

**Department of Legislative Services
Maryland General Assembly
2007 Session**

FISCAL AND POLICY NOTE

House Bill 1038
Judiciary

(Delegate Haynes)

Crimes - Victim and Witness Intimidation

This bill expands, under specified circumstances, the categories of crimes for which hearsay evidence may be admissible at trial. Under prohibitions against: (1) inducing false testimony or avoidance of a subpoena; (2) retaliation for testimony; or (3) intimidating or corrupting a juror, the bill expands the list of crimes that provide for a maximum penalty of 20 years imprisonment, if committed against crime victims or witnesses.

Fiscal Summary

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

Local Effect: None. It is assumed that any additional caseload for the circuit courts could be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, the bill expands coverage of hearsay exemptions and the felony penalties for the three intimidation crimes to include:

- second degree assault, with specified exceptions;
- third degree sexual offense, or attempted third degree sexual offense;

- continuing course of conduct with child;
- incest;
- sexual solicitation of a minor;
- child kidnapping;
- child abuse;
- child sexual abuse;
- a conspiracy or solicitation to commit a felonious violation involving controlled dangerous substances; and
- a conspiracy or solicitation to commit a crime of violence.

Current Law: Chapter 446 of 2005, an Administration initiative, provided 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.

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.

Chapter 461 of 2005 expanded, increased the possible seriousness of, and altered 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.

Specifically, Chapter 461:

- under provisions relating to the crime of inducing false testimony or avoidance of a subpoena, prohibited 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 existing provisions relating to the crime of retaliation for testimony, prohibited 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 existing provisions relating to the crime of intimidating or corrupting a juror, prohibited a person from: (1) trying, by threat, force, or corrupt means, to influence, intimidate, or impede an officer of a court of the United States 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 United States in the performance of the person's official duties.

Chapter 461 also altered 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, Chapter 461 subjected a violator to a maximum fine of \$5,000 that may be imposed in addition to, or instead of, the then existing maximum incarceration of five years. It lowered the maximum fine for the crime of intimidating or corrupting a juror from \$10,000 to \$5,000.

The Act provided 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 solicitation or conspiracy to commit such an offense, 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.

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.

According to statewide circuit court conviction data from sentencing guideline worksheets provided by the Maryland State Commission on Criminal Sentencing Policy, the following convictions occurred for the covered offenses in fiscal 2006:

<u>Offense</u>	<u>Convictions</u>
Inducing false testimony	3
Retaliation for testimony	1
Intimidating or corrupting jurors	7
Inducing false testimony or subpoena avoidance related to a felony controlled dangerous substance offense or crime of violence	1
Retaliation for testimony related to a felony controlled dangerous substance offense or crime of violence	0
Intimidating or corrupting jurors related to a felony controlled dangerous substance offense or crime of violence	<u>4</u>
Total	16

Additional Information

Prior Introductions: SB 222 and HB 320 of 2006, Administration bills, received unfavorable reports from the Senate Judicial Proceedings Committee and the House Judiciary Committee, respectively.

Cross File: SB 779 (Senator Pugh) (By Request) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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