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WRITTEN TESTIMONY

Re: HOUSE BILL 170

From: Laura Corbett Wilt, Chief Assistant State's Attorney, Juvenile Division, address above.

IN OPPOSITION TO (C) and OPPOSITION TO (B) AS DRAFTED

I am asking for an unfavorable report on House Bill 170.

(B)(1): The Bill proposes several factors that the Court "shall consider" before imposing a sentence. This language would require the Court to receive evidence on each sensitive factor even if that was contrary to the youth's wishes. The proposed language needs to be amended to include Defense to provide notice to the State if the youth wishes not to have the Court consider these factors, and also include the right of both State and Defense to obtain records to address each of these factors. The language needs to be added to specifically allow for the youth's juvenile record with the Department of Juvenile Services to be part of the record (IX).

(C)(1): Although seemingly well-intended this provision would create legal conflicts that are untenable. Additionally, the benefits sought to a youth in this situation are already available in a different statutory provision so I would argue that the legislation is unnecessary.

First: The provision (C) creates legal conflicts and an evidentiary mess. To establish that the youth was the victim of a sex offense within three months by clear and convincing evidence, the Defense Attorney would be placed into the role of prosecutor trying to establish evidence of a recently committed sex offense (not a role they may be well-suited to, nor appropriate). Calling the youth to testify could be harmful to her (She may not want to testify, but she might feel compelled to testify in order to have her case be sent to juvenile court). Having the Defense Attorney call witnesses and elicit testimony on a separate crime could also jeopardize any criminal investigation or case pending against the adult (transcript of this proceeding would be fodder for cross-examination, any inconsistent testimony would be traumatic for the youth, and he or she would be traumatized by having to testify about the offense in two different courtroom settings. The Defense Attorney would be in the position of calling his client to the stand to testify to a crime and if he/she failed to ask all relevant questions would jeopardize the separate criminal case. Would the youth have the benefit of victim/witness services? These are provided by the State's Attorney's Office in Maryland, but this would be a conflict of interest? Additionally, the State's Attorney's Office would be placed in the role of cross-examining the youth regarding

circumstances where the youth may also be a victim in a separate criminal matter or could be in the future.

The evidence needs to be reliable for the Court, and this is not the setting nor the process by which to admit this evidence. An entire separate hearing could be required on this issue. What could be admitted? DSS records, PC statement of offense, could other victims be required to testify if subpoenaed? Who is presenting evidence of a crime which is a crime separate from the one the youth was convicted of? What if the situation was investigated and either a criminal or DSS case was closed without any findings or charges? Is that admissible evidence? Whose obligation is it to bring that to light? What if no report was ever filed?

Second: The primary benefit to the youth pending sentencing is that “the court may transfer the minor to the juvenile court for sentencing.” The youth already has the ability to present the evidence that they were themselves a victim of a sex crime or human trafficking crime. The youth should present such evidence during a Transfer hearing under Criminal Procedure 4-202. CP 4-202 requires the Court consider the “mental and physical condition of the child,” the “nature of the alleged crime” and the “public safety.” When considering the applicable appellate court rulings on point and the common-sense definition of these terms, the Court can consider the facts and arguments relevant to the youth’s victimization. A youth’s exposure to adverse childhood experiences and trauma is a focus of such hearings. It is during this hearing under CP 4-202 that the Court has the ability to send the case to juvenile court.

Additionally, under CP 4-202.2, the youth is entitled to a second transfer hearing if he/she was charged as an adult but was being sentenced on a lesser charge (one that does not incur automatic adult charging). During this second transfer hearing, the youth can again argue facts relevant to the youth’s victimization and obtain the result sought with this legislation.

I would be happy to provide discuss this matter in person. Thank you,



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