

February 18, 2020

Hon. Chair Luke Clippinger
6 Bladen Street, House Room 131
Annapolis, MD 21401

Mr. Chair,

In an effort to protect witnesses in a criminal trials, House Bill 449 alters the witness protection exception to the hearsay rule. This bill was inspired by the September 27th article by the *Baltimore Sun*.

Witness intimidation is a real problem. Maryland may be the “stop snitching” capital of the world. This was a problem former Baltimore City State’s Attorney Patricia Jessamy campaigned to fix. Her campaign resulted in an alliance with former Governor Bob Ehrlich with one of the goals being the implementation of an exception to the hearsay rule for the statements of witnesses whose testimony had been prevented by the wrongdoing of the defendant, an exception utilized in federal law.

By the end of that 2005 legislative campaign, States Attorney Jessamy called the bill, which had been greatly amended, a “toothless tiger.” She said that she’d rather have “nothing at all.” I believe that is because amended and codified language in that bill – which we currently use today – makes it nearly impossible to utilize the hearsay exception to protect witnesses.

Currently, to utilize the exception, direct involvement by the defendant must be proven. You can prove that a defendant knew about actual witness intimidation – the threat of violence or actual violence – but that act may have been committed by another person, leaving a witness outside of the scope of the exception. Without a provision including parties that acquiesced to real witness intimidation, it is impossible to recognize a defendant as privy to witness intimidation.

Most importantly, the amended 2005 legislation struck the broad authority of a judge to permit the admission of evidence under Rule 5-104(a) and put into place

strict rules of evidence to the admissibility of evidence under this section. One of the reasons Rule 5-104(a) was written was because it is often impossible to determine whether a statement meets a hearsay exception without the judge hearing and – at least in part – relying on the contents of the statement itself.

It is written that days before the end of the 2005 legislative session, Chairman Joe Vallario and Governor Bob Ehrlich came to an agreement, and part of that agreement struck Rule 5-104(a) – which is the rule, not the exception – and replaced Rule 5-104(a) with the strict rules of evidence in this section of code. In the end, many actually believe that the 2005 legislation made it harder to admit a statement under this exception.

Currently, the hearsay exception applies only to crimes of violence. House Bill 449 expands the exception to allow for application to all crimes. There is no reason to have the rules of evidence vary according to the seriousness of the crime.

Currently, the hearsay exception may only be used against a party that has engaged in, directed or conspired to commit a crime. House Bill 449 expands the exception to allow for use against a party who acquiesced to a crime so that a the hearsay exception can be used against a party that knew about acts of intimidation against the witness.

Currently, the burden is clear and convincing evidence under the strict rules of evidence. House Bill 449 lowers the burden to preponderance of the doubt and restores the natural state of the judge to Rule 5-104(a), which says that a court “may, in the interest of justice, decline to require strict adherence to the Rules of Evidence” in making admissibility determinations.

At the joint hearing on crime and public safety, we heard from the current States Attorney from Baltimore City. When I asked her why a man with 230 criminal charges on his record remained free to kill a young man in my district, she noted that of the cases she drops, 35% are due to witness intimidation and the inability to procure witnesses. If we are concerned about crime and public safety, we should pass this bill to help protect witnesses and protect our communities.

Thank you for the hearing for House Bill 449. I am happy to discuss any questions and I ask for a favorable report.

Delegate Robin Grammer