

HOUSE BILL 357

E1, E2

0lr0161
CF SB 271

By: **The Speaker (By Request – Administration) and Delegates Adams, Anderton, Arentz, Arian, Beitzel, Buckel, Chisholm, Clark, Corderman, Cox, M. Fisher, Ghrist, Grammer, Griffith, Hartman, Howard, Jacobs, Kipke, Kittleman, Krebs, Long, Malone, Mangione, Mautz, McComas, McKay, Metzgar, Morgan, Otto, Parrott, Pippy, Reilly, Rose, Saab, Shoemaker, Szeliga, and Wivell**

Introduced and read first time: January 20, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Victim and Witness Intimidation – Penalties and Procedures**

3 FOR the purpose of expanding the applicability of a certain exception to the hearsay rule
4 relating to victim or witness intimidation; prohibiting a person from causing serious
5 physical injury to another as a result of certain violations; prohibiting a person from
6 causing the death of another as a result of certain violations; establishing certain
7 penalties for a violation of this Act; defining a certain term; and generally relating
8 to victim and witness intimidation.

9 BY repealing and reenacting, with amendments,
10 Article – Courts and Judicial Proceedings
11 Section 10–901
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2019 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Law
16 Section 3–201(a) and (d), 9–302, 9–303, and 9–305
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 9–301
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to

2 Article – Criminal Law

3 Section 9–302.1, 9–302.2, 9–303.1, 9–303.2, 9–305.1, and 9–305.2

4 Annotated Code of Maryland

5 (2012 Replacement Volume and 2019 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
7 That the Laws of Maryland read as follows:

8 **Article – Courts and Judicial Proceedings**

9 10–901.

10 (a) During the trial of a criminal case [in which the defendant is charged with a
11 felonious violation of Title 5 of the Criminal Law Article or with the commission of a crime
12 of violence as defined in § 14–101 of the Criminal Law Article], a statement as defined in
13 Maryland Rule 5–801(a) is not excluded by the hearsay rule if the statement is offered
14 against a party that has engaged in, directed, or conspired to commit wrongdoing that was
15 intended to and did procure the unavailability of the declarant of the statement, as defined
16 in Maryland Rule 5–804.

17 (b) Subject to subsection (c) of this section, before admitting a statement under
18 this section, the court shall hold a hearing outside the presence of the jury at which:

19 (1) The Maryland Rules of Evidence are strictly applied; and

20 (2) The court finds by clear and convincing evidence that the party against
21 whom the statement is offered engaged in, directed, or conspired to commit the wrongdoing
22 that procured the unavailability of the declarant.

23 (c) A statement may not be admitted under this section unless:

24 (1) The statement was:

25 (i) Given under oath subject to the penalty of perjury at a trial,
26 hearing, or other proceeding or in a deposition;

27 (ii) Reduced to writing and signed by the declarant; or

28 (iii) Recorded in substantially verbatim fashion by stenographic or
29 electronic means contemporaneously with the making of the statement; and

30 (2) As soon as is practicable after the proponent of the statement learns
31 that the declarant will be unavailable, the proponent notifies the adverse party of:

32 (i) The intention to offer the statement;

- 1 (ii) The particulars of the statement; and
- 2 (iii) The identity of the witness through whom the statement will be
- 3 offered.

4 **Article – Criminal Law**

5 3–201.

6 (a) In this subtitle the following words have the meanings indicated.

7 (d) “Serious physical injury” means physical injury that:

8 (1) creates a substantial risk of death; or

9 (2) causes permanent or protracted serious:

10 (i) disfigurement;

11 (ii) loss of the function of any bodily member or organ; or

12 (iii) impairment of the function of any bodily member or organ.

13 9–301.

14 (a) In this subtitle the following words have the meanings indicated.

15 (b) “Official proceeding” includes a criminal trial, a hearing related to a criminal

16 trial or adjudicatory hearing, a grand jury proceeding, and any other proceeding that is

17 part of a criminal action or juvenile delinquency case.

18 **(C) “SERIOUS PHYSICAL INJURY” HAS THE MEANING STATED IN § 3–201 OF**

19 **THIS ARTICLE.**

20 **[(c)] (D)** “Victim” means a person against whom a crime or delinquent act has

21 been committed or attempted.

22 **[(d)] (E)** “Witness” means a person who:

23 (1) has knowledge of the existence of facts relating to a crime or delinquent

24 act;

25 (2) makes a declaration under oath that is received as evidence for any

26 purpose;

27 (3) has reported a crime or delinquent act to a law enforcement officer,

prosecutor, intake officer, correctional officer, or judicial officer; or

(4) has been served with a subpoena issued under the authority of a court of this State, any other state, or the United States.

9–302.

(a) A person may not harm another, threaten to harm another, or damage or destroy property with the intent to:

(1) influence a victim or witness to testify falsely or withhold testimony; or

(2) induce a victim or witness:

(i) to avoid the service of a subpoena or summons to testify;

(ii) to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned; or

(iii) not to report the existence of facts relating to a crime or delinquent act.

(b) A person may not solicit another person to harm another, threaten to harm another, or damage or destroy property with the intent to:

(1) influence a victim or witness to testify falsely or withhold testimony; or

(2) induce a victim or witness:

(i) to avoid the service of a subpoena or summons to testify;

(ii) to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned; or

(iii) not to report the existence of facts relating to a crime or delinquent act.

(c) (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000 or both.

(2) If the testimony, subpoena, official proceeding, or report involving the victim or witness relates to a felonious violation of Title 5 of this article or the commission of a crime of violence as defined in § 14–101 of this article, or a conspiracy or solicitation to commit such a crime, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

9-302.1.

(A) A PERSON MAY NOT CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER AS A RESULT OF A VIOLATION OF § 9-302 OF THIS SUBTITLE.

(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS.

(C) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.

9-302.2.

(A) A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER AS A RESULT OF A VIOLATION OF § 9-302 OF THIS SUBTITLE.

(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 25 YEARS.

(C) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.

9-303.

(a) A person may not intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against:

(1) a victim or witness for:

(i) giving testimony in an official proceeding; or

(ii) reporting a crime or delinquent act;

(2) a juror for any reason relating to the performance of the juror's official duties in a pending or completed case in a court of the State or the United States; or

(3) an officer of the court of the State or the United States for any reason

relating to the performance of the officer's official duties in a pending or completed case.

(b) A person may not solicit another person to intentionally harm another, threaten to harm another, or damage or destroy property with the intent of retaliating against:

(1) a victim or witness for:

(i) giving testimony in an official proceeding; or

(ii) reporting a crime or delinquent act;

(2) a juror for any reason relating to the performance of the juror's official duties in a pending or completed case in a court of the State or the United States; or

(3) an officer of the court of the State or the United States for any reason relating to the performance of the officer's official duties in a pending or completed case.

(c) (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000 or both.

(2) If the official proceeding or report described in subsection (a) of this section relates to a felonious violation of Title 5 of this article or the commission of a crime of violence as defined in § 14–101 of this article, or a conspiracy or solicitation to commit such a crime, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

9–303.1.

(A) A PERSON MAY NOT CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER AS A RESULT OF A VIOLATION OF § 9–303 OF THIS SUBTITLE.

(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS.

(C) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.

9–303.2.

(A) A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER AS A RESULT OF A VIOLATION OF § 9-303 OF THIS SUBTITLE.

(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 25 YEARS.

(C) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.

9-305.

(a) A person may not, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of a court of the State or of the United States in the performance of the person's official duties.

(b) A person may not solicit another person to, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of the court of the State or of the United States in the performance of the person's official duties.

(c) (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000 or both.

(2) If an act described in subsection (a) of this section is taken in connection with a proceeding involving a felonious violation of Title 5 of this article or the commission of a crime of violence as defined in § 14-101 of this article, or a conspiracy or solicitation to commit such a crime, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of this section.

9-305.1.

(A) A PERSON MAY NOT CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER AS A RESULT OF A VIOLATION OF § 9-305 OF THIS SUBTITLE.

(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS.

1 **(C) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM**
2 **AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED**
3 **ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.**

4 **9-305.2.**

5 **(A) A PERSON MAY NOT CAUSE THE DEATH OF ANOTHER AS A RESULT OF A**
6 **VIOLATION OF § 9-305 OF THIS SUBTITLE.**

7 **(B) A PERSON WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY**
8 **OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING**
9 **25 YEARS.**

10 **(C) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM**
11 **AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED**
12 **ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2020.