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Intimidation of Trial Witnesses Called 'Terrorism'

Opponents of Maryland Bills to Stiffen Penalties Again Raise Constitutional Concerns

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The message yesterday from prosecutors, crime victims and Maryland's governor was as clear as it was compelling: The intimidation of witnesses prior to criminal trials has become an epidemic and threatens the integrity of the state's criminal justice system.

At the first state Senate hearing on several bills that would stiffen penalties for intimidating witnesses, Baltimore State's Attorney Patricia C. Jessamy called the loss of witnesses because they are scared away from testifying "a public safety crisis."

"In whatever form it takes, witness intimidation is having its desired effect," Jessamy said. "This terrorism must end."

Victims of witness intimidation, who identified themselves only by their initials for fear of being tracked down, described for the legislators lives of constant fear, brought on only because they happened to witness a crime.

But emotional pleas similar to those made yesterday to the Senate's Judicial Proceedings Committee have failed in the past to win enough support to change Maryland law, and there are signs that opposition in the General Assembly has not waned significantly since last year, when several witness-intimidation bills died.

Nobody argues that witnesses are being scared away from testifying far too often. Opponents of the legislation, however, say it raises serious constitutional questions.

The Sixth Amendment guarantees anyone accused of a crime the right "to be confronted with the witnesses against him," which generally means that witnesses must testify, in person, at trial.

Two of the three witness-intimidation bills submitted in the General Assembly would in some circumstances allow prior testimony from a witness who does not appear in court, if prosecutors can prove that the defendant was responsible for the witness not appearing.

"Our biggest fear is that if the government allows statements into evidence without the opportunity to even challenge the witness, that wrongful convictions could easily happen," said Timothy Mitchell,

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president of the Maryland Criminal Defense Attorneys' Association. "People are less inclined to give a false statement when they're up there on the stand, in person, and have to answer questions."

The issue garnered wide attention recently following several media reports about a homemade DVD that has circulated in Baltimore and was sold in at least one Baltimore store. Titled "Stop Snitchin'," the video shows local men talking about retaliation against police informers.

Proponents of the bills point out that federal law has long provided for so-called "hearsay exceptions" -- allowing written testimony under some circumstances in place of live witness testimony -- in cases of witness intimidation. Federal courts have upheld the law, proponents say, and several states have passed similar measures.

"Almost everybody agrees that we need to do something about witness intimidation," said Prince George's State's Attorney Glenn F. Ivey. "Clearly, it is a growing problem that is making it harder to get killers and violent criminals off the street."

Gov. Robert L. Ehrlich Jr. (R) has proposed this year legislation that would make witness intimidation a felony punishable by up to 20 years in prison. Under current law, witness intimidation is a misdemeanor, punishable by five years in prison. The measure also would allow the "hearsay exception."

Sens. Brian E. Frosh and Jennie M. Forehand, Montgomery Democrats, have proposed a bill similar to Ehrlich's. A third measure, introduced by Sen. Leo E. Green (D-Prince George's), would increase penalties for witness intimidation but does not include the hearsay exception.

Last year, two bills that would have increased witness intimidation penalties died in the House Judiciary Committee, chaired by Del. Joseph F. Vallario Jr. (D-Prince George's).

Vallario said yesterday that the bills failed because of his concerns about allowing testimony from witnesses who are not required to appear in court. The effort to curtail witness intimidation "sounds like apple pie," he said. "It's the right thing to do to get the bad guy. But we've got a Constitution, and we've got to maintain it."

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