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Judicial Proceedings Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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Senate Judicial Proceedings Committee

Senate Bill 776 - Criminal Procedure – Out of Court Statements – Child and Vulnerable Adult Victims

SB 776 has been introduced in various forms in past sessions. This version proposes expanding the hearsay exception for more children and vulnerable adults under § 11-304 of the Criminal Procedure Article. This existing statute is an exception to the hearsay rule, and currently allows the State to admit statements made by children under the age of thirteen that relate to child physical and sexual abuse when those statements are made to certain individuals, including physicians, social workers, teachers, and therapists. The proposed law extends the exception to child victims of Neglect of a Minor (Criminal Law Article § 3-602.1) and Crimes of Violence (defined in Public Safety Article § 5-101). It also extends the hearsay exception to vulnerable adult victims of Abuse or Neglect of a Vulnerable Adult in the First and Second Degree (Criminal Law Article §§ 3-604, 3-605). Another provision of the bill will extend the hearsay exception to children and vulnerable adult witnesses to crimes of violence, face similar intimidation factors.

Under current law, § 11-304 has a specific scheme to admit certain out-of-court statements. The State must first notify the defendant of its intent to introduce the statement at trial, and the defendant is entitled to depose the statement-taker. The Court then holds a pretrial hearing to determine if both the statement is trustworthy and the child is competent to testify. 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.

It is my contention that the 11-304 exceptions should be applicable to statements made by victims of child neglect, crimes of violence, and vulnerable adult victims, as well as certain witnesses to those serious crimes. These victims and witnesses often have similar relationships to their perpetrators and face similar challenges when it comes to testifying, including their

ability to recall specific events and their susceptibility to intimidation. A victim's or witness's memory of an event is much stronger closer in time to the precipitating event, which is when most of the statements admissible under §11-304 are disclosed.

Moreover, cases of this nature often involve complex family dynamics that may, over time, result in a child or vulnerable adult becoming reluctant to speak about the abuse they experienced or witnesses, trivializing the nature of the abuse, or even recanting their allegations altogether. A child or vulnerable adult's out-of-court statement made close in time to the event, in a safe, comfortable environment out of the presence of the perpetrator, and before being subjected to the pressures of other family members, may be reliable than his or her testimony at trial.

Expanding § 11-304 to include child and vulnerable adult victims and witnesses to certain crimes will allow a judge or jury to hear a full and reliable account of what happened to a victim or what a witness saw. The rigorous trustworthiness test in place with the right to confront the witness provide the due process protections for defendants, while allowing this evidence to be brought forward in a credible manner. The statement taker also is able to be cross examined at trial. The process is more reliable, more complete and more unearths more important details for all sides to consider.

For these reasons I respectfully request a favorable committee report on SB 776, as amended.