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POSITION ON PROPOSED LEGISLATION

BILL: SB 209 -- Task Force to Study Crime Classification and Penalties

FROM: Maryland Office of the Public Defender

POSITION: Favorable with amendments

DATE: 2/13/2023

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report with amendments on Senate Bill 209.

Senate Bill 209 establishes a Task Force to Study Crime Classification and Penalties for the purpose of “review[ing] penalties for all criminal and civil violations throughout the Maryland Code,” and studying “the history and legislative intent of the classification of criminal and civil violations throughout the Maryland Code, including the constitutional implications and collateral consequences that arise as a result of classification” and “criminal classifications and penalty schemes in other states and how those classifications and schemes compare to those in the State.” It directs the task force to make recommendations regarding whether there are violations that should be reclassified; whether there are penalties that should be altered; whether the State would benefit from standardized crime classifications and penalties, the codification of a default mental state as an element of criminal liability, and the codification of affirmative defenses and their elements; whether statutory changes are necessary for provisions of criminal law that lack an explicit *mens rea*; and what limitations, if any, should be placed on the ability of administrative entities and local governments to enact regulations providing for criminal penalties.

It appears that the purpose of this task force is to lay the groundwork for needed reform of Maryland's criminal law and thereby reduce unnecessary incarceration by (a) looking to the best practices of other states; (b) examining whether certain violations should be decriminalized; (c) assessing whether current penalties are necessary and desirable; and (d) ensuring that criminal offenses require the prosecution to establish that the defendant had a culpable mental state sufficient to justify the punishment that is authorized. In the hope that this task force will accomplish these important goals, the Office of the Public Defender (OPD) supports Senate Bill 209.

The OPD respectfully proposes an amendment that would ensure that the task force's mandate is not unintentionally constrained. Maryland retains a significant number of common law offenses. For some, the General Assembly has codified penalties (e.g. indecent exposure). For others, no penalty has been codified (e.g. false imprisonment). To allow the task force to consider common law offenses as well as statutory offenses, the OPD suggests amending subparagraphs (f)(1) and (2) as follows (with capitalized text indicating added language):

(f) The Task Force shall:

(1) review the penalties for all criminal and civil violations throughout the Maryland Code AND MARYLAND COMMON LAW;

(2) study the history and legislative intent of the classification of criminal and civil violations throughout the Maryland Code AND MARYLAND COMMON LAW, including the constitutional implications and collateral consequences that arise as a result of classification;

For these reasons, we urge this Committee to issue a favorable report with amendments for Senate Bill 209.

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