

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL NO. 188

(Third Reading File Bill)

AMENDMENT NO. 1

On page 2, strike beginning with “providing” in line 3 down through “justice;” in line 5; strike in their entirety lines 19 through 23, inclusive; in line 26, strike “3-8A-03(d)(4)(xviii) and”; and strike in their entirety lines 29 through 33, inclusive.

AMENDMENT NO. 2

On page 5, strike in their entirety lines 25 through 36, inclusive.

AMENDMENT NO. 3

On page 6, strike in their entirety lines 2 through 27, inclusive, and substitute:

“(A) DURING THE TRIAL OF A CRIMINAL CASE IN WHICH THE DEFENDANT IS CHARGED WITH A FELONIOUS VIOLATION OF TITLE 5 OF THE CRIMINAL LAW ARTICLE OR WITH THE COMMISSION OF A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, A STATEMENT AS DEFINED IN MARYLAND RULE 5-801(A) IS NOT EXCLUDED BY THE HEARSAY RULE IF THE STATEMENT IS OFFERED AGAINST A PARTY THAT HAS ENGAGED IN, DIRECTED, OR CONSPIRED TO COMMIT WRONGDOING THAT WAS INTENDED TO AND DID PROCURE THE UNAVAILABILITY OF THE DECLARANT OF THE STATEMENT, AS DEFINED IN MARYLAND RULE 5-804.

(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, BEFORE ADMITTING A STATEMENT UNDER THIS SECTION, THE COURT SHALL HOLD A HEARING OUTSIDE THE PRESENCE OF THE JURY AT WHICH:

(1) THE MARYLAND RULES OF EVIDENCE ARE STRICTLY APPLIED;

AND

(Over)

(2) THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE PARTY AGAINST WHOM THE STATEMENT IS OFFERED ENGAGED IN, DIRECTED, OR CONSPIRED TO COMMIT THE WRONGDOING THAT PROCURED THE UNAVAILABILITY OF THE DECLARANT.

(C) A STATEMENT MAY NOT BE ADMITTED UNDER THIS SECTION UNLESS:

(1) THE STATEMENT WAS:

(I) GIVEN UNDER OATH SUBJECT TO THE PENALTY OF PERJURY AT A TRIAL, HEARING, OR OTHER PROCEEDING OR IN A DEPOSITION;

(II) REDUCED TO WRITING AND SIGNED BY THE DECLARANT;
OR

(III) RECORDED IN SUBSTANTIALLY VERBATIM FASHION BY STENOGRAPHIC OR ELECTRONIC MEANS CONTEMPORANEOUSLY WITH THE MAKING OF THE STATEMENT; AND

(2) AS SOON AS IS PRACTICABLE AFTER THE PROPONENT OF THE STATEMENT LEARNS THAT THE DECLARANT WILL BE UNAVAILABLE, THE PROPONENT NOTIFIES THE ADVERSE PARTY OF:

(I) THE INTENTION TO OFFER THE STATEMENT;

(II) THE PARTICULARS OF THE STATEMENT; AND

(III) THE IDENTITY OF THE WITNESS THROUGH WHOM THE STATEMENT WILL BE OFFERED.”.