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Position on Proposed Legislation

BILL: SB 768 Criminal Law - Victims of Child Sex Trafficking - Safe Harbor and Service Response
FROM: Maryland Office of the Public Defender
POSITION: Favorable
DATE: March 7, 2022

The Maryland Office of the Public Defender respectfully requests this Committee issue a favorable report on Senate Bill 768.

Too often, young people who are victims of trafficking find themselves having to choose between two kinds of imprisonment - that inflicted by their traffickers and that threatened by the State of Maryland's juvenile courts.

Juvenile courts often use secure detention as a means to protect youth without adequate consideration of the trauma that secure detention can inflict on already traumatized youth. Youth exposed to trauma run away from those who inflict the trauma, quite often into another situation that, while unsafe, may seem safer than home. While federal law prohibits the incarceration of youth for status offenses such as runaways, there is a loophole (the valid court order exception) that allows states to imprison youth who have violated a court order. The use of detention to address status offenders is counterproductive and tends to exacerbate the underlying issues those children face.¹ Worse yet, status offenders are disparately detained depending on their gender, as girls are more likely than boys to be detained for status offenses.²

The Office of the Public Defender has represented countless teenage runaways who are forced into prostitution - a pathway all too familiar to anyone who has dealt with victims of domestic sex trafficking.³ Our clients often "do not seek help or resist intervention from law enforcement or

¹ See Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, National Academy of Sciences (2013) at 164.

² *Report of the Attorney General's National Task Force on Children Exposed to Violence* at 182, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

³ See Jessica Lustig, *The 13-Year Old Prostitute: Working Girl or Sex Slave?*, New York Magazine (April 1, 2007), available at <https://nymag.com/news/features/30018/>; President Barack Obama, *Remarks by the President to the Clinton Global Initiative*, (September 25, 2012, available at <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>; see also *Very Young Girls*, a film which documents

social service organizations because they do not know their rights, they feel ashamed, they are reluctant to admit to victimization, or they fear their traffickers.”⁴

The federal directive for how to help young people in this situation is clear: “Help, do not punish, child victims of sex trafficking.”⁵ The U.S. Attorney General’s *National Task Force on Children Exposed to Violence* asked localities to ensure that local law enforcement and prosecutors work to protect the rights of child victims instead of continuing with outdated views that teens were willing participants and charging them with prostitution-related crimes.⁶ The Task Force report further directs that “[c]hild victims of commercial sex trafficking should not be treated as delinquents or criminals.”

Instead of incarceration and out of home placements, juvenile justice should focus on returning these youth to their communities, noting that “the key elements to trauma-informed, gender-responsive juvenile justice programs exist in every community. Very simply, programs that are good for girls, especially those recovering from exposure to violence, weave together family, community, and systems of care.”

Unfortunately, while Maryland, like many other states, prohibits the use of secure detention for status offenders on paper⁷ but courts use the valid court order exception to incarcerate children status offenders for “their own safety. The Office of the Public Defender supports SB 768 as it clarifies the law to make clear that victims should not be treated as delinquents. This position is supported by stakeholders across the criminal legal system, “The task force, consistent with federal policy, recommends strongly that child victims of commercial sex trafficking be treated as victims and not as delinquents or criminals. **They should not be locked up in juvenile detention facilities, placement programs, or jails** but instead should be given safe harbor in facilities specially designed to address their unique needs.”⁸

The National Academy of Sciences similarly argues against detention for victims of trafficking, finding that “secure detention deprives youth of opportunities that are vital to healthy development, including access to activities that lead to self-efficacy and critical thinking, connections with peers who exhibit prosocial behavior and value academic success, and adequate health and mental health care.”⁹ The National Academy of Sciences found that secure detention places victims of trafficking

commercial sexual exploitation of girls in New York City, information available at <https://www.gems-girls.org/shop>.

⁴ See Note 2 at 188.

⁵ *Id.*

⁶ *Id.* at 189.

⁷ Linda A. Szymanski, *What is the Valid Court Order Exception to Secure Detention for Status Offenders?* National Center for Juvenile Justice (2011).

⁸ See Note 2 at 189.

⁹ Ellen Wright Clayton, Richard D. Krugman, and Patti Simon, *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, National Academy of Sciences (2013) at 202.

at greater risk, as “secure detention can be an additional trauma and is therefore especially harmful to minors who are victims of commercial sexual exploitation and sex trafficking.”

Understanding, however, that youth who have been sexually trafficked are often detained for running away, truancy, or violating other conditions of probation, the Office of the Public Defender supports prohibiting detention for all youth who are suspected victims of sex trafficking instead of limiting the detention prohibition to youth detained for “qualifying offenses.”

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 768.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.