



POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 394 – Criminal Law – Concealment of Death and Disturbing and Dismembering Human Remains

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 01/31/2025

The Maryland Office of the Public Defender respectfully requests that the Judicial Proceedings Committee issue an unfavorable report on Senate Bill 394.

Senate Bill 394 creates a new felony in Maryland for anyone found guilty of (1) failing to contact emergency medical services or law enforcement regarding the death of the person; (2) knowingly and willfully dismembering, destroying, removing, or otherwise obliterating human remains by any means; or (3) burying or otherwise disposing of the body. See Proposed §10-405(a)(1)-(3). If enacted, the bill would further criminalize any effort to aid or abet another in committing a violation of the foregoing three sections. *Id.* at §10-405(b). Anyone found guilty of committing the substantive offenses, or aiding and abetting the principal perpetrator, is guilty of a felony and subject to a 10 year statutory maximum penalty. *Id.* at §10-405(c) There's more: subsection (d) of the proposed law mandates, "a sentence imposed under this section shall be consecutive to and not concurrent with any other sentence imposed for any other crime based on the act establishing the violation of this section."¹ If enacted, SB 394 would become effective on October 1, 2025.

¹ This consecutive sentencing provision appears designed to legislatively overrule *Sifrit v. State*, 383 Md. 116 (2004). In that case, the Court of Appeals affirmed Benjamin Adam Sifrit's second-degree murder conviction while vacating his conviction for assault because it merged with second degree murder. *Sifrit v. State*, 383 Md. at 137. Here, SB 394 seeks to subvert merger by requiring a sentence under this new provision (dismembering and destroying a body to avoid detection) be served consecutive to the sentence for the



This bill is an unfortunate step in the wrong direction and will not make Maryland safer. At its worst, SB 394 creates a 10-year statutory maximum penalty for mere negligence. If the bill passes, a prosecutor could charge someone with a felony under §10-405(a)(1) for failing to notify police or emergency services when a friend overdoses and dies in their presence. This crime of omission lacks the *actus reus* normally required to accompany criminal law violations.

This bill creates a new felony conviction. Felonies are the highest level of crime. As such, people with felony convictions face increased challenges in gaining employment. Eighty-seven percent of employers conduct background checks. Most employers do not hire people with felony convictions and/or who have served time in prison. Sixty percent of incarcerated people remain unemployed one year after their release. This inability to gain employment desperately impacts a person's quality of life and ability to establish a livelihood without committing crime. Without the possibility of stable housing and income to provide for food and other necessities, people are forced to partake in illegal and not unsafe measures, increasing the risk of crime and making our communities less are not safe. Additionally, people with felony convictions are excluded from participating in food supplement programs in Maryland. With the prices of food on the rise, limited income and no access to food supplement programs, the options for a convicted felon to survive and meet their basic needs without reoffending are little to none.

Additionally, felonies result in many collateral consequences. Collateral consequences are legal restrictions that disqualify people convicted of crimes from accessing certain needs and benefits available to other citizens. Many of the collateral consequences experienced by people with felony convictions involve very basic needs, including employment, housing and public food benefits. In particular, a person with a felony conviction faces significant barriers accessing housing, especially affordable housing because of their conviction. Most, if not all, government housing disqualifies applicants with felony convictions. Furthermore, families that live in public housing or have housing through a government voucher, are often not allowed to have family members with felony convictions live with them. Additionally, most landlords often do background checks

underlying primary crime (murder). However, "Offenses merge and separate sentences are prohibited when, for instance, a defendant is convicted of two offenses based on the same act or acts and one offense is a lesser-included offense of the other." *Holbrook v. State*, 364 Md. 354, 369 (2001) (internal citations omitted); *Sifrit v. State*, 383 Md. at 137. Dismembering or destroying human remains is most likely to occur after a murder, and will likely be merged with the latter notwithstanding legislative efforts to the contrary.



and do not rent to people with criminal backgrounds and specifically felony charges. They could also be prohibited from reunifying with their families if their family lives in any form of public housing.

Finally, we know that longer sentences do not work as deterrence. Certainty and swiftness of a conviction are the primary ways that the criminalization of behavior works to deter that behavior. Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment. To best address the issue of gun theft, we must focus on the root causes of the theft. We must pursue policies that will actually make our communities safe, including prioritizing public health approaches to gun violence and investing in community resources, infrastructure, and systemic supports.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 394.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.