
By: **Senators Forehand and Frosh**

Introduced and read first time: January 19, 2005

Assigned to: Judicial Proceedings

A BILL ENTITLED

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
17 crime or delinquent act; prohibiting a person, from trying by threat, force, or
18 corrupt means, to influence, intimidate, or impede an officer of a court of the
19 United States in the performance of the person's official duties; prohibiting a
20 person from soliciting another person to try, by threat, force, or corrupt means,
21 to influence, intimidate, or impede a juror, a witness, or an officer of a court of
22 the State or of the United States in the performance of the person's official
23 duties; increasing certain penalties; providing that if the testimony, subpoena,
24 official proceeding, or report involving a victim or witness relates to a felony, a
25 person who violates certain provisions of this Act is guilty of a felony and on
26 conviction is subject to a certain term of imprisonment; providing that certain
27 sentences imposed under certain provisions of this Act may be separate from
28 and consecutive to or concurrent with a sentence for certain other crimes;
29 providing that a certain juvenile court has jurisdiction over certain offenses;
30 providing that certain statements made by certain victims or witnesses are not
31 excluded in a judicial proceeding by the hearsay rule under certain
32 circumstances; and generally relating to crimes against victims and witnesses.

33 BY repealing and reenacting, with amendments,

34 Article - Courts and Judicial Proceedings

1 Section 3-8A-03(d)(4)(xvi) and (xvii)
2 Annotated Code of Maryland
3 (2002 Replacement Volume and 2004 Supplement)

4 BY adding to
5 Article - Courts and Judicial Proceedings
6 Section 3-8A-03(d)(4)(xviii) and 10-901
7 Annotated Code of Maryland
8 (2002 Replacement Volume and 2004 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article - Criminal Law
11 Section 9-301(c) and (d)
12 Annotated Code of Maryland
13 (2002 Volume and 2004 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Criminal Law
16 Section 9-302, 9-303, and 9-305
17 Annotated Code of Maryland
18 (2002 Volume and 2004 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article - Criminal Procedure
21 Section 4-202(b)
22 Annotated Code of Maryland
23 (2001 Volume and 2004 Supplement)

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

26 **Article - Courts and Judicial Proceedings**

27 3-8A-03.

28 (d) The court does not have jurisdiction over:

29 (4) A child at least 16 years old alleged to have committed any of the
30 following crimes, as well as all other charges against the child arising out of the same
31 incident, unless an order removing the proceeding to the court has been filed under §
32 4-202 of the Criminal Procedure Article:

33 (xvi) Attempted robbery under § 3-403 of the Criminal Law Article;
34 [or]

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

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

5 10-901.

6 (A) A STATEMENT IS NOT EXCLUDED BY THE HEARSAY RULE IF THE
7 STATEMENT IS OFFERED AGAINST A PARTY THAT HAS ENGAGED OR ACQUIESCED IN
8 WRONGDOING THAT WAS INTENDED TO AND DID RESULT IN THE UNAVAILABILITY
9 OF THE WITNESS, AS DEFINED IN MARYLAND RULE 5-804, WHO WAS THE DECLARANT
10 OF THE STATEMENT.

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

13 **Article - Criminal Law**

14 9-301.

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

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

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

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

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

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

26 9-302.

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

29 (1) influence a victim or witness to testify falsely or withhold testimony;
30 or

31 (2) induce a victim or witness:

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

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

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

5 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO HARM ANOTHER,
6 THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY WITH THE
7 INTENT TO:

8 (1) INFLUENCE A VICTIM OR WITNESS TO TESTIFY FALSELY OR
9 WITHHOLD TESTIMONY; OR

10 (2) INDUCE A VICTIM OR WITNESS:

11 (I) TO AVOID THE SERVICE OF A SUBPOENA OR SUMMONS TO
12 TESTIFY;

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

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

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

21 (2) IF THE TESTIMONY, SUBPOENA, OFFICIAL PROCEEDING, OR REPORT
22 INVOLVING THE VICTIM OR WITNESS RELATES TO A FELONY, INCLUDING AN
23 ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT A FELONY, A PERSON WHO
24 VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT
25 TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

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

29 9-303.

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

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

34 (2) reporting a crime or delinquent act.

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

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

5 (2) REPORTING A CRIME OR DELINQUENT ACT.

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

10 (2) IF THE OFFICIAL PROCEEDING OR REPORT DESCRIBED IN
11 SUBSECTION (A) OF THIS SECTION RELATES TO A FELONY OR A DELINQUENT ACT
12 BASED ON A FELONY, INCLUDING AN ATTEMPT, CONSPIRACY, OR SOLICITATION TO
13 COMMIT A FELONY, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
14 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

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

18 9-305.

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

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

26 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
27 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on
28 conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
29 [\$10,000] \$5,000 or both.

30 (2) IF AN ACT DESCRIBED IN SUBSECTION (A) OF THIS SECTION RELATES
31 TO A PROCEEDING INVOLVING A FELONY, INCLUDING AN ATTEMPT, CONSPIRACY, OR
32 SOLICITATION TO COMMIT A FELONY, A PERSON WHO VIOLATES THIS SECTION IS
33 GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
34 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

Article - Criminal Procedure

2 4-202.

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

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

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

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

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