

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 62  
Judiciary

(Delegate Grammer)

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Courts and Judicial Proceedings - Contempt - Duress

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This bill prohibits duress from being used as a defense in a contempt proceeding that arises from an individual's refusal to comply with an order that compels testimony or information after the individual has refused to testify based on the privilege against self-incrimination.

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Fiscal Summary

**State Effect:** None. The bill is procedural and does not materially affect State finances.

**Local Effect:** None. The bill is procedural and does not materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** A prosecutor seeking to compel an individual to testify or provide other information must request, by written motion, that the court issue an order compelling the testimony or the information when the prosecutor determines that (1) the testimony or other information from the individual may be necessary to the public interest and (2) the individual has refused or is likely to refuse to testify or provide other information on the basis of the individual's privilege against self-incrimination. If an individual has been, or may be, called to testify or provide other information in a criminal prosecution or a proceeding before a grand jury, the court must issue, on request of the prosecutor, an order requiring the individual to give testimony or provide other information, as specified.

If the court has issued an order for a witness to testify or provide information, the witness may not refuse to comply with the order based on the privilege against self-incrimination.

No testimony or other information compelled under the order and no information directly or indirectly derived from the testimony or information may be used against the witness in a criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with the order. If a witness refuses to comply with the order, the court must treat the refusal as a direct contempt, as specified, and proceed in accordance with the Maryland Rules.

**Background:** Duress is a common law defense in Maryland. According to the Court of Appeals, “the duress by another person on the defendant must be present, imminent, and impending, and of such a nature as to induce well-grounded apprehension of death or serious bodily injury if the act is not done.” The duress must also leave no opportunity to the accused for escape. Mere fear is not enough, nor are threats of violence at some prior time; the defense cannot be raised if the harm is only property damage or future, but not present personal injury. The defense is also unavailable if the compulsion arose by the defendant’s own fault, negligence, or misconduct. *McMillan v. State*, 428 Md. 333, 348-49 (2012).

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland State’s Attorneys’ Association; Department of Legislative Services

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mr/lgc

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