

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 370  
Judiciary

(Delegates Rosenberg and Simmons)

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Uniform Act to Secure the Attendance of Witnesses From Without the State in  
Criminal Proceedings - News Media Privilege

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This bill prohibits a judge from issuing a summons under the Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Proceedings if (1) the witness being summoned is covered by the news media testimonial privilege under State law; (2) the judge finds that the laws of the state in which the prosecution is pending regarding privileged communications with members of the news media do not provide protections for the witness that are substantially similar to the protections provided under the State's news media testimonial privilege; and (3) the judge finds that there is a substantial likelihood that the witness will be directed to disclose the name of a confidential source or be held in contempt of court.

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Fiscal Summary

**State Effect:** The bill is procedural/technical and does not materially affect State finances.

**Local Effect:** The bill is procedural/technical and does not materially affect local finances.

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### **Maryland Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Proceedings**

*Issuance of Certificate and Hearing:* If a judge of a court of record in any state which has statutory provisions for commanding persons within that state to attend and testify in the State certifies the assertions listed below under the seal of the court, a judge of a court of record in the county in which the person is located must fix a time and place for a hearing upon presentation of the certificate and must make an order directing the witness to appear at a specified time and place for the hearing. The certificate must attest that (1) there is a criminal prosecution pending in the court or that a grand jury investigation has begun or is about to begin; (2) a person subject to the order is a material witness in the prosecution or grand jury investigation; and (3) the person's presence will be required for a specified number of days.

*Ordering Witness to Attend:* At the hearing, if the judge makes the determinations listed below, the judge must issue a summons attached to a copy of the certificate directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has begun or is about to begin at the time and place specified in the summons:

- the witness is material and necessary;
- that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state; and
- that the laws of the state in which the prosecution is pending, or grand jury investigation has begun or is about to begin, and of any other state through which the witness may be required to pass by ordinary course of travel, will protect the witness from arrest and the service of civil and criminal process.

In the hearing, the certificate is *prima facie* evidence of all the facts stated above.

*Arrest of Witness:* If a certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be brought to the court for a hearing. If the judge is satisfied of the desirability of the custody and delivery, the judge may, in lieu of issuing a subpoena or summons, order that a witness be taken into custody and delivered to an officer of the requesting state. However, the witness may be admitted to bail in the amount fixed by the judge upon condition that the witness will appear at the time and place specified in the subpoena or

summons served upon him. The certificate serves as prima facie proof of a desirability of custody and delivery.

*Penalty for Witness's Failure to Attend and Testify:* If the summoned witness fails without good cause, to attend and testify as directed in the summons, the witness must be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in the State.

### **News Media Testimonial Privilege**

State statute prohibits the compelled disclosure of specified information from individuals employed by news media or engaged in specified news-related activity while enrolled as a postsecondary student.

*Eligibility for the Privilege:* This testimonial privilege applies to a person (1) employed by the news media in any news gathering or news disseminating capacity or (2) a postsecondary student engaged in any news gathering or news disseminating capacity recognized by his/her school as a scholastic activity or in conjunction with an activity sponsored, funded, managed, or supervised by school staff or faculty ("scholastic/school-related activity").

"News media" means:

- newspapers;
- magazines;
- journals;
- press associations;
- news agencies;
- wire services;
- radio;
- television; and
- any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

*Prohibition Against Compelled Disclosure:* A judicial, legislative, or administrative body, or anybody that has the power to issue subpoenas, may not compel a person eligible for the privilege to disclose:

- the source of any news or information procured by the person while employed by the news media or while enrolled as a student, whether or not the source has been promised confidentiality; or

- any news or information procured for communication to the public but which is not so communicated, in whole or in part by a person who, at the time, was (1) employed by the news media and was in the course of pursuing a professional activity or (2) a student in the course of pursuing a scholastic/school-related activity.

*Exceptions to Prohibition:* A court may compel disclosure of news or information, if the court finds that the party seeking protected news or information has established by clear and convincing evidence that:

- the news or information is relevant to a significant legal issue before any judicial, legislative, or administrative body, or anybody that has the power to issue subpoenas;
- the news or information cannot, with due diligence, be obtained by any alternate means; and
- there is an overriding public interest in disclosure.

*Compelled Disclosure of a Source by a Court:* A court may not compel disclosure of the source of any news or information procured by a person eligible for the privilege.

*Waiver of Privilege:* If a person eligible for the privilege disseminates a source of any news or information, or any portion of the news or information procured while pursuing a professional or scholastic/school-related activity, the protection from compelled disclosure is not waived by the person.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland Public Television, Department of Legislative Services

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