

Testimony to the House Judiciary Committee
HB 0459 Juvenile Justice Omnibus Bill
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My name is Marc Schindler. I serve as the Executive Director of the Justice Policy Institute (JPI), a national research and policy organization with expertise on criminal and juvenile justice issues. Over the last decade, JPI has released over a dozen policy and research reports on the Maryland justice system.

I am testifying today to offer my strong support of HB 0459, which will codify important recommendations by the Juvenile Justice Reform Council (JJRC).

By way of background, I have had the opportunity in my career to view the justice system from several different angles. I come to this issue today with perspective drawn from experiences both inside and outside the criminal justice system. After graduating from the University of Maryland School of Law, I began my legal career over 20 years ago with the Maryland Office of the Public Defender, representing children in Baltimore's juvenile court. At that time I also chaired the Baltimore City Bar Association Juvenile Justice Committee. I then spent eight years as a staff attorney with the Youth Law Center, a national civil rights law firm. Then, I held several leadership roles within the Washington, DC Department of Youth Rehabilitation Services, Washington, DC's juvenile corrections agency, including serving as General Counsel, Chief of Staff, and Interim Director between 2005 and 2010. Prior to joining JPI, I was a partner with Venture Philanthropy Partners (VPP), a Washington-based philanthropic organization.

I want to start by commending the legislature for creating the JJRC, and the JJRC for its outstanding work. Supported by technical assistance from the Vera Institute of Justice, the JJRC devoted considerable time researching best practices regarding the treatment of youth who are subject to the criminal and juvenile justice systems and identifying recommendations to create a fairer and more effective system in Maryland. This is exactly the type of approach to policy-making that Maryland should be pursuing consistently. The recommendations being offered are research-based and will allow Maryland to much more effectively "right-size" its system, ensuring that precious taxpayer dollars are focused on youth who most need resources and attention to get them on the right track. This is in contrast to spending considerable time and resources on youth who can best be served outside the system or will likely age out of delinquent behavior without further involvement in the justice system.

While Maryland had made progress in recent years in how it responds to youth in the juvenile justice system, the system and the approach is still not aligned with best practices in the field. Moreover, decades of dysfunction has led to Maryland having amongst the worst racial disparities in the country for justice system involved youth and young adults. We all should be compelled to make swift, thorough, and permanent reforms to our state's juvenile justice system. HB 0459 Youth Justice: Omnibus Reform package encompasses many of the recommendations of the JJRC authorized by the legislature in 2019 to examine best practices regarding the treatment of youth to limit or otherwise mitigate risk factors that contribute to young people coming into contact with the criminal and juvenile justice systems. Based on my experience helping to lead DC's juvenile justice system, where we shifted to a developmentally appropriate approach in which low level youth were diverted out of the system, secure confinement was reserved for the most high risk youth and for the shortest amount of time consistent with treatment needs and public safety, and emphasis was on investing in community based

supports, services and opportunities for youth and their families, it is critical for states to implement policies and practices that will focus on the highest risk youth. We recently published a report, Smart, Safe & Fair II, which described DC's work in this area as well as that of three other jurisdictions that have made substantial progress in implementing such an approach. In my view, passage of HB0459 would be a very good step in that direction for Maryland.

The youth and adult criminal justice systems are fundamentally different. The purpose of establishing the juvenile court 120 years ago was to develop age-appropriate rehabilitative responses in recognition of the developmental differences between children and adults. Since the founding of the juvenile court system, crimes committed by children below the legal age of majority were mostly handled in those courts. The juvenile court's role has evolved as an expanding portfolio of research reinforces the principle that children do not have fully-developed decision making skills, lack requisite impulse control, and are more amenable to rehabilitation than adults. Thus, their culpability for crimes is different than adults, and there is recognition that they should be subject to different laws, different courts, and a distinct set of correctional responses.

However, during the "tough on crime" era of the 1980s and 1990s, lawmakers eroded many of the barriers between the adult and juvenile justice systems and pushed for more punishment at the expense of rehabilitation. This included both more punitive responses within the juvenile justice system as well as enacting laws that allowed for transfer of youth into adult criminal court for certain serious offenses. Further, many states even lowered their age of adult jurisdiction to include all 16 or 17-year old's in the adult criminal justice system, regardless of the committing offense. That meant that a young person would be subject to the dangers of being housed with adults in jails and prisons, face adult punishment for their crimes, carrying the stigma of that crime for the rest of their lives, hampering their ability for future education, stable housing, and a steady career.

House Bill 0459 does not remove accountability. Youth will still face accountability for the crimes they commit; yet this step will ensure that Maryland aligns itself with the latest research in youth justice as well as with other states that have successfully implemented reforms proven to have increased public safety while placing youth on the road to rehabilitation.

Resourcing and developing age-appropriate approaches for youth can offer Maryland a path forward, focused on investing in youth rather than simply giving up on and warehousing them for much of their life. It is a tragic loss of potential for the individual, their families, and their communities. Early interventions that work and are targeted to youth include rolling back costly and cruel practices like extreme sentences, incarceration for low-level offenses, and indefinite probation. All of which are incongruous with Supreme Court jurisprudence and areas that are addressed in HB 0459.

This legislation would move Maryland closer to other jurisdictions that use developmentally appropriate and research-based approaches, and improving outcomes for justice system involved youth in Maryland by:

Raising the minimum age for children to be subject to court jurisdiction

According to a report from the MacArthur Foundation, the largest study of young people's competency to stand trial found children 12 and under demonstrate significantly poorer understanding of trial matters, poorer reasoning, and less ability to recognize relevant information for a legal defense. Moreover, the vast majority of children 12 and under who are arrested *do not* end up on probation or committed, but the arrest itself can traumatize and stigmatize a child for years to come.

Nationally, Maryland has some of the worst racial disparities throughout the justice system, and juvenile arrests and convictions are not exempt from that trend. [More than 70 percent of all people in Maryland's prisons, double the national average, and almost 80 percent of people serving at least 10 years, are Black.](#) These are the highest rates in the country, outpacing Louisiana, Mississippi, and Georgia. And, according to testimony from the Office of the Public Defender, youth arrests follow this trend with 75% of the children under the age of 13 arrested in Maryland in 2020 being Black or Hispanic. And according to the Maryland Youth Coalition, 81% of children charged in adult court in Maryland are Black. Even when accounting for the type of offense, Black youth are more likely to be sent to adult prison and receive longer sentences than their white counterparts.

Even China, who is currently being scrutinized for violations of human rights, [has a minimum age of juvenile court jurisdiction of 14 years old](#) and offers a layer of protection for youth in their juvenile justice system.

Placing developmentally appropriate time limitations on probation

A juvenile legal system that allows young people to take accountability for wrongdoing and accept responsibility are crucial for healthy adolescent development. When consequences are far removed, in time, from the underlying offense young people do not connect the consequences to their actions and can perceive the system as unfair. This reinforces social disaffection and negative attitudes toward the law.

It is therefore essential that youth probation be designed to ensure young people have a meaningful opportunity to meet finite goals successfully in a developmentally appropriate time period. There is a clear correlation in the length of probation and increased recidivism. According to the Maryland Department of Juvenile Services 2021 Annual Report, in 2019, the recidivism rate for youth under a six-month probation was 31 percent compared to a 50 percent recidivism rate for those on two year probation.

When youth probation is structured like adult probation, focused on technical compliance rather than tangible, holistic goals, it places youth at greater risk of being violated, detained, and committed. The likely result is more involvement with the criminal justice system and when this occurs disproportionately to youth of color it also increases the existing racial inequity inside that system. Maryland's system of indefinite probation is inconsistent with expert recommendations that children be limited to no more than nine months' probation, if at all.

Instead of simply keeping an eye on youth or making them follow the rules, more developmentally appropriate probation and aftercare focuses on engaging a young person in behavior change, partners with community organizations, works with families, and attempts to limit the likelihood a young person's supervision will be revoked. [Juvenile justice systems in Connecticut, Washington, DC, Georgia, Illinois, Louisiana, Massachusetts, Mississippi, and New York have implemented changes to make their probation or aftercare approaches more effective.](#)

Connecticut changed its community supervision approach to prohibit young people from being detained or re-committed to a facility based simply on a technical probation violation and instituted a set of graduated incentives for probation officers to use to help young people change their behavior and reduce the number of youths revoked and re-incarcerated. Connecticut's approach to juvenile probation also shifted to rely more on counseling and treatment, allowing more youth to be at home, and in turn reducing the number of individuals

confined or placed out of the home. Connecticut developed 58 centers around the state that offer increased individual or group programming for young people on probation—when appropriate—and reduce reliance on a residential setting.

Removing barriers to diversion so that courts may allow for more restorative measures

Diversion adjudication measures promote a system of restorative justice, which is likely to result in less recidivism both for the remainder of their youth as well as into adulthood. These measures can include substance abuse rehabilitation, mental health treatment, mentoring programs, job training, mediation and community service and other restitution measures outside of incarceration and fines.

Moreover, diversion can be uniquely tailored to the needs of each child as a true restorative justice measure while saving the state significant cost in the form of reduced court caseloads and the immense expense of future incarceration through reduced recidivism.

More developmentally appropriate juvenile justice approaches seek to ensure that when a young person comes into contact with law enforcement, he or she is not arrested nor formally processed by the justice system. Instead, juvenile justice systems are finding ways to hold youth accountable through cost-effective approaches that help youth move past delinquency. [Juvenile justice systems in Connecticut, Washington, DC, Illinois, Louisiana, Mississippi, North Carolina, Michigan, and Texas have all taken steps to expand the use of pre-arrest or pre-adjudication diversion.](#)

North Carolina took significant steps to expand the use of diversion, reduce the number of youth in pretrial detention and post-adjudication facilities, and focus more of their juvenile justice resources on community-based approaches. As a result of taking these steps towards a more developmentally appropriate juvenile justice approach, one stakeholder body tasked with evaluating North Carolina's judicial system offered that the state has already built the capacity and generated the resources to raise the age. [The \\$44 million in cost savings that North Carolina's Division of Juvenile Justice generated over the past decade by closing and reducing reliance on facilities and using more effective practices to manage justice-involved youth built the capacity for the system to serve 16- and 17-year-old youth.](#)

By removing barriers to diversion, courts will allow for more restorative measures. [When low-risk youth are diverted, they're 45 percent less likely to reoffend. Counseling, skill-building, and restorative justice diversion programs reduce chances of reoffending by ten percent where probation supervision only reduces that chance by one percent.](#)

Banning child incarceration for low-level offenses

This legislation would prohibit incarceration for children who have been charged with only a misdemeanor or technical violation of probation, thus mitigating the risk for physical and emotional harm and separation from their families.

Limiting incarceration of youth alleged to have committed a misdemeanor or technical violation of probation, would allow DJS to better leverage its resources to provide focused programming for those young people who face the most serious charges and are at the highest risk of re-offense. Youth incarceration solves very little when compared to community-based programming tailored to the child, providing them the assistance they often need to thrive

From a fiscal standpoint, incarceration comes with immense cost to taxpayers. On a per child basis, Maryland spends more than 48 other states on incarcerating youth. It can [cost \\$414,000 a year, to incarcerate one youth in Maryland](#).

Young people offer tremendous opportunities for change and redemption, given a chance to learn and participate in supportive programming. A failure to invest in our young people involved in the justice system has been catastrophic for the Black community, and it is long past time that we chart a new course. For this, JPI strongly urges favorable consideration of HB 0459.

Thank you for your consideration and I would be happy to answer questions.