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## **POSITION ON PROPOSED LEGISLATION**

**BILL: House Bill 1361 -Criminal Law- Controlled Dangerous Substances and Criminal Organizations**

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

**POSITION: Unfavorable**

**DATE: 03/10/2026**

**The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1361.**

**Instead of reducing or preventing controlled substances offenses by criminal organizations in Maryland, House Bill 1361 would add additional problems to our criminal and legal system.**

As we know, enhanced penalties do not actually deter crime. Certainty and celerity of conviction is the most effective deterrent.<sup>1</sup> In particular, enhanced penalties for nonviolent crime has long been proven to be a driving contributor to costly mass incarceration and increased rates of recidivism, while failing to have a meaningful impact on reducing crime.

Not only will House Bill 1361 be ineffective, it will create confusing and unnecessarily complicated venue issues. The proposed amendments to Criminal Law § 5-611 allow *any* violation of the Criminal Law or the Public Safety Articles to be tried in *any county* if the charges are alleged to have been committed “in furtherance of violating Criminal Law Title 5, Subtitle 6: Crimes involving Controlled Dangerous Substances and Paraphernalia.” This incredibly permissive and expansive venue provision will result in a flood of negative consequences to the criminal legal system.

One of the unintended consequences is that, in addition to increased pretrial litigation to challenge more complex joinder and evidentiary issues that will inevitably take longer through circuit court proceedings, **this bill will likely make it harder for victims and witnesses to attend and participate in court proceedings that are not in their home jurisdictions.** Prosecution in the location in which a crime occurred provides more efficient and immediate results for communities, whereas this bill would allow for litigation involving multiple victims and witnesses across multiple jurisdictions. This bill will also complicate and delay assessing and effectuating monetary relief for victims.

Another consequence is a complete lack of clarity or guidance on how the various venues may or should interact with one another. House Bill 1361 does not clarify what procedure may exist, if any, when two counties which have an equal claim to bring a case want to bring the case. It does not address if there are offenses or circumstances in which a particular jurisdiction or State’s Attorney Office should take the lead.

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<sup>1</sup> <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

Additionally, House Bill 1361 will invite **misjoinder**: Due process prevents the State from going forward with two trials at the same time before a single jury. *Epps v. State*, 52 Md.App. 308, 317 (1982) holds that: “[A] defendant charged with similar but unrelated offenses is entitled to a severance where he establishes that the evidence as to each individual offense would not be mutually admissible at separate trials.” *See also McKinney v. State*, 82 Md.App 111 (1990) (discussing whether evidence of one crime would otherwise be admissible in the trial of the second crime). House Bill 1361 appears to overlook the potential of prejudice in joinder as noted in Maryland 4-253. *State v. Kramer* indicates that: "Potential prejudice is the overbearing concern of the law of this State with respect to the question of joint or separate trials of a defendant charged with criminal trials." 318 Md. 576, 583 (1990). Even if cases are cured of misjoinder in pretrial proceedings, the initial misjoinder will create unnecessary and laborious delay in criminal trials.

Similarly, House Bill 1361 would create evidentiary issues in light of the prohibition on character evidence and could lead to unconstitutional presentation of evidence of other crimes. In addition, House Bill 1361 would create double jeopardy issues by permitting the types of cross-jurisdictional prosecutions contemplated by the statute. Should a prosecution fail, because all charges were brought in an improper venue, or a myriad of other issues that could arise when one county attempts to prosecute a case that arises in another part of Maryland, it would prevent the ability of the State’s Attorney in the proper venue to pursue the appropriate charges.

Finally, and perhaps most importantly, House Bill 1361’s overreach would undo years of progress Maryland has made in legalizing Cannabis and approaching substance abuse disorder as a public health issue. Punitive responses to the public health issues related to substance abuse do not work. As the number of drug-related prosecutions and resulting incarceration dramatically increased from the “War on Drugs,” so did the rate of fatal overdose. States with higher drug imprisonment rates do not exhibit lower rates of drug use or overdose.<sup>2</sup> In fact, by decreasing supply through prosecution and sentencing without addressing the demand of addiction with treatment services, these laws make society more dangerous. Studies show that the increased criminalization of substance misuse and sales increases violent and property crime and diverts limited resources away from addressing these offenses.<sup>3</sup>

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on House Bill 1361.**

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

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<sup>2</sup> Pew Charitable Trusts, Issue Brief: More Imprisonment Does Not Reduce State Drug Problems (2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>

<sup>3</sup> Jared Grossi, The Relationship between the War on Drugs and Crime (May 3, 2020), <https://ssrn.com/abstract=3591798>.