

Bill Number: HB 471
Maryland States Attorneys Association
Support

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS
ASSOCIATION IN SUPPORT OF HOUSE
BILL 471 – CRIMINAL LAW –
INDECENT EXPOSURE WITH LASCIVIOUS OR PRURIENT INTENT

The Maryland States Attorneys Association supports House Bill 471, Criminal Law – Indecent Exposure with Lascivious Intent or Prurient, as a manner to address an important missing component of the category of persons who should register as a sexual offender.

Currently, under the present law, an individual convicted of indecent exposure cannot be ordered to register as a sex offender under any circumstance. The Sex Offender Registration statutes in Title 11, Subtitle 7 of the Criminal Procedure Article do not include indecent exposure as an eligible offense to require or even provide the option for registration. In *State v Duran*, 407 Md. 532 (2009), the Court of Appeals stated that indecent exposure is not a crime that by its' nature is a sexual offense. The Court found that an individual who had exposed his penis to multiple middle school age girls could not be ordered to register as a sexual offender. Under the current law, unfortunately, this makes sense because not all acts of indecent exposure are sexual in nature.

House Bill 471 creates the solution for this problem. There are, unquestionably, circumstances where the act of indecent exposure is sexual in nature and ought to be addressed for protection of the public from sex offenders. House Bill 471 creates a new offense of indecent exposure with a lascivious or prurient intent. The phrase "prurient intent" is utilized in Maryland law as it applies to the crime of Visual Surveillance with Prurient Intent at Criminal Law § 3-902. Prurient is commonly defined as "having or encouraging an excessive interest in sexual matters". The word "lascivious" is utilized in Maryland law as it applies to obscenity and Child Pornography and is included in the definition of sexual conduct to include the "lascivious exhibition of the genitals" at Criminal Law § 11-101. Lascivious is commonly defined as an adverb to apply to "an overt and often offensive sexual desire, filled with or showing sexual desire."

The creation of this new crime will sufficiently distinguish the elements necessary to be proven from those acts of indecent exposure which are not related to

a sexual purpose such as an act of public urination or many other possible circumstances. Many communities throughout the State are either plagued or at least affected by individuals whom choose to engage in sexually deviant acts of indecent exposure to our children or other unwilling viewers of such activity. The purpose and effect of the sex offender registry can and should be utilized to do our best to protect the innocent citizens of this State from those individuals. The schools, churches and individual residents of communities ought to be able to know that an individual who engages in such deviant activity lives nearby. They can at that point at least be vigilant in working to protect themselves and their children.

In the event that there could be a circumstance where sexual offender registration for an individual who exposes himself with a sexual purpose would not be appropriate, there are clear options available to prosecutors, defense attorneys and judges. First, the defendant could be convicted of the common law offense of indecent exposure by plea agreement and no registration could be required. Next, even if convicted of this new offense, the Court would have the power to grant probation before judgment and registration would not be required but could be ordered in the discretion of the Court.

With the nature of the act of indecent exposure with lascivious or prurient intent, it makes no sense that sex offender registration is not an available option to protect the public. We ask for a favorable report.