

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 281
Judiciary

(Delegate Embry)

Judicial Proceedings

Criminal Procedure - Admission of Out-of-Court Statements - Assault in the
Second Degree

This bill expands a limited exception to the hearsay rule in a criminal case – applicable in felony cases when a statement is offered against a party who, through wrongdoing, has caused the unavailability of the witness who made the statement – to include cases in which a defendant is charged with assault in the second degree.

Fiscal Summary

State Effect: The bill is procedural in nature and does not materially affect State finances or operations.

Local Effect: The bill is procedural in nature and does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Current Law: While evidentiary rules generally exclude hearsay from being admitted into evidence, there are exceptions. Under § 10-901 of the Courts and Judicial Proceedings Article, a statement is not excluded by the hearsay rule and is admissible during the criminal trial of a defendant charged with a felony violation if the statement is offered against a party that has engaged in, directed, or conspired to commit wrongdoing that was intended to and did render the witness unavailable. Maryland Rule 5-801(a) defines a “statement” as (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

Before admitting a statement under this exception to the hearsay rule, the court must hold a hearing outside the presence of the jury at which the Maryland Rules of Evidence are strictly applied. The court must find by a preponderance of the evidence that the party against whom the statement is offered has engaged in specified activities that rendered the witness unavailable.

A statement entered under this exception may not be introduced into evidence unless it was made under oath and subject to the penalties of perjury at a trial, hearing, or other proceeding or in a deposition, was written and signed by the declarant, or was recorded at the same time the statement was made.

As soon as practicable after learning that the declarant is unavailable, the party offering the statement must notify the adverse party of its intention to offer the statement, the particulars of the statement, and the identity of the witness through whom the statement will be offered.

Maryland Rule 5-804 specifies that the “unavailability of a witness” includes situations in which the declarant (1) is exempted by a court ruling of privilege from testifying; (2) refuses to testify despite a court order to do so; (3) testifies to a lack of memory of the subject matter of the declarant’s statement; (4) is unable to be present or testify because of death or then existing illness or infirmity; or (5) is absent from the hearing and the party offering the statement has been unable to procure the declarant’s attendance by process or other reasonable means.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 424 and HB 572 of 2024.

Designated Cross File: SB 146 (Senator James) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Legislative Services

Fiscal Note History: First Reader - January 14, 2025
js/jkb Third Reader - February 28, 2025

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