



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1855

Introduced 2/20/2015, by Sen. Toi W. Hutchinson

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-10

from Ch. 38, par. 115-10

Amends the Code of Criminal Procedure of 1963. Adds first degree murder to the list of offenses for which certain out of court statements are admissible as an exception to the hearsay rule in a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13, or a person who was a moderately, severely, or profoundly intellectually disabled person. Allows as an exception to the hearsay rule an out of court statement of a child witness under the age of 13 (rather than limited to the child victim under the age of 13) describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim, and describing a sexual or physical act performed by the accused on or with any person if admissible under the Section of this Code regarding evidence in certain cases or certain character evidence under the Illinois Rules of Evidence.

LRB099 09252 MRW 31216 b

1 AN ACT concerning 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
11 intellectually disabled person as defined in this Code and in
12 Section 2-10.1 of the Criminal Code of 1961 or the Criminal
13 Code of 2012 at the time the act was committed, including but
14 not limited to prosecutions for violations of Sections 11-1.20
15 through 11-1.60 or 12-13 through 12-16 of the Criminal Code of
16 1961 or the Criminal Code of 2012 and prosecutions for
17 violations of Sections 9-1 (first degree murder), 10-1
18 (kidnapping), 10-2 (aggravated kidnapping), 10-3 (unlawful
19 restraint), 10-3.1 (aggravated unlawful restraint), 10-4
20 (forcible detention), 10-5 (child abduction), 10-6 (harboring
21 a runaway), 10-7 (aiding or abetting child abduction), 11-9
22 (public indecency), 11-11 (sexual relations within families),
23 11-21 (harmful material), 12-1 (assault), 12-2 (aggravated

1 assault), 12-3 (battery), 12-3.2 (domestic battery), 12-3.3
2 (aggravated domestic battery), 12-3.05 or 12-4 (aggravated
3 battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery
4 with a firearm), 12-4.3 (aggravated battery of a child), 12-4.7
5 (drug induced infliction of great bodily harm), 12-5 (reckless
6 conduct), 12-6 (intimidation), 12-6.1 or 12-6.5 (compelling
7 organization membership of persons), 12-7.1 (hate crime),
8 12-7.3 (stalking), 12-7.4 (aggravated stalking), 12-10 or
9 12C-35 (tattooing the body of a minor), 12-11 or 19-6 (home
10 invasion), 12-21.5 or 12C-10 (child abandonment), 12-21.6 or
11 12C-5 (endangering the life or health of a child) or 12-32
12 (ritual mutilation) of the Criminal Code of 1961 or the
13 Criminal Code of 2012 or any sex offense as defined in
14 subsection (B) of Section 2 of the Sex Offender Registration
15 Act, the following evidence shall be admitted as an exception
16 to the hearsay rule:

17 (1) testimony by the victim of an out of court
18 statement made by the victim that he or she complained of
19 such act to another; ~~and~~

20 (2) testimony of an out of court statement made by a
21 child witness under the age of 13, including the victim
22 describing any complaint of such act or matter or detail
23 pertaining to any act which is an element of an offense
24 which is the subject of a prosecution for a sexual or
25 physical act against that victim; and

26 (3) testimony of an out of court statement made by a

1 child witness under the age of 13, including the victim,
2 describing a sexual or physical act performed by the
3 accused on or with any person if admissible under Section
4 115-7.3 of this Code or Rule 404 (b) of the Illinois Rules
5 of Evidence.

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

7 (1) The court finds in a hearing conducted outside the
8 presence of the jury that the time, content, and
9 circumstances of the statement provide sufficient
10 safeguards of reliability; and

11 (2) The child or moderately, severely, or profoundly
12 intellectually disabled person either:

13 (A) testifies at the proceeding; or

14 (B) is unavailable as a witness and there is
15 corroborative evidence of the act which is the subject
16 of the statement; and

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

23 (c) If a statement is admitted pursuant to this Section,
24 the court shall instruct the jury that it is for the jury to
25 determine the weight and credibility to be given the statement
26 and that, in making the determination, it shall consider the

1 age and maturity of the child, or the intellectual capabilities
2 of the moderately, severely, or profoundly intellectually
3 disabled person, the nature of the statement, the circumstances
4 under which the statement was made, and any other relevant
5 factor.

6 (d) The proponent of the statement shall give the adverse
7 party reasonable notice of his intention to offer the statement
8 and the particulars of the statement.

9 (e) Statements described in paragraphs (1), (2), and (3)
10 ~~and (2)~~ of subsection (a) shall not be excluded on the basis
11 that they were obtained as a result of interviews conducted
12 pursuant to a protocol adopted by a Child Advocacy Advisory
13 Board as set forth in subsections (c), (d), and (e) of Section
14 3 of the Children's Advocacy Center Act or that an interviewer
15 or witness to the interview was or is an employee, agent, or
16 investigator of a State's Attorney's office.

17 (Source: P.A. 96-710, eff. 1-1-10; 96-1551, Article 1, Section
18 965, eff. 7-1-11; 96-1551, Article 2, Section 1040, eff.
19 7-1-11; 97-227, eff. 1-1-12; 97-1108, eff. 1-1-13; 97-1109,
20 eff. 1-1-13; 97-1150, eff. 1-25-13.)