



Maryland State's Attorneys' Association

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BILL NO: HB 937

TITLE: Criminal Law – Attempted Second–Degree Murder – Penalty

POSITION: FAVORABLE

Dear Mr. Chair. Vice Chair and Committee Members,

We support HB937 as we believe this is a necessary housekeeping bill. The currently penalty for Attempted Second Degree Murder is inconsistent with Second Degree Murder. No other attempt crimes carry less penalty. All common law attempts carry the same penalty as the statutory crimes.

In addition to being inconsistent, it is also disproportionate to First Degree Assault being only 5 years less. First degree assault can be pointing a firearm at someone. However, trying to actually kill someone is only 5 years more?

For the committee's reference, there are four different types of second-degree murder:

- (1) the killing of another person, other than by poison or lying in wait, with the intent to kill but without the deliberation and premeditation required for first-degree murder;
- (2) the killing of another person with the intent to inflict such serious bodily harm that death would be the likely result.
- (3) “depraved heart murder,” which is to say, a killing resulting from the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not; and
- (4) murder committed in the perpetration of a felony other than those enumerated in the first-degree murder statutes.

The current jury instructions read: Attempted second degree murder is a substantial step, beyond mere preparation, toward the commission of murder in the second degree. Second degree murder does not require premeditation or deliberation. In order to convict the defendant of attempted murder in the second degree, the State must prove:

- (1) that the defendant took a substantial step, beyond mere preparation, toward the commission of murder in the second degree;
- (2) that the defendant had the apparent ability, at that time, to commit the crime of murder in the second degree; and
- (3) that the defendant actually intended to kill (name).

Given the nature of these crimes and this conduct, we support HB937 and the increase of the penalty.

Sincerely,

Joyce King
MSAA Legislative Committee
Co-Chair MSAA Special Victims Committee
Frederick County State's Attorney Chief Counsel