

MARY-DULANY JAMES
Legislative District 34
Harford County



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

Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair

Joint Committee on
Children, Youth, and Families

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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
House Judiciary Committee
March 31, 2026

Chair Bartlett, Vice Chair Davis, 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. While not listed as a cross-file, this bill is identical to Delegate Embry's House Bill 477, which passed unanimously both in this committee and on the House floor.

The statute this legislation aims to amend 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.

If we don't pass this legislation, the victim's previous recorded statement is barred from use at trial, and another known abuser walks free. Thank you, and I ask for a Favorable Report.

Respectfully,

A handwritten signature in black ink, appearing to read "Mary-Dulany James". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Senator Mary-Dulany James
Harford County, Maryland