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**TO:** The Honorable Luke Clippinger  
Chair, Judiciary Committee

**FROM:** Jer Welter, Assistant Attorney General  
Deputy Division Chief for Legal Affairs, Criminal Appeals Division  
Office of the Attorney General

**RE:** HB 748 – Law Enforcement Officers – Sexual Contact With Person in  
Custody – Penalty  
(Support with Amendments)

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The Office of Attorney General supports House Bill 748 in concept, but we suggest that it should be amended to avoid unintended and undesirable consequences.

The bill would raise the maximum penalty, from a 3-year misdemeanor to a 10-year felony, for a law enforcement officer engaging in sexual conduct (vaginal intercourse, sexual acts, or sexual contact) with a person in the officer's custody or who is a victim, witness, suspect, or person requesting the officer's assistance in the course of the officer's duties. The bill would do so by moving the offense out of Criminal Law Article § 3-314, where it is currently codified, and into third-degree sexual offense, which is codified in § 3-307 and carries a 10-year penalty.

We support increasing the potential penalties for sexual conduct by officers with persons in their custody or with whom they are interacting in their official duties. However, we have two concerns with the bill as proposed.

First, we do not see a policy justification for increasing the penalty provision only for law enforcement officers, while retaining a lower penalty for other actors covered by § 3-314 (which also include correctional officers, employees, and contractors, as well as court-ordered service providers who provide services to people who have been ordered by a court, the Division of Parole and Probation, or the Department of Juvenile Services to obtain those services).

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

Second, moving the offense from § 3-314 to § 3-307 will have the effect of *lowering* the applicable penalty in circumstances where the defendant's conduct would also constitute a third-degree sex offense for other reasons (for instance, because of an age differential between the defendant and the victim, or because of the use of a weapon or a threat of physical violence). In those circumstances, current § 3-314 has an anti-merger provision (*see* § 3-314(g)) which allows consecutive sentencing up to a total of 13 years (10 years for the third-degree sex offense plus 3 years for the § 3-314 offense). If this bill were enacted in its current form, the benefit of that anti-merger provision would be lost, and the total penalty would be capped at 10 years.

For these reasons, we recommend amending the bill by striking all of its provisions and instead simply amending § 3-314(f) of the Criminal Law Article to read: "A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$3,000 or both."

cc: Committee Members