

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 237
Judiciary

(Delegate Smith, *et al.*)

Judicial Proceedings

Courts - Prohibition Against Testimony by Convicted Perjurer - Repeal

This bill repeals the prohibition on convicted perjurers testifying in court proceedings and requires that evidence that a person has been convicted of perjury be admitted for the purpose of attacking the credibility of the witness, regardless of the date of the conviction, if the evidence is elicited from the witness or established by public record during examination of the witness.

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: None.

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.

Under § 10-905 of the Courts and Judicial Proceedings Article, evidence is admissible to prove the interest of a witness in any proceeding, or the fact of the witness’s conviction of an infamous crime. Evidence of the witness’s conviction is not admissible if an appeal is pending, the time for an appeal has not expired, or the conviction has been reversed, and there has been no retrial or reconviction. Perjury was an infamous crime under the common law. *Garitee v. Bond*, 102 Md. 379, 383 (1905).

Prior to Maryland’s adoption of the Rules of Evidence, convictions of infamous crimes were *per se* admissible under § 10-905. However, § 10-905 was superseded by Maryland Rule 5-609 to the extent that they conflict. *Williams v. State*, 110 Md. App. 1 (1996). In such a situation, the rule prevails. *Beales v. State*, 329 Md. 263 (1993).

Background: According to the Governor’s Office of Crime Control and Prevention (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, a similar bill, 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: SB 150 (Senator Lee, *et al.*) - Judicial Proceedings.

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 - February 1, 2016
kb/kdm Revised - House Third Reader - March 18, 2016

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510