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POSITION ON PROPOSED LEGISLATION

BILL: SB 704 - Children Charged as Adults - Confinement

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendments

DATE: 2/21/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report with amendments on Senate Bill 704.

The Office of Public Defender is supportive of the general aim and intent of SB704, 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 SB704, 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 documented the horrible conditions children face in adult facilities in Maryland for decades.¹ Adult jails and prisons in Maryland regularly violate federal laws prohibiting site 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.²

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 “[M]ost adult jails or prisons are ill-equipped to meet the needs of children or keep them safe. They are **much more likely to commit suicide** in an adult jail than in a juvenile facility. They are also **five times as likely to be sexually abused or raped** as they would be in a juvenile facility. Some of these youth are confined in facilities along with adults, where they may witness as well as be the target of violence.” *Report of the Attorney General’s National Task Force on Children Exposed to Violence* at 190, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> at page 190 (emphasis added) (internal citations omitted).

For that reason, the U.S. Congress renewed the Juvenile Justice Delinquency Prevention Act³ (JJDP A) in 2018. The JJDP A has four core requirements: deinstitutionalization of status offenders, separation of youth from adults in secure facilities, sight and sound separation between youth 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. SB704 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 of SB704, while protecting youth who are not eligible for transfer, would reduce the protections already in place for youth who are eligible for transfer.

In 2014, this body passed SB515 to ensure sight and sound separation between children and adults in adult jails and prisons.⁴ 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.

With that purpose in mind, we would concur with the amendments proposed by the Maryland Association of Counties (MACo) to last year's bill, HB877, which were:

1. On page 6, line 4 (previously line 6), after "release" insert "."
2. On page 6, line 4 (previously line 6), strike "; OR"
3. On page 6, strike lines 5 through 11 (previously 9 through 15) in their entirety

³ 34 U.S.C.A. § Subt. I, Ch. 111.

⁴ 2014 Maryland Laws Ch. 178 (S.B. 515).

4. In addition to MACo's suggested amendments to last year's bill, on page 6, strike line 19 through 29 and strike page 7, lines 1 through 10.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendments on SB 704.

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

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