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## POSITION ON PROPOSED LEGISLATION

**BILL: SB710**

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

**POSITION: Unfavorable**

**DATE: 3.26.25**

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The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on SB710.

Although this bill purports to create a new crime of ‘criminally negligent driving,’ it in fact sets out an almost perfect equivalent to Reckless Driving, which is already prohibited under § 21-901.1 of the Transportation Article. Reckless driving that does not result in any accident or injury and does not result from impairment is, and has long been, a traffic citation punishable by stiff fines up to \$1000 and six driver’s license points. It is not punishable by jail time.

There is no practical daylight between the definition of “criminal negligence” in SB710 and the definition of reckless driving under § 21-901.1. If there is any daylight at all, recklessness would actually be the *more* culpable conduct, though it will have the lesser penalty if this legislation is enacted.<sup>1</sup>

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<sup>1</sup> SB710 states that a driver is criminally negligent when the driver “*should be aware, but fails to perceive*, that the person’s conduct creates a substantial and unjustifiable risk to the safety of persons or property” and “the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person” (emphasis added). Section 21-901.1(a) defines reckless driving as “*wanton or willful disregard* for the safety of persons or property” (emphasis added) or driving “in a manner that indicates a wanton or willful disregard for the safety of persons or property.” Thus, this bill’s proposed offense of “criminal negligence” encompasses an unreasonable but genuine failure to perceive risk, while “recklessness” applies only when there is evidence that the person wantonly or willfully disregarded the risk. In practice, a driver’s *mens rea* is almost always going to be inferred from way that they were driving, so these two statutes will likely be applied to identical conduct. But in theory, if a driver runs a red light while daydreaming, that conduct could be deemed criminally negligent—they unreasonably failed to perceive a substantial and unjustifiable risk, and that failure could constitute a gross deviation from the standard of care—but *not* reckless, because they did not willfully or wantonly disregard the risk.

For that reason, this bill would have several apparently unintended consequences:

- 1) It would allow police officers *extremely* broad discretion to arrest (and therefore search incident to arrest) drivers for first-time, routine traffic violations.**

Reckless driving is routinely charged based on all types of ordinary moving violations: speeding, changing lanes without signaling, failing to stop at a stop sign. While this conduct can sometimes be dangerous, there is good reason that it has never been deemed a criminal offense. Giving police the option to charge ‘criminal negligence’ and arrest—and therefore search incident to arrest—in all situations where they might plausibly write a ticket for reckless driving is a *very* significant expansion of authority that is very likely to fall most heavily on Black and brown drivers. It will also have a disproportionately harsh impact on noncitizen drivers, who may suffer immigration consequences as a result of being arrested, regardless of whether they are ultimately convicted of a crime.

- 2) It would result in an arrest in every case, because this offense would be ineligible to be charged by citation under Maryland Criminal Procedure § 4-101.**

While the proponents’ stated intention was simply to create a mechanism *permitting* arrest in some cases, and *allowing* the state to force reckless drivers to appear in front of a judge, without necessarily imposing jail time, this is not how the bill will function as written. Because this offense is situated in the Criminal Law Article with a maximum penalty of 6 months, it is not eligible to be charged by citation.<sup>2</sup> Therefore, all drivers charged under this law will be arrested, and will serve one or more days in custody before they have a chance to contest the allegation. In addition to disrupting lives through unnecessary incarceration, this policy would be detrimental to judicial efficiency. If the vast majority of defendants arrive at their trial dates having already served all the jail time that a judge would be likely to impose on what has long been a payable traffic citation, and they are entitled to counsel and required to appear in court regardless, there may be little incentive for defendants to accept a plea. This reverses the incentives compared to the current system, which promotes efficiency by encouraging those cited for reckless driving to plead guilty and accept the pre-set fine and points to avoid having to take a day off from work to appear in court.

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<sup>2</sup> See Md. Crim. P. § 4-101.

**3) It would substantially burden the courts, the Public Defender’s Office, and prosecutors—and ultimately Maryland taxpayers.**

This bill would take a whole category of what are now payable traffic ticket cases, in which a defendant is charged by citation with payable moving violations including reckless driving, and require that they be handled in court on aailable docket. While payable reckless driving tickets *can* result in a court date, many do not because defendants choose to plead guilty and pay the fine in advance, in order to avoid having to appear in court. Even when there is a court date, defendants in payable cases are not entitled to appointed counsel, and the cases do not require the involvement of an Assistant State’s Attorney. By making the conduct currently known as ‘reckless driving’ from a payable ticket into aailable offense, this bill would a) remove the option to avoid a court date by pleading guilty in advance, increasing the overall number of hearings that the court must conduct, and b) require that each of those cases, which currently require only an informal non-ailable citation hearing if they result in a hearing at all, must now be handled at a full criminal trial involving at least two attorneys, at substantial expense to Maryland taxpayers.

**4) It would give the State unchecked discretion to prosecute the same conduct under the criminal statute or the payable traffic statute, inviting disparate treatment of identically situated drivers.**

While police and prosecutors often have some level of discretion in choosing which offenses to charge, in most cases the option of a trial serves as a backstop, ensuring that more culpable conduct is sorted from less culpable conduct by the factfinder, and that only the more culpable conduct receives the higher penalty. Here, however, because the conduct covered by the two statutes is virtually identical (if anything the less culpable conduct is assigned the *higher* penalty), trials will not sort more culpable from less culpable conduct to ensure that the appropriate penalty is applied. If the state charges both offenses, it will very likely get a conviction on either both offenses, or neither. Because the State’s discretion about which charge to pursue could not be checked by factfinding at trial, it would be more easily abused.

**For all of these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB710.**

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