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By: **The President (By Request - Administration) and Senators Brinkley, Colburn, Della, Garagiola, Haines, Hooper, Jacobs, Jimeno, Kittleman, Mooney, Munson, Schrader, Stoltzfus, and Stone**

Introduced and read first time: January 23, 2006

Rules suspended

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Victim and Witness Intimidation**

3 FOR the purpose of expanding the categories of crimes for which a certain type of  
4 evidence is admissible at trial under certain circumstances; expanding the list of  
5 crimes applicable to certain provisions that provide a greater penalty if certain  
6 acts are committed against certain persons relating to the crimes; and generally  
7 relating to victim and witness intimidation.

8 BY repealing and reenacting, with amendments,  
9 Article - Courts and Judicial Proceedings  
10 Section 10-901  
11 Annotated Code of Maryland  
12 (2002 Replacement Volume and 2005 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article - Criminal Law  
15 Section 9-302, 9-303, and 9-305  
16 Annotated Code of Maryland  
17 (2002 Volume and 2005 Supplement)

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

20 **Article - Courts and Judicial Proceedings**

21 10-901.

22 (a) THIS SECTION APPLIES TO TRIALS FOR THE FOLLOWING CRIMES:

23 (1) ASSAULT IN THE SECOND DEGREE UNDER § 3-203 OF THE CRIMINAL  
24 LAW ARTICLE FOR CASES TRIED IN A CIRCUIT COURT, UNLESS THE CASE IS BEING  
25 TRIED IN A CIRCUIT COURT BECAUSE OF A DEFENDANT'S:

- 1 (I) APPEAL FROM THE DISTRICT COURT; OR
- 2 (II) REQUEST FOR A JURY TRIAL IN THE DISTRICT COURT;
- 3 (2) SEXUAL OFFENSE IN THE THIRD DEGREE UNDER § 3-307 OF THE  
4 CRIMINAL LAW ARTICLE, OR ATTEMPTED SEXUAL OFFENSE IN THE THIRD DEGREE;
- 5 (3) CONTINUING COURSE OF CONDUCT WITH CHILD UNDER § 3-315 OF  
6 THE CRIMINAL LAW ARTICLE;
- 7 (4) INCEST UNDER § 3-323 OF THE CRIMINAL LAW ARTICLE;
- 8 (5) SEXUAL SOLICITATION OF A MINOR UNDER § 3-324 OF THE CRIMINAL  
9 LAW ARTICLE;
- 10 (6) CHILD KIDNAPPING UNDER § 3-503 OF THE CRIMINAL LAW ARTICLE;
- 11 (7) CHILD ABUSE UNDER § 3-601 OF THE CRIMINAL LAW ARTICLE;
- 12 (8) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL LAW  
13 ARTICLE;
- 14 (9) A FELONIOUS VIOLATION OF TITLE 5 OF THE CRIMINAL LAW  
15 ARTICLE, OR A CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS VIOLATION  
16 OF TITLE 5 OF THE CRIMINAL LAW ARTICLE; AND
- 17 (10) A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THE CRIMINAL  
18 LAW ARTICLE, OR A CONSPIRACY OR SOLICITATION TO COMMIT A CRIME OF  
19 VIOLENCE AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.

20 (B) During the trial of a criminal case in which the defendant is charged with  
21 a [felonious violation of Title 5 of the Criminal Law Article or with the commission of  
22 a crime of violence as defined in § 14-101 of the Criminal Law Article] CRIME  
23 DESCRIBED IN SUBSECTION (A) OF THIS SECTION, a statement as defined in  
24 Maryland Rule 5-801(a) is not excluded by the hearsay rule if the statement is offered  
25 against a party that has engaged in, directed, or conspired to commit wrongdoing that  
26 was intended to and did procure the unavailability of the declarant of the statement,  
27 as defined in Maryland Rule 5-804.

28 [(b)] (C) Subject to [subsection (c)] SUBSECTION (D) of this section, before  
29 admitting a statement under this section, the court shall hold a hearing outside the  
30 presence of the jury at which:

- 31 (1) The Maryland Rules of Evidence are strictly applied; and
- 32 (2) The court finds by clear and convincing evidence that the party  
33 against whom the statement is offered engaged in, directed, or conspired to commit  
34 the wrongdoing that procured the unavailability of the declarant.

35 [(c)] (D) A statement may not be admitted under this section unless:

1 (1) The statement was:

2 (i) Given under oath subject to the penalty of perjury at a trial,  
3 hearing, or other proceeding or in a deposition;

4 (ii) Reduced to writing and signed by the declarant; or

5 (iii) Recorded in substantially verbatim fashion by stenographic or  
6 electronic means contemporaneously with the making of the statement; and

7 (2) As soon as is practicable after the proponent of the statement learns  
8 that the declarant will be unavailable, the proponent notifies the adverse party of:

9 (i) The intention to offer the statement;

10 (ii) The particulars of the statement; and

11 (iii) The identity of the witness through whom the statement will be  
12 offered.

13 **Article - Criminal Law**

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;

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 crime or  
24 delinquent act.

25 (b) A person may not solicit another person to harm another, threaten to harm  
26 another, or damage or destroy property with the intent to:

27 (1) influence a victim or witness to testify falsely or withhold testimony;  
28 or

29 (2) induce a victim or witness:

30 (i) to avoid the service of a subpoena or summons to testify;

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 crime or  
4 delinquent act.

5 (C) A PERSON MAY NOT VIOLATE SUBSECTION (A) OR (B) OF THIS SECTION IF  
6 THE TESTIMONY, SUBPOENA, OFFICIAL PROCEEDING, OR REPORT INVOLVING THE  
7 VICTIM OR WITNESS RELATES TO ONE OF THE FOLLOWING CRIMES:

8 (1) ASSAULT IN THE SECOND DEGREE UNDER § 3-203 OF THIS ARTICLE;

9 (2) SEXUAL OFFENSE IN THE THIRD DEGREE UNDER § 3-307 OF THIS  
10 ARTICLE, OR ATTEMPTED SEXUAL OFFENSE IN THE THIRD DEGREE;

11 (3) CONTINUING COURSE OF CONDUCT WITH CHILD UNDER § 3-315 OF  
12 THIS ARTICLE;

13 (4) INCEST UNDER § 3-323 OF THIS ARTICLE;

14 (5) SEXUAL SOLICITATION OF A MINOR UNDER § 3-324 OF THIS ARTICLE;

15 (6) CHILD KIDNAPPING UNDER § 3-503 OF THIS ARTICLE;

16 (7) CHILD ABUSE UNDER § 3-601 OF THIS ARTICLE;

17 (8) CHILD SEXUAL ABUSE UNDER § 3-602 OF THIS ARTICLE;

18 (9) A FELONIOUS VIOLATION OF TITLE 5 OF THIS ARTICLE, OR A  
19 CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS VIOLATION OF TITLE 5 OF  
20 THIS ARTICLE; OR

21 (10) A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE, OR  
22 A CONSPIRACY OR SOLICITATION TO COMMIT A CRIME OF VIOLENCE AS DEFINED IN  
23 § 14-101 OF THIS ARTICLE.

24 [(c)] (D) (1) [Except as provided in paragraph (2) of this subsection, a] A  
25 person who violates SUBSECTION (A) OR (B) OF this section is guilty of a misdemeanor  
26 and on conviction is subject to imprisonment not exceeding 5 years or a fine not  
27 exceeding \$5,000 or both.

28 (2) [If the testimony, subpoena, official proceeding, or report involving  
29 the victim or witness relates to a felonious violation of Title 5 of this article or the  
30 commission of a crime of violence as defined in § 14-101 of this article, or a conspiracy  
31 or solicitation to commit such a crime, a] A person who violates SUBSECTION (C) OF  
32 this section is guilty of a felony and on conviction is subject to imprisonment not  
33 exceeding 20 years.

34 [(d)] (E) A sentence imposed under this section may be separate from and  
35 consecutive to or concurrent with a sentence for any crime based on the act  
36 establishing the violation of this section.

1 9-303.

2 (a) A person may not intentionally harm another, threaten to harm another, or  
3 damage or destroy property with the intent of retaliating against a victim or witness  
4 for:

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

6 (2) reporting a crime or delinquent act.

7 (b) A person may not solicit another person to intentionally harm another,  
8 threaten to harm another, or damage or destroy property with the intent of retaliating  
9 against a victim or witness for:

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

11 (2) reporting a crime or delinquent act.

12 (C) A PERSON MAY NOT VIOLATE SUBSECTION (A) OR (B) OF THIS SECTION IF  
13 THE TESTIMONY OR REPORT OF THE VICTIM OR WITNESS RELATES TO ONE OF THE  
14 FOLLOWING CRIMES:

15 (1) ASSAULT IN THE SECOND DEGREE UNDER § 3-203 OF THIS ARTICLE;

16 (2) SEXUAL OFFENSE IN THE THIRD DEGREE UNDER § 3-307 OF THIS  
17 ARTICLE, OR ATTEMPTED SEXUAL OFFENSE IN THE THIRD DEGREE;

18 (3) CONTINUING COURSE OF CONDUCT WITH CHILD UNDER § 3-315 OF  
19 THIS ARTICLE;

20 (4) INCEST UNDER § 3-323 OF THIS ARTICLE;

21 (5) SEXUAL SOLICITATION OF A MINOR UNDER § 3-324 OF THIS ARTICLE;

22 (6) CHILD KIDNAPPING UNDER § 3-503 OF THIS ARTICLE;

23 (7) CHILD ABUSE UNDER § 3-601 OF THIS ARTICLE;

24 (8) CHILD SEXUAL ABUSE UNDER § 3-602 OF THIS ARTICLE;

25 (9) A FELONIOUS VIOLATION OF TITLE 5 OF THIS ARTICLE, OR A  
26 CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS VIOLATION OF TITLE 5 OF  
27 THIS ARTICLE; OR

28 (10) A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE, OR  
29 A CONSPIRACY OR SOLICITATION TO COMMIT A CRIME OF VIOLENCE AS DEFINED IN  
30 § 14-101 OF THIS ARTICLE.

31 [(c)] (D) (1) [Except as provided in paragraph (2) of this subsection, a] A  
32 person who violates SUBSECTION (A) OR (B) OF this section is guilty of a misdemeanor

1 and on conviction is subject to imprisonment not exceeding 5 years or a fine not  
2 exceeding \$5,000 or both.

3 (2) [If the official proceeding or report described in subsection (a) of this  
4 section relates to a felonious violation of Title 5 of this article or the commission of a  
5 crime of violence as defined in § 14-101 of this article, or a conspiracy or solicitation  
6 to commit such a crime, a] A person who violates SUBSECTION (C) OF this section is  
7 guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

8 [(d)] (E) A sentence imposed under this section may be separate from and  
9 consecutive to or concurrent with a sentence for any crime based on the act  
10 establishing the violation of this section.

11 9-305.

12 (a) A person may not, by threat, force, or corrupt means, try to influence,  
13 intimidate, or impede a juror, a witness, or an officer of a court of the State or of the  
14 United States in the performance of the person's official duties.

15 (b) A person may not solicit another person to, by threat, force, or corrupt  
16 means, try to influence, intimidate, or impede a juror, a witness, or an officer of the  
17 court of the State or of the United States in the performance of the person's official  
18 duties.

19 (C) A PERSON MAY NOT VIOLATE SUBSECTION (A) OR (B) OF THIS SECTION IF  
20 THE OFFICIAL DUTIES OF THE JUROR, WITNESS, OR OFFICER OF THE COURT RELATE  
21 TO PROCEEDINGS FOR ONE OF THE FOLLOWING CRIMES:

22 (1) ASSAULT IN THE SECOND DEGREE UNDER § 3-203 OF THIS ARTICLE;

23 (2) SEXUAL OFFENSE IN THE THIRD DEGREE UNDER § 3-307 OF THIS  
24 ARTICLE, OR ATTEMPTED SEXUAL OFFENSE IN THE THIRD DEGREE;

25 (3) CONTINUING COURSE OF CONDUCT WITH CHILD UNDER § 3-315 OF  
26 THIS ARTICLE;

27 (4) INCEST UNDER § 3-323 OF THIS ARTICLE;

28 (5) SEXUAL SOLICITATION OF A MINOR UNDER § 3-324 OF THIS ARTICLE;

29 (6) CHILD KIDNAPPING UNDER § 3-503 OF THIS ARTICLE;

30 (7) CHILD ABUSE UNDER § 3-601 OF THIS ARTICLE;

31 (8) CHILD SEXUAL ABUSE UNDER § 3-602 OF THIS ARTICLE;

32 (9) A FELONIOUS VIOLATION OF TITLE 5 OF THIS ARTICLE, OR A  
33 CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS VIOLATION OF TITLE 5 OF  
34 THIS ARTICLE; OR

1 (10) A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE, OR  
2 A CONSPIRACY OR SOLICITATION TO COMMIT A CRIME OF VIOLENCE AS DEFINED IN  
3 § 14-101 OF THIS ARTICLE.

4 [(c)] (D) (1) [Except as provided in paragraph (2) of this subsection, a] A  
5 person who violates SUBSECTION (A) OR (B) OF this section is guilty of a misdemeanor  
6 and on conviction is subject to imprisonment not exceeding 5 years or a fine not  
7 exceeding \$5,000 or both.

8 (2) [If an act described in subsection (a) of this section is taken in  
9 connection with a proceeding involving a felonious violation of Title 5 of this article or  
10 the commission of a crime of violence as defined in § 14-101 of this article, or a  
11 conspiracy or solicitation to commit such a crime, a] A person who violates  
12 SUBSECTION (C) OF this section is guilty of a felony and on conviction is subject to  
13 imprisonment not exceeding 20 years.

14 [(d)] (E) A sentence imposed under this section may be separate from and  
15 consecutive to or concurrent with a sentence for any crime based on the act  
16 establishing the violation of this section.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
18 effect October 1, 2006.