

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 248

(The Speaker, *et al.*) (By Request – Administration)

Judiciary

Judicial Proceedings

Crimes and Criminal Procedure - Victim and Witness Intimidation

This Administration bill expands, increases the possible seriousness of, and alters the penalties for the crimes of: (1) inducing false testimony or avoidance of a subpoena; (2) retaliation for testimony; and (3) intimidating or corrupting a juror.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's expanded scope for affected offenses and increases in applicable penalty provisions.

Local Effect: Minimal increase in revenues and expenditures due to the bill's expanded scope for affected offenses and increases in applicable penalty provisions.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. The attached assessment does not reflect amendments to the bill.

Analysis

Bill Summary: Specifically, the bill:

- under provisions relating to the crime of inducing false testimony or avoidance of a subpoena, prohibits a person from: (1) harming another, threatening to harm another, or damaging or destroying property with the intent to induce a victim or witness not to report the existence of facts relating to a crime or delinquent act; or (2) soliciting another person to harm another, threaten to harm another, or damage or destroy property with the intent to influence a victim or witness to testify falsely

or withhold testimony, or to induce a victim or witness to avoid service of a subpoena or summons, to be absent from certain proceedings, or not to report the existence of facts relating to a crime or delinquent act;

- under provisions relating to the crime of retaliation for testimony, prohibits a person from: (1) threatening to harm another with the intent of retaliating against a victim or witness for giving testimony in an official proceeding or reporting a crime or delinquent act; or (2) soliciting another person to harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against a victim or witness for giving testimony in an official proceeding or reporting a crime or delinquent act; and
- under provisions relating to the crime of intimidating or corrupting a juror, prohibits a person from: (1) trying, by threat, force, or corrupt means, to influence, intimidate, or impede an officer of a court of the U.S. in the performance of the person's official duties; or (2) soliciting another person to, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of a court of the State or of the U.S. in the performance of the person's official duties.

The bill alters penalties for the crimes of inducing false testimony or avoidance of a subpoena, retaliation for testimony, and intimidating or corrupting a juror. For the crime of inducing false testimony or avoidance of a subpoena and the crime of retaliation for testimony, the bill subjects a violator to a maximum fine of \$5,000 that may be imposed in addition to, or instead of, the existing maximum incarceration of five years. The bill lowers the maximum fine for the crime of intimidating or corrupting a juror from \$10,000 to \$5,000.

The bill provides that, for all three cited offenses, if the testimony, subpoena, official proceeding, or report involving a victim or witness relates to a felonious drug violation or the commission of a crime of violence, or a conspiracy or solicitation to commit such a crime, the violator is guilty of a felony and subject to maximum imprisonment of 20 years, which sentence may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of the cited offense.

In addition, the bill provides that, during the trial of a criminal case in which the defendant is charged with a felonious violation of specified controlled dangerous substances provisions or with the commission of a crime of violence, a "hearsay" statement is not excluded by the hearsay rule if the statement is offered against a party that has engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the declarant of the statement, as defined under the Maryland Rules.

Before admitting such a statement, the court must hold a hearing outside the presence of the jury at which the Maryland Rules of Evidence are strictly applied and the court finds by clear and convincing evidence that the party against whom the statement is offered engaged in, directed, or conspired to commit the wrongdoing that procured the unavailability of the declarant.

Such a statement may not be admitted unless the statement was:

- given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
- reduced to writing and signed by the declarant; or
- recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement.

As soon as is practicable after the proponent of the statement learns that the declarant will be unavailable, the proponent must notify the adverse party of the intention to offer the statement, the particulars of the statement, and the identity of the witness through whom the statement will be offered.

Current Law: The crimes of inducing false testimony or avoidance of a subpoena, retaliation for testimony, and intimidating or corrupting a juror are misdemeanors which subject a violator to a maximum imprisonment of five years. In addition, a person convicted of intimidating or corrupting a juror is also subject to a maximum fine of \$10,000 and/or the imprisonment term.

Background: Witness intimidation continues to be an impediment to the effective prosecution of violent crimes, especially in jurisdictions where witnesses are reluctant to testify for fear of their lives.

Intimidation by drug dealers has been a top concern in Baltimore City, where a husband and wife and five children were killed in 2002 after their home was firebombed in retaliation for calls to police against local drug dealers. In January 2005, city detectives sought federal grand jury indictments against four men accused of involvement in a retaliatory firebombing at the North Baltimore home of a woman who had reported drug activity to police. In addition, a so-called “Stop Snitching” DVD has been distributed in Baltimore.

In response to problems of witness intimidation, the Standing Committee on Rules of Practice and Procedure of Maryland’s Court of Appeals has recommended additional

hearsay exceptions applicable to circumstances under which a witness has been made unavailable for court.

State Revenues: General fund revenues could increase minimally as a result of the bill's expanded scope and additional monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's expanded scope and additional incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's expanded scope and additional monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's expanded scope and applicable incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: In 2004, similar bills, SB 185 and HB 296 (Administration bills), each failed. SB 185 had a hearing before the Judicial Proceedings Committee and had no further action taken on it. HB 296 received an unfavorable report from the Judiciary Committee.

Cross File: SB 188 (The President, *et al.*) (Administration) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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