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To: The Honorable Luke Clippinger
Chair, Judiciary Committee

From: Hannibal G. Williams II Kemerer, Legislative Director, Office of the Attorney General

Re: HB 36 Juvenile Proceedings – Fines, Fees, and Costs (SUPPORT)

Consistent with emerging efforts to decriminalize poverty and to staunch a downward cycle of criminality spurred by regressive policies, House Bill 36 eliminates court authority to order youth to pay fines, fees, and court costs. The bill eliminates a court's authority to impose \$25 (first offense) or \$100 (subsequent offense(s)) fines against:

- youth misstating their age in violation of MD CRIM LAW § 10-113; or
- youth engaged in unlawful possession of tobacco in violation of MD CRIM LAW § 10-108 (a recently repealed criminal law).

The bill also eliminates a court's ability to "impose reasonable court costs against" a youth or the youth's "parent, guardian, or custodian" in any case where the youth was found delinquent for (1) making false statements concerning the location or possible detonation of a destructive device, or the location or possible release of toxic material in violation of MD CRIM LAW § 9-504; or (2) manufacturing, possessing, or transporting, or placing labeled or intended to represent a toxic material intending to terrorize, frighten, intimidate, or harass in violation of MD CRIM LAW § 9-505. Finally, HB 36 rescinds court authority to assess best-interests attorneys' fees "against any party or against a parent of the child."



The Problem with Juvenile Justice Fines and Fees

For juveniles in Maryland—most especially juveniles in poverty—fines and fees levied against them by the court create a nearly insurmountable barrier resulting in high levels of recidivism, financial hardship, and exacerbate racial and ethnic inequalities within the criminal justice system.ⁱ Instead of providing poor youth a chance for rehabilitation and development, juvenile fines and fees push impoverished individuals and families further into the depths of the juvenile and criminal justice system.ⁱⁱ

Courts have recognized the unique vulnerabilities of juveniles, including the fundamental differences between juvenile and adult minds.ⁱⁱⁱ As the Supreme Court noted in *Montgomery v. Louisiana*, where the Court eliminated life-without-parole for crimes less than murder, “the Constitution demands unique protections for juveniles in the justice system due to the ‘children’s ‘diminished culpability and greater prospects for reform.’”^{iv} This case was one in a series of landmark Supreme Court cases that reflect the legal responses to the scientific understanding of the juvenile brain,^v and the “assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”^{vi} In addition to the elimination of life-without-parole for crimes less than murder, the Supreme Court has abolished the death penalty for crimes committed during adolescence,^{vii} and found that, for juveniles, mandatory life-without-parole sentences for murder violates the 8th Amendment.^{viii}

The Court’s desire to move away from a punitive approach to criminal justice reflects the understanding that the juvenile justice system’s primary goal is to rehabilitate.^{ix} The imposition of fines and fees on juveniles provides little to no rehabilitative effect, and as the United States Department of Justice reports, greatly increases the risk of recidivism and pushes poor youth

ⁱ U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Communities of Color*, at 33 (Sept. 2017), https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf.

ⁱⁱ *Id.* at 33.

ⁱⁱⁱ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

^{iv} *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (quoting *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012)).

^v Massachusetts General Hospital, Center for Law, Brain & Behavior, *Juvenile Justice & the Adolescent Brain*, <http://clbb.mgh.harvard.edu/juvenilejustice/>.

^{vi} *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011).

^{vii} *Romer v. Simpson*, 543 U.S. 551, (2005).

^{viii} *Miller v. Alabama*, 567 U.S. 460 (2012).

^{ix} Juvenile Law Center, *Youth in the Justice System: An Overview*, <http://jlc.org/youth-justice-system-overview>

into the juvenile justice system.^x According to a 2017 meta-study by the bipartisan U.S. Civil Rights Commission, juvenile fines and fees disproportionately impact youth of color compared to their white counterparts, often resulting in higher recidivism rates for youth of color due to unresolved fines or fees.^{xi}

Fines and fees exacerbate poverty for young-individuals and their families, and the harm caused by the imposition of the fees can have a profoundly negative effect lasting well into the child’s adulthood. The Department of Justice believed juvenile “fines and fees can be economically debilitating to children and their families and can have an enduring impact on a child’s prospects.”^{xii} For young people with no realistic way to earn money, fines and fees create financial obligations that are nearly impossible to meet and often push low-income families deeper into poverty and require families to make devastating financial decisions. A growing concern about the impact of fines on children and their families “led numerous professional organizations including the American bar Association, National Juvenile Defender Center, the Juvenile Law Center, and Conference of Chief Justices/Conference of State Court Administrators to recognize the negative consequences of imposing fines and fees without regard for one’s ability to pay and issued guidance on the imposition of juvenile justice related fines, fees, and costs[.]”^{xiii} Families should “not have to choose between paying court fines and fees or paying for basic needs such as food or rent—and weakening family ties.”^{xiv}

Fines and fees have “little to do with the rehabilitative purpose of the juvenile system,”^{xv} rather are a tool to criminalize the poor—which exacerbates existing racial and ethnic inequalities within the juvenile justice system, and magnifies both the economic and emotional distress for impoverished families”^{xvi} Justice Ginsberg traces the ugly-truth of fines and fees back to their racial roots in the Civil-War era in *Timbs v. Indiana*, where she notes “draconian fines were used for ‘violating broad proscriptions on “vagrancy” and “other dubious offenses”’ often to have newly-freed slaves placed in involuntary labor programs due to their failure to pay fines.”^{xvii}

^x U.S. Dep’t of Justice, *Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles 2* (Jan. 2017) [hereinafter *Advisory on Levying Fines and Fees on Juveniles*], <https://www.ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf> (this, along with 24 other advisories, were rescinded by Attorney General Jeff Sessions on December 21, 2017).

^{xi} U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Communities of Color*, at 163 (Sept. 2017), https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf.

^{xii} *Advisory on Levying Fines and Fees on Juveniles*, <https://www.ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>

^{xiii} National Council of Juvenile and Family Court Judges, *Resolution Addressing Fines, Fees, and Costs in Juvenile Courts* (March 17, 2018), https://www.ncjfcj.org/sites/default/files/FinesFeesCosts_Resolution_FNL_3-17-18.pdf

^{xiv} *U.S. Commission on Civil Rights, Targeted Fines and Fees Against Communities of Color*, at 33 (Sept. 2017), https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf.

^{xv} *Id.* at 34.

^{xvi} *Id.* at 33.

^{xvii} *Timbs v. Indiana*, 139 S.Ct. 682, 688 (2019).

Unfortunately, fines and fees today often result in a similar outcome—the criminalization of poor simply because they do not have the means to pay. This is even more so the case with youth, as many are too young to have any real earning capacity. Without the ability to work full time, many impoverished children and their families are left making difficult financial decisions that have lasting consequences well into adulthood.

In light of the aforementioned realities, and because a policy change is consistent with both case law and evolving understandings about lesser juvenile culpability as evidenced by brain science, the Attorney General strongly supports eliminating juvenile fines and fees through this bill. We urge the Committee to favorably report this important legislation.

cc: Members of the Judiciary Committee