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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 138, Criminal Procedure- Sentencing- Domestic Violence as a Mitigating Factor PATH Act

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 1/23/26

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 138 with amendments striking subsections B (page 3, and page 4 lines 1- 2) and E (page 4 lines 23-26) in their entirety and the phrase “listed in subsection b of this section” from page 4 line 7.

During sentencing of modification of sentence hearings defendants are already allowed to introduce evidence at that they are also victims of domestic violence as mitigation, Senate Bill 138 will not change that. However, for certain crimes and situations¹ assuming that evidence is credible, it would require judges to decide whether that domestic violence was a contributing factor in the commission of the crime, and if so it requires the court to treat the domestic violence as a mitigating factor and consider whether it warrants a departure from a mandatory minimum sentence, or a the sentencing guidelines. It does not require the judge to depart from either the guidelines or the mandatory minimums, rather it requires that they state on the record the reason for the decision and to explain why the court did or did not find the domestic violence to be a mitigating factor.

¹ The enumerated crimes are : Crimes of violence as defined by Criminal Law §14-10 except for murder, sex offenses, and child abuse); CDS distribution where the defendant was compelled to distribute, transport, or possess a controlled dangerous substance on behalf of a perpetrator; prostitution or human trafficking resulting from coercion by a perpetrator; and burglary, theft, and certain financial crimes when committed because of coercion, economic abuse or because of circumstances arising from domestic violence.

The Maryland Office of the Public Defender supports this bill because it recognizes the inherent humanity in our clients who have been the victims of domestic violence and allows for just and compassionate sentencing in light of their particular circumstances.

Helping Ourselves To Transform issued [PATH Impact Report](#) that outlines how important this bill is to Maryland, and so we will not repeat that here. Instead, we will explain how this bill would work in by using as an example Gwendolyn Levi², who recounts the story of assaulting her abusive husband in the first degree, and use of a handgun in the commission of that felony. She wrote:

One evening, after returning late from being out with friends, I was beaten into a corner and left there for hours. When he finally returned, he tried to comfort me by blaming me for what had happened and demanding that we reconcile physically. He fell asleep afterward. I noticed a .357 Magnum on the nightstand. I don't know what came over me, but I picked it up, woke him, and struck him in the face; pointing the gun at him, I told him that if he ever assaulted me and then went to sleep again, I would kill him. He lay there in stunned silence. I dressed and left that night, taking the gun with me.

It is not uncommon at all for perpetrators of domestic violence to abuse the legal system by going to a District Court Commissioner to file an application for a statement of charges pursuant to Courts and Judicial Proceedings §2-607. Fortunately, Ms. Levi was not charged. But had she been, the statement of charges would undoubtedly read that she assaulted her husband both by striking him with a gun and by pointing the gun at him while threatening his life. Under Maryland law she would be charged with First Degree Assault, which is a felony and a crime of violence, and therefore also Use of a Handgun in a Felony. Both of these charges would be impacted by this bill.

At first blush, it might seem like Ms. Levi would have a valid self-defense claim. However, under Maryland law, because he was asleep, she was no longer in imminent danger and so she can not prevail on self-defense. Ms. Levi is a dedicated mother and community member, who has served as PTA president. With no criminal history, her sentencing guidelines for First Degree Assault would call for a sentence between three and eight years in prison. Convicted of Use of a Handgun in a

² PATH Report at page 38

Felony the Judge would be *required* to sentence her to a mandatory minimum of five years in prison in addition to any penalty imposed for the First Degree Assault.³

Unlike in federal court, imposing a sentence within the guidelines is not mandatory, but filling out the guidelines worksheet is, and this includes a requirement to document the reasons for any departure from the guidelines.⁴ This includes the use of “departure codes” shown below. Notably whether the defendant was the victim of domestic violence or how whether domestic violence was a contributing factor to the crime are not among the departure codes.

Below Guidelines
<ol style="list-style-type: none">1. The parties reached a plea agreement that called for a reduced sentence.2. Offender's minor role in the offense.3. Offender is or was suffering from a mental or physical condition that reduces culpability for the offense.4. Offender's age/health.5. Offender amenable to probation or other community supervision.6. Offender made restorative efforts after the offense.7. Offender's criminal history is less severe than represented by offender score.8. Offender's commitment to substance abuse treatment or other therapeutic program.9. Recommendation of State's Attorney or Division of Parole and Probation.10. Other circumstances of the crime and/or the offenders do not warrant a sentence within the guidelines (explain in the space provided).
Above Guidelines

Women in Ms. Levi's position deserve for their circumstances around having been the victims of domestic violence to be considered mitigating factors in sentencing.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on Senate Bill 138 with the proposed amendments.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
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³ Criminal Laws § 4-204.

⁴ Maryland Sentencing Guidelines Manual § 14.1: Using the Departure Codes, page 71.

