

**SUBSTITUTE FOR  
HOUSE BILL NO. 5445**

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 122 (MCL 750.122), as added by 2000 PA 452.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 122. (1) A person shall not give, offer to give, or  
2       promise anything of value to an individual for any of the follow-  
3       ing purposes:

4       (a) To discourage any individual from attending a present or  
5       future official proceeding as a witness, testifying at a present  
6       or future official proceeding, or giving information at a present  
7       or future official proceeding.

8       (b) To influence any individual's testimony at a present or  
9       future official proceeding.

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1 (c) To encourage any individual to avoid legal process, to  
2 withhold testimony, or to testify falsely in a present or future  
3 official proceeding.

4 (2) Subsection (1) does not apply to EITHER OF the  
5 FOLLOWING:

6 (A) CONDUCT PROSCRIBED UNDER CHAPTER LXII.

7 (B) THE reimbursement or payment of reasonable costs for any  
8 witness to provide a statement to testify truthfully or provide  
9 truthful information in an official proceeding as provided for  
10 under section 16 of the uniform condemnation procedures act, 1980  
11 PA 87, MCL 213.66, or section 2164 of the revised judicature act  
12 of 1961, 1961 PA 236, MCL 600.2164, or court rule.

13 (3) A person shall not do any of the following by threat or  
14 intimidation:

15 (a) Discourage or attempt to discourage any individual from  
16 attending a present or future official proceeding as a witness,  
17 testifying at a present or future official proceeding, or giving  
18 information at a present or future official proceeding.

19 (b) Influence or attempt to influence ANY INDIVIDUAL'S tes-  
20 timony at a present or future official proceeding.

21 (c) Encourage or attempt to encourage any individual to  
22 avoid legal process, to withhold testimony, or to testify falsely  
23 in a present or future official proceeding.

24 (4) A PERSON SHALL NOT KNOWINGLY PROVIDE FALSE OR MISLEADING  
25 TESTIMONY AT A PRESENT OR FUTURE OFFICIAL PROCEEDING, KNOWING THE  
26 TESTIMONY IS FALSE OR MISLEADING. THIS SUBSECTION DOES NOT APPLY  
27 TO CONDUCT PROSCRIBED UNDER CHAPTER LXII.

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1 (5) A PERSON SHALL NOT KNOWINGLY INFLUENCE OR ATTEMPT TO  
2 INFLUENCE ANY INDIVIDUAL TO PROVIDE FALSE OR MISLEADING TESTIMONY  
3 AT A PRESENT OR FUTURE OFFICIAL PROCEEDING, KNOWING THE TESTIMONY  
4 IS FALSE OR MISLEADING. THIS SUBSECTION DOES NOT APPLY TO CON-  
5 DUCT PROSCRIBED UNDER CHAPTER LXII.

6 (6) ~~(4)~~ It is an affirmative defense under  
7 subsections (1), ~~and~~ (3), (4), AND (5) for which the defendant  
8 has the burden of proof by a preponderance of the evidence, that  
9 the conduct consisted solely of lawful conduct and that the  
10 defendant's sole intention was to encourage, induce, or cause the  
11 other person to testify or provide evidence truthfully.

12 (7) ~~(5)~~ Subsections (1), ~~and~~ (3), (4), AND (5) do not  
13 apply to any of the following:

14 (a) The lawful conduct of an attorney in the performance of  
15 his or her duties, such as advising a client.

16 (b) The lawful conduct or communications of a person as per-  
17 mitted by statute or other lawful privilege.

18 (8) ~~(6)~~ A person shall not willfully impede, interfere  
19 with, prevent, or obstruct or attempt to willfully impede, inter-  
20 fere with, prevent, or obstruct the ability of a witness to  
21 attend, testify, or provide information in or for a present or  
22 future official proceeding.

23 (9) ~~(7)~~ A person who violates this section is guilty of a  
24 crime as follows:

25 (a) Except as provided in subdivisions (b) and (c), ~~the~~ A  
26 person WHO VIOLATES SUBSECTION (1), (3), (4), (5), OR (8) is

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1 guilty of a felony punishable by imprisonment for not more than 4  
2 years or a fine of not more than \$5,000.00, or both.

3 (b) ~~if~~ EXCEPT AS PROVIDED IN SUBDIVISION (C), IF the vio-  
4 lation OF SUBSECTION (1), (3), OR (8) is committed in a criminal  
5 OR CIVIL case ~~for which the maximum term of imprisonment for the~~  
6 ~~violation is more than 10 years, or the violation is punishable~~  
7 ~~by imprisonment for life or any term of years,~~ OR INVOLVES COM-  
8 MITTING OR ATTEMPTING TO COMMIT A CRIME OR A THREAT TO CAUSE  
9 PROPERTY DAMAGE, the person is guilty of a felony punishable by  
10 imprisonment for not more than ~~10~~ 15 years or a fine of not  
11 more than \$20,000.00, or both.

12 (c) If the violation OF SUBSECTION (3) OR (8) involves  
13 ~~committing or attempting to commit a crime or~~ a threat to kill  
14 or injure any person, or ~~to cause property damage~~ CAUSING THE  
15 DEATH OF OR INJURY TO ANY PERSON, the person is guilty of a  
16 felony punishable by imprisonment for not more than ~~15~~ 20 years  
17 or a fine of not more than \$25,000.00, or both.

18 (10) ~~(8)~~ A person who retaliates, attempts to retaliate,  
19 or threatens to retaliate against another person for having been  
20 a witness in an official proceeding is guilty of a felony punish-  
21 able by imprisonment for not more than 10 years or a fine of not  
22 more than \$20,000.00, or both. As used in this subsection,

23 "retaliate" means to do any of the following:

24 (a) Commit or attempt to commit a crime against any person.

25 (b) Threaten to kill or injure any person or threaten to  
26 cause property damage.

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1           (11) ~~(9)~~ This section applies regardless of whether an  
2 official proceeding actually takes place or is pending or whether  
3 the individual has been subpoenaed or otherwise ordered to appear  
4 at the official proceeding if the person knows or has reason to  
5 know the other person could be a witness at any official  
6 proceeding.

7           (12) ~~(10)~~ This section does not prohibit a person from  
8 being charged with, convicted of, or punished for any other vio-  
9 lation of law arising out of the same transaction as the viola-  
10 tion of this section.

11           (13) ~~(11)~~ The court may order a term of imprisonment  
12 imposed for violating this section to be served consecutively to  
13 a term of imprisonment imposed for the commission of any other  
14 crime including any other violation of law arising out of the  
15 same transaction as the violation of this section.

16           (14) ~~(12)~~ As used in this section:

17           (a) "Official proceeding" means a proceeding heard before a  
18 legislative, judicial, administrative, or other governmental  
19 agency or official authorized to hear evidence under oath,  
20 including a referee, prosecuting attorney, hearing examiner, com-  
21 missioner, notary, or other person taking testimony or deposition  
22 in that proceeding.

23           (b) "Threaten or intimidate" does not mean a communication  
24 regarding the otherwise lawful access to courts or other branches  
25 of government, such as the otherwise lawful filing of any civil  
26 action or police report of which the purpose is not to harass the

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- 1 other person in violation of section 2907 of the revised
- 2 judiciary act of 1961, 1961 PA 236, MCL 600.2907.

[Enacting section 1. This amendatory act takes effect July 1, 2002.]