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POSITION ON PROPOSED LEGISLATION

BILL: SB298
FROM: Maryland Office of the Public Defender
POSITION: OPPOSE
DATE: February 4, 2022

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 298.

The Maryland Office of the Public Defender supports the idea that health care providers should not be prevented from carrying out their duties to provide for the health of Maryland's citizens. However, SB 298 is not the appropriate vehicle for delivering protection from threats or intimidation directed at health care workers. The language of SB 298 is vague and overbroad and could criminalize behavior that is protected by the First Amendment, while not fully protecting the intended beneficiaries of the statute. Common law assault, statutory assault, harassment, stalking, malicious destruction, and trespassing are already prohibited by law, and the behaviors and actions that SB298 intends to curb can be done so through prosecution under these existing laws.

SB 298 criminalizes verbal or nonverbal communication towards a hospital staff member or public health official if the communication is "intended to intimidate, interfere with, or impede a public health official or hospital staff member from performing official duties." This language is vague and overbroad and sweeps protected speech within its ambit. For example, a group of citizens protesting against abortion on the basis of religious beliefs in front of the main entry of a hospital could impede nurses and doctors from entering the hospital or could make them feel intimidated, and those protesters could be prosecuted under SB 298. Clearly, this would be an infringement on their right to free speech.

Criminal laws should not be passed as a way of showing healthcare workers that society "has their backs." While this bill is being introduced during a pandemic, the response to which has become a

divisive political issue, it is important to remember that criminal laws will remain in the books long after this pandemic is over. An emotional response to behavior triggered by the pandemic in the form of a criminal law would be shortsighted and, ultimately, harmful to citizens.

Hospitals are a place where people are usually experiencing the most serious crises of their lives. It is an understatement to say that emotions run high. SB298 would criminalize behaviors that are not in fact criminal but may be driven by distress or grief. For example, a mother and father are told that their child has Stage IV cancer. The recommended course of treatment is chemotherapy. The parents are reluctant to put their child through such a debilitating form of treatment. The father is dismayed when the doctors insist chemotherapy offers the best chance of survival, however slim. The father, a big man, stands up, cuts them off, and angrily says, "To give my child that poison you have to come through me first." Technically, the father could be prosecuted under SB298. His statement sounds like a threat, and he appears to be "intimidating, interfering, or impeding" the medical staff from performing their official duties of explaining the available treatments and obtaining consent from the parents. This is not behavior that our society should criminalize. Doing so would exacerbate the problems with overcrowded dockets, understaffed public defender's and prosecutor's offices, overcrowded jails, and overburdened police officers.

This Committee should decline to pass a vague and overly broad law as a means of showing support for health care workers but should show its support of them by encouraging prosecutions under the existing laws.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB198.

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

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