

HOUSE BILL 1038

E1
SB 222/06 – JPR

7lr2958
CF 7lr2567

By: **Delegate Haynes**

Introduced and read first time: February 9, 2007

Assigned to: Judiciary

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
5 of crimes applicable to certain provisions that provide a greater penalty if
6 certain acts are committed against certain persons relating to the crimes; and
7 generally 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 (2006 Replacement Volume)

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 2006 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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(A) THIS SECTION APPLIES TO TRIALS FOR THE FOLLOWING CRIMES:**

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

5 **(I) APPEAL FROM THE DISTRICT COURT; OR**

6 **(II) REQUEST FOR A JURY TRIAL IN THE DISTRICT COURT;**

7 **(2) SEXUAL OFFENSE IN THE THIRD DEGREE UNDER § 3-307 OF**
8 **THE CRIMINAL LAW ARTICLE, OR ATTEMPTED SEXUAL OFFENSE IN THE THIRD**
9 **DEGREE;**

10 **(3) CONTINUING COURSE OF CONDUCT WITH CHILD UNDER**
11 **§ 3-315 OF THE CRIMINAL LAW ARTICLE;**

12 **(4) INCEST UNDER § 3-323 OF THE CRIMINAL LAW ARTICLE;**

13 **(5) SEXUAL SOLICITATION OF A MINOR UNDER § 3-324 OF THE**
14 **CRIMINAL LAW ARTICLE;**

15 **(6) CHILD KIDNAPPING UNDER § 3-503 OF THE CRIMINAL LAW**
16 **ARTICLE;**

17 **(7) CHILD ABUSE UNDER § 3-601 OF THE CRIMINAL LAW**
18 **ARTICLE;**

19 **(8) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL LAW**
20 **ARTICLE;**

21 **(9) A FELONIOUS VIOLATION OF TITLE 5 OF THE CRIMINAL LAW**
22 **ARTICLE, OR A CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS**
23 **VIOLATION OF TITLE 5 OF THE CRIMINAL LAW ARTICLE; AND**

24 **(10) A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THE**
25 **CRIMINAL LAW ARTICLE, OR A CONSPIRACY OR SOLICITATION TO COMMIT A**
26 **CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.**

1 ~~[(a)]~~ **(B)** During the trial of a criminal case in which the defendant is
2 charged with a [felonious violation of Title 5 of the Criminal Law Article or with the
3 commission of a crime of violence as defined in § 14–101 of the Criminal Law Article]
4 **CRIME DESCRIBED IN SUBSECTION (A) OF THIS SECTION**, a statement as defined
5 in Maryland Rule 5–801(a) is not excluded by the hearsay rule if the statement is
6 offered against a party that has engaged in, directed, or conspired to commit
7 wrongdoing that was intended to and did procure the unavailability of the declarant of
8 the statement, as defined in Maryland Rule 5–804.

9 ~~[(b)]~~ **(C)** Subject to subsection ~~[(c)]~~ **(D)** of this section, before admitting a
10 statement under this section, the court shall hold a hearing outside the presence of the
11 jury at which:

12 (1) The Maryland Rules of Evidence are strictly applied; and

13 (2) The court finds by clear and convincing evidence that the party
14 against whom the statement is offered engaged in, directed, or conspired to commit the
15 wrongdoing that procured the unavailability of the declarant.

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

17 (1) The statement was:

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

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

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

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

26 (i) The intention to offer the statement;

27 (ii) The particulars of the statement; and

28 (iii) The identity of the witness through whom the statement will
29 be offered.

Article – Criminal Law

9–302.

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

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

(2) induce a victim or witness:

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

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

(iii) not to report the existence of facts relating to a crime or delinquent act.

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

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

(2) induce a victim or witness:

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

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

(iii) not to report the existence of facts relating to a crime or delinquent act.

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

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

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

5 (3) **CONTINUING COURSE OF CONDUCT WITH CHILD UNDER**
6 **§ 3-315 OF THIS ARTICLE;**

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

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

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

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

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

13 (9) **A FELONIOUS VIOLATION OF TITLE 5 OF THIS ARTICLE, OR A**
14 **CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS VIOLATION OF TITLE**
15 **5 OF THIS ARTICLE; OR**

16 (10) **A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THIS**
17 **ARTICLE, OR A CONSPIRACY OR SOLICITATION TO COMMIT A CRIME OF**
18 **VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE.**

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

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

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

4 9-303.

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

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

9 (2) reporting a crime or delinquent act.

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

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

14 (2) reporting a crime or delinquent act.

15 (C) **A PERSON MAY NOT VIOLATE SUBSECTION (A) OR (B) OF THIS**
16 **SECTION IF THE TESTIMONY OR REPORT OF THE VICTIM OR WITNESS RELATES**
17 **TO ONE OF THE FOLLOWING CRIMES:**

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

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

22 (3) **CONTINUING COURSE OF CONDUCT WITH CHILD UNDER**
23 **§ 3-315 OF THIS ARTICLE;**

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

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

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

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

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

3 **(9) A FELONIOUS VIOLATION OF TITLE 5 OF THIS ARTICLE, OR A**
4 **CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS VIOLATION OF TITLE**
5 **5 OF THIS ARTICLE; OR**

6 **(10) A CRIME OF VIOLENCE AS DEFINED IN § 14-101 OF THIS**
7 **ARTICLE, OR A CONSPIRACY OR SOLICITATION TO COMMIT A CRIME OF**
8 **VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE.**

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

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

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

21 9-305.

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

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

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

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

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

8 **(3) CONTINUING COURSE OF CONDUCT WITH CHILD UNDER**
9 **§ 3-315 OF THIS ARTICLE;**

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

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

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

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

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

16 **(9) A FELONIOUS VIOLATION OF TITLE 5 OF THIS ARTICLE, OR A**
17 **CONSPIRACY OR SOLICITATION TO COMMIT A FELONIOUS VIOLATION OF TITLE**
18 **5 OF THIS ARTICLE; OR**

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

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

26 **(2) [If an act described in subsection (a) of this section is taken in**
27 **connection with a proceeding involving a felonious violation of Title 5 of this article or**
28 **the commission of a crime of violence as defined in § 14-101 of this article, or a**

1 conspiracy or solicitation to commit such a crime, a] **A** person who violates
2 **SUBSECTION (C) OF** this section is guilty of a felony and on conviction is subject to
3 imprisonment not exceeding 20 years.

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2007.