

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by Senators Forehand and Frosh, Frosh, Green, Giannetti, Garagiola, Jimeno, and Stone

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

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 influence a victim or
8 witness to testify falsely or withhold testimony or to induce a victim or witness
9 to avoid service of a subpoena or summons to testify, to be absent from certain
10 proceedings, or to not report the existence of facts relating to a crime or
11 delinquent act; prohibiting a person from threatening to harm another with the
12 intent of retaliating against a victim or witness for giving testimony in an
13 official proceeding or for reporting a crime or delinquent act; prohibiting a
14 person from soliciting another person to harm another, threaten to harm
15 another, or damage or destroy property with the intent of retaliating against a
16 victim or witness for giving testimony in an official proceeding or for reporting a

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

18 ~~BY repealing and reenacting, with amendments,~~
 19 ~~Article - Courts and Judicial Proceedings~~
 20 ~~Section 3-8A-03(d)(4)(xvi) and (xvii)~~
 21 ~~Annotated Code of Maryland~~
 22 ~~(2002 Replacement Volume and 2004 Supplement)~~

23 ~~BY adding to~~
 24 ~~Article - Courts and Judicial Proceedings~~
 25 ~~Section 3-8A-03(d)(4)(xviii) and 10-901~~
 26 ~~Annotated Code of Maryland~~
 27 ~~(2002 Replacement Volume and 2004 Supplement)~~

28 BY repealing and reenacting, without amendments,
 29 Article - Criminal Law
 30 Section 9-301(c) and (d)
 31 Annotated Code of Maryland
 32 (2002 Volume and 2004 Supplement)

33 BY repealing and reenacting, with amendments,
 34 Article - Criminal Law
 35 Section 9-302, 9-303, and 9-305
 36 Annotated Code of Maryland
 37 (2002 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—Courts and Judicial Proceedings**

6 ~~3-8A-03.~~

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

8 (4) ~~A child at least 16 years old alleged to have committed any of the~~
9 ~~following crimes, as well as all other charges against the child arising out of the same~~
10 ~~incident, unless an order removing the proceeding to the court has been filed under §~~
11 ~~4-202 of the Criminal Procedure Article:~~

12 (xvi) ~~Attempted robbery under § 3-403 of the Criminal Law Article;~~
13 ~~{or}~~

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

16 (XVIII) ~~A VIOLATION OF § 9-302, § 9-303, OR § 9-305 OF THE CRIMINAL~~
17 ~~LAW ARTICLE THAT IS A FELONY;~~

18 ~~40-901.~~

19 (A) ~~A STATEMENT IS NOT EXCLUDED BY THE HEARSAY RULE IF THE~~
20 ~~STATEMENT IS OFFERED AGAINST A PARTY THAT HAS ENGAGED OR ACQUIESCED IN~~
21 ~~WRONGDOING THAT WAS INTENDED TO AND DID RESULT IN THE UNAVAILABILITY~~
22 ~~OF THE WITNESS, AS DEFINED IN MARYLAND RULE 5-804, WHO WAS THE DECLARANT~~
23 ~~OF THE STATEMENT.~~

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

26 **Article - Criminal Law**

27 9-301.

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

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

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

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

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

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

7 9-302.

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

10 (1) influence a victim or witness to testify falsely or withhold testimony;
11 or

12 (2) induce a victim or witness:

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

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

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

18 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO HARM ANOTHER,
19 THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY WITH THE
20 INTENT TO:

21 (1) INFLUENCE A VICTIM OR WITNESS TO TESTIFY FALSELY OR
22 WITHHOLD TESTIMONY; OR

23 (2) INDUCE A VICTIM OR WITNESS:

24 (I) TO AVOID THE SERVICE OF A SUBPOENA OR SUMMONS TO
25 TESTIFY;

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

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

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

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

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

12 9-303.

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

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

17 (2) reporting a crime or delinquent act.

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

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

22 (2) REPORTING A CRIME OR DELINQUENT ACT.

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

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

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

1 9-305.

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

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

9 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
10 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on
11 conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
12 [\$10,000] \$5,000 or both.

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

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

24 **~~Article—Criminal Procedure~~**

25 ~~4-202.~~

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

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

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

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

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

