

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 98
Judiciary

(Delegate B. Wilson, *et al.*)

Judicial Proceedings

Criminal Law - Participation in Court Proceedings - Retaliation

This bill prohibits a person from intentionally harming, threatening to harm, or damaging or destroying property with the intent of retaliating against a juror or an officer of the court of the State or the United States for any reason relating to the performance of the juror's or officer's official duties in a pending or completed case. The bill also prohibits a person from soliciting another person to engage in these activities. Violators are guilty of a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. Consistent with existing statute, a sentence imposed for these retaliatory crimes may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the retaliation violation.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines imposed in the District Court. Minimal increase in general fund incarceration expenditures.

Local Effect: Minimal increase in local revenues from fines imposed in the circuit courts. Minimal increase in local incarceration expenditures.

Small Business Effect: None.

Analysis

Current Law:

Retaliating Against a Victim or Witness: A person may not intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating

against a victim or witness for (1) giving testimony in an official proceeding or (2) reporting a crime or delinquent act. A person is also prohibited from soliciting another person to engage in these activities.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. However, if the official proceeding or report described above relates to a felonious violation of Title 5 of the Criminal Law Article (Controlled Dangerous Substances) or the commission of a “crime of violence” as defined in § 14-101 of the Criminal Law Article, or a conspiracy or solicitation to commit such a crime, a violator is guilty of a felony, punishable by imprisonment for up to 20 years. A sentence imposed for these retaliatory crimes may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the retaliation violation.

Intimidating or Corrupting a Juror: A person may not, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of a court of the State or of the United States in the performance of the person’s official duties. A person is also prohibited from soliciting another person from engaging in these activities. Violators are guilty of a misdemeanor, punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. However, if the prohibited act is taken in connection with a proceeding involving a felonious violation of Title 5 of the Criminal Law Article (Controlled Dangerous Substances) or the commission of a “crime of violence” as defined in § 14-101 of the Criminal Law Article, or a conspiracy or solicitation to commit such a crime, a violator is guilty of a felony, punishable by imprisonment for up to 20 years. A sentence imposed for this offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation.

Threats Against Officials: A person may not knowingly and willfully make a threat to take the life of, kidnap, or cause physical injury to a State official, a local official, a deputy State’s Attorney, an assistant State’s Attorney, or an assistant Public Defender. A person may not knowingly send, deliver, part with, or make for the purpose of sending or delivering a prohibited threat. A violator is guilty of a misdemeanor, punishable by imprisonment for up to three years and/or a \$2,500 maximum fine.

“Threat” includes (1) an oral threat or (2) a threat in any written form, whether or not the writing is signed or, if the writing is signed, whether or not it is signed with a fictitious name or any other mark.

“State official means” a:

- constitutional officer or officer-elect in an executive unit;
- member or member-elect of the General Assembly;
- judge or judge-elect;

- judicial appointee;
- State's Attorney;
- clerk of the circuit court;
- register of wills; or
- sheriff.

Background: According to the Judiciary, during fiscal 2015 in the District Court, there were 120 violations (with 2 convictions) for retaliation against a victim or witness; 61 violations (with no convictions) for solicitation of another to retaliate against a victim or witness; 29 violations (with 3 convictions) for knowingly and willfully making a threat against a State or local official; and 2 violations (with no convictions) for sending/delivering a threat to a State or local official. Circuit court case statistics are not readily available at this time.

According to the Maryland Sentencing Guidelines Database, no one was sentenced in the State's circuit courts during fiscal 2015 for making threats against State and local officials. However, two people were sentenced in the State's circuit courts during fiscal 2014 for this offense. Each person received a sentence for two counts. In fiscal 2013, there were two convictions in the State's circuit courts for threats against State and local officials. Information is not available on whether any of the threats were made against officers of the court.

State Revenues: General fund revenues increase minimally as a result of the bill's expanded application of an existing monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between

12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The District Court advises that while it is impossible to project the bill's impact on District Court caseloads, it does not anticipate caseloads that result in a significant fiscal or operational impact on the Judiciary.

The Office of the Public Defender (OPD) advises that it cannot determine the bill's impact on OPD caseloads. The Department of Legislative Services advises that since defendants in these cases may face additional criminal charges for which they will be represented by OPD and since victims and witnesses, rather than jurors or officers of the court, have been the more traditional/common targets of these types of retaliatory threats, the bill is unlikely to significantly impact OPD caseloads.

Local Revenues: Revenues increase minimally as a result of the bill's expanded application of an existing monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

The State's Attorneys' Association advises that the effect of the bill on prosecutors is unknown at this time.

Additional Information

Prior Introductions: None.

Cross File: SB 156 (Senator Cassilly) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of State Police, Department of Legislative Services

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