

HOUSE BILL 284

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CF SB 20

By: **Delegate Crutchfield**

Introduced and read first time: January 17, 2022

Assigned to: Judiciary

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 an alleged victim or a witness in a case concerning a crime of
6 violence, subject to certain requirements; and generally relating to the admissibility
7 of out of court 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.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

21 (1) a physician;

22 (2) a psychologist;

23 (3) a nurse;

24 (4) a social worker;

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

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

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

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

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

9 (ii) if the child victim testifies.

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

13 1. if the statement is not admissible under any other hearsay
14 exception; and

15 2. regardless of whether the child victim testifies.

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

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

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

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

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

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

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

1 (xii) whether the statement was suggested by the use of leading
2 questions; and

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

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

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

8 (2) determine the admissibility of the statement.

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

12 (i) the child victim:

13 1. is deceased; or

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

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

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

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

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

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

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

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

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