

HOUSE BILL 941

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4lr0426

By: **Delegate Rosenberg**

Introduced and read first time: February 2, 2024

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Threats and Stalking – Recklessness**

3 FOR the purpose of altering the mental state required as an element of certain threat and
4 stalking crimes; and generally relating to threats and stalking.

5 BY repealing and reenacting, with amendments,
6 Article – Criminal Law
7 Section 3–708, 3–802, 3–1001(b), and 10–304
8 Annotated Code of Maryland
9 (2021 Replacement Volume and 2023 Supplement)

10 Preamble

11 WHEREAS, The Supreme Court of the United States in *Counterman v. Colorado*,
12 600 U.S. 66 (2023) allows a lower standard for a showing of some subjective understanding
13 of the threatening nature of statements or conduct by a defendant; and

14 WHEREAS, True threats are not protected speech by the First Amendment to the
15 Constitution of the United States and are thus subject to criminal prosecution, and the
16 Supreme Court concluded that the prosecution in a true threats case must show that the
17 defendant was aware in some way of the threatening nature of the communications in order
18 to avoid a chilling effect on speech and result in self-censorship of speech that could not be
19 proscribed by the government; and

20 WHEREAS, The holding in *Counterman v. Colorado* requires the use of a subjective
21 standard, and the Supreme Court determined that “recklessness”, defined as when a person
22 “consciously disregards a substantial and unjustifiable risk that the conduct will cause
23 harm to another” is the appropriate test; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



WHEREAS, The “recklessness” standard shall be applied in certain circumstances where it “offers enough breathing space for protected speech, without sacrificing too many of the benefits of enforcing laws against true threats”; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Law

3–708.

(a) (1) In this section the following words have the meanings indicated.

(2) “Local official” means an individual serving in a publicly elected office of a local government unit, as defined in § 10–101 of the State Government Article.

(3) (i) “State official” has the meaning stated in § 5–101 of the General Provisions Article.

(ii) “State official” includes the Governor, Governor–elect, Lieutenant Governor, and Lieutenant Governor–elect.

(4) “Threat” includes:

(i) an oral threat; or

(ii) a threat in any written form, whether or not the writing is signed, or if the writing is signed, whether or not it is signed with a fictitious name or any other mark.

(b) A person may not [knowingly and willfully] **RECKLESSLY** make a threat to take the life of, kidnap, or cause physical injury to a State official, a local official, a deputy State’s Attorney, an assistant State’s Attorney, or an assistant Public Defender.

(c) A person may not knowingly send, deliver, part with, or make for the purpose of sending or delivering a threat prohibited under subsection (b) of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$2,500 or both.

3–802.

(a) In this section:

(1) “stalking” means a malicious course of conduct that includes approaching or pursuing another where:

(i) the person intends to place or [knows or reasonably should have known the conduct would place] **RECKLESSLY PLACES** another in reasonable fear:

1. A. of serious bodily injury;

B. of an assault in any degree;

C. of rape or sexual offense as defined by §§ 3–303 through 3–308 of this title or attempted rape or sexual offense in any degree;

D. of false imprisonment; or

E. of death; or

2. that a third person likely will suffer any of the acts listed in item 1 of this item; or

(ii) the person intends to cause or [knows or reasonably should have known that the conduct would cause] **RECKLESSLY CAUSES** serious emotional distress to another; and

(2) “stalking” includes conduct described in item (1) of this subsection that occurs:

(i) in person;

(ii) by electronic communication, as defined in § 3–805 of this subtitle; or

(iii) through the use of a device that can pinpoint or track the location of another without the person’s knowledge or consent.

(b) The provisions of this section do not apply to conduct that is:

(1) performed to ensure compliance with a court order;

(2) performed to carry out a specific lawful commercial purpose; or

(3) authorized, required, or protected by local, State, or federal law.

(c) A person may not engage in stalking.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

(e) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for any other crime based on the acts establishing a violation of this section.

3–1001.

(b) A person may not [knowingly] **RECKLESSLY** threaten to commit or threaten to cause to be committed a crime of violence, as defined in § 14–101 of this article, that would place five or more people at substantial risk of death or serious physical injury, as defined in § 3–201 of this title, if the threat were carried out.

10–304.

Motivated either in whole or in substantial part by another person's or group's race, color, religious beliefs, sexual orientation, gender, gender identity, disability, or national origin, or because another person or group is homeless, a person may not:

(1) (i) commit a crime or attempt or **RECKLESSLY** threaten to commit a crime against that person or group;

(ii) deface, damage, or destroy, or attempt or **RECKLESSLY** threaten to deface, damage, or destroy the real or personal property of that person or group;

(iii) burn or attempt or **RECKLESSLY** threaten to burn an object on the real or personal property of that person or group; or

(iv) make or cause to be made a false statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer of the State, of a county, municipal corporation, or other political subdivision of the State, or of the Maryland–National Capital Park and Planning Police, about that person or group, with the intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint, in violation of § 9–501 of this article; or

(2) commit a violation of item (1) of this section that:

(i) except as provided in item (ii) of this item, involves a separate crime that is a felony; or

(ii) results in the death of a victim.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.