

## (D) STATUTE OF LIMITATIONS AND IN BANC REVIEW

A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5-106(B) OF THE COURTS ARTICLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, §§ 435, 437, and, as it related to the penalty for perjury, § 439.

In subsection (b) of this section, the phrase "is subject to imprisonment" is substituted for the former mandatory phrase "shall be sentenced" more accurately to reflect the discretionary minimum range for imprisonment for a violation.

Also in subsection (b) of this section, the reference to a person who violates this section being guilty "of the misdemeanor" of perjury is added to state expressly that which was only implied in the former law. At common law, perjury was a misdemeanor, although it was an "infamous crime" involving moral turpitude, a *crimen falsi*, which disqualified a convicted person from testifying in court. *Garitee v. Bond*, 102 Md. 379, 384 (1905); *Hourie v. State*, 53 Md. App. 62 (1982); see, also, *Murray v. State*, 27 Md. App. 404, 408 (1975) (dicta). Also, in this State, any crime that was not considered a felony at common law and has not been declared a felony by statute is considered a misdemeanor. See *State v. Canova*, 278 Md. 483, 490 (1976); *Bowser v. State*, 136 Md. 342, 354 (1920); *Dutton v. State*, 123 Md. 373, 378 (1914); and *Williams v. State*, 4 Md. App. 342, 347 (1968).

Subsection (c) of this section, derived from former Art. 27, § 437, is revised as a rule for resolving contradictory statements for purposes of indictment and conviction, for clarity.

In subsection (d) of this section, the reference to a violation being "subject to § 5-106(b) of the Courts Article" is substituted for the former reference to the violation subjecting the defendant to imprisonment "in the ... penitentiary" for clarity and consistency within this article. See General Revisor's Note to article.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a)(4) of this section, it is not clear whether the reference to an affidavit made to an officer of the "government" refers only to the Maryland State government, or also to an officer of the federal government, a local government, a bi-county or multi-county unit, or even to an officer of the government of another state taking an affidavit in Maryland. The General Assembly may wish to address the scope of governments and their officers covered by this provision.

Defined term: "Person" § 1-101

## 9-102. SUBORNATION OF PERJURY.

## (A) PROHIBITED.