

## STATEMENT IN SUPPORT OF HOUSE BILL 1338

I am submitting this Statement in support of House Bill 1338 on behalf of the Juvenile Rules Subcommittee of the Court of Appeals Standing Committee on Rules of Practice and Procedure. The subcommittee is currently in the process of undertaking a comprehensive review of the Rules on Juvenile Causes (Title 11 of the Maryland Rules).

Section 3-828 (a) of the Courts & Judicial Proceedings Article (CJP) makes it a misdemeanor punishable by up to three years in prison and a \$2,500 fine for an adult to willfully contribute to, encourage, cause, or tend to cause any act, omission, or condition that renders a child in need of assistance. CJP § 3-8A-30 (a) makes it unlawful, subject to the same penalty, for an adult willfully to contribute to, encourage, cause or tend to cause any act, omission, or condition which renders a child delinquent or in need of supervision. **We certainly have no objection to those provisions**, although we believe they more properly belong in the Criminal Law Article, which is where HB 1338 proposes to move them.

The real problem is with CJP §§ 3-803 (c) and 3-8A-03 (b), which give the Juvenile Courts “concurrent jurisdiction” over those offenses. Because the offenses are misdemeanors, that jurisdiction is concurrent with that of the District Court. Because the possible sentence is three years in prison, a defendant charged with the offense has a right to a jury trial, which makes the Juvenile Court jurisdiction concurrent with the criminal

division of the Circuit Courts as well.<sup>1</sup> That, in itself, is an anomaly. I am not aware of any other crime over which three different Maryland courts have concurrent trial jurisdiction. The problem is not just an anomaly but presents significant procedural issues. In a nutshell, placing **criminal** jurisdiction over **adults** in the Juvenile Court, which is a civil court that otherwise focuses solely on children, is a classic example of forcing a square peg into a round hole. All of the Rules of criminal procedure are in Title 4 of the Maryland Rules, and it is not clear how some of them could be applied in a Juvenile Court.

The Code tacitly recognizes the problem by **requiring** the Juvenile Court to waive its jurisdiction on motion of the State’s Attorney or the adult defendant, so that “the adult shall be tried in the criminal court according to the usual criminal procedure.”. *See* CJP §§ 3-803 (c) (2)(ii) and 3-8A-03 (b). The question is why the “usual criminal procedure” should not apply automatically for a defendant facing three years in prison. Juvenile Court judges and magistrates are no doubt generally familiar with criminal procedure, but it is not their daily focus. The Juvenile Rules Subcommittee has recognized that, to provide the protections that the law mandates in criminal proceedings, whole blocks of the Rules in Title 4 would have to be incorporated, at least by reference, into Title 11—the Rules on pretrial release, waiver of counsel, waiver of jury trial (which cannot occur

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<sup>1</sup> As the Committee no doubt is aware, there are no separately created Juvenile Courts in Maryland. The Juvenile Courts are a division of the Circuit Courts. *See* CJP §§ 3-801 (i) and 3-8A-01 (j) defining “court” for purposes of those two subtitles as “the circuit court for a county sitting as the juvenile court.”

in Juvenile Court), discovery, plea agreements, motions to suppress evidence, sentencing procedures, revisory power over sentences, all of which to convert a court designed as a civil court focusing on children into an adult criminal court.

The only advantage asserted for putting this criminal jurisdiction into the Juvenile Court is that it allows that court to coordinate its authority over the adult with its authority over the child, but that is not necessary to achieve that goal. CJP §§ 3-821 and 3-8A-26 authorize the Juvenile Court to “issue an appropriate order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court” if the court finds that the conduct “(1) Is or may be detrimental or harmful to a child over whom the court has jurisdiction; (2) Will tend to defeat the execution of an order or disposition made or to be made under this subtitle; or (3) Will assist in the rehabilitation of or is necessary for the welfare of the child.” That authority applies to “a person not a party to the petition” provided that the person is given notice and has an opportunity to contest a proposed order. That gives the court all the authority it needs to control an adult’s conduct without invoking criminal procedure foreign to the exclusive mission of the court.

Another cogent reason for repealing this element of jurisdiction in the Juvenile Court is that it isn’t being invoked. A decade ago, when a Rules Committee workgroup first began reviewing the Juvenile Rules, we asked the Administrative Office of the Courts for data on how many “contributing” cases were being filed in the Juvenile Courts, and the answer, for 2009, 2010, and 2011, was a total, for the three years, of four,

all in Garrett County. We asked AOC for an update in connection with our current review, and the answer, for 2017, 2018, and 2019 was a total of zero. The State's Attorneys, Statewide, have recognized that the Juvenile Courts are not the place to bring and try these cases.

Respectfully submitted.

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