

HOUSE BILL 40

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(PRE-FILED)

0lr1181
CF SB 64

By: **Delegates Barron and Henson**

Requested: November 1, 2019

Introduced and read first time: January 8, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Evidence – Causing Unavailability of Witness**

3 FOR the purpose of altering certain provisions relating to the admission in evidence, during
4 certain criminal trials, of a statement offered against a party who caused the
5 unavailability of the declarant of the statement under certain circumstances; and
6 generally relating to evidence and criminal trials.

7 BY repealing and reenacting, with amendments,

8 Article – Courts and Judicial Proceedings

9 Section 10–901

10 Annotated Code of Maryland

11 (2013 Replacement Volume and 2019 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

13 That the Laws of Maryland read as follows:

14 **Article – Courts and Judicial Proceedings**

15 10–901.

16 (a) During the trial of a criminal case in which the defendant is charged with a
17 felonious violation of Title 5 of the Criminal Law Article or with the commission of a crime
18 of violence as defined in § 14–101 of the Criminal Law Article, a statement as defined in
19 Maryland Rule 5–801(a) is not excluded by the hearsay rule if the statement is offered
20 against a party [that has engaged in, directed, or conspired to commit wrongdoing that was
21 intended to and did procure the unavailability of the declarant of the statement, as defined
22 in Maryland Rule 5–804] **WHO WRONGFULLY CAUSED OR ACQUIESCED IN**
23 **WRONGFULLY CAUSING THE UNAVAILABILITY OF THE DECLARANT OF THE**
24 **STATEMENT.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) Subject to subsection (c) of this section, before admitting a statement under
2 this section, the court shall hold a hearing outside the presence of the jury at which[:

3 (1) The Maryland Rules of Evidence are strictly applied; and

4 (2) The] **THE** court finds by [clear and convincing] **A PREPONDERANCE**
5 **OF THE** evidence that the party against whom the statement is offered [engaged in,
6 directed, or conspired to commit the wrongdoing that procured the unavailability of the
7 declarant] **WRONGFULLY CAUSED OR ACQUIESCED IN WRONGFULLY CAUSING THE**
8 **UNAVAILABILITY OF THE DECLARANT OF THE STATEMENT.**

9 (c) A statement may not be admitted under this section unless[:

10 (1) The statement was:

11 (i) Given under oath subject to the penalty of perjury at a trial,
12 hearing, or other proceeding or in a deposition;

13 (ii) Reduced to writing and signed by the declarant; or

14 (iii) Recorded in substantially verbatim fashion by stenographic or
15 electronic means contemporaneously with the making of the statement; and

16 (2) **As], AS** soon as is practicable after the proponent of the statement
17 learns that the declarant will be unavailable, the proponent notifies the adverse party of:

18 [(i)] **(1)** The intention to offer the statement;

19 [(ii)] **(2)** The particulars of the statement; and

20 [(iii)] **(3)** The identity of the witness through whom the statement
21 will be offered.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2020.