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POSITION ON PROPOSED LEGISLATION

BILL: SB 487 Criminal Procedure - Violation of Pretrial or Posttrial Condition

FROM: Maryland Office of the Public Defender

POSITION: Oppose

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 487. By including incarcerated persons among those who can be found guilty of the misdemeanor of violating a condition of pretrial or posttrial release, this bill will create additional punishment for people who are already incarcerated with minimal safety benefit.

No contact orders are intended to ensure that a victim is safely separated from someone accused or convicted of harming them. They are generally included as a condition of release because a defendant in the community is capable of approaching and confronting the victim. Although this is a laudable goal, the impact on an incarcerated person could be detrimental.

The circumstances while a person, either accused of an offense and pending trial or after a conviction, differ significantly from those when a person is not incarcerated. Any letters sent must clearly identify the inmate by name and commitment number on the envelope, COMAR 12.02.20.04, thereby allowing the victim to avoid opening or reading its content. Telephone calls are limited to numbers that have prepaid accounts to receive calls from the individual and are received as collect calls that identify the caller and can be rejected by the recipient before being connected. The warden can further restrict calls based on the complaint of a recipient or any security reason. COMAR 12.02.14.01(C)(3). Moreover, physical contact is not possible, particularly on the defendant's volition. The inability to initiate a face-to-face contact and the identification requirements for mail and telephone calls facilitate the victim avoiding contact from the incarcerated individual. Incarcerated persons are also less able to avoid contact that may

be initiated by the victim. To avoid the risk of violating SB 487, incarcerated individuals may have to avoid maintaining connections, particularly with other loved ones.

This bill will increase punishment for incarcerated individuals and has the potential to harm people who are merely trying to remain connected with their family, regardless of their intent to contact the victim. No contact orders are generally included in domestic disputes, and the parties often have common relatives and other loved ones with whom they may share an address and/or phone number. Incarcerated individuals are limited in where and how they can connect with their family. A person who is incarcerated may call or write to a residence to connect with one person, unaware or unable to avoid that the victim also resides at that location.

Senate Bill 487 carries the weight of increased punishment for people who are already incarcerated, whose actions are already subject to the strictest of scrutiny. In instances, where an incarcerated person is intentionally contacting the victim (or any person) with the intent to harass or abuse them, other criminal laws already address this behavior. *See, e.g.*, Crim. L. §§ 3-803 (harassment), 3-804 (misuse of telephone facilities and equipment).

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 487.

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

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