

HB427 - Obstruct Executive or Legislative.pdf

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To: Members of The House Judiciary Committee

From: Doyle Niemann, Chair, Legislative Committee, Criminal Law and Practice Section

Date: February 4, 2022

Subject: **HB427 – Executive or Legislative Proceedings - Obstruction**

Position: **Support**

The Legislative Committee of the Criminal Law & Practice Section of the Maryland State Bar Association (MSBA) **Supports HB427 – Executive or Legislative Proceedings – Obstruction.**

This bill makes it a misdemeanor offense to intentionally obstruct or impede executive or legislative proceedings by threat of force or other corrupt means.

In today’s polarized and emotionally charged environment, where the examples of individuals and groups who deliberately and intentionally try to impede or stop governmental functions, this bill fills a gap. It does not impinge on the exercise of free speech or even civil disobedience if the parties so choose because it explicitly requires that there be threats of force or other corrupt means.

While “corrupt means” is an undefined term the Committee believes there is sufficient guidance in case law and practice to ensure that remains narrowly defined.

For the reasons stated, we **Support HB427 – Executive or Legislative Proceedings - Obstruction.**

If you have questions about the position of the Criminal Law and Practice Section’s Legislative Committee, please feel free to address them to me at 240-606-1298 or at doyleniemann@verizon.net.

Testimony HB-427_Rosenberg.pdf

Uploaded by: Jennifer Sutton

Position: FAV

SAMUEL I. "SANDY" ROSENBERG
Legislative District 41
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Health and Government Operations
Committee

Chair

Government Operations and
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House Chair

Joint Committee on Administrative,
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Testimony of Delegate Samuel I. Rosenberg
Before the House Judiciary Committee
In support of
House Bill 472
Criminal Law - Executive or Legislative Proceedings - Obstruction

*"There is no grievance that is a fit object of redress by mob law."*¹ Abraham Lincoln,
1838.

*"I am in the House Chambers. We have been instructed to lie down on the floor and put on our gas masks. Chamber Security and Capitol Police have their guns drawn as protestors bang on the front door of the chamber."*² Tweet from Representative Dan Kildee of Michigan on January 6, 2021.

Mister Chairman and Members of the Judiciary Committee:

House Bill 427 would criminalize obstructing or impeding an official proceeding of the executive or legislative branch. Our law already treats such criminal acts that disrupt the administration of justice by the judiciary.

The purpose of this bill should be clear to every member of this assembly. It is intended to protect the operation of all three branches of state government from events like those that at the United States Capitol on January 6, 2021.

Since then, there have been numerous incidents where government actions have been intentionally disrupted by conduct that is not protected by the First Amendment.

¹ Lincoln, Abraham; Lyceum Address; January 27, 1838;
<http://www.abrahamlincolnonline.org/lincoln/speeches/lyceum.htm>.

² <https://twitter.com/RepDanKildee/status/1346907565482004495>

HB 427 is about protecting the democratic processes by which laws are made and the people of Maryland are governed. This bill would ensure that any person who attempts to criminally interfere with the basic functions of the legislature or executive is punished.

Currently there is no statute in this state, or any other, that specifically punishes a person who obstructs legislative or executive actions. The importance of deterring such actions cannot be understated.

The elected members of the Maryland General Assembly and our staff enact the public policy that governs and benefits the people of this state. The members of the executive branch, from Cabinet Secretaries to rank and file employees, serve the people of this state by faithfully carrying out the laws that we enact.

To ensure that our three branches of government continue to function, uninterrupted and unimpeded, I respectfully urge the committee to give House Bill 472 a favorable report.

February 8, 2022

testimonyhb427-final.pdf

Uploaded by: Sarah David

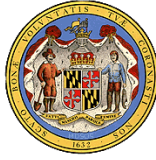
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RE: SUPPORT OF HB-427, Criminal Law - Executive or Legislative Proceedings – Obstruction

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

HB0427-JUD_MACo_SWA.pdf

Uploaded by: Michael Sanderson

Position: FWA



House Bill 427

Criminal Law - Executive or Legislative Proceedings - Obstruction

MACo Position: **SUPPORT WITH
AMENDMENTS**

To: Judiciary Committee

Date: February 8, 2022

From: Dominic J. Butchko and Michael Sanderson

The Maryland Association of Counties (MACo) **SUPPORTS HB 427 WITH AMENDMENTS**. Current law protects the official proceedings of state courts from interference or impediment. HB 427, as written, would extend those protections to the state's executive and legislative branches. MACo seeks an amendment to extend this provision to apply to local governing bodies.

This bill would make it a misdemeanor to seek to impede the business of the executive or legislative branches through threat, force, or corrupt means. Current law already imposes this standard for interference of court proceedings and HB 427 further recognizes the importance of governing bodies conducting public affairs. The bill does not apply to mere dissent, debate, or opposition to policies, but to a higher standard of actual interference.

The rationale for the bill applies equally to local governing bodies and their own proceedings. MACo requests amendment language to add local governing bodies to this section of state law.

HB 427 seeks to protect the proceeding of the state executive or legislative branches. An amendment could reasonably extend this same protection to local government proceedings as well. Accordingly, MACo requests a **FAVORABLE WITH AMENDMENTS** report on HB 427.