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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 0005 - Criminal Law - Indecent Exposure Within the Presence of a Minor

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 01/19/24

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 0005.

House Bill 0005 codifies the prohibition on committing the common law crime of indecent exposure and establishes a new offense by prohibiting a person from committing indecent exposure with prurient intent within the sight of a minor who is at least two years old and more than four years younger than the perpetrator.

This bill is unnecessary. Criminal Law 11-107 already provides that: A person convicted of indecent exposure is guilty of a misdemeanor and is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both. As defined, the common law crime of indecent exposure is already a general intent crime that includes within its scope an innumerable variety of offenses, including acts that are reckless or negligent. This bill's attempt to enhance penalties will not serve a prophylactic purpose nor a deterrent purpose.

The Office of the Public Defender recognizes the prerogative of the legislature to identify special classes of victims within our criminal laws, particularly as it relates to the especially vulnerable. Similarly, we recognize that the Assembly can create a sentencing scheme that, within reason and constitutional principles, penalizes an offender potentially more or less based on victim characteristics or class. However, we believe that when a differentiated sentencing scheme is sought, and the current maximum penalties in our code are already applicable to the specific class of especially vulnerable victims, that maximum penalty should remain in force, and the potential penalty for the more general cases should be reduced, unless specific data

regarding increasing crime rates or recidivism related to the special class of victims can substantiate a need for higher penalties. Here, there is no such data.