

Chapter 607

(House Bill 40)

AN ACT concerning

Criminal Procedure – Evidence – Causing Unavailability of Witness

FOR the purpose of altering ~~certain provisions~~ *the standard of proof by which the court must make a certain finding* relating to the admission in evidence, during certain criminal trials, of a statement offered against a party who caused the unavailability of the declarant of the statement under certain circumstances; *making this Act an emergency measure*; and generally relating to evidence and criminal trials.

BY repealing and reenacting, with amendments,
 Article – Courts and Judicial Proceedings
 Section 10–901
 Annotated Code of Maryland
 (2013 Replacement Volume and 2019 Supplement)

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

Article – Courts and Judicial Proceedings

10–901.

(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* ~~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~~ **who wrongfully caused or acquiesced in wrongfully causing the unavailability of the declarant of the statement.**

(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

(2) The~~¶ THE~~ court finds by **[clear and convincing] A PREPONDERANCE OF THE** 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; ~~WRONGFULLY CAUSED OR ACQUIESCED IN WRONGFULLY CAUSING THE UNAVAILABILITY OF THE DECLARANT OF THE STATEMENT.~~

(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 ~~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)}~~ ~~(1)~~ The intention to offer the statement;

~~{(ii)}~~ ~~(2)~~ The particulars of the statement; and

~~{(iii)}~~ ~~(3)~~ The identity of the witness through whom the statement will be offered.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect October 1, 2020~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.