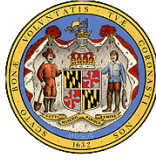


STATE OF MARYLAND

CHARLTON T. HOWARD, III
State Prosecutor

SARAH R. DAVID
Deputy State Prosecutor

LINDSAY E. BIRD
LETAM DUSON
Senior Assistant State Prosecutors



OFFICE OF
THE STATE PROSECUTOR

Hampton Plaza
Suite 410
300 East Joppa Road
Towson, MD 21286-3152
Telephone (410) 321-4067
1 (800) 695-4058
Fax (410) 321-3851

RE: SUPPORT OF HB-427, Criminal Law - Executive or Legislative Proceedings – Obstruction

Dear Mr. Chairman and Members of the Judiciary Committee:

We are writing to express the support of the Office of the State Prosecutor for HB 427, **Criminal Law - Executive or Legislative Proceedings – Obstruction**, which would make our State’s law more in line with the federal government’s obstruction of justice statute and allow the law to address not only the judicial branch, but the legislative and executive branches of government as well.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of State government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our State and local government institutions, officials, employees and elections.

Obstruction of Justice

The current obstruction of justice statute in Maryland only restricts interference with a judicial proceeding. This closely mirrors federal law 18 U.S.C.A. § 1503, which also makes it criminal to interfere with an official trial or judicial proceeding. However, the federal law has expanded to include interference with other branches of government, for example:

§ 1505. Obstruction of proceedings before departments, agencies, and committees

...Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

18 U.S.C.A. § 1505.

Expanding Maryland's law to do the same would allow the same protections to witnesses in the executive and legislative branches that are afforded witnesses in Court. For example, this legislative body has the power to investigate and issue subpoenas to witnesses for those investigations. If someone were to intimidate a witness or threaten to kill or harm a witness for cooperating with a legislative subpoena they would not be afforded the protections of the obstruction of justice statute.

Consistent with Current Law

This proposed statute only expands the protections witnesses and judicial officers are extended by the current obstruction of justice statute to legislative and executive witnesses and officers. It does not change the elements of the offense or restrict speech otherwise protected.

True threats are not protected by the first amendment. *See Virginia v. Black*, 538 U.S. 343, 359 (2003); *Watts v. United States*, 394 U.S. 705, 707 (1969). "True threats" constitute one of the "well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72, (1942); *see Alvarez*, 132 S.Ct. at 2544 (recognizing that true threats are one of the few "historic and traditional categories [of expression]" in which content-based restrictions on speech is permitted); *United States v. Williams*, 690 F.3d 1056, 1061 (8th Cir.2012) (noting that true threats are one of the "discrete categories of content-based restrictions on speech" permitted under the First Amendment).

There has been extensive litigation of obstruction of justice issues as they relate to the First Amendment and while there may always be future litigation in this area, there are nonetheless accepted delineations when someone is expressing speech or a political perspective, as opposed to committing the crime of obstruction of justice. Importantly for this legislation, the First Amendment does not guarantee a right to make intimidating threats against government witnesses. *United States v. Shoulberg*, 895 F.2d 882, 886 (2d Cir. 1990) *See, e.g., Watts v. United States*, 394 U.S. at 707, 89 S.Ct. at 1401 (statute prohibiting threats against President "is constitutional on its face"); *United States v. Kelner*, 534 F.2d 1020, 1025-27 (2d Cir.) (threat to injure another is not protected by First Amendment), *cert. denied*, 429 U.S. 1022, (1976); *United States v. Velasquez*, 772 F.2d 1348, 1357-58 (7th Cir.1985) (threat to retaliate against informant is not protected by First Amendment), *cert. denied*, 475 U.S. 1021, (1986).

In general, our office strongly support reforms in our public corruption laws that will provide our investigators and prosecutors the tools necessary to ensure that we can preserve the integrity of State government. To that end, we would encourage a favorable report from the Judiciary Committee on House Bill 427.

Sincerely,

Charlton T. Howard, III
State Prosecutor

