

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 188

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

Judicial Proceedings

Judiciary

Criminal Procedure - Victim and Witness Intimidation

This Administration bill provides for a limited exception to the hearsay rule in a felony case involving controlled dangerous substances or a crime of violence if a 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 witness who made the statement.

Fiscal Summary

State Effect: Although this bill may result in additional criminal convictions for certain felonies, it is not expected to significantly affect incarceration costs for the Division of Correction.

Local Effect: None.

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: The court must hold a hearing and find by clear and convincing evidence that the party against whom the statement is offered has engaged in, directed, or conspired to commit the wrongdoing that rendered the witness unavailable. A statement may not be introduced into evidence unless it was made under oath and subject to the penalties of perjury at a proceeding or in a deposition, was written and signed by the

declarant, or was recorded at the same time the statement is made. Additionally, after learning that the declarant is unavailable, the party offering the statement must, as soon as practicable, notify the adverse party of its 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.

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: None.

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

Fiscal Note History: First Reader - January 24, 2005
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Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510