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December 29, 2023

The Honorable Wes Moore, Governor of Maryland
The Honorable Bill Ferguson, President of the Senate
The Honorable Adrienne A. Jones, Speaker of the House of Delegates

Re: Senate Bill 209 – Task Force to Study Crime Classification

Dear Governor Moore, President Ferguson, and Speaker Jones:

I write to you on behalf of the Task Force to Study Crime Classification (“Task Force”), established by Senate Bill 209, 2023 Md. Laws, Chap. 712 (S.B. 209). This letter outlines the work of the Task Force and its recommendations.

The Task Force is charged with:

- (1) Studying and making recommendations regarding a method for classifying crimes and civil offenses under State law; and
- (2) Identifying and logically categorizing all crimes and civil offenses that exist under State law.

The Task Force was assembled in August 2023. The members of the Task Force included Senator Christopher R. West, Delegate Karen Toles, State’s Attorney Haven N. Shoemaker, Jr., Carrie Williams, Benjamin Harris, Megan Coleman, Katy O’Donnell, Jessica Bancroft, and Melanie Shapiro. The Task Force was staffed by Sophie Asike and Tiffany Dayemo.

The Task Force held its first meeting in September 2023 and met approximately six times between September 2023 and December 2023.

September 15, 2023 Meeting

The Task Force held its first meeting on September 15, 2023. At the meeting, the Task Force discussed its duties under Senate Bill 209, and worked to identify objectives of the Bill moving forward.

The Task Force began by reviewing the scope of Senate Bill 209 by looking at the language of the Bill. The Bill calls for classifying and categorizing “all crimes and civil offenses that exist under State law.” The Task Force discussed whether that plain language meant that the Task Force

was required to review *all* 36 titles under the Maryland Code (including the Agriculture Article through the Transportation Article) to identify any crime or civil offense that carries either a penalty of incarceration or simply a fine.

The Task Force did a preliminary search in Westlaw to search the Maryland Code for all pertinent phrases, such as “imprisonment,” “offense,” “fine,” “penalties and fines,” or “penalty.” The Task Force removed from the search the articles most likely to generate those terms, including Correctional Services, Criminal Law, Criminal Procedure, Public Safety, and Transportation. Notwithstanding the removal of those articles from the search, for the remaining articles, the search yielded 759 entries for the term “imprisonment,” 3,816 entries for the term “penalty” or “penalties,” 1,702 entries for the term “fine,” 838 entries for the term “offense,” and 1,455 entries for the phrase “penalties and fines.”

As a result, the Task Force determined that a review of “*all* crimes and civil offenses that exist under State law” would be an enormous undertaking, and one not attainable within the three-and-a-half months remaining before the Task Force was required to submit this letter.

The Task Force also decided to review the prior work of the first Task Force, established by House Bill 542 of the 2019 Session, and to seek input from those members as to how best to proceed with this task.

Also at this first meeting, the Task Force inquired into whether there was any funding available to staff an associate or research assistant, and advertised, through the University of Maryland Carey School of Law, for a law student to serve as a Task Force intern. The Task Force received one response from an interested law student, but that response was not received until November 2023.

September 29, 2023 Meeting

At this meeting, one of the current members of the Task Force presented an Excel spreadsheet that contains information based on the Maryland Sentencing Guidelines (“Guidelines”). The Guidelines consist of the most commonly charged offenses in the Circuit Courts of Maryland, but do not contain information on many offenses that are only charged in the District Court of Maryland. The offenses listed in this Excel spreadsheet are predominantly from the Criminal Law and Transportation Articles; however, there are also several offenses from various other articles as well. The spreadsheet allows reviewers to organize the categories and to sort the data.

At this meeting, the Task Force was presented with an initial draft that contained 728 offenses, mostly from the Criminal law Article. That initial draft was subsequently amended and now is separated by two tabs.

The first tab of the amended spreadsheet identifies 1,488 offenses, mostly from the Criminal Law Article, and is inclusive of the following categories of information:

- Name of the Offense
- Statutory Provision for the Offense
- CJIS Code
- COMAR Number
- Felony or Misdemeanor
- Maximum Penalty
- Minimum Penalty (if applicable)
- Offense Type (Person/Drug/Property)
- Seriousness Category in Guidelines
- Associated Fine (if applicable)

Data for some of the offenses still needs to be inputted into this spreadsheet.

The second tab of the spreadsheet identifies 1,607 offenses, mostly from the Transportation Article, and is inclusive of the following categories of information:

- Name of the Offense
- Charge ID Number
- Statutory Provision for the Offense
- Maximum Penalty
- Minimum Penalty (if applicable)
- Associated Fine (if applicable)

Data for some of the offenses still needs to be inputted into this spreadsheet.

October 20, 2023 Meeting

At this meeting, the Task Force welcomed David Soule, Executive Director of the Maryland State Commission on Criminal Sentencing Policy and Principal Faculty Specialist at the University of Maryland, in the Department of Criminology and Criminal Justice. Dr. Soule was a member of the prior Task Force to Study Crime Classification and Penalties from 2019-2021.

Dr. Soule shared a database that he previously put together using the Guidelines offense table. This database was similar to the Excel document drafted by the current Task Force. Dr. Soule's database contained 729 offenses from the Guidelines and 1607 offenses from the traffic code. The database collected information based upon the name of the offense, statutory citation, category of the offense, corresponding CJIS code and COMAR number, seriousness category of the offense, whether the offense was a felony or misdemeanor, mandatory and minimum penalties, and a few other categories. This spreadsheet was last updated in 2019.

Dr. Soule explained how the Maryland Sentencing Commission establishes and maintains the Guidelines. The Commission first has to establish a ranking of offenses based upon their level of seriousness, with Category VII being least serious and Category I being most serious. In order to determine the level of seriousness of an offense, the Commission turns to three pieces of information that guide the classification within a seriousness category.

The first, and most important piece of information for the Commission, is the associated penalty with the offense. For instance, a crime that carries life imprisonment will usually be deemed a Category I offense, whereas a crime that carries 30 days' imprisonment will usually be deemed a Category VII offense. Dr. Soule explained that the statutory maximum for the offense is the most important factor for the Commission.

The second factor is whether the offense is labeled a felony or a misdemeanor.

The third factor is the nature of the offense. Dr. Soule explained that this factor has the least influence on the seriousness category because the Commission assumes that the General Assembly has identified its intentions about the severity of the offense based upon the maximum penalty established and the classification of whether it is a misdemeanor or a felony.

Dr. Soule discussed how Maryland's penalty provisions are unlike other states in that Maryland does not identify levels of severity of the offense based on gradations within its statutes. For instance, many states have felonies and misdemeanors that are labeled A, B, C, D, and E, and those categories are generally driven by the statutory maximum for the offense.

Dr. Soule further advised that Maryland still retains common law offenses that do not have corresponding statutory penalties.

The Task Force asked Dr. Soule whether other states have particular lines of demarcation distinguishing felonies from misdemeanors. Dr. Soule explained that, in most states, a penalty of less than one year is considered a misdemeanor offense, and a penalty of more than one year is considered a felony offense. There are also classifications for petty misdemeanors which may include 30-day offenses.

Dr. Soule identified Maryland's Second-Degree Assault statute as being an outlier: being labeled a misdemeanor, but carrying a 10-year penalty.

Dr. Soule expressed that the prior Task Force had two years to cull this information, and, even then, the task was one that would take significantly more time and resources before a final recommendation could be made. Dr. Soule agreed that it was difficult to reach a consensus on the best way to categorize or reclassify offenses when the scope of the legislation was very broad.

This Task Force greatly benefitted from the insights of a member of the Maryland State Commission on Criminal Sentencing Policy. After meeting with Dr. Soule, it became apparent to this Task Force that much of the work that this Task Force set out to do has already been produced and maintained by the Sentencing Commission.

November 17, 2023 Meeting

At this meeting, the Task Force welcomed Professor David Jaros, the Faculty Director of the Criminal Justice Center at the University of Baltimore School of Law. Professor Jaros served on the prior Task Force.

Professor Jaros presented his prior findings, including his research into laws in other states. Professor Jaros and his law students did a state-by-state analysis to determine how each state structured its respective criminal codes. The purpose of this endeavor was to determine whether Maryland could better structure its Criminal Law Article, which is largely based on common law. New York State, for example, follows the Model Penal Code by providing definitions for the *mens rea* of the offenses. By contrast, in Maryland, to determine what suffices for the *mens rea* of a particular offense, one must turn to case law for examples.

Professor Jaros also focused his research on the crime of assault in other states to see how it compared to Maryland's 10-year misdemeanor offense for Second-Degree Assault.

Professor Jaros and his law students put together a spreadsheet that contained the following categories:

- Names of all States
- Level of Assault
- Classification Scheme
- Misdemeanor or Felony
- Collateral Consequences
- Default Mental State
- Presumption Against Strict Liability
- Adopted Model Penal Code
- Sample Criminal Penalties for Petty Larceny, Grand Larceny, Burglary, Murder, Felony Murder

This spreadsheet was last updated in 2019.

Professor Jaros explained that Maryland's misdemeanor assault offense is a clear example of why the General Assembly should revisit crime classification in Maryland.

Professor Jaros explained that there are over 1,500 crimes to evaluate, and that the directive of the prior legislation did not clearly identify the factors to be considered when evaluating the criminal penalties associated with those crimes. Professor Jaros explained that a substantial amount of time would be needed to complete the task and that funding for research assistants would be essential towards making headway with this endeavor.

December 1, 2023 Meeting

At this meeting, the Task Force reviewed a draft of this letter and discussed recommendations to be included in the final letter.

December 15, 2023 Meeting

At this meeting, the Task Force reviewed this letter, including the preliminary findings, and voted on the recommendations and proposed methodology included herein.

Preliminary Findings

A preliminary review of the Excel spreadsheet reveals the following:

As to Gradations of Offense:

- There are varying periods of imprisonment for State offenses including:
 - 30 days, 60 days, 90 days, 180 days, 1 year, 18 months, 2 years, 3 years, 4 years, 5 years, 6 years, 7 years, 8 years, 9 years, 10 years, 12 years, 15 years, 20 years, 25 years, 30 years, 40 years, Life, and Life Without the Possibility of Parole
- Local ordinances, which are not included in Excel spreadsheet, are subject to their own penalties.

Potential Outliers

- There are misdemeanors that are potential outliers for the penalty, such as:
 - Common law misdemeanors in which any penalty that does not violate the 8th Amendment could be a term of up to Life Imprisonment
 - Misdemeanor penalties that carry a substantial period of incarceration, from 6 years' all the way up to 20 years' imprisonment
- There are misdemeanors and felonies that overlap for the penalty, such as:
 - Periods of imprisonment ranging from 1 year to 10 years, where in some instances the offense is a misdemeanor, in other instances the offense is a felony

Recommendations

The Task Force voted to make the following recommendations:

1. Clarify the Intent of the Legislation and the Scope of the Reclassification

The directive from S.B. 209 was to “study and make recommendations regarding a method for classifying crimes and civil offenses under State law,” but there were no parameters set as to what that meant or what the objective of the classification was. Therefore, the Task Force brainstormed ways in which the existing offenses could be sorted and reclassified. For instance:

- Offenses could be organized by their penalties and then reclassified as a felony or misdemeanor depending on the penalty. This would require an agreement as to what penalty serves as the line of demarcation between a misdemeanor and a felony. For example, should a felony be a one-year offense, a five-year offense, or a ten-year offense?
- Offenses could be organized by their penalties and then categorized by gradations of misdemeanors and felonies to correspond with the severity of the offense identified in the Guidelines.
- Common law offenses could be abrogated in their entirety by statute. This would ensure that there are statutory maximums for every criminal offense. This approach might require consideration of adoption of the Model Penal Code to further define elements

of the offense, especially for the *mens rea* of each offense, in order to ensure consistency in definitions.

- Offenses could be classified based upon approaches taken by other states. This would require an in-depth analysis of out-of-state statutes, cases, and legislative materials.
- Offenses could be checked for disproportionately severe or lenient penalties.
- Penalization could be reviewed to determine if certain conduct disproportionately harms marginalized communities.

It would be helpful for a future Task Force to understand the drivers behind the legislation in order to better understand the purposes to be served by reclassification. If it is a matter of ensuring that the offenses on today's books mirror the values in today's society, that will take a greater amount of effort and input from various stakeholders in the Maryland legal community.

2. Narrow the Offenses to be Reviewed

It would also be helpful if the future legislation could narrow and further define the scope of the task. Currently, S.B. 209 requires the Task Force to review "all crimes and civil offenses under State law," which, as discussed above, would not only be a monumental task, but would require analysis of offenses outside of the Criminal Law Article and the Guidelines.

To make the task more manageable, it is recommended that the first phase consider the offenses contained within the Guidelines. The second phase may consider the remainder of the offenses in the Criminal Law Article and Transportation Article. After that, perhaps the Task Force could then review other sections of the code that contain penalty and fine provisions.

3. Ensure Adequate Support

Once the objective is firmly established, the Task Force could effectively assess the staffing needs for the completion of the project.

The Task Force recommends that the Task Force be provided with adequate funding to staff contractual attorneys, paralegals, and law students to assist in this endeavor. The first Task Force was able to put together the materials referenced in this letter due, in large part, to the law students that professors had at their disposal to do the research.

4. Ensure Adequate Time

The current Task Force was selected in August, first met in September, and was required to provide its report by December. This Task Force recommends that the time frame be extended to no less than one year, but ideally at least two years, to accomplish the objective.

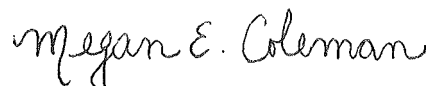
The Methodology to Implement the Objective

Once the objective is more narrowly tailored, a future Task Force should consider the following:

1. Consider additional information that may be needed, such as:
 - a. Statistics on penalties imposed by judges vs. penalties recommended by the Guidelines
 - b. Statistics on offenses that are rarely charged and/or rarely result in a jail or prison sentence
2. Identify the potential driving forces for reclassification
 - a. Penalties are not consistent
 - i. 1-year felony vs. 10-year misdemeanor
 - b. Policy concerns
 - c. Uniformity with other states
 - d. *Mens rea* considerations
 - e. Similarity among offenses, both within the same article, as well as among various articles
 - f. Collateral consequences (licensing issues: driving, guns, professional licenses)
3. Reach out to individual organizations to solicit feedback on areas that the greater legal community, as a whole, would like to see reformed
4. After collecting and reviewing the data, identify logical areas of classification and/or areas that might benefit from a change

The members of the Task Force and I greatly look forward to the opportunity to continue our work.

Sincerely,



Megan E. Coleman, Chair
Task Force to Study Crime Classification

Enclosure: Excel Spreadsheet

cc: Senator William C. Smith, Jr.
Delegate Luke Clippinger