



Maryland State's Attorneys' Association

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BILL NUMBER: HB 941

POSITION: Favorable with Amendment

The Maryland State's Attorneys' Association (MSAA) supports HB 941 with the inclusion of a minor amendment that clarifies that criminal liability continues to attach to knowing and willful threats.

In *Counterman v. Colorado*, 600 U.S. 66 (2023), the Supreme Court held that the First Amendment requires the State to establish a defendant had some subjective understanding of the threatening nature of their statements, and that proof of recklessness satisfies this requirement. *Id.* at 69. In so holding, the Court found that requiring this *mens rea* struck the appropriate balance, affording enough "breathing space" for protected speech without forfeiting the benefit to enforcing laws against threatening statements. *Id.* at 82.

The Maryland State's Attorneys' Association recognizes the harm caused by threats in this context – adopting a recklessness standard would capture a wider range of threatening behavior, making it easier to hold accountable individuals who would make threats against the officials covered by this statute.

Although evidence of a more restrictive *mens rea*, such as knowingly and willfully as it currently exists in MD. CODE ANN., CRIM. LAW § 3-708 (b), should necessarily satisfy the requirement of a less restrictive *mens rea*, such as recklessness, MSAA encourages this Committee to adopt a minor amendment that explicitly states this – by providing that liability attaches to individuals that "knowingly and willfully, or recklessly, make a threat" against the covered officials, this Committee can provide clarity to trial courts applying this law and minimize incorrect, but unreviewable, interpretations.