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By: **The Speaker (By Request - Administration) and Delegates Anderson, Arnick, Aumann, Barkley, Bartlett, Bates, Benson, Bobo, Bohanan, Boschert, Boteler, Boutin, Branch, Burns, Cadden, Cane, Cluster, Conroy, Conway, Costa, Cryor, C. Davis, DeBoy, Donoghue, Doory, Dumais, Dwyer, Eckardt, Edwards, Elliott, Elmore, Feldman, Frank, Frush, Fulton, Gilleland, Goodwin, Griffith, Gutierrez, Haddaway, Hammen, Haynes, Heller, Hennessy, Hogan, Howard, Hubbard, Impallaria, James, Jameson, Jennings, Kach, Kelly, King, Kirk, Krebs, Krysiak, Kullen, Lee, Leopold, Levy, Love, Madaleno, Mandel, McComas, McConkey, McDonough, McHale, McIntosh, McKee, McMillan, Menes, Miller, Minnick, Moe, Montgomery, Morhaim, Murray, Myers, Nathan-Pulliam, Niemann, Oaks, O'Donnell, Paige, Parker, Parrott, Petzold, Proctor, Quinter, Ramirez, Ross, Rudolph, Shank, Shewell, Smigiel, Sophocleus, Sossi, Stocksdales, Stull, Taylor, Trueschler, F. Turner, V. Turner, Vaughn, Walkup, Weir, Weldon, and Wood**

Introduced and read first time: January 25, 2005

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 2, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Crimes and Criminal Procedure - Victim and Witness Intimidation**

3 FOR the purpose of prohibiting a person from harming another, threatening to harm  
4 another, or damaging or destroying property with the intent to induce a victim  
5 or witness not to report the existence of facts relating to a crime or delinquent  
6 act; prohibiting solicitation of another person to harm another, threaten to harm  
7 another, or damage or destroy property with the intent to induce a victim or  
8 witness not to report the existence of facts relating to a crime or delinquent act;  
9 prohibiting a person from threatening to harm another with the intent of  
10 retaliating against a victim or witness for giving testimony in an official  
11 proceeding or reporting a crime or delinquent act; prohibiting a person from  
12 soliciting another person to harm another, threaten to harm another, or damage  
13 or destroy property with the intent of retaliating against a victim or witness for

1 giving testimony in an official proceeding or reporting a crime or delinquent act;  
2 prohibiting a person, by threat, force, or corrupt means, from trying to influence,  
3 intimidate, or impede an officer of a court of the United States in the  
4 performance of the person's official duties; prohibiting a person from soliciting  
5 another person to, by threat, force, or corrupt means, try to influence,  
6 intimidate, or impede a juror, a witness, or an officer of a court of the State or of  
7 the United States in the performance of the person's official duties; increasing  
8 certain penalties; providing that if the testimony, subpoena, official proceeding,  
9 or report involving a victim or witness relates to a ~~felony~~ certain felony or crime  
10 of violence or a conspiracy or solicitation to commit such a crime, a person who  
11 violates certain provisions of this Act is guilty of a felony and on conviction is  
12 subject to a certain term of imprisonment; providing that certain sentences  
13 imposed under certain provisions of this Act may be separate from and  
14 consecutive to or concurrent with a sentence for certain other crimes; providing  
15 that certain statements made by certain victims or witnesses are not excluded in  
16 a judicial proceeding by the hearsay rule under certain circumstances; and  
17 generally relating to crimes against victims and witnesses.

18 BY repealing and reenacting, without amendments,  
19 Article - Criminal Law  
20 Section 9-301(c) and (d)  
21 Annotated Code of Maryland  
22 (2002 Volume and 2004 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article - Criminal Law  
25 Section 9-302, 9-303, and 9-305  
26 Annotated Code of Maryland  
27 (2002 Volume and 2004 Supplement)

28 ~~BY repealing and reenacting, with amendments,~~  
29 ~~Article - Courts and Judicial Proceedings~~  
30 ~~Section 3-8A-03(d)(4)(xvi) and (xvii)~~  
31 ~~Annotated Code of Maryland~~  
32 ~~(2002 Replacement Volume and 2004 Supplement)~~

33 BY adding to  
34 Article - Courts and Judicial Proceedings  
35 Section ~~3-8A-03(d)(4)(xviii)~~ and 10-901  
36 Annotated Code of Maryland  
37 (2002 Replacement Volume and 2004 Supplement)

38 ~~BY repealing and reenacting, without amendments,~~  
39 ~~Article - Criminal Procedure~~  
40 ~~Section 4-202(b)~~

1 ~~Annotated Code of Maryland~~  
2 ~~(2001 Volume and 2004 Supplement)~~

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

5 **Article - Criminal Law**

6 9-301.

7 (c) "Victim" means a person against whom a crime or delinquent act has been  
8 committed or attempted.

9 (d) "Witness" means a person who:

10 (1) has knowledge of the existence of facts relating to a crime or  
11 delinquent act;

12 (2) makes a declaration under oath that is received as evidence for any  
13 purpose;

14 (3) has reported a crime or delinquent act to a law enforcement officer,  
15 prosecutor, intake officer, correctional officer, or judicial officer; or

16 (4) has been served with a subpoena issued under the authority of a  
17 court of this State, any other state, or the United States.

18 9-302.

19 (a) A person may not harm another, threaten to harm another, or damage or  
20 destroy property with the intent to:

21 (1) influence a victim or witness to testify falsely or withhold testimony;  
22 or

23 (2) induce a victim or witness:

24 (i) to avoid the service of a subpoena or summons to testify; [or]

25 (ii) to be absent from an official proceeding to which the victim or  
26 witness has been subpoenaed or summoned; OR

27 (III) NOT TO REPORT THE EXISTENCE OF FACTS RELATING TO A  
28 CRIME OR DELINQUENT ACT.

29 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO HARM ANOTHER,  
30 THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY WITH THE  
31 INTENT TO:

32 (1) INFLUENCE A VICTIM OR WITNESS TO TESTIFY FALSELY OR  
33 WITHHOLD TESTIMONY; OR

1 (2) INDUCE A VICTIM OR WITNESS:

2 (I) TO AVOID THE SERVICE OF A SUBPOENA OR SUMMONS TO  
3 TESTIFY;

4 (II) TO BE ABSENT FROM AN OFFICIAL PROCEEDING TO WHICH  
5 THE VICTIM OR WITNESS HAS BEEN SUBPOENAED OR SUMMONED; OR

6 (III) NOT TO REPORT THE EXISTENCE OF FACTS RELATING TO A  
7 CRIME OR DELINQUENT ACT.

8 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
9 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on  
10 conviction is subject to imprisonment not exceeding 5 years OR A FINE NOT  
11 EXCEEDING \$5,000 OR BOTH.

12 (2) IF THE TESTIMONY, SUBPOENA, OFFICIAL PROCEEDING, OR REPORT  
13 INVOLVING THE VICTIM OR WITNESS RELATES TO A ~~FELONY, INCLUDING AN~~  
14 ~~ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT A FELONY FELONIOUS~~  
15 VIOLATION OF TITLE 5 OF THIS ARTICLE OR THE COMMISSION OF A CRIME OF  
16 VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE, OR A CONSPIRACY OR  
17 SOLICITATION TO COMMIT SUCH A CRIME, A PERSON WHO VIOLATES THIS SECTION  
18 IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT  
19 EXCEEDING 20 YEARS.

20 (D) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM  
21 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED  
22 ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

23 9-303.

24 (a) A person may not intentionally harm another, THREATEN TO HARM  
25 ANOTHER, or damage or destroy property with the intent of retaliating against a  
26 victim or witness for:

27 (1) giving testimony in an official proceeding; or

28 (2) reporting a crime or delinquent act.

29 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO INTENTIONALLY HARM  
30 ANOTHER, THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY  
31 WITH THE INTENT OF RETALIATING AGAINST A VICTIM OR WITNESS FOR:

32 (1) GIVING TESTIMONY IN AN OFFICIAL PROCEEDING; OR

33 (2) REPORTING A CRIME OR DELINQUENT ACT.

34 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
35 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on

1 conviction is subject to imprisonment not exceeding 5 years OR A FINE NOT  
2 EXCEEDING \$5,000 OR BOTH.

3 (2) IF THE OFFICIAL PROCEEDING OR REPORT DESCRIBED IN  
4 SUBSECTION (A) OF THIS SECTION RELATES TO A ~~FELONY OR A DELINQUENT ACT~~  
5 ~~BASED ON A FELONY, INCLUDING AN ATTEMPT, CONSPIRACY, OR SOLICITATION TO~~  
6 ~~COMMIT A FELONY~~ FELONIOUS VIOLATION OF TITLE 5 OF THIS ARTICLE OR THE  
7 COMMISSION OF A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE, OR  
8 A CONSPIRACY OR SOLICITATION TO COMMIT SUCH A CRIME, A PERSON WHO  
9 VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT  
10 TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

11 (D) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM  
12 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED  
13 ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

14 9-305.

15 (a) A person may not, by threat, force, or corrupt means, try to influence,  
16 intimidate, or impede a juror, a witness, or an officer of a court of the State OR OF THE  
17 UNITED STATES in the performance of the person's official duties.

18 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO, BY THREAT, FORCE, OR  
19 CORRUPT MEANS, TRY TO INFLUENCE, INTIMIDATE, OR IMPEDE A JUROR, A WITNESS,  
20 OR AN OFFICER OF THE COURT OF THE STATE OR OF THE UNITED STATES IN THE  
21 PERFORMANCE OF THE PERSON'S OFFICIAL DUTIES.

22 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
23 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on  
24 conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding  
25 [\$10,000] \$5,000 or both.

26 (2) IF AN ACT DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS  
27 TAKEN IN CONNECTION WITH A PROCEEDING INVOLVING A ~~FELONY, INCLUDING AN~~  
28 ~~ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT A FELONY~~ FELONIOUS  
29 VIOLATION OF TITLE 5 OF THIS ARTICLE OR THE COMMISSION OF A CRIME OF  
30 VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE, OR A CONSPIRACY OR  
31 SOLICITATION TO COMMIT SUCH A CRIME, A PERSON WHO VIOLATES THIS SECTION  
32 IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT  
33 EXCEEDING 20 YEARS.

34 (D) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM  
35 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED  
36 ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

37 **Article - Courts and Judicial Proceedings**

38 ~~3-8A-03.~~

39 (d) ~~The court does not have jurisdiction over:~~

(4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article:

(xvi) Attempted robbery under § 3-403 of the Criminal Law Article;

(xvii) A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the Criminal Law Article; OR

(XVIII) A VIOLATION OF § 9-302, § 9-303, OR § 9-305 OF THE CRIMINAL LAW ARTICLE;

10-901.

(A) 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 OR ACQUIESCED IN WRONGDOING THAT WAS INTENDED TO AND DID PROCURE THE UNAVAILABILITY OF THE WITNESS AS DEFINED IN MARYLAND RULE 5-804 WHO WAS THE DECLARANT OF THE STATEMENT.

(B) THE COURT SHALL DETERMINE THE ADMISSIBILITY OF A STATEMENT UNDER THIS SECTION IN THE MANNER PROVIDED IN THE MARYLAND RULES.

(C) A STATEMENT MAY NOT BE ADMITTED UNDER THIS SECTION UNLESS, AS SOON AS IS PRACTICABLE AFTER THE PROPONENT OF THE STATEMENT LEARNS THAT THE DECLARANT WILL BE UNAVAILABLE, THE PROPONENT MAKES KNOWN TO THE ADVERSE PARTY THE INTENTION TO OFFER THE STATEMENT AND THE PARTICULARS OF IT.

#### **Article -- Criminal Procedure**

~~4-202.~~

(b) Except as provided in subsection (c) of this section, a court exercising criminal jurisdiction in a case involving a child may transfer the case to the juvenile court before trial or before a plea is entered under Maryland Rule 4-242 if:

(1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;

(2) the alleged crime is excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article; and

(3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

(A) DURING THE TRIAL OF A CRIMINAL CASE IN WHICH THE DEFENDANT IS CHARGED WITH A FELONIOUS VIOLATION OF TITLE 5 OF THE CRIMINAL LAW

1 ARTICLE OR WITH THE COMMISSION OF A CRIME OF VIOLENCE AS DEFINED IN §  
2 14-101 OF THE CRIMINAL LAW ARTICLE, A STATEMENT AS DEFINED IN MARYLAND  
3 RULE 5-801(A) IS NOT EXCLUDED BY THE HEARSAY RULE IF THE STATEMENT IS  
4 OFFERED AGAINST A PARTY THAT HAS ENGAGED IN, DIRECTED, OR CONSPIRED TO  
5 COMMIT WRONGDOING THAT WAS INTENDED TO AND DID PROCURE THE  
6 UNAVAILABILITY OF THE DECLARANT OF THE STATEMENT, AS DEFINED IN  
7 MARYLAND RULE 5-804.

8 (B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, BEFORE ADMITTING A  
9 STATEMENT UNDER THIS SECTION, THE COURT SHALL HOLD A HEARING OUTSIDE  
10 THE PRESENCE OF THE JURY AT WHICH:

11 (1) THE MARYLAND RULES OF EVIDENCE ARE STRICTLY APPLIED; AND

12 (2) THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE  
13 PARTY AGAINST WHOM THE STATEMENT IS OFFERED ENGAGED IN, DIRECTED, OR  
14 CONSPIRED TO COMMIT THE WRONGDOING THAT PROCURED THE UNAVAILABILITY  
15 OF THE DECLARANT.

16 (C) A STATEMENT MAY NOT BE ADMITTED UNDER THIS SECTION UNLESS:

17 (1) THE STATEMENT WAS:

18 (I) GIVEN UNDER OATH SUBJECT TO THE PENALTY OF PERJURY  
19 AT A TRIAL, HEARING, OR OTHER PROCEEDING OR IN A DEPOSITION;

20 (II) REDUCED TO WRITING AND SIGNED BY THE DECLARANT; OR

21 (III) RECORDED IN SUBSTANTIALLY VERBATIM FASHION BY  
22 STENOGRAPHIC OR ELECTRONIC MEANS CONTEMPORANEOUSLY WITH THE MAKING  
23 OF THE STATEMENT; AND

24 (2) AS SOON AS IS PRACTICABLE AFTER THE PROPONENT OF THE  
25 STATEMENT LEARNS THAT THE DECLARANT WILL BE UNAVAILABLE, THE  
26 PROPONENT NOTIFIES THE ADVERSE PARTY OF:

27 (I) THE INTENTION TO OFFER THE STATEMENT;

28 (II) THE PARTICULARS OF THE STATEMENT; AND

29 (III) THE IDENTITY OF THE WITNESS THROUGH WHOM THE  
30 STATEMENT WILL BE OFFERED.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
32 effect October 1, 2005.

