

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 205 (Senator Lee)
Judicial Proceedings

Public Safety - Crime of Violence - Witness Intimidation

This bill adds felony witness intimidation under §§ 9-302, 9-303, and 9-305 of the Criminal Law Article to the definition of a “crime of violence” under § 5-101 of the Public Safety Article.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to expanded application of existing penalties. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local operations or finances.

Small Business Effect: None.

Analysis

Current Law: Sections 9-302, 9-303, and 9-305 of the Criminal Law Article refer to witness intimidation offenses.

§ 9-302 – Inducing False Testimony or Avoidance of a Subpoena

A person may not harm another, threaten to harm another, or damage or destroy property with the intent to (1) influence a victim or witness to testify falsely or withhold testimony or (2) induce a victim or witness to avoid the service of a subpoena or summons to testify, to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned, or not to report the existence of facts relating to a crime or delinquent act.

A person may not solicit another person to harm another, threaten to harm another, or damage or destroy property with the intent to (1) influence a victim or witness to testify falsely or withhold testimony or (2) induce a victim or witness to avoid the service of a subpoena or summons to testify, to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned, or not to report the existence of facts relating to a crime or delinquent act.

Generally, a violator is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000. However, if the offense is related to a felony controlled dangerous substance offense, the commission of a crime of violence under § 14-101 of the Criminal Law Article or the conspiracy or solicitation to commit one of these offenses, the violator is guilty of a felony and subject to imprisonment for up to 20 years.

§ 9-303 – Retaliation for Testimony

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 giving testimony in an office proceeding or reporting a crime or delinquent act.

An individual is also prohibited from soliciting another person to intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against (1) a victim or witness for giving testimony in an official proceeding or reporting a crime or delinquent act; (2) a juror for any reason relating to the performance of the juror's official duties in a pending or completed case in a court of the State or the United States; or (3) an officer of the court of the State or the United States for any reason relating to the performance of the officer's official duties in a pending or completed case.

Generally, a violator is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000. However, if the offense is related to a felony controlled dangerous substance offense, the commission of a crime of violence under § 14-101 of the Criminal Law Article or the conspiracy or solicitation to commit one of these offenses, the violator is guilty of a felony and subject to imprisonment for up to 20 years.

§ 9-305 – Intimidating or Corrupting a Juror, Witness, or Officer of the Court

A person may not use threat, force, or corrupt means to try to influence, intimidate, or impede a juror, a witness, or an officer of the court of the State or the United States in performance of the person's official duties.

Generally, a violator is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000. However, if the offense is related to a felony controlled dangerous substance offense, the commission of a crime of violence under § 14-101 of the Criminal Law Article or the conspiracy or solicitation to commit one of these offenses, the violator is guilty of a felony and subject to imprisonment for up to 20 years.

Crime of Violence Under § 5-101 of the Public Safety Article

Section 5-101 defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) felony sex trafficking and forced marriage; (18) an attempt to commit offenses (1) through (17); or (19) assault with the intent to commit offenses (1) through (17) or a crime punishable by imprisonment for more than one year.

This definition is cross-referenced in statutes pertaining to reckless endangerment, committing a crime in the presence of a minor, use of a handgun or antique firearm in the commission of a crime, use of an assault weapon or magazine in the commission of a felony or a crime of violence, and possession of a regulated firearm, a rifle, or a shotgun by a person previously convicted of specified offenses.

State law contains several factors, which prohibit a person from possessing a regulated firearm, a rifle, or a shotgun, including if the person has been convicted of a disqualifying crime. “Disqualifying crime” means a crime of violence under § 5-101 of the Public Safety Article, a felony, or a misdemeanor in the State that carries a statutory penalty of imprisonment of more than two years.

“Convicted of a disqualifying crime” includes a case in which a person received probation before judgment for a crime of violence and a case in which a person received probation before judgment in a domestically related crime. “Convicted of a disqualifying crime” does not include a case in which a person received a probation before judgment for second-degree assault (unless the crime was a domestically related crime) or a crime, which was expunged under Title 10, Subtitle 1 of the Criminal Procedure Article.

A “domestically related crime” (under § 6-233 of the Criminal Procedure Article) is a crime committed by a defendant against a victim who is a “person eligible for relief” (under § 4-501 of the Family Law Article) or is a person who had a sexual relationship with the defendant within 12 months before the commission of the crime. Under the applicable

provisions of the Family Law Article, a “person eligible for relief” includes (1) the current or former spouse of the respondent; (2) a cohabitant of the respondent; (3) a person related to the respondent by blood, marriage, or adoption; (4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition; (5) a vulnerable adult; (6) an individual who has a child in common with the respondent; or (7) an individual who has had a sexual relationship with the respondent within one year before the filing of the petition.

Background: The Judiciary advises that during fiscal 2019, 66 violations were filed in the District Court and 84 violations were filed in the circuit courts for felony witness intimidation, resulting in 12 guilty dispositions and no probations before judgment. According to the Maryland State Sentencing Guidelines Database, 15 individuals were sentenced in the State’s circuit courts during fiscal 2019 for felony witness intimidation.

State Expenditures: General fund expenditures may increase minimally if the bill results in additional or extended incarcerations of individuals in State correctional facilities. Given the low number of convictions and the lack of probations before judgment for these offenses, the number of people convicted of crimes or subject to longer incarcerations as a result of the bill is expected to be minimal.

This estimate assumes that (1) the number of individuals found guilty of and sentenced for felony witness intimidation offenses remains constant and (2) designation of felony witness intimidation offenses as crimes of violence does not materially alter prosecutorial decisions regarding plea bargains, etc.

The bill’s addition of specified felony witness intimidation offenses to the definition of a “crime of violence” under § 5-101 of the Public Safety Article expands the applicability of various other prohibitions and penalties to the commission of these offenses or by an individual previously convicted of these offenses (*e.g.*, use of a handgun or antique firearm in the commission of a crime, possession of a rifle or shotgun by a person previously convicted of specified offenses, and the mandatory minimum and enhanced penalties for possession of a regulated firearm by a person previously convicted of a crime of violence).

However, some of these provisions also apply to the commission of a felony. Thus, felony witness intimidation offenses are already subject to some of these statutes. Also, individuals convicted of a felony witness intimidation offense may also have convictions for other offenses currently defined as crimes of violence.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 132 (Delegate Barron, *et al.*) - Judiciary.

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

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