

SENATE BILL 64

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EMERGENCY BILL
(PRE-FILED)

0lr1182
CF HB 40

By: **Senator Lee**

Requested: November 1, 2019

Introduced and read first time: January 8, 2020

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 2, 2020

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Evidence – Causing Unavailability of Witness**

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

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 10–901
11 Annotated Code of Maryland
12 (2013 Replacement Volume and 2019 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 10–901.

17 (a) During the trial of a criminal case in which the defendant is charged with a
18 felonious violation of Title 5 of the Criminal Law Article or with the commission of a crime
19 of violence as defined in § 14–101 of the Criminal Law Article, a statement as defined in

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Maryland Rule 5–801(a) is not excluded by the hearsay rule if the statement is offered
 2 against a party ~~that~~ that has engaged in, directed, or conspired to commit wrongdoing that was
 3 intended to and did procure the unavailability of the declarant of the statement, as defined
 4 in Maryland Rule 5–804] ~~WHO WRONGFULLY CAUSED OR ACQUIESCED IN~~
 5 ~~WRONGFULLY CAUSING THE UNAVAILABILITY OF THE DECLARANT OF THE~~
 6 ~~STATEMENT.~~

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

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

10 (2) The] ~~THE~~ court finds by [clear and convincing] **A PREPONDERANCE**
 11 **OF THE** evidence that the party against whom the statement is offered ~~engaged in,~~
 12 directed, or conspired to commit the wrongdoing that procured the unavailability of the
 13 declarant] ~~WRONGFULLY CAUSED OR ACQUIESCED IN WRONGFULLY CAUSING THE~~
 14 ~~UNAVAILABILITY OF THE DECLARANT OF THE STATEMENT.~~

15 (c) A statement may not be admitted under this section unless~~]:~~

16 (1) The statement was:

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

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

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

22 (2) ~~As] AS~~ soon as is practicable after the proponent of the statement
 23 learns that the declarant will be unavailable, the proponent notifies the adverse party of:

24 ~~[(i)] (1)~~ The intention to offer the statement;

25 ~~[(ii)] (2)~~ The particulars of the statement; and

26 ~~[(iii)] (3)~~ The identity of the witness through whom the statement
 27 will be offered.

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