

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 8
Judiciary

(Delegate Rosenberg)

Judicial Proceedings

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

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 under limited circumstances.

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.

Analysis

Bill Summary: A judge may not issue 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 record indicates that the witness reasonably relied on the protections provided under State law regarding the disclosure of a source that has been promised confidentiality when the witness engaged in the conduct that gave rise to the summons request; (3) 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; (4) 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; and (5) the judge finds that the disclosure of the name of the confidential source would be contrary to State law.

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 laws for commanding persons within that state to attend and testify in the State certifies under the seal of the court the following assertions, a judge of a court of record in the county in which the person is located must establish 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 with 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 post bail in the amount established by the judge upon the condition that

the witness appear at the time and place specified in the subpoena or summons. The certificate serves as *prima facie* proof of the 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, independent contractors of the news media acting in a specified capacity, or postsecondary students engaged in specified news-related activity.

Eligibility for the Privilege: This testimonial privilege applies to a person who is, or has been (1) employed by the news media in any news gathering or news disseminating capacity; (2) an independent contractor of the news media acting within the scope of a contract in any news gathering or news disseminating capacity; or (3) 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; (2) acting as an independent contractor of the news media and in the course of pursuing a professional activity; or (3) 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.

Background: Chapter 226 of 2014 expanded the eligibility for the privilege against compelled disclosure of specified news, information, or sources of news or information to a person who is, or has been, an independent contractor of the news media acting within the scope of a contract in any news gathering or disseminating activity.

Additional Information

Prior Introductions: HB 370 of 2014 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

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