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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**

Introduced and read first time: January 21, 2005  
Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 3, 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~~  
14 ~~giving testimony in an official proceeding or reporting a crime or delinquent act;~~  
15 ~~prohibiting a person, by threat, force, or corrupt means, from trying to influence,~~  
16 ~~intimidate, or impede an officer of a court of the United States in the~~  
17 ~~performance of the person's official duties; prohibiting a person from soliciting~~  
18 ~~another person to, by threat, force, or corrupt means, try to influence,~~  
19 ~~intimidate, or impede a juror, a witness, or an officer of a court of the State or of~~  
20 ~~the United States in the performance of the person's official duties; increasing~~  
21 ~~certain penalties; providing that if the testimony, subpoena, official proceeding,~~  
22 ~~or report involving a victim or witness relates to a felony, a person who violates~~  
23 ~~certain provisions of this Act is guilty of a felony and on conviction is subject to~~

1 a certain term of imprisonment; providing that certain sentences imposed under  
2 certain provisions of this Act may be separate from and consecutive to or  
3 concurrent with a sentence for certain other crimes; providing that a certain  
4 court does not have jurisdiction over a certain person who engages in certain  
5 types of obstruction of justice; providing that certain statements made by  
6 certain victims or witnesses are not excluded in a judicial proceeding by the  
7 hearsay rule under certain circumstances; and generally relating to ~~crimes~~  
8 against victims and witnesses victim and witness intimidation.

9 ~~BY repealing and reenacting, without amendments,~~  
10 ~~Article - Criminal Law~~  
11 ~~Section 9-301(e) 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, with amendments,  
20 Article - Courts and Judicial Proceedings  
21 Section 3-8A-03(d)(4)(xvi) and (xvii)  
22 Annotated Code of Maryland  
23 (2002 Replacement Volume and 2004 Supplement)

24 BY adding to  
25 Article - Courts and Judicial Proceedings  
26 Section 3-8A-03(d)(4)(xviii) and 10-901  
27 Annotated Code of Maryland  
28 (2002 Replacement Volume and 2004 Supplement)

29 BY repealing and reenacting, without amendments,  
30 Article - Criminal Procedure  
31 Section 4-202(b)  
32 Annotated Code of Maryland  
33 (2001 Volume and 2004 Supplement)

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

1 **Article—Criminal Law**

2 ~~9-301.~~

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

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

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

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

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

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

14 ~~9-302.~~

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

17 (1) ~~influence a victim or witness to testify falsely or withhold testimony;~~  
18 ~~or~~

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

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

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

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

25 (B) ~~A PERSON MAY NOT SOLICIT ANOTHER PERSON TO HARM ANOTHER,~~  
26 ~~THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY WITH THE~~  
27 ~~INTENT TO:~~

28 (1) ~~INFLUENCE A VICTIM OR WITNESS TO TESTIFY FALSELY OR~~  
29 ~~WITHHOLD TESTIMONY; OR~~

30 (2) ~~INDUCE A VICTIM OR WITNESS:~~

31 (i) ~~TO AVOID THE SERVICE OF A SUBPOENA OR SUMMONS TO~~  
32 ~~TESTIFY;~~

1                   (HI)    TO BE ABSENT FROM AN OFFICIAL PROCEEDING TO WHICH  
2 THE VICTIM OR 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)}~~    (C)    (1) ~~[A]~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
6 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on  
7 conviction is subject to imprisonment not exceeding 5 years OR A FINE NOT  
8 EXCEEDING \$5,000 OR BOTH.

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

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

17 9-303.

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

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

22                   (2)    reporting a crime or delinquent act.

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

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

27                   (2)    REPORTING A CRIME OR DELINQUENT ACT.

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

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

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

4 9-305.

5 (a) ~~A person may not, 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 THE~~  
 7 ~~UNITED STATES in the performance of the person's official duties.~~

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

12 ~~[(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~  
 13 ~~SUBSECTION, A person who violates this section is guilty of a misdemeanor and on~~  
 14 ~~conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding~~  
 15 ~~[\$10,000] \$5,000 or both.~~

16 ~~(2) IF AN ACT DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS~~  
 17 ~~TAKEN IN CONNECTION WITH A PROCEEDING INVOLVING A FELONY, INCLUDING AN~~  
 18 ~~ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT A FELONY, A PERSON WHO~~  
 19 ~~VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT~~  
 20 ~~TO IMPRISONMENT NOT 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 - Courts and Judicial Proceedings**

25 3-8A-03.

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

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

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

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

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

1 10-901.

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

8 (B) THE COURT SHALL DETERMINE THE ADMISSIBILITY OF A STATEMENT  
9 UNDER THIS SECTION:

10 (1) BY CLEAR AND CONVINCING EVIDENCE; AND

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

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

17 **Article - Criminal Procedure**

18 4-202.

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

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

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

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

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

