1 **State of Arkansas**

2 **78th General Assembly**   # A Bill   **Call Item 3**

3 **First Extraordinary Session, 1992**   **HOUSE BILL   1039**

4 **By: Representative Pollan**

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7   # For An Act To Be Entitled

8   "AN ACT TO CREATE A CHILD HEARSAY EXCEPTION TO THE RULES

9   OF EVIDENCE; AND FOR OTHER PURPOSES."

10

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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13   SECTION 1. Rule 803 (25) of Arkansas Code 16-41-101 is hereby amended

14 to read as follows:

15   "(25) A statement made by a child under ten (10) years of age

16 concerning any act or offense against that child involving sexual offenses,

17 child abuse, or incest is admissible in any *civil or* criminal proceeding in a

18 court of this state, provided:

19   *1. The court finds, in a* hearing conducted outside the presence of the

20 jury, that the statement offered possesses a reasonable likelihood of

21 trustworthiness using the following criteria:

22   a. the spontaneity and consistency of repetition of the statement by the

23 child;

24   b. the mental state of the child;

25   c. the child_s use of terminology unexpected of a child of similar age;

26   d. the lack of a motive by the child to fabricate the statement.

27   *2. Before the hearsay testimony is admitted by the court and without*

28 *regard to the determination of competency, the court will examine the child on*

29 *the record in camera. This examination shall be considered along with the*

30 *criteria set forth in subdivisions (25)(1) (a) - (d) as to the admissability*

31 *of the hearsay statements. The court shall not require this examination nor*

32 *shall it require the attendance of the child at the hearing if the court*

33 *determines the examination and attendance will be against the best interest of*

34 *the child.*

35   *3. The proponent of the statement shall give the adverse party*

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1 reasonable notice of his intention to offer the statement and the particulars

2 of the statement.

3   *4.* This section shall not be construed to limit the admission of an

4 offered statement under any other hearsay exception or applicable rule of

5 evidence."

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7   SECTION 2. All provisions of this act of a general and permanent nature

8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

9 Revision Commission shall incorporate the same in the Code.

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11   SECTION 3. If any provision of this act or the application thereof to

12 any person or circumstance is held invalid, such invalidity shall not affect

13 other provisions or applications of the act which can be given effect without

14 the invalid provision or application, and to this end the provisions of this

15 act are declared to be severable.

16

17   SECTION 4. All laws and parts of laws in conflict with this act are

18 hereby repealed.

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20   *SECTION 5. EMERGENCY. It is hereby found and determined by the General*

21 *Assembly that the hearsay exception under 803(25) concerning statements made*

22 *by a child under ten years of age concerning any act or offense against that*

23 *child involving sexual offenses, child abuse or incest should be amended to*

24 *reflect the criteria for determining trustworthiness as set forth in the*

25 *United States Supreme Court decision of <u>Idaho v. Wright</u>, 110 S.Ct. 3139*

26 *(1990). It is determined by the General Assembly that the United States'*

27 *Supreme Court's decision in <u>White v. Illinois</u>, No. 90-6113 (S.Ct. Jan. 15,*

28 *1992) foreclosed any rule requiring that as a necessary antecedent to the*

29 *introduction of hearsay testimony, the prosecution must either produce the*

30 *declarant at trial or show that the declarant is unavailable. Therefore, an*

31 *emergency is hereby declared to exist and this act being necessary for the*

32 *preservation of the public peace, health and safety shall be in full force and*

33 *effect from and after its passage and approval.*

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35   */s/Carolyn Pollan*

As Engrossed: 3/25/03

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