

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1069

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE EVANS.

2043H.01P

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 575.040, 575.050, 575.160, 575.270, 575.280, and 576.030, RSMo, and to enact in lieu thereof nine new sections relating to offenses committed against a body of the general assembly, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 575.040, 575.050, 575.160, 575.270, 575.280, and 576.030, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 21.403, 21.405, 575.040, 575.050, 575.160, 575.270, 575.280, 575.330, and 576.030, to read as follows:

**21.403. 1. If an individual who has been subpoenaed to testify or provide other information at a proceeding before a body of the general assembly has refused to give or provide such testimony or other information on the basis of his or her privilege against self-incrimination, the president pro tempore or speaker of the originating body of the general assembly may request the court to issue an order requiring such individual to testify or provide other information, and if the court finds that such request has been approved by an affirmative vote of a three-fifths majority of the members of such body of the general assembly, the court shall issue an order requiring such individual to give such testimony or provide other information requested or subpoenaed by such body of the general assembly, which shall become effective as provided under this section.**

**2. After being provided written notice that an order has been issued under this section, the witness shall not refuse to comply with the order on the basis of his or her privilege against self-incrimination. However, no testimony or other information**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **compelled under such order, or any information directly or indirectly derived from such**  
15 **testimony or other information, shall be used against the witness in any criminal**  
16 **proceeding except for perjury, giving false statement, or otherwise failing to comply with**  
17 **such order.**

2 **21.405. 1. If a witness is summoned by a body of the general assembly and such**  
3 **witness:**

4 **(1) Willfully fails to appear to testify;**

5 **(2) After having appeared, refuses to answer any question pertinent to the question**  
6 **under inquiry; or**

7 **(3) Fails to produce required documents,**

8 **a statement of facts constituting such failure or refusal may be reported to and filed with**  
9 **the president pro tempore or speaker of the originating body of the general assembly.**  
10 **Upon receipt of such statement of facts, the president pro tempore or the speaker may**  
11 **certify such statement of facts to the prosecuting attorney or such other attorney having**  
12 **jurisdiction for prosecution under section 575.330. The state attorney general shall have**  
13 **concurrent original jurisdiction to commence such criminal action throughout the state**  
14 **where such violation has occurred.**

15 **2. Upon request by the president pro tempore or speaker of the originating body**  
16 **of the general assembly who has certified a statement of facts under this section, the court**  
17 **shall within fifteen days of the request appoint independent counsel, who shall have**  
18 **jurisdiction to prosecute under section 575.330. In the event independent counsel is**  
19 **appointed under this section, such independent counsel shall have sole jurisdiction to**  
20 **prosecute under section 575.330.**

2 **575.040. 1. A person commits the offense of perjury if, with the purpose to deceive, he**  
3 **or she knowingly testifies falsely to any material fact upon oath or affirmation legally**  
4 **administered, in any official proceeding before any court, public body, notary public or other**  
5 **officer authorized to administer oaths.**

6 **2. A fact is material, regardless of its admissibility under rules of evidence, if it could**  
7 **substantially affect, or did substantially affect, the course or outcome of the cause, matter or**  
8 **proceeding.**

9 **3. Knowledge of the materiality of the statement is not an element of this crime, and it**  
10 **is no defense that:**

11 **(1) The person mistakenly believed the fact to be immaterial; or**

12 **(2) The person was not competent, for reasons other than mental disability or immaturity,**  
13 **to make the statement.**

13           4. It is a defense to a prosecution under subsection 1 of this section that the person  
14 retracted the false statement in the course of the official proceeding in which it was made  
15 provided he or she did so before the falsity of the statement was exposed. Statements made in  
16 separate hearings at separate stages of the same proceeding, including but not limited to  
17 statements made before a grand jury, at a preliminary hearing, at a deposition or at previous trial,  
18 are made in the course of the same proceeding.

19           5. The defendant shall have the burden of injecting the issue of retraction under  
20 subsection 4 of this section.

21           6. The offense of perjury committed in any proceeding not involving a felony charge is  
22 a class E felony.

23           7. The offense of perjury committed in any proceeding involving a felony charge is a  
24 class D felony unless:

25           (1) It is committed during a criminal trial for the purpose of securing the conviction of  
26 an accused for any felony except murder, in which case it is a class B felony; or

27           (2) It is committed during a criminal trial for the purpose of securing the conviction of  
28 an accused for murder, in which case it is a class A felony.

29           **8. The offense of perjury committed in any proceeding before a body of the general**  
30 **assembly is a class D felony.**

          575.050. 1. A person commits the offense of making a false affidavit if, with purpose  
2 to mislead any person, he or she, in any affidavit, swears falsely to a fact which is material to the  
3 purpose for which said affidavit is made.

4           2. The provisions of subsections 2 and 3 of section 575.040 shall apply to prosecutions  
5 under subsection 1 of this section.

6           3. It is a defense to a prosecution under subsection 1 of this section that the person  
7 retracted the false statement by affidavit or testimony but this defense shall not apply if the  
8 retraction was made after:

9           (1) The falsity of the statement was exposed; or

10           (2) Any person took substantial action in reliance on the statement.

11           4. The defendant shall have the burden of injecting the issue of retraction under  
12 subsection 3 of this section.

13           5. The offense of making a false affidavit is a class C misdemeanor, unless done for the  
14 purpose of misleading a public servant in the performance of his or her duty, in which case it is  
15 a class A misdemeanor.

16           **6. The offense of making a false affidavit when done in any proceeding before a**  
17 **body of the general assembly is a class A misdemeanor.**

575.160. 1. A person commits the offense of interference with legal process if, knowing another person is authorized by law to serve process, he or she interferes with or obstructs such person for the purpose of preventing such person from effecting the service of any process.

2. "Process" includes any writ, summons, subpoena, warrant other than an arrest warrant, or other process or order of a court **or body of the general assembly**.

3. The offense of interference with legal process is a class B misdemeanor.

575.270. 1. A person commits the offense of tampering with a witness or victim if:

(1) With the purpose to induce a witness or a prospective witness to disobey a subpoena or other legal process, absent himself or herself, avoid subpoena or other legal process, withhold evidence, information, or documents, or testify falsely, he or she:

(a) Threatens or causes harm to any person or property; or

(b) Uses force, threats or deception; or

(c) Offers, confers or agrees to confer any benefit, direct or indirect, upon such witness;

or

(d) Conveys any of the foregoing to another in furtherance of a conspiracy; or

(2) He or she purposely prevents or dissuades or attempts to prevent or dissuade any person who has been a victim of any crime or a person who is acting on behalf of any such victim from:

(a) Making any report of such victimization to any peace officer, state, local or federal law enforcement officer, prosecuting agency, or judge;

(b) Causing a complaint, indictment or information to be sought and prosecuted or assisting in the prosecution thereof;

(c) Arresting or causing or seeking the arrest of any person in connection with such victimization.

2. The offense of tampering with a witness or victim is a class A misdemeanor, unless the original charge is a felony, in which case tampering with a witness or victim is a class D felony. Persons convicted under this section shall not be eligible for parole.

**3. The offense of tampering with a witness subpoenaed in a proceeding before a body of the general assembly is a class E felony.**

575.280. 1. A person commits the offense of acceding to corruption if he or she:

(1) Is a judge, juror, special master, referee or arbitrator and knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, on the representation or understanding that it will influence his or her official action in a judicial proceeding pending in any court or before such official or juror;

(2) Is a witness or prospective witness in any official proceeding and knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, on the representation or understanding

8 that he or she will disobey a subpoena or other legal process, absent himself or herself, avoid  
9 subpoena or other legal process, withhold evidence, information or documents, or testify falsely.  
10 2. The offense of acceding to corruption under subdivision (1) of subsection 1 of this  
11 section is a class C felony. The offense of acceding to corruption under subdivision (2) of  
12 subsection 1 of this section in a felony prosecution [øæ] , on the representation or understanding  
13 of testifying falsely, **or in a proceeding before a body of the general assembly** is a class D  
14 felony. Otherwise acceding to corruption is a class A misdemeanor.

**575.330. 1. A person commits the offense of contempt of a body of the general  
2 assembly if he or she was subpoenaed as a witness by a body of the general assembly to  
3 give testimony or to produce documents or provide other information upon any matter  
4 under inquiry before the body of the general assembly and he or she willfully:**

5 **(1) Fails to appear to testify;**  
6 **(2) After having appeared, refuses to answer any question pertinent to the question  
7 under inquiry; or**  
8 **(3) Fails to produce required documents.**

9 **2. The offense of contempt of a body of the general assembly is a class A  
10 misdemeanor.**

11 **3. The offense of contempt of a body of the general assembly after an order has  
12 been issued under section 21.403 is a class E felony.**

13 576.030. 1. A person commits the offense of obstructing government operations if he  
14 or she purposely obstructs, impairs, hinders or perverts the performance of a governmental  
1 function by the use or threat of **harm, intimidation, coercion**, violence, force, or other physical  
2 interference or obstacle.

3 2. The offense of obstructing government operations is a class [B] A misdemeanor,  
4 **unless committed against a body of the general assembly, in which case it is a class E  
5 felony.**

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