

**Testimony in Opposition to House Bill 314
Juvenile Law – Probation – Technical Violations**

To: Delegate Luke Clippinger, Chair, and Members of the House Judiciary Committee

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I am a student attorney in the Youth, Education, and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children in Maryland who have been suspended, expelled, or pushed out of school through other means, as well as individuals who are serving life sentences for crimes they committed as children or emerging adults. The Clinic opposes House Bill 314, which would enable Maryland courts to impose community detention on children who commit a first technical violation of probation, as well as to detain or commit children for second or subsequent technical violations.

Technical violations of probation involve no further delinquent acts on the part of a child. Common forms of technical violations include failure to attend court-ordered classes or appointments and testing positive for drugs or alcohol. The Clinic opposes HB 314 for three primary reasons. First, any form of detention, including community detention, can have enduring negative effects on children. Second, contemporary cognitive science shows clearly that children lack the foresight, judgment, and executive functioning of adults such that they have diminished culpability for their actions relative to adults. Third, children are broadly dependent on parents and caregivers for daily needs, such as transportation; in turn, there is a risk that acts or omissions of parents or caregivers could lead to technical violations of probation by children, leading to their detention or commitment.

Imposing community detention on children for a first technical violation of probation, or more severe forms of detention for further technical violations, will have negative impacts that are disproportionate to the harm presented by the actual technical violations. An extensive body of scientific literature shows that incarcerated youth experience higher rates of negative outcomes

in domains related to health and social functioning.¹ More significant involvement with the juvenile justice system can also have an unintended criminogenic effect.²

HB 314 also does not align with brain developmental science. The prefrontal cortex – the portion of the brain “associated with a variety of cognitive abilities, including . . . voluntary behavior control and inhibition such as risk assessment, evaluation of reward and punishment . . . impulse control . . . [and] the ability to judge and evaluate future consequences”³ – is the last area of the brain to fully develop and, for most people, does not reach maturity “until about age 25.”⁴ Accordingly, children are less culpable for their actions than adults. Such diminished culpability should be considered in situations that lead to technical violations of probation as much as it does in those emerging from actions that involve criminal acts. HB 314 would apply to all children on probation—with significant differences in ages—and would impose harsh punishments for technical violations.

Detaining children for technical violations also overlooks the limited control most children have in their lives, especially as it concerns transportation and scheduling. While adults are independent and autonomous, children are dependent and relatively non-autonomous.⁵ Many common technical violations emerge from a probationer’s failure to appear at particular times and in particular places to participate in classes, counseling, or community service. Thus, children could commit technical violations because they depend on family or caregivers for transportation, and in turn risk detention and prolonged involvement with the juvenile justice system.

Notably, HB 314 would cause Maryland’s juvenile justice system to diverge from the National Council of Juvenile and Family Court Judges’ Enhanced Juvenile Justice Guidelines, a set of best practices for jurists and practitioners in cases involving juvenile delinquency. The Enhanced Juvenile Justice Guidelines explicitly recommend that children not be placed in detention for technical violations.⁶ Indeed, the short- and long-term harms of detaining and committing children for technical violations would, in many instances, be substantial and permanent. For these reasons, we ask for an unfavorable report.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

¹ See generally, Elizabeth S. Barnert et al., *Juvenile Incarceration and Health*, 16 ACADEMIC PEDIATRICS 99 (2015).

² E.g., Uberto Gatti et al., *Iatrogenic Effect of Juvenile Justice*, 50 J. CHILD PSYCHOLOGY AND PSYCHIATRY 991, 996 (2009) (“impact [of the juvenile justice system] increases as the type of intervention imposed becomes more intense and constrictive”).

³ Brief for the American Medical Association and the American Academy of Child and Adolescent Psychiatry as Amici Curie in Support of Neither Party, *Miller v. Alabama*, 2012 WL 121237 at *18-19 (2012).

⁴ Tony Cox, *Brain Maturity Extends Well Beyond Teen Years*, NAT’L PUBLIC RADIO, Oct. 10, 2011, <https://www.npr.org/templates/story/story.php?storyId=141164708>.

⁵ Alexander Baggatini, *Children’s Well-being and Vulnerability*, 13 ETHICS AND SOCIAL WELFARE 211, 211-12 (2019) <https://www.tandfonline.com/doi/full/10.1080/17496535.2019.1647973>.

⁶ NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, ENHANCED JUVENILE JUSTICE GUIDELINES, Chapter XI at 4 (2018), <https://www.ncjfcj.org/publications/enhanced-juvenile-justice-guidelines/>.