

SB 424 - WLCMD - FAV.pdf

Uploaded by: Andrea Rafter

Position: FAV

BILL NO: Senate Bill 424
TITLE: Criminal Procedure – Admission of Out of Court Statements – Assault in the Second Degree
COMMITTEE: Judicial Proceedings
HEARING DATE: February 9, 2024
POSITION: **SUPPORT**

The Women’s Law Center of Maryland (WLC) is a non-profit legal services and advocacy organization dedicated to ensuring the physical safety, economic security, and bodily autonomy of women in Maryland. While our direct representation projects are limited to primarily survivors of domestic violence, our advocacy is in support of gender justice as a whole, because all women are entitled to access to justice, equality, and autonomy. We recognize that all the issues we fight for are interconnected. Women cannot have bodily autonomy unless they have physical safety. They cannot have physical safety without economic security. And they cannot have economic security without bodily autonomy.

The Women’s Law Center supports SB 424. Many of the clients we serve have civil and criminal matters where they are victims of second-degree assault. This bill would allow an exception to the hearsay rule by allowing a statement admissible if the statement is being offered against a party that has engaged in, or conspired to commit wrongdoing that was intended to and does procure the unavailability of the declarant.

Victims in domestic violence cases experience a variety of challenges when making decisions about testifying against their abusers. Some of those challenges are as a direct result of the abuser threatening the well being of the victim. This bill will allow the statement of an unavailable witness in evidence if a Court finds the unavailability was as result of the wrongdoing by the party opponent.

As such, The Women’s Law Center of Maryland urges a favorable report on SB 424.

The Women’s Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

DVCC Letter SB Forfeiture by Wrongdoing.pdf

Uploaded by: Brett Engler

Position: FAV



The Honorable William Smith & Members of the Senate Judicial Proceedings Committee
Senate Judicial Proceedings Committee
11 Bladen Street, Annapolis, MD 21401

Dear Chairperson Smith and Judicial Proceedings Committee,

The Frederick County Domestic Violence Coordinating Council (DVCC) writes in support of Senate Bill 424: Criminal Procedure – Admission of Out-of-Court Statements – Assault in the Second Degree. The Frederick County DVCC is a multidisciplinary public commission, formed in 2020, to increase collaboration and communication among criminal and civil justice stakeholders, service providers, and community members with the goal of reducing and preventing domestic violence in Frederick County.

The DVCC is in support of Senate Bill 424 because most domestic assault prosecutions are categorized as second-degree assaults. While not felonies, they are critical State intervention points—working to interrupt the cycle of violence before a felony-level assault occurs. Under current law, an abuser benefits by engaging in wrongdoing that makes a Victim or witness unavailable to testify against them--because relevant and inculpatory statements are excluded under the hearsay rules. The research is clear that behavior aimed at manipulating and silencing victims is a common technique of domestic abusers. When they benefit from their wrongdoing in the courtroom, their abuse is enabled and perpetuated by a system that fails to hold them to account.

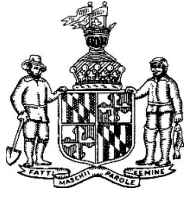
We urge a favorable report on SB 424.

Brett Engler, Esq.
Frederick County State's Attorney's Office
Chair, Frederick County DVCC

Feinstein Letter of Support SB424 Forfeiture by Wr

Uploaded by: Debbie Feinstein

Position: FAV



STATE'S ATTORNEY
JOHN J. MCCARTHY

State's Attorney for Montgomery County

50 Maryland Avenue
Rockville, Maryland 20850

240-777-7300
FAX 240-777-7413
WWW.MONTGOMERYCOUNTYMD.GOV/SAO

DEPUTY STATE'S ATTORNEYS
PETER A. FEENEY
RYAN S. WECHSLER

February 8, 2024

The Honorable Will Smith
Chair, Judicial Proceedings Committee
11 Bladen Street
Annapolis, MD 21401

Dear Chair Smith and Committee Members:

On behalf of the Montgomery County State's Attorney's Office and the Maryland State's Attorneys' Association, I write in support of SB424—Criminal Procedure—Admission of Out-of-Court Statements—Assault in the Second Degree. I am the Chief of the Special Victims Division for the Montgomery County State's Attorney's Office. I am also the co-chair of the MSSA Special Victims Committee and a member of the Governor's Family Violence Council.

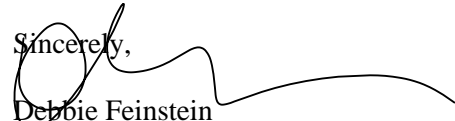
Section 10-901 of the Maryland Criminal Law Article sets forth an exception to the Rules of Evidence that govern hearsay. If the defendant on criminal trial "engaged in, directed, or conspired to commit wrongdoing" against a victim or a witness, and the defendant "intended to and did procure the unavailability of the [victim or witness]," the court can admit an out-of-court statement made by that victim or witness without live testimony in court. This section, however, only applies in criminal cases where the defendant is charged with a felony. This statute precludes the admission of such statements in trials for second degree assault, a crime we regularly see committed in domestic violence cases. Senate Bill 424 removes this barrier and allows the Court to hear from the victim or witness through their pretrial statements.

Over the past 24 years, I have handled 100s of cases involving domestic violence. Domestic abusers rely on power and control to dominate, intimate, coerce, and manipulate. Consequently, we often see that power and control dynamic dominate any court proceedings that involve the abuser and their victim. I personally have reviewed jail calls, text messages, and emails where abusers apply their power and control to prevent victims from testifying against them. The threats have varied, but the outcome is the same: Victims fear the repercussions of their testimony and elect not to participate in the criminal justice system.

Senate Bill 424 prevents the abuser from controlling the outcome of the criminal trial against them. This bill literally rights a wrong. The voices of victims and witnesses will be heard at trial, despite the abuser's best efforts to prevent them from coming to court and testifying. Defendants should not be allowed to benefit from their wrongdoing.

I strongly urge this Committee to issue a favorable report on SB424.

Sincerely,


Debbie Feinstein
Chief, Special Victims Division
Senior Assistant State's Attorney

I write in support of Senate Bill 424.pdf

Uploaded by: Jacey Smith

Position: FAV

Bill number: SB 424

Jacey Smith, Assistant State's Attorney for Baltimore County

Support

**WRITTEN TESTIMONY OF JACEY SMITH ASSISTANT STATE'S ATTORNEY FOR
BALTIMORE COUNTY, IN SUPPORT OF SENATE BILL 424**

I write in support of Senate Bill 424.

In contemplation of this bill, consider the following set of facts that Assistant State's Attorney Madison Frank and I were confronted with last year.

We were assigned a second degree assault domestic violence case in which the Defendant was on probation for assaulting the same victim when he picked up our new case. He had a long and violent record with an extensive history of domestic violence. In our new case, he was charged with beating the victim while she was pregnant with his child, leaving extensive injury to her face and body. Collectively between the time he was facing in our case and the time he was backing up on his probation case, he was facing sixteen years of incarceration.

Pending trial, the State collected jail calls between this Defendant and this victim, in which he instructed her to avoid service and that her non compliance with service would result in his acquittal. The State spent weeks trying to get her to come out of the house to be served to no avail. The State even secured a body attachment for the victim. She still refused to leave her house to be served.

The defendant and his family even facilitated the shipment of groceries to her house to keep her indoors, and he even had his family walk their children to school to keep her indoors. After weeks of trying the State was unable to serve her with the body attachment.

She failed to appear for trial. We were unable to use her statement to police, identifying the Defendant as the individual who beat her, recorded on body worn camera because the current forfeiture by wrong doing statute, codified in Courts and Judicial Proceedings 10-901 applies to felonies only.

If this violent Defendant procures her unavailability by wrongful means, why does he get to benefit from the hearsay rule designed to protect him just because it is a misdemeanor? If a second degree assault would have been included in the statute, the defendant would not have had the opportunity to benefit from his unlawful conduct in his trial.

I urge a favorable report for senate bill 424.

Forefiture by wrong doing - 2d assault - senate -

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting Senate Bill 424
Lisae C. Jordan, Executive Director & Counsel
February 9, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 424.

Senate Bill 424 – Forfeiture by Wrong-Doing – 2d degree Assault

Senate Bill 424 would permit the admission of out of court statements made by victims and witnesses in 2d degree assault trials if the statement is offered against a defendant who has engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the victim or witness. Current law, Courts and Judicial Proceedings §10-901, allows for the admission of these statements in any criminal trial of a felony, but excludes these statements in second degree assault cases, a misdemeanor and a common charge in intimate partner violence cases, including cases involving sexual assault.

Admitting this evidence is particularly important when a defendant threatens a victim or coerces a victim witness not to testify, and that wrongdoing can be demonstrated. Senate Bill 424 would allow the victim's prior statements to be introduced and prevent the abuser from benefitting from wrongdoing.

The Maryland Coalition Against Sexual Assault
urges the Judicial Proceedings Committee to
report favorably on Senate Bill 424

SB 424 Written Testimony .pdf

Uploaded by: Madison Frank

Position: FAV

Bill Number: SB 424

**Madison M. Frank, Assistant State's Attorney for Baltimore County
Support**

**WRITTEN TESTIMONY OF MADISON M. FRANK, ASSISTANT STATE'S ATTORNEY FOR
BALTIMORE COUNTY, IN SUPPORT OF SENATE BILL 424, OUT-OF-COURT STATEMENTS**

In today's world, individuals charged with committing crimes dedicate an enormous amount of energy and time attempting to hijack the justice system. They do this by intimidating the victims and witnesses that the State has vowed to protect. They do this by soliciting friends and family members to encourage those victims and witnesses to not participate in the prosecution process.

That is exactly what happened in Ms. Smith and I's case. I wish I could say that our case is an outlier, but it is not, and these actions are particularly prevalent in cases that involve domestic violence.

While we believe that this law will apply to so many of our cases, it will especially impact our domestic violence cases. As a DV prosecutor, I am constantly faced with the reality that either through threats or manipulation, DV offenders continue to pull the strings, even when they are incarcerated pending trial. Many of our cases are charged with misdemeanor assault, and as the law currently stands, Defendants benefit from procuring a victim's absence simply because they are not charged with a felony.

Victims of domestic violence are faced with many challenges when a case is brought for prosecution – they often rely on the offender for financial support, share children and a home with them, and are otherwise entangled in the cycle of abuse. It is challenging enough to convince a DV victim to hold their abuser accountable, but when that abuser is able to use threats and manipulation as a means to escape prosecution, it becomes an almost impossible feat for the State to secure participation.

It defies logic to allow a Defendant to benefit from his meddling in the justice system. And in fact, this State agreed when it enacted Courts & Judicial Proceedings §10-901. Why should we limit this law to only apply to felonies, when thousands of domestic violence cases are charged with misdemeanor assault?

I ask y'all to please consider how we not only protect victims who *do* come forward and testify, but also how we protect those who are too frightened or too entrenched in the cycle to do so.

This law will allow the State to forge ahead and protect those who struggle to protect themselves and tamp down those who attempt to dismantle our justice system.

I urge you to consider a favorable report of SB 424.

SB 424_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: Senate Bill 424
TITLE: Criminal Procedure - Admission of Out-of-Court Statements - Assault in the Second Degree
COMMITTEE: Judicial Proceedings
HEARING DATE: February 9, 2024
POSITION: **Favorable**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on SB 424.**

Senate Bill 424 would expand an existing hearsay exception to second degree assault in a criminal trial if a defendant engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the declarant of the statement. A 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.

Second degree assault is commonly charged in domestic violence cases. Due to the ongoing power and control dynamics present in domestic violence, an abuser could threaten or coerce a victim into not testifying in a criminal proceeding. The law would require that a party's wrongdoing be proven by a preponderance of the evidence. Senate Bill 424 allows the victim to testify through their prior statements, statements that were made at a time they were safe and able to state what happened to them, so long as they were contemporaneously recorded, made under oath and subject to the penalties of perjury at a proceeding or in a deposition, or was written and signed by the declarant

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 424.**

For further information contact Melanie Shapiro ■ Public Policy Director ■ 301-852-3930 ■ mshapiro@mnadv.org

1997 Annapolis Exchange Parkway, Suite 300 ■ Annapolis, MD 21401
Tel: 301-429-3601 ■ E-mail: info@mnadv.org ■ Website: www.mnadv.org



For further information contact Melanie Shapiro ■ Public Policy Director ■ 301-852-3930 ■ mshapiro@mnadv.org

1997 Annapolis Exchange Parkway, Suite 300 ■ Annapolis, MD 21401
Tel: 301-429-3601 ■ E-mail: info@mnadv.org ■ Website: www.mnadv.org

SB 424 FVC Letter of Support.pdf

Uploaded by: Rebecca Allyn

Position: FAV



Governor's Family Violence Council
100 Community Place, Crownsville, MD 21032

ARUNA MILLER, Co-Chair
Lieutenant Governor

ANTHONY BROWN, Co-Chair
Attorney General

TESTIMONY IN SUPPORT OF SENATE BILL 424
February 9, 2024
Governor's Family Violence Council

The Governor's Family Violence Council supports Senate Bill 424, a bill that, at a criminal trial for second degree assault, allows for the admission of certain statements made by victims and witnesses if that statement is offered against a defendant who has engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the victim or witness. Current law, Courts and Judicial Proceedings 10-901, allows for the admission of these statements in any criminal trial of a felony, but excludes these statements in second degree assault cases, a common charge in family violence and intimate partner cases.

Victims of intimate partner violence who have been subpoenaed as a witness in a criminal trial against their abuser face many pressures and barriers, including fear of repercussion if they testify. If the defendant threatens a victim or coerces them not to testify, and that wrongdoing can be demonstrated, Senate Bill 424 allows the victim to testify through their prior statements, statements that were made at a time they were safe and able to state what happened to them. Senate Bill 424 aligns with the mission of the Governor's Family Violence Council, which is to provide recommendations that will allow for the reduction and elimination of abusive behaviors.

For these reasons, the Governor's Family Violence Council urges a favorable report on Senate Bill 424.

UNF SB0424 (JPR) vmcavoy.pdf

Uploaded by: vince mcavoy

Position: UNF

UNFAVORABLE on SB0424
Criminal Procedure – Admission of Out-of-Court Statements –
3 Assault in the Second Degree

vince mcavoy baltimore maryland

Dear Senators of JPR,

This Session and recent sessions are demonstrating removal of longstanding evidentiary standards. Maryland has looked to federal guidelines on such matters. I would like to believe that is because of the tendency to use “give-an-inch-take-a-mile” approaches. For a state with so many lawyers in the legislation, we have certainly fallen from the rigors of legislative review of late. For instance, there are several wiretap bills making their way through Annapolis. Fort Meade and NSA driven intelligence techniques should be allowed to sully once-thought out rules. I urge the Committee to resist this type of incrementalism.

I learned hearsay rules from the same institutions several of you have frequented, Univ. of Maryland Law and Univ. of Baltimore Law. The teachings I saw gave some of the best samples of hearsay rules and how to overcome evidentiary techniques. This incrementalist process of “if we only cast a bigger net” is not disciplined. It will spread to wrongful techniques. And I hope State’s Attorneys aren’t pushing this. I would hate to think that the state and its counties are hiring lazy, slothful workers when it comes to finding and admitting evidence. These occasions alleging 2nd degree assault are often heated engagements where words are offered to diffuse, deflect or scare off a physical assault. Hearsay should not be used against a defendant who was trying to get out of a physical engagement.

I urge an UNFavorable for this worrisome approach of SB0424.

humbly offered

~vince