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POSITION ON PROPOSED LEGISLATION

BILL: HB 170 Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: January 31, 2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report with amendments on House Bill 170.

While HB 170 is an important step towards acknowledging that youth charged within the justice system are likely to have experienced severe trauma, the Youth, Equity, and Safety (YES) Act, HB 96/SB93, which will come before this committee this session, seeks to end the harmful practice of automatically charging youth in adult criminal court.

Youth charged within the justice system, and especially youth who are now excluded from juvenile court jurisdiction because they have been charged with serious crimes, are likely to have experienced severe trauma. Children who come into conflict with the law often contend with early childhood trauma and unmitigated adverse childhood experiences such as psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who struggle with substance abuse, suffer from mental illness or are suicidal, or are formerly incarcerated.¹ 90% of children in the juvenile justice system have experienced at least two adverse childhood experiences; 28% of boys and 46% of girls have experienced at least five adverse childhood experiences.²

Those experiences, when combined with youth, can cause extreme reactions to threats, whether perceived or real.

“Battered children, unlike those children who are not abused, live in an environment where abuse is commonplace and may occur at anytime with or without warning. Battered children, therefore often appear to be what researchers have termed as ‘hypervigilant.’ Such a hypervigilant child is acutely aware of his or her environment and remains on the alert for any signs of danger, events to which the unabused child may not attend. The child’s history of abusive encounters with his or her battering parent leads

¹ *Adverse childhood experiences (ACEs)*, Administration for Children and Families, U.S. Department of Health and Human Services, available at

<https://www.childwelfare.gov/topics/preventing/overview/framework/aces/#:%7E:text=ACEs%20include%20all%20types%20of,family%20going%20through%20a%20divorce>

² Baglivio, Michael T., et al. *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, OJJDP Journal of Juvenile Justice, Volume 3, Issue 2, (Spring 2014).

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him or her to be overly cautious and to perceive danger in subtle changes in the parent's expressions or mannerisms.”³

That “hypervigilance” means that these children may “perceive an imminent threat of immediate danger” where outside observers would not.⁴ Behaviors that seem “relatively benign to others” may nonetheless be recognized by the child as “signal[ing] the imminence of . . . [an] assault.”⁵ Rather than being a path to safety, reporting the violence to authority figures, such as police officers or teachers, is perceived by a children exposed to trauma and adverse childhood experiences as a path to escalated abuse; child victims of sex trafficking often “do not seek help or resist intervention from law enforcement or social service organizations because they do not know their rights, they feel ashamed, they are reluctant to admit to victimization, or they fear their traffickers.”⁶ In combination, those elements — continuing and escalating abuse, the impossibility of escape, and a feeling of desperation and helplessness — “may lead a battered child to strike back against an abuser in self-defense.”⁷

Confining these traumatized youth in adult prisons and jails puts them at a particular risk for harm. Because adolescents are in a formative developmental stage, their social context is likely to shape the trajectory of their future lives. “Prisons have been characterized as developmentally toxic settings for adolescents; they contain none of the attributes of a social environment that are likely to facilitate youthful progress toward completion of the developmental tasks that are important to functioning as law-abiding adults.”⁸ Confining youth in prisons with adults can increase their risks for recidivism; youth are not separated from adult offenders in the Division of Corrections and are subject to a “contagion effect” of deviant behavior that can further exacerbate a delinquent mindset.⁹

Youth incarcerated in the adult correctional system are also at particular risk for further trauma. Congress enacted the Prison Rape Elimination Act specifically to address the high incident of sexual occurring in prisons and jails across the country, with particular concern for detained youth who are especially vulnerable to abuse. “Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities – often within the first 48 hours of incarceration.”¹⁰ Youth make up 7.7% of all victims of substantiated acts of sexual violence in prison and jails carried out by other inmates, even though they made up less than 1% of the total detained and incarcerated population.¹¹ “[M]ost adult jails or prisons are ill-equipped to meet the needs of children or keep them safe. They are **much more likely to commit suicide** in an adult jail than in a juvenile facility. They are also **five times as likely to be sexually abused or raped** as they would be in a juvenile facility. Some of these youth are confined in facilities along with adults, where they may witness as well as be the target of violence.”¹² These risks are exacerbated when youth are “housed in

³ Steven R. Hicks, *Admissibility of Expert Testimony on the Psychology of the Battered Child*, 11 Law & Psychol. Rev. 103, 103 (1987).

⁴ *State v. Smullen*, 380 Md. 233, 273 (2004).

⁵ Hicks, *supra*, at 142.

⁶ *Report of the Attorney General's National Task Force on Children Exposed to Violence* at 188, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

⁷ Hicks, *supra*, at 103

⁸ *Reforming Juvenile Justice: A Developmental Approach*, Committee on Assessing Juvenile Justice Reform, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, National Academy of Sciences, available at <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>, at 134 (internal citations omitted).

⁹ *Id.*

¹⁰ 34 U.S.C. §30301(4)

¹¹ Nat'l Prison Rape Elimination Comm'n Report at 155-156, available at <https://www.ncjrs.gov/pdffiles1/226680.pdf> at 19.

¹² *Defending Childhood: Protect, Heal, Thrive*, at page 190 (emphasis added) (internal citations omitted).

solitary confinement to protect them from adults....Nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement. A 2002 investigation by the U.S. Department of Justice showed that juveniles experience symptoms of paranoia, anxiety, and depression even after very short periods of isolation.”¹³

Understanding that youth are at a particularized risk if incarcerated with adults, the report of the Attorney General’s National Task Force on Children Exposed to Violence recommends prosecuting young offenders, especially those who have been exposed to trauma, in the juvenile system instead of transferring their cases to adult courts.

“Too often, these children are labeled as “bad,” “delinquent,” “troublemakers,” or “lacking in character and positive motivation.” Many commit violent acts and enter the criminal justice system. However, enormous strides have been made in developing effective ways of interrupting the cycle of violence ... **We should stop treating juvenile offenders as if they were adults, prosecuting them as adults in adult courts, incarcerating them as adults and sentencing them to harsh punishments that ignore their capacity to grow.** When properly screened, assessed, and provided with trauma-informed care and evidence-based trauma specific treatment, children who have been exposed to violence and are in trouble with the law have the capacity to grow, mature and become productive citizens.”¹⁴

The federal directive is even clearer when youth have been subjected to sexual trauma: “Help, do not punish, child victims of sex trafficking.”¹⁵

Research has shown that youth, even when charged with very serious crimes, are receptive to rehabilitative services. “[M]ost violent juvenile offenders could be successfully rehabilitated through intensive treatment in small secure juvenile facilities.”¹⁶ Youth have lower recidivism rates when offered treatment within the youth justice system instead of the punitive approach of the adult correctional system: “Although supporters of the punitive reforms of the 1990s argued that getting tough on juvenile offenders was necessary to protect the public, developmental knowledge indicates that punishing juveniles as adults is not likely to reduce recidivism and is likely to increase the social cost of juvenile crime.”¹⁷

The National Academy of Sciences, after two years studying the youth justice system and its response to adolescent brain development research, published a Report on Reforming Juvenile Justice. That Report is clear in its directive that youth should be treated different than adults:

“[i]t does not follow, however, that the mechanisms of accountability for juveniles should mimic criminal punishments. Condemnation, control, and lengthy confinement (“serving time”), the identifying attributes of criminal punishment, are not necessary features of accountability for juveniles. The research demonstrates that, if designed and implemented in a developmentally informed way, procedures specifically designed for holding

¹³ *Id.*

¹⁴ *Id.* at 124 (emphasis added)

¹⁵ *Id.* at 23

¹⁶ Fagan, Jeffrey, et al. “System Processing of Violent Juvenile Offenders: An Empirical Assessment,” In Robert A. Mathias, Paul DeMuro, and Richard S. Allinson (eds.) *Juvenile Offenders – An Anthology*. San Francisco: National Council on Crime and Delinquency (1984) pages 117-136

¹⁷ *Reforming Juvenile Justice: A Developmental Approach*, at 134.

adolescents accountable for their offending can promote positive legal socialization, reinforce a prosocial identity and facilitate compliance with the law. However, unduly harsh interventions and negative interaction between youth and justice system officials can undermine respect for the law and legal authority and reinforce a deviant identity and social disaffection.”¹⁸

The Report goes on to inform that, “[b]oth proportionality and prevention support a policy of retaining youth in the juvenile justice system; adult prosecution and punishment should be uncommon.”¹⁹ Understanding that, the YES Act will end the practice of automatically charging teens in adult criminal court. While HB 170 seeks to expand transfer at sentencing for victims of sex trafficking victims and require courts to consider youth-specific factors when sentencing teens who have been charged as adults, the YES Act seeks to forward public safety goals by giving all teenagers a fair chance to be rehabilitated in the juvenile justice system.

To achieve the goals of HB 170 to treat instead of punish youth who have been trafficked, we suggest the following amendments:

- Amend the timing for consideration of a youth’s status as a victim of trafficking from sentencing to their first appearance in the court;
- Expand the defined class of youth eligible for transfer as a result of having previously been trafficked to include youth have experienced the trauma of all manners of trafficking, to include labor and drug trafficking (page 2, beginning at line 27); and
- On page 3, line 5 of the bill, amend the word “may” to “shall.”

While HB 170 is an important first step towards acknowledging that youth court-involved youth are often exhibiting signs of trauma, the only way to truly help heal these youth is by ending the harmful practice of charging them in adult court.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on HB 170 with amendments.

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

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¹⁸ *Reforming Juvenile Justice: A Developmental Approach* at 4-5.

¹⁹ *Id.* at 134