

# SENATE BILL 211

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9lr1433

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By: **Senator Lee**

Introduced and read first time: January 24, 2019

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Evidence – Causing Unavailability of Witness – Standard of Proof**

3 FOR the purpose of altering the standard of proof by which a judge in a certain criminal  
4 case must make certain findings before the judge may admit into evidence a certain  
5 statement; and generally relating to evidence.

6 BY repealing and reenacting, with amendments,  
7 Article – Courts and Judicial Proceedings  
8 Section 10–901  
9 Annotated Code of Maryland  
10 (2013 Replacement Volume and 2018 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
12 That the Laws of Maryland read as follows:

13 **Article – Courts and Judicial Proceedings**

14 10–901.

15 (a) During the trial of a criminal case in which the defendant is charged with a  
16 felonious violation of Title 5 of the Criminal Law Article or with the commission of a crime  
17 of violence as defined in § 14–101 of the Criminal Law Article, a statement as defined in  
18 Maryland Rule 5–801(a) is not excluded by the hearsay rule if the statement is offered  
19 against a party that has engaged in, directed, or conspired to commit wrongdoing that was  
20 intended to and did procure the unavailability of the declarant of the statement, as defined  
21 in Maryland Rule 5–804.

22 (b) Subject to subsection (c) of this section, before admitting a statement under  
23 this section, the court shall hold a hearing outside the presence of the jury at which:

24 (1) The Maryland Rules of Evidence are strictly applied; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (2)    The court finds by [clear and convincing] **A PREPONDERANCE OF THE**  
2 evidence that the party against whom the statement is offered engaged in, directed, or  
3 conspired to commit the wrongdoing that procured the unavailability of the declarant.

4           (c)    A statement may not be admitted under this section unless:

5           (1)    The statement was:

6                   (i)    Given under oath subject to the penalty of perjury at a trial,  
7 hearing, or other proceeding or in a deposition;

8                   (ii)   Reduced to writing and signed by the declarant; or

9                   (iii)   Recorded in substantially verbatim fashion by stenographic or  
10 electronic means contemporaneously with the making of the statement; and

11           (2)    As soon as is practicable after the proponent of the statement learns  
12 that the declarant will be unavailable, the proponent notifies the adverse party of:

13                   (i)    The intention to offer the statement;

14                   (ii)   The particulars of the statement; and

15                   (iii)   The identity of the witness through whom the statement will be  
16 offered.

17           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2019.