



PAUL DeWOLFE

PUBLIC DEFENDER

KEITH LOTRIDGE

DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN

DIRECTOR OF POLICY AND DEVELOPMENT

KRYSTAL WILLIAMS

DIRECTOR OF GOVERNMENT RELATIONS DIVISION

ELIZABETH HILLIARD

ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

POSITION ON PROPOSED LEGISLATION

BILL: HB877 - Juveniles Charged as Adults - Confinement

POSITION: FAVORABLE WITH AMENDMENT

DATE: March 24, 2022

The Office of Public Defender is supportive of the general aim and intent of HB877, and we are grateful to the Department of Juvenile Services for working to bring Maryland into compliance with federal directive. We do, however, offer this statement to express several concerns that remain with the current language in this bill and the unintended consequences presented with its passage without any further revisions. In particular, and most importantly, the Office of the Public Defender is concerned that HB877, in its current proposed construction, does not in its entirety address the issue of housing children and youth under the age of 18 in adult jails and prisons.

Children under 18 should never be housed in adult jails or prisons. For years, Maryland has failed to ensure the separation of juveniles and adults in correctional facilities. Human rights groups have been documenting the horrible conditions children face in adult facilities in Maryland for decades.¹ Adult jails and prisons in Maryland regularly violate federal laws prohibiting sight and sound separation for youth. Adult facilities cannot provide the mandatory education services all children are entitled to under the law. Children housed in adult jails and prisons are at high risk of violence – especially sexual assault.

For that reason, the U.S. Congress renewed the Juvenile Justice Delinquency Prevention Act² (JJDP) in 2018. The JJDP has four core requirements: deinstitutionalization of status offenders, separation of juveniles from adults in secure facilities, sight and sound separation between juveniles and adults in jails and lockups, and the reduction of racial and ethnic disparities within the juvenile justice system. Maryland continues to be out of compliance with this important federal legislation. HB877 is necessary to bring Maryland into compliance with federal law, a prerequisite for receiving critical federal juvenile justice funding.

The Office of the Public Defender strongly supports mandating children be housed in juvenile facilities and establishing clear prohibitions on having sight or sound contact with adult inmates while a child is awaiting trial or other legal process. However, the current proposed construction

¹ Vincent Schralid & Marc Schindler, Op-Ed Maryland must overhaul its juvenile justice system, BALTIMORE SUN, Dec. 17, 1999. www.baltimoresun.com/news/bs-xpm-1999-12-17-9912170111-story.html.

² 34 U.S.C.A. § Subt. I, Ch. 111.



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of HB877, while protecting youth who are not eligible for transfer, would reduce the protections for youth who are eligible for transfer.

In 2014, this body passed SB515 to ensure sight and sound separation between children and adult in adult jails and prisons.³ Criminal Procedure § 4-202 was revised to make transfer to a juvenile facility mandatory for youth charged as adults while pending a transfer hearing unless the child was released, there were no beds available at any juvenile facility, or there was a specific danger to the child or others if housed at a juvenile facility. The proposed legislation would eliminate a number of the protections Maryland put in place by SB515 in 2014.

While this bill would expand the universe of youth eligible to be held in a juvenile facility, it would also expand the exceptions to the general rule that youth should not be held at adult facilities. The current iteration of the bill provides vague guidance to judges and allows for exceptions that could be used to fit every circumstance where a child would be held in an adult facility. For example, the third factor in the proposed exceptions is the nature and circumstances of the alleged offense. For a child to be charged as an adult the allegations will always be serious and anyone could make the argument that that factor weighs in favor of holding every youth charged as an adult in an adult facility.

The Office of the Public Defender believes that this bill should outright bar children from being held in adult detention centers.

If the committee is unwilling to commit to protecting children from the harms of pretrial detention in adult jails, we suggest instead that the current standard, mandating transfer to a juvenile facility for youth who are transfer-eligible, remain, and the committee apply the suggested language in the bill to children who are not currently eligible for transfer with a higher standard for any exception to the default of juvenile detention.

As such, we are offering the following amendments that could address this issue:

- a. On page 3, line 21: strike the proposed amendments to 4-202, leaving 4-202(H) intact.
- b. On page 6, line 29, add the following language to 4-202.3(A)(2)

(2) "CHILD" MEANS AN INDIVIDUAL UNDER THE AGE OF 18 YEARS WHO IS NOT ELIGIBLE FOR TRANSFER TO JUVENILE COURT PURSUANT TO 4-202(C)(2).

We therefore urge a favorable report by the Committee on HB877, with amendments.

³ 2014 Maryland Laws Ch. 178 (S.B. 515).