E2

0 lr 2328 CF 0 lr 2334

By: Delegates Pippy, Atterbeary, Bartlett, D.M. Davis, Grammer, J. Lewis, Lopez, Malone, McComas, Shetty, R. Watson, and Williams

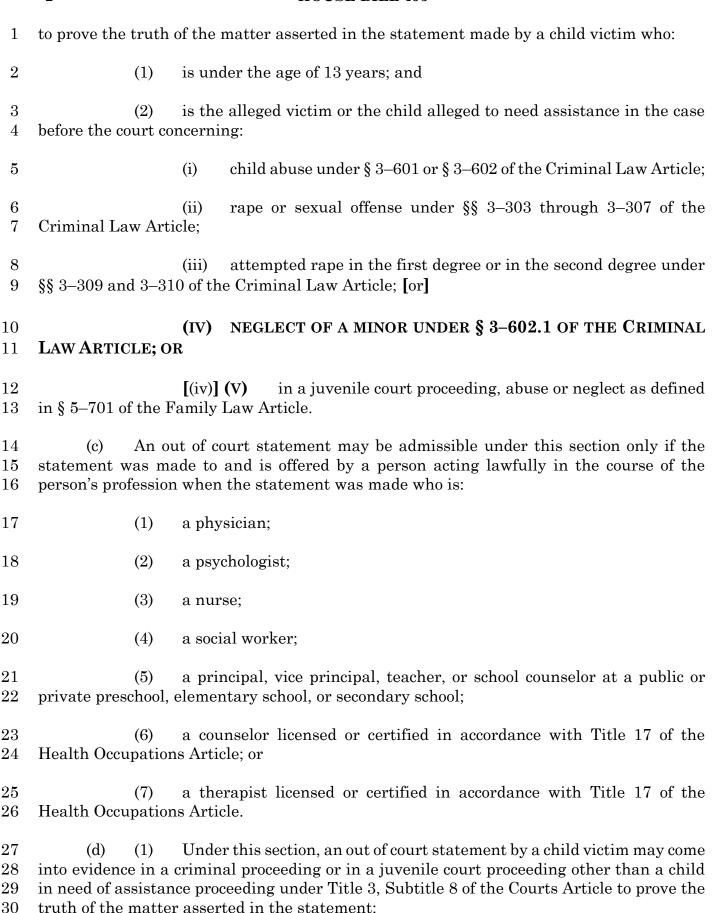
Introduced and read first time: January 24, 2020

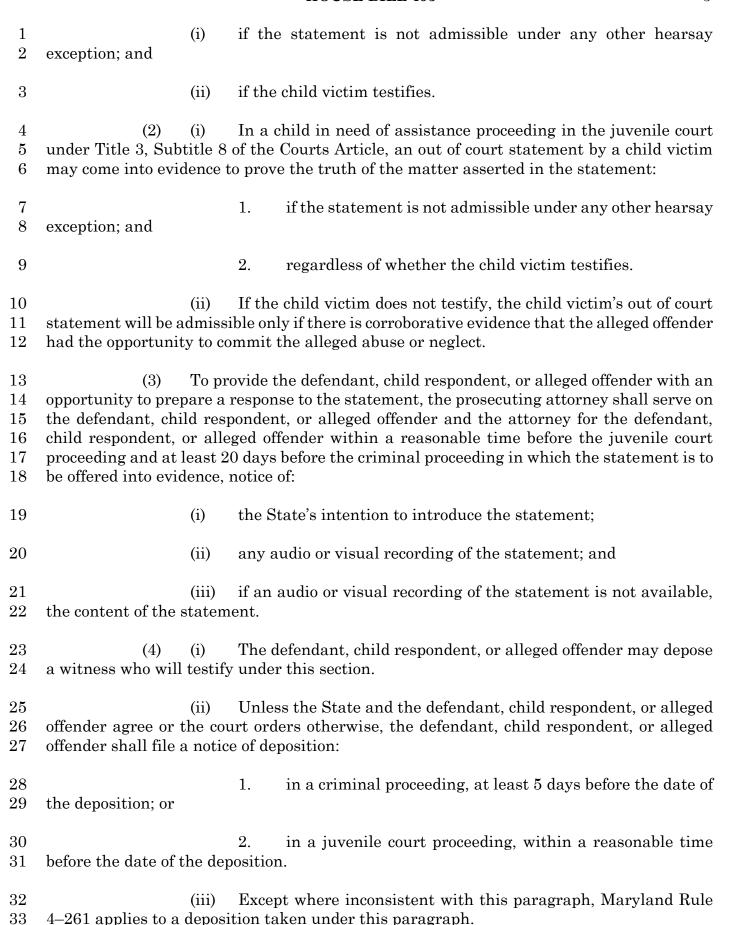
Assigned to: Judiciary

A BILL ENTITLED

1	AN ACT concerning
2 3	Criminal Procedure – Out of Court Statement of Child Victim – Neglect of a Minor
4 5 6 7	FOR the purpose of adding cases concerning neglect of a minor under a certain provision of law as a type of case in which a court may admit into evidence a certain out of court statement made by a certain child; and generally relating to out of court statements of child victims.
8 9 10 11 12	BY repealing and reenacting, with amendments, Article – Criminal Procedure Section 11–304 Annotated Code of Maryland (2018 Replacement Volume and 2019 Supplement)
13 14	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, 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 20	(2) nonverbal conduct intended as an assertion, including sounds, gestures, demonstrations, drawings, and similar actions.
21 22	(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







30

(1)

A child victim's out of court statement is admissible under this section 1 (e) (1)2 only if the statement has particularized guarantees of trustworthiness. 3 (2)To determine whether the statement has particularized guarantees of 4 trustworthiness under this section, the court shall consider, but is not limited to, the following factors: 5 6 (i) the child victim's personal knowledge of the event; 7 (ii) the certainty that the statement was made; 8 any apparent motive to fabricate or exhibit partiality by the child (iii) victim, including interest, bias, corruption, or coercion; 9 10 (iv) whether the statement was spontaneous or directly responsive to 11 questions; 12 the timing of the statement; (v) 13 whether the child victim's young age makes it unlikely that the (vi) child victim fabricated the statement that represents a graphic, detailed account beyond 14 the child victim's expected knowledge and experience; 15 16 the appropriateness of the terminology of the statement to the (vii) 17 child victim's age; 18 (viii) the nature and duration of the abuse or neglect; 19 the inner consistency and coherence of the statement; (ix) 20 whether the child victim was suffering pain or distress when 21making the statement; 22 whether extrinsic evidence exists to show the defendant or child 23respondent had an opportunity to commit the act complained of in the child victim's 24statement: 25 whether the statement was suggested by the use of leading (xii) 26 questions; and 27 (xiii) the credibility of the person testifying about the statement. 28In a hearing outside of the presence of the jury or before the juvenile court 29 proceeding, the court shall:

make a finding on the record as to the specific guarantees of

- 1 trustworthiness that are in the statement; and 2 (2) determine the admissibility of the statement. 3 (g) (1) In making a determination under subsection (f) of this section, the court 4 shall examine the child victim in a proceeding in the judge's chambers, the courtroom, or another suitable location that the public may not attend unless: 5 6 the child victim: (i) 7 1. is deceased; or 8 2. is absent from the jurisdiction for good cause shown or the State has been unable to procure the child victim's presence by subpoena or other 9 reasonable means; or 10 11 (ii) the court determines that an audio or visual recording of the 12 child victim's statement makes an examination of the child victim unnecessary. 13 (2)Except as provided in paragraph (3) of this subsection, any defendant or child respondent, attorney for a defendant or child respondent, and the prosecuting 14 attorney may be present when the court hears testimony on whether to admit into evidence 15 the out of court statement of a child victim under this section. 16 17 When the court examines the child victim as paragraph (1) of this (3)18 subsection requires: one attorney for each defendant or child respondent, one attorney 19 (i) 20for the child victim, and one prosecuting attorney may be present at the examination; and 21(ii) the court may not allow a defendant or child respondent to be 22present at the examination. 23(h) This section does not limit the admissibility of a statement under any (1)24other applicable hearsay exception or rule of evidence. 25(2)This section does not prohibit the court in a juvenile court proceeding from hearing testimony in the judge's chambers. 26
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.