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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB1154 – Criminal Law – Felony Second Degree Assault –Emergency Medical Care Workers**

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

**POSITION: OPPOSE**

**DATE: March 4, 2022**

The Maryland Office of the Public Defender (OPD) respectfully requests that the Committee issue an unfavorable report on House Bill 1154.

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OPD supports the idea that workers providing emergency care and related services in an emergency department should not be prevented from carrying out their duties to provide for the health of Maryland's citizens. However, HB1154 is not the appropriate vehicle for this goal. Common law assault is already a crime, and behaviors and actions that HB1154 were intended to curb can be done so through prosecution for assault.

HB1154 includes emergency room workers within a statute that prohibits assaults of first responders like police officers, EMTs, firefighters, and parole and probation agents. However, including emergency room workers is inappropriate for several reasons. First, the people covered under "worker who is providing emergency and related services" is vague. Does this include a file clerk working in the back of an urgent care facility who gets into a fistfight with the janitor of the facility? If a nurse is walking to the hospital from her car in the garage and is assaulted by someone at the front door of the hospital, does this statute apply? The category of people covered by this statute is overly broad.

Second, the nature of emergency room work is different from that of first responders. First responders confront situations where the safety and health of one or more individuals is being harmed or at risk of being harmed, AND there is a general duty to protect the community from that harm. For example, a family in a house fire needs to be rescued and the fire needs to be contained so it does not spread to other houses. An assault by the family in the house that is burning prevents the fire fighters from protecting the community. But in an emergency room, the medical professionals have a duty to treat only the individual needing medical care; there is no continuing community caretaking duty.

Third, emergency room workers necessarily deal with people who may be experiencing a mental health or other event that makes them belligerent and violent. People experiencing a mental health break that causes them to behave in a physically violent manner will likely be taken to an emergency room for evaluation and treatment. HB1154 will act as a deterrent for people to take their friends or family

members to an emergency room for an evaluation or treatment if there is a risk that they will be charged with a crime due to their behaviors caused by mental health issues.

Finally, hospitals are a place where people are usually experiencing the most serious crises of their lives. It is an understatement to say that emotions run high. HB1154 would criminalize behaviors that are not in fact criminal but may be driven by distress or grief. For example, a family is rushed to the ER after a car accident. The father is told that his child was severely injured in the crash. Distressed, he wants to find his child so he tries to climb out of the stretcher and swats away the arm of the nurse trying to hold him down. Technically, the father could be prosecuted for assault under HB1154. This is not behavior that our society should criminalize. Doing so would exacerbate the problems we face with overcrowded dockets, understaffed public defender's and prosecutor's offices, and overburdened police officers.

Criminal laws should not be passed as a way of showing healthcare workers that society "has their backs." While this bill is being introduced during a pandemic, the response to which has become a divisive political issue, it is important to remember that criminal laws will remain in the books long after this pandemic is over. An emotional response to behavior triggered by the pandemic in the form of a criminal law would be shortsighted and, ultimately, harmful to citizens.

Presently, health care workers and public health officials are protected by statutory and common laws that prohibit assault. These laws are already in effect. This Committee should decline to pass a vague and overbroad law that would have negative unintended consequences for our communities and citizens. Instead, this Committee should show support for health care workers by encouraging prosecutions under the existing laws.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB1154.**

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