeking to protect the welfare of the child with this alternative process, minimizing serious emotional distress is an appropriate standard. HB0141 (with amendment) appropriately separates the child's ability to speak from the child suffering serious emotional distress.

Over the last several years, the court has determined that video testimony via such platforms as Zoom or Microsoft Teams, satisfies the defendant's right to confrontation. Section 11-303 similarly satisfies that right. This process may only be used where the defendant is represented by counsel and where defendant's counsel is in the room with the child. The statute specifically allows for communication between the defendant and their counsel.

The process outlined in HB0141 (with amendment) allows child victims greater access to justice without forgoing the defendant's constitutional right to confrontation. I urge a favorable report on HB0141.

Sincerely,

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

# **Child Abuse - closed circuit - testimony - house i**

Uploaded by: Lisae C Jordan

Position: FAV





**Working to end sexual violence in Maryland**

P.O. Box 8782  
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For more information contact:  
Lisae C. Jordan, Esquire  
443-995-5544

**Testimony Supporting House Bill 141**  
**Lisae C. Jordan, Executive Director & Counsel**  
March 21, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute which provides direct legal services for survivors across the State of Maryland. We urge the Judicial Proceedings Committee to report favorably on House Bill 141.

**House Bill 141 – Child Abuse Victim – Testimony Outside the Courtroom**

This bill would modify Maryland's current statute, Criminal Procedure §11-303, and create a rebuttable presumption that child abuse victim-witnesses under age 13 will testify via two-way closed-circuit television. For child victim-witnesses age 13 and over, closed circuit testimony would be permitted only if testimony will result in the child victim's suffering serious emotional distress such that the child victim cannot reasonably communicate. Court interpretations of the current statute have limited the utility of the law. See, *Wildermuth v State*, 310 Md. 496 (1987)

Child abuse victims who would be protected by HB141 include victims of child sexual abuse. 28.4% of the child abuse or neglect that occurred in Maryland in 2020 was sexual abuse, meaning at least 2,059 Maryland children experienced sexual abuse.<sup>1</sup> This is an increase of 3.4% from 2019. It is important that Maryland continue to improve its response to these children.

Testifying in court and being subject to cross examination is inherently traumatizing for many survivors of sexual crimes, but especially for child victims of sexual abuse. These children are often ashamed, embarrassed, scared, and conflicted about their abuse. Countless cases are pled down so children can avoid being on the stand, and others are lost when children are unable to articulate what happened while sitting near their abuser. When children do testify, they are retraumatized.

Providing testimony via closed circuit TV helps reduce (but not eliminate) re-traumatization, and will increase cases where children can provide important information to juries and judges in both criminal cases and child protective services cases. The prevalence of on-line platforms and video

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<sup>1</sup> U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau. (2020) Child maltreatment 2020. Retrieved from: <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>

communication has also increased factfinders' familiarity with this media and reduces past concerns about fairness.

Potential amendment: MCASA notes that the Committee may wish to consider amending the bill to include any sexual crime against a child under Title 3, Subtitle 3 of the Criminal Law Article and protect a wider group of child victims.

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on House Bill 141**

# **Testimony in support of crossover bill HB0141.pdf**

Uploaded by: Richard KAP Kaplowitz

Position: FAV

**CROSSOVER BILL HB0141\_RichardKaplowitz\_FAV**

3/21/2024

Richard Keith Kaplowitz  
Frederick, MD 21703

**TESTIMONY ON CROSSOVER BILL HB#/0141 - POSITION: FAVORABLE**  
**Criminal Procedure - Child Abuse Victim - Testimony Taken Outside the Courtroom**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Richard Keith Kaplowitz

**My name is Richard Keith Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of CROSSOVER BILL HB#/0141, Criminal Procedure - Child Abuse Victim - Testimony Taken Outside the Courtroom**

I am proud of my two Frederick County legislators for their sponsorship of this important bill. An abused child has been damaged not only in body but in mind and soul. The trauma of that abuse can often last a lifetime and destroy the child's happiness and sense of self-worth. To then make that child be in the presence of their abuser compounds all of the damages the abuse has inflicted upon them. The abuser's manipulation of the child's trust could create a situation in which, viewing that abuser directly, threats and warnings from their abuser become primary motivators in a child's testimony against the individual.

Childhood and children are precious. My Jewish faith teaches me how to treat a child who has suffered damage, as Isaiah 1:17 says "Learn to do good, seek justice, strengthen the robbed, perform justice for the orphan, plead the case of the widow." An abused child must have justice having been robbed of that childhood. It is incumbent upon us then to strengthen them by protecting them from their abuser and this bill will help the justice system to accomplish that end.

The protection of the life, health, and safety of children in is a primary responsibility of every adult in Maryland. This bill expands the capability of the criminal justice system to meet that responsibility. **I respectfully urge this committee to return a favorable report on CROSSOVER BILL HB#/0141.**