



## SENATE BILL 0021

Criminal Procedure – Sentencing- Primary Caretaker

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

**POSITION: UNFAVORABLE**

January 28, 2022

My name is Rich Gibson, I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys' Association. Part of my obligations as State's Attorney is to advocate for laws that enhance the safety and well-being of our community; that is the reason I am writing today to **OPPOSE** Senate Bill 0021.

In Maryland, a sentencing judge is vested with virtually boundless discretion in devising an appropriate sentence. Our current justice system allows judges to examine cases holistically; exploring all variables presented by both the State and Defense in fashioning the appropriate sentence for a defendant's conduct. At present, defense counsel has an obligation to their convicted clients to present all facts that might mitigate and lead to a reduction in the sentence the judge renders. This includes but is not limited to the family history of the defendant, rehabilitative and remedial efforts made by the defendant, the relationships of the defendant to the community, work history of the defendant, the medical and mental health history of the defendant, educational background, prior criminal record or lack thereof, and the nature and severity of the crime the defendant committed. Senate Bill 0021 attempts to create an increased weight to the fact that a defendant accused of a crime is the primary caregiver for others.

Prioritizing this one variable over others and requiring a judge to “jump through” additional ministerial hurdles, (e.g., requiring that the sentencing judge draft written findings before imposing a sentence of imprisonment) is an attack on discretion of the court. Maximum penalties and sentencing guidelines exist for a reason. They create a reasonable range and relative consistency in sentences mete out as a punishment for a particular crime. Senate Bill 0021 attempts to force judges to artificially weigh one factor, that the person who chose to commit the crime has caregiving responsibilities for another individual, over all other factors. **This is particularly interesting because the person who has been convicted of the crime did not let the fact that had a duty as a primary caregiver impede them from engaging in the criminal conduct resulting in their conviction.** Which begs the question: why should a judge give enhanced weight to a factor that was clearly not important enough to the defendant to dissuade them from engaging in the criminal conduct in the first place? Judges are carefully selected and able to sift through all the relevant variables in fashioning an appropriate sentence and the legislature should resist request to mandate that judges prioritize one variable over others.

I ask that the legislature give Senate Bill 0021 an unfavorable report.