



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB 404 Gabriel's Law**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 2/27/2024**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 404

While our government gives the legislature the power to make laws, that power is not unbridled. Our laws must conform to the United States Constitution, even when they are well-intentioned. Legislators are tasked with the job of identifying problems and coming up with solutions, and undoubtedly, our legislators are seeking to remedy a problem with this Bill, but this Bill, unfortunately, creates more problems than it aims to address. Namely, it fails to sufficiently define qualified request, and it fails to place limitations on what law enforcement can do in its community caretaking function or proclaim what they cannot. And finally, it creates a mandatory interaction between law enforcement and vulnerable persons, without any requirement that trained mental health providers be involved.

In no uncertain terms, law enforcement may not rely on the community caretaking function to enter into a person's home, and this law fails to draw that important boundary. More specifically, in Caniglia v. Strom, 593 U.S. 194, 197–98 (2021), a unanimous Supreme Court made abundantly clear that police officers' community caretaking function may not be used to make a warrantless entry into a home. This bill, on the other hand, which demands a response from law enforcement on a non-criminal matter, under the community caretaking doctrine, makes a law enforcement response mandatory, but it fails to appropriately draw the boundaries around what that response will look like, and when and how it ends. With the knowledge, from as recent as 2021, that the United States Supreme Court rejects any notion that the community caretaking function can serve as a basis for law enforcement to enter a

home, it seems this legislation conflicts with the law or, at best, under-informs the public and law enforcement, by failing to recognize this important line in the sand drawn by the Constitution.

The bill also fails to sufficiently define what qualified request means—leaving open the possibility for false calls. And finally, and perhaps most importantly, the Bill fails to address the necessity that trained mental health workers, not law enforcement officers armed with deadly weapons, be the ones to respond to mental health crises. All too often, officers exacerbate community caretaking calls, making matters worse and people (including law enforcement) are catastrophically and fatally injured. Without any sufficient guardrails this legislation may be well-intentioned, but it makes everyone less safe.