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SUPPORT FOR SB 391

Mr. Chairman and Members of the Judicial Proceedings Committee:

We are writing to express the support of the Office of the State Prosecutor for Senate Bill 391. The Office of the State Prosecutor is tasked with enforcement of political corruption and police misconduct cases throughout Maryland and believes that this legislation will help ensure that the crimes of stalking, revenge porn, and sextortion can be thoroughly investigated and, where appropriate prosecuted.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of State government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our State and local government institutions, officials, employees, and elections.

Stalking, Revenge Porn and Sextortion- eliminating the statute of limitations

This legislation 391 adds Maryland Courts and Judicial Proceedings §5-106(b) to the following offenses: (1) Criminal Law Title 3 - Other Crimes Against the Person Subtitle 7 - Extortion and Other Threats § 3-709 - Sextortion and Revenge Porn; (2) Subtitle 8 - Stalking § 3-802; and (3) § 3-809 Revenge Porn. These offenses all involve charges that have a lifelong impact on victims and often involve complicated, long investigations to prove. Oftentimes, these crimes are not known or reported until after the one-year statute of limitations has expired.

The Office of the State Prosecutor recently created a unit to address Official Misconduct involving special victims. With an uptick in complaints of misconduct involving special victims, we sought a specialized prosecutor and investigator to handle the complexities of prosecuting cases involving people using their positions to exploit victims. Our office recently reported that in FY 23 we received 58 complaints involving special victims and the numbers continue to increase.

The victims in stalking cases, particularly those where the person is in a position of power like law enforcement or prosecutors, are often hesitant to come forward in part because of the perpetrator's position. The current stalking statute, in subsection (a)(2)(iii), states that stalking "includes conduct that occurs through the use of a location tracking device without the person's knowledge." This body has already recognized that this offense can occur without

someone's knowledge initially, and the consequence is often late reporting that puts behaviors out of the statute of limitations. Our office recently charged a police officer with various offenses, including witness retaliation, visual surveillance with prurient intent, misconduct in office and other crimes (the Statement of Facts is attached). Stalking, however, was out of the statute of limitations and could not be charged.

In cases of revenge porn, often the challenge is that the victim is not made aware of the revenge porn until the statute of limitations has expired. In one of our cases, the former Mayor of Cambridge, Maryland was convicted on multiple counts of revenge porn that was detected only when a friend of the victim notified the victim about a reddit thread with her photograph. Otherwise, the victim would not have had notice until it was too late to hold him accountable. The victim, however, would have been harmed either way, with her image a permanent fixture on the internet.

Sextortion is one of the most challenging cases to prove given the statute of limitations because often victims do not come forward until there has been a significant passage of time, due to the very nature of the crime committed –that the perpetrator has caused another to engage in sexual activity or engage as a subject in the production of a visual representation of sexual activity, by *threatening* the person. The perpetrator of this crime instills fear in the victim, which understandably transfers to a fear of further harm or retaliation for reporting the crime. The one-year statute of limitations makes this crime prosecutable only when it is immediately reported, which is exceedingly rare. Rather, understandably, it is common for the victim of this crime to wait to report it until there has been a separation from the offender before gaining the courage to report the conduct.

Timeline

There are 26 misdemeanors in the Criminal Law Article (and several others related to voting) where the statute of limitations has been eliminated by the legislature, and all for similar reasons related to the time it takes for evidence to surface. Bribery and perjury, for example, are misdemeanors without a statute of limitations because the ongoing and deceitful nature of the offenses makes it hard to detect within a short time frame.

While the Office of the State Prosecutor has in-house investigators, we must rely on already overburdened law enforcement agencies to extract and process electronic evidence. Therefore, even if the crime of revenge porn or stalking is reported within the statute of limitations, these offenses often involve the use of electronics, so a phone extraction as well as other electronic forensics are required. The extraction and review of electronics can take months. Sometimes, the behavior in our cases has taken place over the course of years, and victim phones, target phones and witness phones all need to be reviewed in addition to other electronics. A thorough investigation is necessary, particularly when the offender is in a position of public trust, and a short statute of limitations not only makes some investigations impossible, it also forces prosecutions to proceed without all the evidence.

We welcome this opportunity to support our colleagues in the MSAA in supporting SB 391. We believe this is important legislation to ensure justice for victims throughout the State and encourage this Committee to issue a favorable report on SB 391.

Sincerely,

CHARLTON T. HOWARD
STATE PROSECUTOR