

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 82

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Office of Crime Control and Prevention)

Judicial Proceedings

Courts - Prohibition Against Testimony by Convicted Perjurer - Repeal

This departmental bill repeals the prohibition on convicted perjurers testifying in court proceedings.

Fiscal Summary

State Effect: None. The bill is procedural and does not affect State finances.

Local Effect: None. The bill is procedural and does not affect local finances.

Small Business Effect: The Governor's Office of Crime Control and Prevention (GOCCP) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: A convicted perjurer is prohibited from testifying in a court proceeding.

Maryland Rule 5-609 establishes that for the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime must be admitted if elicited from the witness or established by public record during examination of the witness but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

However, evidence of a conviction that is admissible must be excluded if (1) the conviction has been reversed or vacated; (2) the conviction has been the subject of a pardon; or (3) an appeal or application for leave to appeal from the judgment of conviction is pending, or the time for noting an appeal or filing an application for leave to appeal has not expired. Evidence of a conviction is not admissible under the rule if more than 15 years have elapsed since the date of the conviction.

Under Maryland Rule 5-609, “conviction” includes a plea of *nolo contendere* followed by a sentence, whether or not the sentence is suspended.

Background: According to GOCCP, in certain types of cases, such as domestic violence and sexual assault, it is crucial that the victim be able to testify, since the victim is the only witness (other than the defendant) to the events. However, if the victim has a prior conviction for perjury, then the victim is prohibited from testifying under current statute. GOCCP reports that there is no other statutory ban on an individual testifying due to a prior criminal conviction.

Additional Information

Prior Introductions: SB 673 of 2012 passed the Senate with amendments but received an unfavorable report from the House Judiciary Committee. Its cross file, HB 926, received an unfavorable report from the House Judiciary Committee.

Cross File: None. However, SB 150 (Senator Lee, *et al.* – Judicial Proceedings) is identical.

Information Source(s): Governor’s Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State’s Attorneys’ Association, Department of Legislative Services

Fiscal Note History: First Reader - January 20, 2016
min/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Courts – Testimony by Perjurer – Repeal of Prohibition**

BILL NUMBER: SB 82

PREPARED BY: Governor’s Office of Crime Control and Prevention

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This bill deals only with court procedure and has no impact on business.