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TO: The Honorable William C. Smith Jr.
Chair, Judicial Proceedings Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: SB0093 – Juvenile Court – Jurisdiction (Support with Amendments)

The Office of the Attorney General urges the Judicial Proceedings Committee to favorably report with amendments Senate Bill 93. Our Organized Crime Unit within our Criminal Division is working with the advocates on a compromise measure that we hope to provide the Sponsor and Committee in the near term.

As introduced, Senator Carter's bill repeals all provisions permitting prosecutors to directly charge juveniles in adult court for dozens of specified crimes. Senate Bill 93 is a good faith attempt to take cognizance of recent Supreme Court jurisprudence establishing that under the U.S. Constitution children are different than adults.¹ These cases rest upon an emerging scientific consensus that children have both diminished culpability and a heightened capacity for rehabilitation.

While we agree that, under current Maryland law, far too many enumerated crimes permit prosecutors to direct file against juveniles in adult court, we do believe that permitting prosecutors to do so in the worst of violent crimes—e.g. murder, rape, and serial violent crimes—should continue to qualify for direct file. Because Department of Juvenile Services

¹ See e.g. *Tatum v. Arizona*, --- U.S. ----, 137 S.Ct. 11 (2016) (granting, vacating, and remanding in several cases where Arizona courts failed to consider individual circumstances of juveniles sentenced to life without parole); *Montgomery v. Louisiana*, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (holding that *Miller v. Alabama* holding that Eighth Amendment mandatory life sentences without parole for juvenile offenders is a new substantive constitutional rule that was retroactive on state collateral review); *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (mandatory life without parole for juvenile offenders is unconstitutional); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (Eighth Amendment prohibits imposition of life without parole sentence on a juvenile offender who did not commit homicide, and State must give juvenile nonhomicide offender sentenced to life without parole a meaningful opportunity to obtain release); and *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (prohibiting death sentences for those who committed their crimes before age 18).

intake decisions (i.e. whether to commit or leave a juvenile in community supervision) are not immediately reviewable, it makes sense to permit prosecutors the discretion to remove particularly violent juvenile offenders from the community. Many of these same juveniles will have significant criminal histories warranting their separation from society at large pending trial on only the most violent of crimes.

For the foregoing reasons, the Office of the Attorney General urges the Committee to favorably report SB 93 with amendments continuing to permit direct file against juveniles who commit murder, rape, or serial violent crimes.

cc: Committee Members