

# HOUSE BILL No. 5445

November 1, 2001, Introduced by Reps. Pappageorge, Richardville, Toy, Pumford, Woronchak, DeVuyst, Kowall, Jelinek, DeWeese, Patterson, Jacobs, Schermesser, Garza, Cassis, Rocca, Mortimer, Shulman, Newell, Pestka, Switalski, Anderson, Rison, Plakas, Middaugh, Birkholz, Allen, Ruth Johnson and Faunce and referred to the Committee on Criminal Justice.

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.

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 the reimbursement or  
5 payment of reasonable costs for any witness to provide a state-  
6 ment to testify truthfully or provide truthful information in an  
7 official proceeding as provided for under section 16 of the uni-  
8 form condemnation procedures act, 1980 PA 87, MCL 213.66, or sec-  
9 tion 2164 of the revised judicature act of 1961, 1961 PA 236, MCL  
10 600.2164, or court rule.

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

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

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

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

22 (4) A PERSON SHALL NOT KNOWINGLY INFLUENCE OR ATTEMPT TO  
23 INFLUENCE ANY INDIVIDUAL TO PROVIDE FALSE OR MISLEADING TESTIMONY  
24 OR PROVIDE FALSE OR MISLEADING EVIDENCE AT A PRESENT OR FUTURE  
25 OFFICIAL PROCEEDING.

26 (5) ~~-(4)-~~ It is an affirmative defense under subsections  
27 (1), ~~and~~ (3), AND (4) for which the defendant has the burden of

1 proof by a preponderance of the evidence, that the conduct  
2 consisted solely of lawful conduct and that the defendant's sole  
3 intention was to encourage, induce, or cause the other person to  
4 testify or provide evidence truthfully.

5       (6) ~~(5)~~ Subsections (1), ~~and~~ (3), AND (4) do not apply  
6 to any of the following:

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

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

11       (7) ~~(6)~~ A person shall not willfully impede, interfere  
12 with, prevent, or obstruct or attempt to willfully impede, inter-  
13 fere with, prevent, or obstruct the ability of a witness to  
14 attend, testify, or provide information in or for a present or  
15 future official proceeding.

16       (8) ~~(7)~~ A person who violates this section is guilty of a  
17 crime as follows:

18       (a) Except as provided in subdivisions (b) and (c), ~~the~~ A  
19 person WHO VIOLATES SUBSECTION (1), (3), (4), OR (7) is guilty of  
20 a felony punishable by imprisonment for not more than 4 years or  
21 a fine of not more than \$5,000.00, or both.

22       (b) If the violation OF SUBSECTION (1), (3), (4), OR (7) is  
23 committed in a criminal case for which the maximum term of  
24 imprisonment for the violation is more than 10 years, or the vio-  
25 lation is punishable by imprisonment for life or any term of  
26 years, the person is guilty of a felony punishable by

1 imprisonment for not more than 10 years or a fine of not more  
2 than \$20,000.00, or both.

3 (c) If the violation OF SUBSECTION (1), (3), OR (7) involves  
4 committing or attempting to commit a crime or a threat to kill or  
5 injure any person or to cause property damage, the person is  
6 guilty of a felony punishable by imprisonment for not more than  
7 15 years or a fine of not more than \$25,000.00, or both.

8 (9) ~~(8)~~ A person who retaliates, attempts to retaliate, or  
9 threatens to retaliate against another person for having been a  
10 witness in an official proceeding is guilty of a felony punish-  
11 able by imprisonment for not more than 10 years or a fine of not  
12 more than \$20,000.00, or both. As used in this subsection,  
13 "retaliate" means to do any of the following:

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

15 (b) Threaten to kill or injure any person or threaten to  
16 cause property damage.

17 (10) ~~(9)~~ This section applies regardless of whether an  
18 official proceeding actually takes place or is pending or whether  
19 the individual has been subpoenaed or otherwise ordered to appear  
20 at the official proceeding if the person knows or has reason to  
21 know the other person could be a witness at any official  
22 proceeding.

23 (11) ~~(10)~~ This section does not prohibit a person from  
24 being charged with, convicted of, or punished for any other vio-  
25 lation of law arising out of the same transaction as the viola-  
26 tion of this section.

1           (12) ~~—(11)—~~ The court may order a term of imprisonment  
2 imposed for violating this section to be served consecutively to  
3 a term of imprisonment imposed for the commission of any other  
4 crime including any other violation of law arising out of the  
5 same transaction as the violation of this section.

6           (13) ~~—(12)—~~ As used in this section:

7           (a) "Official proceeding" means a proceeding heard before a  
8 legislative, judicial, administrative, or other governmental  
9 agency or official authorized to hear evidence under oath,  
10 including a referee, prosecuting attorney, hearing examiner, com-  
11 missioner, notary, or other person taking testimony or deposition  
12 in that proceeding.

13           (b) "Threaten or intimidate" does not mean a communication  
14 regarding the otherwise lawful access to courts or other branches  
15 of government, such as the otherwise lawful filing of any civil  
16 action or police report of which the purpose is not to harass the  
17 other person in violation of section 2907 of the revised judica-  
18 ture act of 1961, 1961 PA 236, MCL 600.2907.