



NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER
ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: House Bill 138 – Criminal Law - Third-Degree Sexual Offense – Burglary
FROM: Maryland Office of the Public Defender
POSITION: Unfavorable
DATE: 02/03/2026 – House Judiciary Bill Hearing

The Maryland Office of the Public Defender respectfully requests that the Judicial Proceedings Committee issue an unfavorable report on House Bill 138. This bill is unnecessary, vague in key parts, and expands sex offender registration in ways that risk disproportionate collateral consequences.

HB 138 is unnecessary because the conduct it targets is already fully criminalized under existing Maryland law. Third-degree burglary is already a standalone felony, punishable by up to 10 years in prison, when a person breaks and enters the dwelling of another with the intent to commit a crime inside. Third-degree sexual offense likewise already prohibits nonconsensual sexual contact and carries a felony penalty of up to 10 years' imprisonment, along with mandatory sex offender registration, including lifetime registration for certain offenses. When a burglary and a sexual offense occur in the same incident, prosecutors can already charge both offenses and seek substantial penalties; nothing in current law prevents them from doing so. HB 138 repackages that same conduct by creating an aggravated third-degree sexual offense category based on nonconsensual sexual contact said to occur "in connection with" a burglary, even though sexual acts committed during a burglary are already fully covered by Maryland's existing first- and second-degree sexual offense and rape statutes and can already be charged in addition to burglary. As a result, the bill does not fill any gap in Maryland's burglary or sexual offense laws; it simply adds a new label and additional registration consequences to behavior that is already punishable today.

The bill's new aggravating language, making a third-degree sex offense when committed "in connection with" a burglary a special category, raises serious concerns about vagueness and overbreadth. "In connection with" is not defined in the statute. Without clear limits on how close in time, place, or intent the burglary must be to the sexual contact, this phrase could be stretched to cover situations where the sexual contact and the burglary are loosely related (e.g., same building, same day, or same dispute) rather than part of a single, preplanned home invasion type assault.

Take for instance, a dispute between two acquaintances that turns into both a questionable "unlawful entry" and disputed touching could suddenly be framed as an aggravated sex offense "in connection with" burglary. Such open-ended language invites inconsistent application across jurisdictions and gives prosecutors undue added leverage in plea negotiations, even in cases where the facts or consent are hotly contested. Aggravating factors should be precise and narrow,

Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
For further information please contact Elizabeth Hilliard, Elizabeth.hilliard@maryland.gov 443-507-8414.

not broad and elastic. Additionally, even if the language “in connection with” is used elsewhere in the law, using such language in a broader, less defined context does not cure those problems; instead, it risks setting a standard into a new setting where the stakes include felony liability and long-term sex offender registration.

HB 138 also unnecessarily expands Maryland’s sex offender registration scheme without demonstrating any clear public safety benefit. The bill amends the definitions of Tier I, Tier II, and Tier III sex offenders to include the newly created burglary linked third degree sex offense subsection, with tier level determined primarily by the victim’s age. That means individuals who are already subject to criminal punishment and strict supervision for third degree sexual offense and burglary would now face years or even a lifetime on the sex offender registry solely because the conduct is deemed “in connection with” a burglary. Yet there is no evidence that this particular combination of offenses, as opposed to existing third-degree sexual offenses, is uniquely predictive of future risk or requires separate supervision or treatment. We do know, however, that sex offender registries not only fail to promote public safety, but also come at an extreme cost to the community, to individual registrants, and to their families.¹ Documented collateral harms include housing instability, unemployment, and barriers to family reunification; these conditions can actually increase, not decrease, recidivism risk.

Additionally, Maryland’s current tiered registration framework already captures truly serious sexual offenses and allows for higher scrutiny where there is force, threats of death or serious physical injury, weapons, multiple offenders, or very young victims. HB 138 effectively treats a property-based offense, burglary, as equivalent to those inherently violent aggravators, even though burglary can encompass a wide variety of circumstances and does not necessarily involve direct violence against a person. As a result, two people who commit essentially the same unlawful sexual contact could face drastically different lifelong consequences: one may not be required to register, while another is labeled a Tier I, II, or III offender simply because of a loosely defined connection to a burglary charge.

This raises serious proportionality and fairness concerns. The bill explicitly applies prospectively as of October 1, 2026, meaning that individuals who engaged in similar conduct before that date will not face the same registration requirements. Permanent collateral consequences and lifelong public labeling should not hinge on a loosely defined link to another offense when courts already can impose lengthy prison terms and strict supervision.

Finally, HB 138 diverts scarce resources toward unnecessary statutory enhancements instead of proven prevention and support strategies. Any expansion of registrable offenses requires new training, system changes, and ongoing monitoring and enforcement. Those resources would be better directed toward survivor services, trauma-informed investigation and prosecution, and evidence-based treatment and supervision programs that have a demonstrated impact on reducing recidivism. Without data showing that this enhancement will prevent future crimes or improve outcomes for survivors, the bill risks more harm in application and resulting collateral consequences than improving public safety.

¹ See e.g., Levenson, J. S., & Tewksbury, R. (2009). Collateral Damage: Family Members of Registered Sex Offenders. *American Journal of Criminal Justice*, 34(1-2), 54-68. <https://doi.org/10.1007/s12103-008-9055-x>. Maryland Office of the Public Defender, Government Relations Division, 45 Calvert St, Suite 108, Annapolis MD 21401
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For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 138.

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