

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **The President (By Request - Administration) and Senators
Astle, Brinkley, Britt, Brochin, Colburn, Della, Forehand, Garagiola,
Giannetti, Greenip, Grosfeld, Hafer, Haines, Harris, Hogan, Hollinger,
Hooper, Hughes, Jacobs, Jimeno, Jones, Kasemeyer, Kelley, Kittleman,
Klausmeier, Kramer, Lawlah, McFadden, Middleton, Mooney, Munson,
Pipkin, Ruben, Schrader, Stoltzfus, Stone, and Teitelbaum**

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 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~~

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

20 ~~BY repealing and reenacting, without amendments,~~
 21 ~~Article—Criminal Law~~
 22 ~~Section 9-301(e) and (d)~~
 23 ~~Annotated Code of Maryland~~
 24 ~~(2002 Volume and 2004 Supplement)~~

25 ~~BY repealing and reenacting, with amendments,~~
 26 ~~Article—Criminal Law~~
 27 ~~Section 9-302, 9-303, and 9-305~~
 28 ~~Annotated Code of Maryland~~
 29 ~~(2002 Volume and 2004 Supplement)~~

30 ~~BY repealing and reenacting, with amendments,~~
 31 ~~Article—Courts and Judicial Proceedings~~
 32 ~~Section 3-8A-03(d)(4)(xvi) and (xvii)~~
 33 ~~Annotated Code of Maryland~~
 34 ~~(2002 Replacement Volume and 2004 Supplement)~~

35 BY adding to
 36 Article - Courts and Judicial Proceedings
 37 Section 3-8A-03(d)(4)(xviii) and 10-901
 38 Annotated Code of Maryland
 39 (2002 Replacement Volume and 2004 Supplement)

40 ~~BY repealing and reenacting, without amendments,~~

1 ~~Article—Criminal Procedure~~
 2 ~~Section 4-202(b)~~
 3 ~~Annotated Code of Maryland~~
 4 ~~(2001 Volume and 2004 Supplement)~~

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

7 **~~Article—Criminal Law~~**

8 ~~9-301.~~

9 (e) ~~"Victim" means a person against whom a crime or delinquent act has been~~
 10 ~~committed or attempted.~~

11 (d) ~~"Witness" means a person who:~~

12 (1) ~~has knowledge of the existence of facts relating to a crime or~~
 13 ~~delinquent act;~~

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

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

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

20 ~~9-302.~~

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

23 (1) ~~influence a victim or witness to testify falsely or withhold testimony;~~
 24 ~~or~~

25 (2) ~~induce a victim or witness:~~

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

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

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

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

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

3 (2) INDUCE A VICTIM OR WITNESS:

4 (1) TO AVOID THE SERVICE OF A SUBPOENA OR SUMMONS TO
5 TESTIFY;

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

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

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

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

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

22 9-303.

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

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

27 (2) reporting a crime or delinquent act.

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

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

32 (2) REPORTING A CRIME OR DELINQUENT ACT.

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

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

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

9 9-305.

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

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

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 exceeding
 20 { \$10,000 } \$5,000 or both.

21 (2) IF AN ACT DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS
 22 TAKEN IN CONNECTION WITH A PROCEEDING INVOLVING 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 **Article - Courts and Judicial Proceedings**

30 3-8A-03.

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

32 (4) A child at least 16 years old alleged to have committed any of the
 33 following crimes, as well as all other charges against the child arising out of the same
 34 incident, unless an order removing the proceeding to the court has been filed under §
 35 4-202 of the Criminal Procedure Article:

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

37 {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;

5 10-901.

6 (A) A STATEMENT AS DEFINED IN MARYLAND RULE 5-801(A) IS NOT
7 EXCLUDED BY THE HEARSAY RULE IF THE STATEMENT IS OFFERED AGAINST A
8 PARTY THAT HAS ENGAGED OR ACQUIESCED IN, DIRECTED, OR CONSENTED TO
9 WRONGDOING THAT WAS INTENDED TO AND DID PROCURE THE UNAVAILABILITY OF
10 THE WITNESS AS DEFINED IN MARYLAND RULE 5-804 WHO WAS THE DECLARANT OF
11 THE STATEMENT.

12 (B) THE COURT SHALL DETERMINE THE ADMISSIBILITY OF A STATEMENT
13 UNDER THIS SECTION;

14 (1) BY CLEAR AND CONVINCING EVIDENCE; AND

15 (2) IN THE MANNER PROVIDED IN THE MARYLAND RULES.

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

21 **Article—Criminal Procedure**

22 ~~4-202.~~

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

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

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

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

32 (A) DURING THE TRIAL OF A CRIMINAL CASE IN WHICH THE DEFENDANT IS
33 CHARGED WITH A FELONIOUS VIOLATION OF TITLE 5 OF THE CRIMINAL LAW
34 ARTICLE OR WITH THE COMMISSION OF A CRIME OF VIOLENCE AS DEFINED IN §
35 14-101 OF THE CRIMINAL LAW ARTICLE, A STATEMENT AS DEFINED IN MARYLAND
36 RULE 5-801(A) IS NOT EXCLUDED BY THE HEARSAY RULE IF THE STATEMENT IS

1 OFFERED AGAINST A PARTY THAT HAS ENGAGED IN, DIRECTED, OR CONSPIRED TO
2 COMMIT WRONGDOING THAT WAS INTENDED TO AND DID PROCURE THE
3 UNAVAILABILITY OF THE DECLARANT OF THE STATEMENT, AS DEFINED IN
4 MARYLAND RULE 5-804.

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

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

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

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

14 (1) THE STATEMENT WAS:

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

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

18 (III) RECORDED IN SUBSTANTIALLY VERBATIM FASHION BY
19 STENOGRAPHIC OR ELECTRONIC MEANS CONTEMPORANEOUSLY WITH THE MAKING
20 OF THE STATEMENT; AND

21 (2) AS SOON AS IS PRACTICABLE AFTER THE PROPONENT OF THE
22 STATEMENT LEARNS THAT THE DECLARANT WILL BE UNAVAILABLE, THE
23 PROponent NOTIFIES THE ADVERSE PARTY OF:

24 (I) THE INTENTION TO OFFER THE STATEMENT;

25 (II) THE PARTICULARS OF THE STATEMENT; AND

26 (III) THE IDENTITY OF THE WITNESS THROUGH WHOM THE
27 STATEMENT WILL BE OFFERED.

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

