



## Legislation loopholes leave Maryland witnesses vulnerable

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The court house in Baltimore. Strengthening a witness intimidation bill passed more than a decade ago could help better protect people scared to testify because of retaliation.

For too long in Baltimore, witnesses have been scared into a frozen silence. Criminals go free because of lack of evidence, and thin cases and crime continue to spiral out of control.

A state law passed in 2005 sought to attack this stop-snitching culture of witness intimidation by raising the punishment for threatening someone from a misdemeanor, with a maximum five year sentence, to a felony that could put someone away for 20 years. A more controversial part of the law, called the hearsay clause, made witness statements admissible in court rather than forcing people to testify in person.

Nearly a decade and a half after the law passed, it hasn't proved to be the tough crime-fighting tool many had hoped.

Weaknesses in the law have made it tough for prosecutors to put the hearsay clause into practice because of severe restrictions added to the bill and the influence of criminal defense attorneys. The law should be strengthened, so

that it can be used in more types of cases. The state could use the much more soundproof federal law as a model, or better yet, adopt that version, as many other states have done.

Under the federal rule, the hearsay exception can be made in any kind of case, while Maryland's law limits it to trials dealing with crimes of violence or drug crimes. Over the years, amendments have been added to beef up the bill, but not by nearly enough. The hearsay clause now covers child abuse in the first degree, or that results in death or severe injury. Child abuse in the second degree is not covered, and the same is true for assault in the second degree. Advocates of domestic abuse violence cases contend this doesn't provide the protection many clients need to safely stand up against abusive partners. Human trafficking is also not included, though victims are often threatened by traffickers.

In February, Baltimore City State's Attorney Marilyn Mosby announced the "You're Not Alone" campaign which provides services for victims and witnesses of crime.

Maryland's law also restricts the type of statement that can be made outside of court. Statements have to be made under oath at a proceeding, such as a grand jury hearing or deposition, or in writing and signed or recorded electronically. It is hard to track how many times the hearsay exception has been used in the state, but there are criminal cases in which the rule was used to secure a conviction that has been upheld on appeal.

Changing the hearsay law is by far not the only way to stop witness intimidation, but it could be a very solid step in protecting witnesses. The dilemma with witnesses too scared to testify came to light this summer during the murder trial of 7-year-old Taylor Hayes, who was shot while riding in the

back of a car. A witness in that case said that financial help she received from prosecutors to move for her protection wasn't enough and that she still feared for her safety despite their efforts.

Baltimore by far has the toughest problem with witness intimidation and its influence on cases, although it comes into play in other jurisdictions as well. Baltimore State's Attorney Marilyn Mosby has said that more than one-third of the cases her office dropped in 2018 were dismissed because of uncooperative witnesses or victims. Witnesses have been firebombed and even killed. Despite doubling the size of the Victim and Services Unit within Ms. Mosby's office, the problem persists.

Making it so that victims don't have to face their attackers in court is a no-brainer. Testifying under the glaring eyes of somebody who may or may not go free is enough to scare anybody. Maryland needs to get on board with federal standards so that is no longer the case.