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March 8, 2021

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

Dear Chairman Smith:

I write in support of SB776—Criminal Procedure—Out of Court Statements—Child and Vulnerable Adult 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, Chair of the Montgomery County Elder/Vulnerable Adult Abuse Task Force, 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. In order for the State to use 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.

HB1122 proposes extending the hearsay exception in section 11-304 to statements made by child or vulnerable adult victims or witnesses to: (1) child abuse and sexual offenses; (2) child neglect; (3) crimes of violence as defined by Section 5-101 of the Public Safety Article; and (4) vulnerable adult abuse. The remainder of the statutory scheme would remain the same.

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.

Section 11-304 should also be extended to vulnerable adult victims and witnesses, particularly to those individuals with mental or other cognitive differences. Like children under the age of thirteen, a safe environment, a trusted statement-taker, and close proximity to the crime or disclosure, render these



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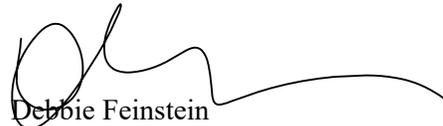
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statements more trustworthy. My division has seen many cases where a vulnerable adult makes a statement to a social worker with Adult Protective Services close in time to the offense, but later has difficulty recalling what happened or is intimidated by the court process.

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 SB776, the General Assembly will provide greater access to justice for those most vulnerable in our community. I urge a favorable report on SB776.

Sincerely,


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