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Education, Energy, and  
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Joint Committee on Cybersecurity,  
Information Technology and  
Biotechnology

*Vice Chair*  
Prince George's County  
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*The Senate of Maryland*  
ANNAPOLIS, MARYLAND 21401

26 February 2024

The Honorable William C. Smith, Jr., Chair  
The Honorable Jeff Waldstreicher, Vice Chair  
Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

The Honorable Luke Clippinger, Chair  
The Honorable J. Sandy Bartlett, Vice Chair  
Judiciary Committee  
Room 101  
House Office Building  
Annapolis, Maryland 21401

Re: **Maryland Senate Bill 351/Maryland House Bill 439**

Dear Chairman Smith, Vice Chairman Waldstreicher, Chairman Clippinger, and Vice Chairwoman Bartlett:

The proposed legislation seeks to clarify the Maryland first-degree assault statute, Md. Crim. Law Code Ann. § 3-202(b). Specifically, the bills seek to add a single word, “intentionally,” to Md. Crim. Law Code Ann. § 3-202(b)(2) so that it would now read, “A person may not intentionally commit an assault with a firearm.”

As you may have seen, the U.S. Court of Appeals for the Fourth Circuit recently ruled that Maryland law was ambiguous as to the mens rea required for a violation of Md. Crim. Law Code Ann. § 3-202(b)(2). *United States v. Redd*, 85 F.4th 153 (4th Cir. 2023). As a result, the Court held that prior Maryland first-degree assault convictions could not be used for federal sentencing enhancements for recidivist criminal offenders who are prosecuted in federal court.

This ruling appears to be at odds with Maryland law. Specifically, Maryland courts have held categorically that first-degree assault is a “specific intent” crime, although admittedly this analysis did not distinguish between the (b)(1) and (b)(2) varieties of the crime. *Haile v. State*, 66 A.3d 600, 605 (Md. 2013); *Chilcoat v. State*, 843 A.2d 240, 245 (Md. Ct. Spec. App. 2004); *Williams v. State*, 2017 WL

2482512 at \*7 (Md. Ct. Spec. App. 2017). Additionally, there are two Maryland decisions that indicate that as to (b)(2) offenses, a specific intent should be inferred from the use of the firearm. *Jones v. State*, 114 A.3d 256, 265 (Md. Ct. Spec. App. 2015), opinion vacated on other grounds by 155 A.3d 492 (Md. 2017); *Jenkins v. State*, 806 A.2d 682, 712 (Md. Ct. Spec. App. 2002), opinion vacated on other grounds by 375 Md. 284 (2003). Nevertheless, the Fourth Circuit ruled that there was not a Maryland case directly on point as to the mens rea required for a (b)(2) offense. Further, because (b)(1) and (b)(3) expressly required “intentional” conduct, but the statute for (b)(2) was silent on the issue, the Court held the statute was ambiguous and perhaps purposefully omitted an intentional mens rea. Accordingly, we presently have a situation where Maryland courts are interpreting (b)(2) in one manner, and the federal courts are interpreting the mens rea requirement in (b)(2) in a different manner.

SB 531 and HB 439 would bring clarity to this issue and would harmonize the Maryland first-degree assault statute to have a unitary mens rea requirement. These bills would also helpfully distinguish first-degree assault from second-degree assault and reckless endangerment, both of which require a lower mens rea. See Md. Crim. Law Code Ann. §§ 3-203, 3-204. Further, these bills would bring federal law into harmony with the state law regarding sentencing enhancements, which require enhancements under state law for prior first-degree assault convictions. See Md. Crim. Law Code Ann. § 14-101(21).

Thank you for the opportunity to provide this information in support of these important bills.

Respectfully,

A handwritten signature in black ink that reads "Ron L. Watson". The signature is written in a cursive, flowing style.

Senator Ron L. Watson, Ph.D.  
Education, Energy, and the Environment Committee  
Maryland State Senate