MARY-DULANY JAMES
*Legislative District 34*
Harford County

Judicial Proceedings Committee
Executive Nominations Committee

*Senate Chair*
Joint Committee on
Children, Youth, and Families

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

James Senate Office Building
11 Bladen Street, Room 103
Annapolis, Maryland 21401
410-841-3158 · 301-858-3158
800-492-7122 *Ext.* 3158
MaryDulany.James@senate.state.md.us

**Testimony of Senator Mary-Dulany James**
**In Support of Senate Bill 465 - Criminal Procedure - Admission of Out-of-Court Statements - Assault in the Second Degree**
**Senate Judicial Proceedings Committee**
**February 11, 2026**

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee,

Senate Bill 465 adds second degree assault to the statute that allows prosecutors to introduce statements in a criminal trial when the witness is unavailable and when that unavailability was caused by the wrongdoing of a criminal defendant. The statute to be amended is called the "Unavailability of declarant of statement due to wrongdoing" (see Court and Judicial Proceedings §10-901) and is substantially the same as Federal Rule of Evidence §804(b)(6). Both codify the doctrine of "forfeiture against wrongdoing" which stands for the proposition that although an accused defendant, in general, has a right to confront a witness against them (by cross-examination), a court will not suffer a party to profit by his (or her) own wrongdoing (see *Crawford v. Washington 541 U.S. 36 (2004)*, *Davis v. Washington 547 U.S. 813 (2006)*).

And while forfeiture by wrongdoing is recognized, either by statute, rule, or common law in every state, I could not find another federal or state jurisdiction that limits its use as only Maryland does to felonies. Rather, every other state but Maryland invokes the doctrine in any criminal case where a criminal defendant uses force, threats, persuasion, control, wrongful disclosure of information, collusion or any other behavior that creates a nexus between the defendant's acts and the unavailability of the declarant.

While SB 465 does not seek to eliminate the seemingly inexplicable difference in treatment of defendants charged with felonies and those with

misdemeanors that engage in wrongdoing which results in a witness not testifying in court, it does seek recognition and equal treatment for the serious and violent charge of second degree assault for which, by its definition, is a crime of violence involving non-minor injuries and up to 10 years in prison (Criminal Law §3-203).

I am submitting as part of my testimony a December 2023 letter from the Task Force to Study Crime Classifications which summarizes the six (6) meetings they had held up to that point. Salient to SB 465, the letter recognized that two pre-eminent legal scholars both highlighted Maryland's second degree assault statute as being an outlier because the underlying harm to victims and its high penalty do not match its stated category as a misdemeanor. Rather, in substance, it is analogous to a felony.

This mislabeling is also allowing a miscarriage of justice under the forfeiture by wrongdoing statute by depriving prosecutors the opportunity to go after domestic abusers as they are most often charged with second degree assault and their frequent modus operandi is to intimidate, coerce, and manipulate their victims into backing out of appearing in court to testify about the suffering and physical harm they have endured. Domestic abusers are well-aware of Maryland's loophole, so even when brave and battered women call the police desperately seeking the protection they deserve, giving law enforcement a full, recorded accounting, the abusers are often not held to account. That is because during the months it takes to bring the defendant to trial, the victims are being worn down by the defendant, and she never tells her story in court.

Without amending §10-901, the victim's previous recorded statement is barred from use at trial and another known abuser walks free. A favorable Judicial Proceedings report on SB 465 will stop it.

Respectfully,

Senator Mary-Dulany James