Testimony from:
Emily Mooney, Research Associate, Criminal Justice & Civil Liberties, R Street Institute
Jesse Kelley, Government Affairs Specialist, R Street Institute

In SUPPORT of SB 149, "AN ACT concerning Task Force to Study Crime Classification and Penalties."

January 31, 2019

Senate Committee on Judicial Proceedings

Chairman and members of the committee:

My name is Emily Mooney, and I am a member of the Criminal Justice and Civil Liberties team at the R Street Institute, a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including criminal justice reform. Hence, SB 149 is of special interest to us.

Whereas most other states have codified their crimes, Maryland still has "common-law crimes" or crimes defined by legal tradition and the courts, rather than statute.

When it comes to criminal sentencing, this lack of codification can lead to an unequitable application of the law. It forces judges to decide the penalties ascribed to those convicted of misdemeanors or felony charges without clear guidance or differentiation.

Indeed, in 1979, the Maryland Court of Appeals wrote in *Pope v. State* that "the distinction between felony and misdemeanor [in Maryland] is a hodgepodge, following neither rhyme nor reason." Crime classification would help judges and juries understand the seriousness of particular crimes, and would put potential wrongdoers on notice of the severity of consequences for engaging in criminal acts.

Misdemeanors generally signal a crime of lesser severity or lacking malintent and thus carry lesser penalties. In contrast, felonies signal a greater abridgement of the law and carry greater penalties. Yet classifications in Maryland statute today do not always signal the true gravity of crimes and their punishments. For example, hiring or soliciting someone to murder an individual is only a misdemeanor—a grossly negligent classification given the potential loss of life. But according to the Maryland Sentencing Guidelines Offense Tables, the maximum penalty for solicitation of first-degree murder is life imprisonment. Further confusing the perceived gravity of the crime, the statute of limitations for prosecuting solicitation to commit first-degree murder is a measly three years.

Meaningful identification and classification of crimes also helps prevent excessive criminalization and punishment as well as inadequate punishment. For example, under current statute, individuals found

guilty of keeping disorderly house may be punished by up to six months of imprisonment. Imprisonment is hardly a proportional punishment for a disorderly house, and brings with it collateral consequences that may cause more harm than good.

The creation of a task force would do much to address the need for a tangible criminal code, one with clear and meaningful crime classifications and penalties proportional to the crime committed. This action is important to ensure equitable, effective delivery of justice.

 For these reasons, it is critical that the Legislature pass SB 149.

Thank you for your time,

Emily Mooney
Research Associate, Criminal Justice & Civil Liberties
R Street Institute
202.900.9733
emooney@rstreet.org

Jesse Kelley
Government Affairs Specialist
R Street Institute
202.900.8252
jkelley@rstreet.org