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My name is Kristin Henning. I am a resident of Takoma Park, Maryland, a Professor of Law and the Director of the Juvenile Justice Clinic & Initiative at Georgetown Law, and the Director of the Mid-Atlantic Juvenile Defender Center. The views expressed are based on my research and experience and not given on behalf of Georgetown University or the Mid-Atlantic Juvenile Defender Center. Thank you for the opportunity to testify today in support of Senate Bill 0853, which would be a critical step forward in ending the criminalization of Black and brown youth in the state of Maryland.

The Harms of Racial Disparities in Maryland's Juvenile Legal System

Youth of color are formally processed, detained in juvenile jails, and incarcerated in youth prisons at disproportionately high rates in Maryland.¹ In 2018, youth of color were nearly twice as likely to have their cases referred to juvenile court intake, 50% more likely to have their cases petitioned, and 30% less likely to be referred to diversion.² Although Black youth make up only 35% of the population of 10-17 year-olds in Maryland, they accounted for approximately 75% of the population of juvenile jails.³ These disparities are even greater for younger children. In 2020, 71% of the children under 13 who were referred to Maryland juvenile courts were Black,⁴ and 83.8% of children under age 13 who were held in Maryland detention centers were Black.⁵

¹ Maryland Department of Juvenile Services, *Data Resource Guide Fiscal Year 2020* (December 2020) https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2020.pdf.

² Maryland Department of Juvenile Services, *Data Resource Guide Fiscal Year 2018*, 233 (December 2019) https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf.

³ C. Puzzanchera, A. Sladky, and W. Kang, "Easy Access to Juvenile Populations: 1990-2019." Online (2020). Available: <https://www.ojjdp.gov/ojstatbb/ezapop/>; Maryland Department of Juvenile Services, *supra* note 1 at 118.

⁴ Maryland Department of Juvenile Services, *supra* note 1 at 30.

⁵ *Id.* at 122.

This disparate treatment causes Maryland's Black youth great harm. The dangers of youth incarceration are well-known. Not only do juvenile jails and prisons not promote rehabilitation, but they place youth at risk of physical and psychological harm, interrupt their education, impact future employment outcomes, and impede healthy development by separating youth from their families and communities.⁶ In addition to these well-documented harms, research now shows that police contact even less intrusive than arrest and incarceration damages the mental health of youth of color.

A 2019 study of Black and Latino boys in the ninth and tenth grades found that police stops negatively affected their psychological well-being six, twelve, and eighteen months after the stops occurred.⁷ Youth who experienced more frequent police stops reported greater psychological distress, which they described as finding it hard to wind down, feeling downhearted and blue, and close to panic.⁸ A 2020 study found that youth who were exposed to police stops exhibited significantly greater odds of sleep deprivation and low sleep quality.⁹ This is consistent with other studies that list nightmares, flashbacks, and insomnia as symptoms commonly associated with the traumatic impact of police contact for people of color.¹⁰

There is no acceptable justification for the disproportionate harm caused to Black youth through arrest and incarceration. Their overrepresentation in juvenile court or jail cannot be explained by differences in the rates youth of color engage in delinquent behavior. In fact, forty years of data collected by researchers at the University of Michigan and the Centers for Disease Control show that youth of all races engage in risky, irresponsible, and dangerous behaviors at

⁶ Extensive research on the harms of juvenile detention demonstrates that detention increases recidivism and hurts public safety, affects dropping out and educational attainment, exacerbates or causes mental illness and trauma, exposes youth to increased abuse, and interferes with what is required for healthy adolescent development. Anna Aizer and Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*, National Bureau of Economic Research, NBER Working Paper No. 19102, 3-6, 9, 25 (2013); Justice Policy Institute, Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 8 (2006); Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, The Annie E. Casey Foundation, 12 (2011); National Academies of Science, *Reforming Juvenile Justice: A Developmental Approach* (2013); Richard A. Mendel, *Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update*, The Annie E. Casey Foundation, 6-29 (2015); Thomas J. Dishion and Jessica M. Tipsord, *Peer Contagion in Child and Adolescent Social and Emotional Development*, 62 Annual Review of Psychology 189 (2011); Karen Abram, et al., *Suicidal Thoughts and Behaviors Among Detained Youth*, OJJDP Juvenile Justice Bulletin, 1-8 (July 2014); Sue Burrell, *Trauma and the Environment of Care in Juvenile Institutions*, National Child Traumatic Stress Network, 2-5 (2013); Edward Cohen and Jane Pfeifer, *Costs of Incarcerating Youth with Mental Illness*, for the Chief Probation Officers of California and California Mental Health Directors Association (2007).

⁷ Juan Del Toro, et al., "The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys," *Proceedings of the National Academy of Sciences of the United States of America* 116(7), 8261-8268 (April 23, 2019).

⁸ *Id.* at 8263.

⁹ Dylan B. Jackson et al., "Police Stops and Sleep Behaviors Among At-Risk Youth," *Journal of the National Sleep Foundation* 6(4), 1-7 (April 16, 2020).

¹⁰ Thema Bryant-Davis et. al., "The Trauma Lens of Police Violence against Racial and Ethnic Minorities," *Journal of Social Issues* 73, 852-871 (December 2017).

roughly the same rates.¹¹ Black youth are not inherently more dangerous, reckless, or impulsive than their white peers. White youth engage in risky behaviors at similar rates as Black and Hispanic youth, and they outpace youth of other races in certain dangerous behaviors, including carrying weapons.¹²

Implicit Racial Bias Leads to Racial Disparities

What accounts for the differences in the way youth of color are treated? Implicit racial bias offers one explanation. Powerful social stereotypes cause police officers and other decisionmakers to subconsciously associate Black people with crime and dangerousness.¹³ Implicit racial bias also causes decisionmakers to perceive Black children as older and more culpable, more dangerous and thus less deserving of diversion, and more deserving of incarceration.¹⁴ In one study, police officers overestimated the age of Black youth accused of a felony by 4.53 years, but underestimated the age of white felony suspects by one year.¹⁵ The older an officer thought the child was, the more likely the officer was to believe the child was culpable of the suspected crime.¹⁶ Researchers also found that civilian study participants perceived the “innocence” of Black children aged 10–13 to be equivalent to that of non-Black children aged 14–17 and the innocence of Black children aged 14–17 to be equivalent to that of non-Black adults aged 18–21.¹⁷ Implicit racial bias impacts the perceptions of judges, probation officers, and attorneys, as well as police officers.

Implicit racial bias leads to racially-disparate outcomes when decision-makers are given ambiguous decision-making criteria, broad discretion, and little oversight.¹⁸ Leading psychologists studying implicit racial bias and policing emphasized this point: “Where decisions

¹¹ Lloyd Johnston et al., *Monitoring the Future National Survey Results on Drug Use, 1975 - 2018*, University of Michigan, Institute for Social Research (January 2019); Centers for Disease Control and Prevention, “Trends in the Prevalence of Sexual Behaviors and HIV Testing National YRBS: 1991—2017,” National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention, (2017); Laura Kann et al., “Youth Risk Behavior Surveillance — United States, 2017,” *Surveillance Summaries* 67 (June 2018).

¹² Kann, *supra* note 11 at 13 (The prevalence of having carried a weapon was higher among white (18.1%) than black (10.8%) and Hispanic (12.7%) students and higher among white male (29.0%) than black male (15.3%) and Hispanic male (18.4%) students), at 34 (In 2017, more white youth than black youth reported carrying some type of weapon within the 30 days leading up to the survey.).

¹³ Marie Pryor, Kim Shayo Buchanan, and Phillip Atiba Goff, *Risky Situations: Sources of Racial Disparity in Police Behavior*, 6(3) Annu. Rev. Law and Soc. Sci., 43-60 (2020); Luca Guido Valla et al., *Not Only Whites: Racial Priming Effect for Black Faces in Black People*, 40(4) Basic & Applied Social Psychology 195-200 (2018); Andrew R. Todd, Kelsey C. Thiem, and Rebecca Neal, *Does Seeing Faces of Young Black Boys Facilitate the Identification of Threatening Stimuli?*, 27 Psychological Sci. 384 (2016).

¹⁴ Phillip Atiba Goff et al., “The Essence of Innocence: Consequences of Dehumanizing Black Children,” 106(4), 526-545 *Interpersonal Relations and Processes* (2014); Aneeta Rattan et al., “Race and the Fragility of the Legal Distinction Between Juveniles and Adults,” *PLoS One* 7, 1-5 (May 2012): 1-5; Sandra Graham and Brian S. Lowery, “Priming Unconscious Racial Stereotypes About Adolescent Offenders,” *Law and Human Behavior* 28 (October 2004).

¹⁵ Goff, *supra* note 14.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Pryor, Shayo Buchanan and Goff, *supra* note 13.

or behaviors are governed by clear-cut, binding norms, a decisionmaker is more likely to apply them fairly, without racial favoritism. But where rules or norms are vague, nonexistent, or not clearly applicable, people, including police officers, are more likely to act in ways that favor White persons and disfavor non-Whites.”¹⁹

SB 0853: A Step Forward

By reducing opportunities for implicit racial bias to impact decision-making and emphasizing the importance of treating all children like children, the measures proposed in SB 0853 take an important step forward in reducing the racial disparities in Maryland’s juvenile legal system.

- **Raise the Minimum Age**

The majority of children under age 13 who are processed in Maryland juvenile courts are Black.²⁰ Of the children under age 13 who were put through the trauma of juvenile court involvement in Maryland in 2019, approximately 5% were found guilty and placed on probation.²¹ Prosecuting pre-adolescent children violates international human rights standards,²² and Black youth, who are perceived as older and more culpable, are most vulnerable in legal systems that do not set an appropriate minimum age of juvenile court jurisdiction. The proposed law would protect these vulnerable children from harmful arrest and incarceration.

- **Reduce Youth Incarceration**

Black youth account for approximately 75% of the population of juvenile jails, even though they only make up 35% of youth ages 10-17 in the state.²³ Maryland incarcerates low risk young people at an alarmingly high rate. Two-thirds of Maryland children sent to youth prisons (“out of home placements”) are there for non-felony offenses.²⁴ One in three children are removed from their homes for technical violations of probation.²⁵ Research shows that sending youth with low risk of re-offense to youth prisons creates worse outcomes than if they had simply been left alone.²⁶ SB 0853 would decrease the

¹⁹ *Id.* (citing Dovidio JF, Gaertner SL. 2000. Aversive racism and selection decisions: 1989 and 1999. *Psychol. Sci.* 11(4):315–19).

²⁰ Maryland Department of Juvenile Services, *supra* note 1 at 30.

²¹ Maryland Department of Juvenile Services, *Data Resource Guide Fiscal Year 2019* (December 2019) https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2019.pdf.

²² The UN’s Global Study on Children Deprived of Liberty recommends that all UN member states set a minimum age of criminal responsibility no lower than age 14. United Nations, General Assembly, *Global Study on Children Deprived of Liberty, Report of the Independent Expert Leading the United Nations Global Study of Children Deprived by Liberty*, Manfred Nowak, A/74/50, 20 (July 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/213/15/PDF/N1921315.pdf?OpenElement>.

²³ Puzzanchera, Sladky, and Kang, *supra* note 3; Maryland Department of Juvenile Services, *supra* note 1 at 118.

²⁴ Juvenile Justice Strategy Group, The Annie E. Casey Foundation, *Doors to DJS Commitment: What Drives Juvenile Confinement in Maryland*, 13 (2015)

<https://djs.maryland.gov/Documents/publications/AECF%20Assessment%20of%20MD%20Dispositions%20%20Updated%20March%202016%20-%20Final%20PDF.pdf>.

²⁵ *Id.* at 4.

²⁶ *Id.* at 3.

number of Black youth needlessly incarcerated in Maryland by prohibiting the use of juvenile jail and youth prisons for children whose most serious alleged offense is a misdemeanor or technical violation of probation.

- **Limit Probation Terms**

Providing clear term limits for probation protects Black youth from being subjected to lengthy and unnecessary sentences based on biased perceptions that they are more culpable or more dangerous. Indeterminate probation terms are harmful to adolescent development.²⁷ Juvenile probation that is stretched over long periods of time and structured like adult probation (i.e. focused on technical compliance rather than tangible, holistic goals) places youth at greater risk of being violated, detained and committed, thereby deepening their involvement with the legal system and continuing racial inequity inside the system. SB 0853 would protect Black youth from these harms by providing clear limits on probation terms.

- **Increase Diversion**

Disturbing racial disparities in the use of diversion exist for Maryland youth. Youth of color were nearly twice as likely to have their cases referred to juvenile court intake, 50% more likely to have their cases petitioned, and 30% less likely to be referred for diversion.²⁸ Diversion keeps low-risk youth away from the stigma of the juvenile legal system and protects them from juvenile jail or prison. Increasing opportunities for diversion for Maryland youth will help ensure that children of color are treated like children.

Conclusion: Treat All Children Like Children

Maryland must treat *all* children like children. Childhood, including adolescence, must be protected as a critical time for development. Instead, youth of color are disproportionately subjected to the harms of arrest, jail, and prison, while being denied access to diversion and kept on probation for unnecessarily lengthy terms. We must end the criminalization of Black and brown youth, and begin to invest in their future by protecting their childhoods as a vital developmental stage. SB 0853 is an important step forward for Maryland.

²⁷ See The Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting It Right*, 17 (2018) <https://www.aecf.org/resources/transforming-juvenile-probation/>.

²⁸ Maryland Department of Juvenile Services, *supra* note 2 at 233.