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POSITION ON PROPOSED LEGISLATION

BILL: SB0334 - Criminal Law – Crimes of Malicious or Fraudulent Burning – Prohibitions and Penalties

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 28, 2025

The Maryland Office of the Public Defender respectfully submits this testimony and asks for an unfavorable report from the committee.

A malicious burning is one where a person willfully and with malice burns the property of another. Md. Crim. Law §§ 6–104, –105. It is a misdemeanor subject to 18 months imprisonment if the property is valued at less than \$1,000. For property over \$1,000 dollars, the penalty rises to a felony subject to up to 5 years of imprisonment. The malicious burning statute is broader than our arson statutes because malicious burning punishes intentional burning of any property, not just permanent structures. The penalties for malicious burning are severe and proportional to the intended act. Perpetrators of malicious burning are also subject to civil suits, thus further holding them accountable while compensating those injured.

Similarly, the fraudulent burning statute punishes similar behavior where the perpetrator also has the intent to defraud. Md. Crim. Law § 6–106.

Senate Bill 0334 seeks to add additional severe penalties for acts of malicious or fraudulent burning if it results in death or serious bodily injury to a firefighter. Senate Bill 0334 is unnecessary to address the harm cause and may punish unintended and relatively minor injuries.

Senate Bill 0334 fails to define the term ‘firefighter.’ Thus, the statute could be interpreted to include anyone who attempt to intervene including an untrained citizen who negligently intervenes, or even a bystander who calls 911.

Senate Bill 0334 applies to ‘serious bodily injury.’ Serious bodily injury includes disfigurement which “is generally regarded as an externally visible blemish or scar that impairs one’s appearance.” *Scott v. State*, 61 Md. App. 599, 608 (1985). Thus, a small visible burn could trigger the severe penalties of Senate Bill 0334.

Senate Bill 0334 is duplicative of existing Maryland law. Involuntary manslaughter is applicable to criminal acts resulting in death of another, even if unintended. The crime of Reckless Endangerment applies to lesser injuries.

“Maryland has an incarceration rate of 475 per 100,000 people (including prisons, jails, immigration detention, and juvenile justice facilities), meaning that it locks up a higher percentage of its people than almost any democratic country on earth.” *Maryland Profile*, PRISON POLICY INITIATIVE, <https://www.prisonpolicy.org/profiles/MD.html>. Senate Bill 0334 is merely another permutation and combination of factors to create yet another incarcerable felony in a state that already overincarcerate its citizens.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 0334.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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