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## POSITION ON PROPOSED LEGISLATION

**BILL:** HB 297, Criminal Law- Victims of Child Sex Trafficking and Human Trafficking- Safe Harbor and Service Response  
**FROM:** Maryland Office of the Public Defender  
**POSITION:** Favorable with Amendments  
**DATE:** February 6, 2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report with amendments on House Bill 297.

The Office of the Public Defender has represented countless young people who have been trafficked by the adults in their lives— both sex trafficked and labor trafficked.<sup>1</sup> Our clients often “do not seek help or resist intervention from law enforcement or 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.”<sup>2</sup> These young people should also be concerned about the potential systemic response to their situation as well: our system *often* responds to young people who are victimized by traffickers by locking them up “for their own safety.” Our system fears they will run away (when many *do* have a history of running away.) Our system fears they will return to their traffickers. Our system fears we will lose them. And so, they are locked in detention because of fear for their safety. But it is the wrong thing to do. Doing so should be outlawed in Maryland.

Detaining someone is inherently violent; the state locks you in a cage, with the threat of physical force if resisted. Detention is almost universally perceived by our clients as a rebuke or punishment. No matter how many times the system tells a young person they are being held in detention for their own protection, the young person perceives they are being criminalized and punished. Research shows that detention is actively harmful for young people, so, in effect, they are right. The harms of juvenile detention are well-documented. Secure detention exposes youth

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<sup>1</sup> 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 commercial sexual exploitation of girls in New York City, information available at <https://www.gems-girls.org/shop>.

<sup>2</sup> *Report of the Attorney General’s National Task Force on Children Exposed to Violence* at 188, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

to violence, exacerbates mental health issues, interrupts education, and leads to increased recidivism.<sup>3</sup> The National Academy of Sciences found that secure detention places victims of trafficking 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.”<sup>4</sup>

By detaining the very children society seeks to support, the system alienates them, breaks trust with them, and sends the message that the adults in the legal system are willing to harm them too, consistent with their already negative experience with adults. The federal directive for how to help young people in this situation is clear: “Help, do not punish, child victims of sex trafficking.”<sup>5</sup> 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.<sup>6</sup> The Task Force report further directs that “[c]hild victims of commercial sex trafficking should not be treated 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.”<sup>7</sup>

Many youth who are dually-involved in both DJS and DSS find themselves stuck in between. Taking secure detention off the table for these youth would force these agencies to coordinate finding services and housing in a community-based setting that is therapeutic instead of punitive.

The Maryland Office of the Public Defender urges a favorable report with the following suggestions. Understanding that youth who have been 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 trafficking instead of limiting the detention prohibition to youth detained for “qualifying offenses.” Young people may find themselves charged with offenses not listed as a direct result of being trafficked and should have access to similar relief. Similarly, understanding that many youth who come into contact with the justice system are coerced into performing labor for adults around them, such as distribution of controlled and dangerous substances, the Office of the Public Defender urges the committee to

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<sup>3</sup> Barry Holman and Jason Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 2-10 (2007).

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> *Report of the Attorney General’s National Task Force on Children Exposed to Violence* at 189, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

<sup>7</sup> *Id.*

adopt an expanded definition of human trafficking for the purposes of this subsection.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendments on HB 297.**