



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

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The Sentencing Project

In support of HB459

Before the Maryland Senate

Committee on Judicial Proceedings

Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy and addressing unjust racial disparities and practices. We are grateful for this opportunity to submit testimony generally supporting HB459.

This legislation was derived from JJRC's excellent work, started under SB856/HB606 in the 2019 legislative session. Such a task force might have met a few times and put forward tepid recommendations that more study or more data are needed to address the needs of our youth. Instead, the JJRC addressed the minimum age of jurisdiction, diversion, probation and detention reform, the utilization of out-of-home commitment, and youth charged as if they were adults. In each case -- except the last of these issues, where it did not initially look for the data nor use available proxies -- the JJRC found that the juvenile justice system is pervaded by racial and ethnic inequities and that it can be made smaller for the betterment of youth and the state of Maryland. (A year later, the JJRC reviewed transfer data and also put forward a strong recommendation to reform Maryland law.)

As a member of the Maryland Youth Justice Coalition, The Sentencing Project supports the bill. As with our testimony last year for SB853, this testimony is limited to two issues:

1. Support for raising the minimum age of juvenile court jurisdiction.
2. Support for limiting the use of detention and commitment.

Maryland Should Remove Children Under 13 years old from its Juvenile Courts

HB459 removes almost all cases of children under 13 years old from the jurisdiction of the juvenile justice system. Dismissal and informal handling of youth cases is a common outcome for all youth, but even more so for the youngest children. Just one in four complaints involving a child under 13-year old has authorized formal petitions in FY2020, a rate consistent with prior years. Removing children under 13-years old from the courts' jurisdiction would have removed 374 children from formal processing in FY2020; just three percent of them were charged with felonies.¹

These arrests open the pipeline for young children to spend their lives enmeshed in the justice system. Probation is a common sentence, offered in roughly one quarter of formally processed cases, meaning about 100 children under 13 years old are issued juvenile probation every year. The decision to keep these children in the system at all is likely to lead to deeper involvement subsequently. A child who shoplifts while on probation may be incarcerated for it; a child who is not on probation will not.

¹ Data in this testimony relies on the pre-pandemic numbers available in Maryland Department of Juvenile Services's Data Resource Guide for FY2020.

Removing these children from the juvenile courts is a modest reform, which is not to say it is unnecessary. Roughly 30 percent of Maryland's children are non-Hispanic Black,² yet in FY2020, more than 70 percent of intake complaints involving children under 13-years old involved Black children.

Maryland's experience disproportionately arresting its Black youth aligns with research showing Black youth in this country are not allowed a childhood. Psychologist Phillip Atiba Goff and his colleagues found Black youth -- especially boys -- are viewed as less innocent than their white peers and, moreover, are estimated by law enforcement and the general public to be much older than their actual age.³

The correct response is to remove children from the jurisdiction of the courts entirely without carveouts for a set of exceptionally rare circumstances. The American Academy of Pediatrics⁴ and Society for Adolescent Health and Medicine⁵ both recommend passage of legislation to exclude children under 13-years old from juvenile courts entirely, as does The Sentencing Project.

Maryland Should Limit the Use of Detention and Commitment

The second piece of the bill, like the first, addresses the common-sense need to keep youth charged with low-level offenses out of detention and commitment. Youth charged with misdemeanors comprise about 40 percent of youth in detention. As with all points of contact with the juvenile justice system, Black youth are disproportionately detained: nearly 80 percent of youth in detention are Black.

Consistent with other states, Maryland is detaining and committing significantly fewer youth than in prior years, a change we can all welcome. The juvenile detention population fell from 275 in FY2014 to 145 in FY2020. Maryland has seven youth detention centers with a capacity for 411 youth. Thankfully, those facilities have many empty beds, with an average daily population of 253 youth in FY2020, 145 of whom are held on juvenile delinquency charges, alongside 108 youths held on criminal charges as if they were adults. Given the importance of peer interactions, placing youths

² Puzzanchera, C., Sladky, A. and Kang, W. (2020). "Easy Access to Juvenile Populations: 1990-2019." Online. Available: <https://www.ojjdp.gov/ojstatbb/ezapop/>

³ Goff, P. A., Jackson, M. C., Di Leone, B. A., Culotta, C. M., & DiTomasso, N. A. (2014). The essence of innocence: consequences of dehumanizing Black children. *Journal of personality and social psychology*, 106(4), 526–545. <https://doi.org/10.1037/a0035663>

⁴ Owen MC, Wallace SB, AAP Committee on Adolescence. Advocacy and Collaborative Health Care for Justice-Involved Youth. *Pediatrics*. 2020;146(1):e20201755

⁵ Society for Adolescent Health and Medicine (2016). International Youth Justice Systems: Promoting Youth Development and Alternative Approaches: A Position Paper of the Society for Adolescent Health and Medicine. *The Journal of adolescent health : official publication of the Society for Adolescent Medicine*, 59(4), 482–486. <https://doi.org/10.1016/j.jadohealth.2016.08.003>

who are at a low risk of reoffending or have been charged with low-level offenses in detention is a pathway toward more serious offending.

Following the closure of J. DeWeese Carter Center and Meadow Mountain Youth Center, Maryland has five DJS-operated commitment programs. Their closures were correctly predicated on the fact that they are unnecessary, given excess capacity elsewhere. The average daily population of committed youth fell from 901 in FY2014 to 314 in FY2020.

Nevertheless, DJS's \$255 million budget is heavily weighted toward operating these facilities. Essentially half of DJS's budget is directed toward state-operated facilities. Surely, this legislature can find a better use of \$136 million. Limiting detention and commitment for low-level offenses is another step toward closing more facilities and directing the savings toward all our youth, away from these facilities, giving them and their families the support they need to thrive.

Maryland Youth Cannot Wait for Comprehensive Reforms

HB459 makes important first steps to ensure that Maryland adopts best practices that have been established over the past 15 years. These reforms will ensure that as many children as possible are treated with community based services that lead to better public safety outcomes at a fraction of the cost of deep end interventions. If done intentionally, there is the opportunity to also reduce the pervasive racial disparities that persist in Maryland. Finally, it will ready the system to expand what services they are also offering to the young people that Maryland has discarded in the adult criminal justice system. Now is the time to address these reforms.