

HOUSE BILL 449

E2

0lr1810

By: **Delegate Grammer**

Introduced and read first time: January 23, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Evidence – Admission of Statement – Unavailability of Witness**
3 **(Witness Protection Act)**

4 FOR the purpose of expanding the applicability of a certain exception to the hearsay rule
5 by authorizing the admission of a certain statement in any criminal case; expanding
6 the applicability of a certain exception to the hearsay rule by authorizing the
7 admission of a statement offered against a party that has acquiesced in the
8 commission of certain wrongdoing under certain circumstances; repealing a
9 requirement that the Maryland Rules of Evidence be strictly applied at a certain
10 hearing; altering the standard of proof by which a judge in the trial of a criminal case
11 must make certain findings before the judge may admit into evidence a certain
12 statement; altering the findings that a certain judge must make in the trial of a
13 criminal case before the judge may admit into evidence a certain statement; and
14 generally relating to evidence.

15 BY repealing and reenacting, with amendments,
16 Article – Courts and Judicial Proceedings
17 Section 10–901
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2019 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – Courts and Judicial Proceedings**

23 10–901.

24 (a) During the trial of a criminal case [in which the defendant is charged with a
25 felonious violation of Title 5 of the Criminal Law Article or with the commission of a crime

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



of violence as defined in § 14–101 of the Criminal Law Article], a statement as defined in Maryland Rule 5–801(a) is not excluded by the hearsay rule if the statement is offered against a party that has engaged in, directed, [or] conspired to commit, **OR ACQUIESCED IN THE COMMISSION OF** wrongdoing that was intended to and did procure the unavailability of the declarant of the statement, as defined in Maryland Rule 5–804.

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

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

(2) The] **THE** court finds by [clear and convincing evidence] **A PREPONDERANCE OF THE EVIDENCE** that the party against whom the statement is offered engaged in, directed, [or] conspired to commit, **OR ACQUIESCED IN THE COMMISSION OF** the wrongdoing that procured the unavailability of the declarant.

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

(1) The statement was:

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

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

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

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

(i) The intention to offer the statement;

(ii) The particulars of the statement; and

(iii) The identity of the witness through whom the statement will be offered.

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