



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB3973

Introduced 12/22/2003, by Dan Brady

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-10

from Ch. 38, par. 115-10

Amends the Code of Criminal Procedure of 1963. Provides that in a prosecution for sexual exploitation of a child, testimony by the victim of an out of court statement made by the victim that he or she complained of such act of sexual exploitation of a child to another and testimony of an out of court statement by the victim describing any complaint of such act of sexual exploitation of a child or matter or detail pertaining to an act which is an element of the offense of sexual exploitation of a child is admissible into evidence as an exception to the hearsay rule. Effective immediately.

LRB093 14202 RLC 40087 b

1 AN ACT in relation to criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 115-10 as follows:

6 (725 ILCS 5/115-10) (from Ch. 38, par. 115-10)

7 Sec. 115-10. Certain hearsay exceptions.

8 (a) In a prosecution for a physical or sexual act
9 perpetrated upon or against a child under the age of 13, or a
10 person who was a moderately, severely, or profoundly mentally
11 retarded person as defined in this Code and in Section 2-10.1
12 of the Criminal Code of 1961 at the time the act was committed,
13 including but not limited to prosecutions for violations of
14 Sections 12-13 through 12-16 of the Criminal Code of 1961 and
15 prosecutions for violations of Sections 10-1, 10-2, 10-3,
16 10-3.1, 10-4, 10-5, 10-6, 10-7, 11-6, 11-9, 11-9.1, 11-11,
17 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-19.2, 11-20.1, 11-21,
18 12-1, 12-2, 12-3, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.7,
19 12-5, 12-6, 12-6.1, 12-7.1, 12-7.3, 12-7.4, 12-10, 12-11,
20 12-21.5, 12-21.6 and 12-32 of the Criminal Code of 1961, the
21 following evidence shall be admitted as an exception to the
22 hearsay rule:

23 (1) testimony by the victim of an out of court
24 statement made by the victim that he or she complained of
25 such act to another; and

26 (2) testimony of an out of court statement made by the
27 victim describing any complaint of such act or matter or
28 detail pertaining to any act which is an element of an
29 offense which is the subject of a prosecution for a sexual
30 or physical act against that victim.

31 (b) Such testimony shall only be admitted if:

1 (1) The court finds in a hearing conducted outside the
2 presence of the jury that the time, content, and
3 circumstances of the statement provide sufficient
4 safeguards of reliability; and

5 (2) The child or moderately, severely, or profoundly
6 mentally retarded person either:

7 (A) testifies at the proceeding; or

8 (B) is unavailable as a witness and there is
9 corroborative evidence of the act which is the subject
10 of the statement; and

11 (3) In a case involving an offense perpetrated against
12 a child under the age of 13, the out of court statement was
13 made before the victim attained 13 years of age or within 3
14 months after the commission of the offense, whichever
15 occurs later, but the statement may be admitted regardless
16 of the age of the victim at the time of the proceeding.

17 (c) If a statement is admitted pursuant to this Section,
18 the court shall instruct the jury that it is for the jury to
19 determine the weight and credibility to be given the statement
20 and that, in making the determination, it shall consider the
21 age and maturity of the child, or the intellectual capabilities
22 of the moderately, severely, or profoundly mentally retarded
23 person, the nature of the statement, the circumstances under
24 which the statement was made, and any other relevant factor.

25 (d) The proponent of the statement shall give the adverse
26 party reasonable notice of his intention to offer the statement
27 and the particulars of the statement.

28 (e) Statements described in paragraphs (1) and (2) of
29 subsection (a) shall not be excluded on the basis that they
30 were obtained as a result of interviews conducted pursuant to a
31 protocol adopted by a Child Advocacy Advisory Board as set
32 forth in subsections (c), (d), and (e) of Section 3 of the
33 Children's Advocacy Center Act or that an interviewer or
34 witness to the interview was or is an employee, agent, or
35 investigator of a State's Attorney's office.

36 (Source: P.A. 91-357, eff. 7-29-99; 92-434, eff. 1-1-02.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.