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Joseph A. Riley
State's Attorney

February 7, 2020

Delegate Luke Clippenger
Chair of Judiciary
Maryland House of Delegates

Re: House Bill 831

Chairman Clippenger:

I am submitting this written testimony in support for scheduled for open hearings on Tuesday, February 25th, 2020.

Attempt is an inchoate crime. It became a part of the English (subsequently American) Common Law in 1784 in the case *Rex v. Scofield*. At common law it is a misdemeanor and remains one today unless amended by statute. The penalty for an attempt at common law is the same for the completed offense. Attempts are separate and distinct crimes from the completed acts however, once one is charged with the completed act they should not be charged with an attempt. An attempt unlike its fellow inchoate brethren conspiracy and solicitation only exist if the proposed act (i.e. murder) is completed. Not every crime can have an attempt. Attempts only exist for "specific attempt" crimes.

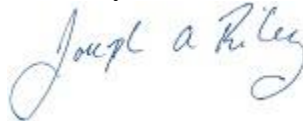
As a misdemeanor however, it is treated differently in several ways. For example, one way is that at common law misdemeanors have a statute of limitations. The crime of Attempted Second Degree Murder has existed since the 18th century. It was codified in 1996 in Article 27 § 411A. The Committee Note to revise Article 27 in this way reads, "that attempted murder be made a felony in order to indicate the seriousness of this crime and to provide that there be no statute of limitations for this offense." The penalty for this crime was 30 years which was the same as Second Degree Murder at that time. *See Article 27 § 412 (d)*. When Article 27 was repealed, and Maryland's Annotated Criminal Code was created this crime was classified as *Maryland Criminal Law § 2-206* the penalty remained 30 years which still mirrored the completed offense of Second Degree Murder. *Maryland Criminal Law § 2-204 (b)*.

On October 1, 2017 what is commonly known as the Justice Reinvestment Act (JRA) went into effect. This series of new and revised laws had one overarching theme, use data driven processes to improve public policy and reduce the number of non-violent individuals incarcerated

and reserve prison space for people convicted of serious violent offenses. See “Maryland Justice Reinvestment Act: One Year Later” Justice Policy Institute p. 1.

No one can make a serious argument that Attempted Second Degree Murder is not a “serious violent offense”. It has been a part of every version of the Crimes of Violence since they have been codified. See *Maryland Criminal Law* § 14-101. There is no committee note that I am aware of that specified a reason why this section of the Criminal Law was not revised when § 2-204 was revised in the JRA. This bill is simply a housekeeping measure to keep the consistent intent of punishing attempts as the same as the completed acts. The Maryland State’s Attorneys Association seeks a favorable report as to this bill.

Sincerely,

A handwritten signature in blue ink that reads "Joseph A. Riley". The signature is written in a cursive, flowing style.

Joseph A. Riley
State Attorney