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Unfavorable Response to HB1406 Criminal Law – Self-Defense – Prior Acts by Victim

Families Advocating Intelligent Registries (FAIR) seeks rational, constitutional sexual offense laws and policies. Although the scope of this bill goes far beyond the area of sexual offense (e.g., it includes assault, including “simple assault”), we feel compelled to express our concerns, as the bill turns on its head established Maryland jurisprudence and potentially introduces substantial harm to individuals who have been accused of committing a criminal offense in the past.

The bill would effectively excuse (i.e., allow a defense of self-defense) an individual who murders another person without justification, simply by stating that the other individual had threatened them with harm at some point in the past. There have been safeguards built into Maryland law to avoid an outcome like this, and the Bill would reverse those.

Removes from the Law a Core Safeguard of Self-Defense Law

Under longstanding Maryland law, a claim of self-defense requires that the individual: (1) actually believed they were in imminent or immediate danger of death or serious bodily harm, and (2) that the belief was reasonable under the circumstances.

This bill would remove the requirement that the individual even assert these elements. This effectively permits acts of retaliation/vengeance to be placed under the self-defense umbrella.

Weakens the Element of Proportionality in Self-Defense Law

Under the bill, lethal force would be allowed (i.e. a defense of self-defense could be meritorious) in circumstances where:

- The other individual allegedly had committed a prior “simple assault;”
- The prior assault occurred months or even years earlier;
- The person asserting the self-defense was not under imminent threat; or
- Other remedies, including a call to law enforcement or seeking a protective order, could have ameliorated the situation.

Proportionality currently is a requirement for the defense of self-defense under Maryland law. *State v. Faulkner*, 301 Md. 482, 483 A.2d 759 (1984). It is also unclear whether this bill would effectively remove or at least lessen from the self-defense burden the required element showing that the individual claiming self-defense was not the aggressor at the time of the murder/manslaughter. *Id.*

Creates Evidentiary Concerns/Ambiguity

The bill provides that the defense is available if the victim of the murder/manslaughter “had previously committed” an assault against the individual. This raises a number of concerns, primarily that the individual can assert the prior commission of an assault with no proof. And there is no standard of proof in the bill requiring a conviction, or even the

requirement for a prior, formal allegation to law enforcement. A person could end up the victim of a murder and have their reputation destroyed at the same time through one false accusation of sexual assault that allegedly occurred years before. Further, the bill leaves unclear how the "had previously committed" language is guided by, if at all, Maryland Evidence Rules, including 5-403, 5-404 and 5-405.

For these reasons FAIR strongly encourages the committee to return a negative vote on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Brenda V. Jones". The signature is fluid and includes a long, sweeping horizontal flourish at the end.

Brenda V. Jones, Executive Director
Families Advocating Intelligent Registries