

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 296

(The Speaker and the Minority Leader, *et al.*)
(By Request – Administration)

Judiciary

Crimes and Criminal Procedure - Victim and Witness Intimidation

This Administration bill expands, increases the possible seriousness of, and alters the penalties for the crimes of: (1) inducing false testimony or avoidance of a subpoena; (2) retaliation for testimony; and (3) intimidating or corrupting a juror.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's expanded scope for affected offenses and increases in applicable penalty provisions.

Local Effect: Minimal increase in revenues and expenditures due to the bill's expanded scope for affected offenses and increases in applicable penalty provisions.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: Specifically, the bill:

- under provisions relating to the crime of inducing false testimony or avoidance of a subpoena, prohibits a person from: (1) harming another, threatening to harm another, or damaging or destroying property with the intent to induce a victim or witness not to report the existence of facts relating to a crime or delinquent act; or (2) soliciting another person to harm another, threaten to harm another, or damage

or destroy property with the intent to influence a victim or witness to testify falsely or withhold testimony, or to induce a victim or witness to avoid service of a subpoena or summons, to be absent from certain proceedings, or not to report the existence of facts relating to a crime or delinquent act;

- under provisions relating to the crime of retaliation for testimony, prohibits a person from: (1) threatening to harm another with the intent of retaliating against a victim or witness for giving testimony in an official proceeding or reporting a crime or delinquent act; or (2) soliciting another person to 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 official proceeding or reporting a crime or delinquent act; and
- under provisions relating to the crime of intimidating or corrupting a juror, prohibits a person from: (1) trying, by threat, force, or corrupt means, to influence, intimidate, or impede an officer of a court of the U.S. in the performance of the person's official duties; or (2) soliciting another person to, 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 U.S. in the performance of the person's official duties.

The bill alters penalties for the crimes of inducing false testimony or avoidance of a subpoena, retaliation for testimony, and intimidating or corrupting a juror. For the crime of inducing false testimony or avoidance of a subpoena and the crime of retaliation for testimony, the bill subjects a violator to a maximum fine of \$5,000 that may be imposed in addition to, or instead of, the existing maximum incarceration of five years. The bill lowers the maximum fine for the crime of intimidating or corrupting a juror from \$10,000 to \$5,000. The bill eliminates these crimes from the exclusive original jurisdiction of the juvenile court if the offense is committed by a child 16 or older.

The bill provides that, for all three cited offenses, if the testimony, subpoena, official proceeding, or report involving a victim or witness relates to a felony, the violator is guilty of a felony and subject to maximum imprisonment of 20 years, which sentence may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of the cited offense.

In addition, the bill provides that, in a judicial proceeding, a statement is not excluded by the hearsay rule if a statement is offered against a party that has engaged or acquiesced in wrongdoing that was intended to and did procure the unavailability of a witness who was the declarant of the statement.

Current Law: The crimes of inducing false testimony or avoidance of a subpoena, retaliation for testimony, and intimidating or corrupting a juror are misdemeanors which subject a violator to a maximum imprisonment of five years. In addition, a person convicted of intimidating or corrupting a juror is also subject to a maximum fine of \$10,000 and/or the imprisonment term.

Background: Witness intimidation continues to be an impediment to the effective prosecution of violent crimes, especially in jurisdictions where witnesses are reluctant to testify for fear of their lives.

State Revenues: General fund revenues could increase minimally as a result of the bill's expanded scope and additional monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's expanded scope and additional incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time 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 DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 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 DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's expanded scope and additional monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's expanded scope and applicable incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: SB 185 (The President, *et al.*) (By Request – Administration) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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