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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB 403 Juvenile Law – Electronic Harassment and Bullying –  
Inquiry by Intake Officer**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 2/14/2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 403.

House Bill 403 mandates that the Department of Juvenile Services (DJS) automatically forward complaints involving children alleged to have violated Maryland Criminal Law § 3-805, Misuse of Electronic Mail. The net effect of this bill will be increased prosecution of youth for a non-violent misdemeanor offense.

Under Court & Judicial Proceedings § 3-8a-10, when DJS receives a complaint, it conducts an initial inquiry as to whether the court has jurisdiction and whether judicial action is in the best interests of the public or the child. For misdemeanors not involving a handgun, the intake officer may offer pre-court supervision. Pre-court supervision is a statewide program that serves as the primary means of diverting youth from formal juvenile court processing. Sometimes called ‘informal adjustment’, pre-court supervision is a special agreement among the youth, parent, DJS, and other involved parties that holds youth accountable for their actions while enabling access to supportive and rehabilitative services. If the intake officer decides to ‘informalize’, the victim is notified of their right to appeal the decision to the State’s Attorney’s Office.

The intake decision is guided by the Intake Decision Tool (IDT). The validated risk screen incorporated into the IDT generates a risk score, which measures the risk of reoffending. Importantly, the IDT collects detailed information on social history factors, e.g., school, use of free time, employment, relationships in the community, and family, that are used to identify service needs, as well as prompting the appropriate service referrals. The IDT also requires that the intake officer consider any aggravating and mitigating factors, as well as any service access considerations that may be barriers to youth obtaining services.<sup>1</sup>

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<sup>1</sup> *Data Resource Guide, Fiscal Year 2021, DEP’T OF JUVENILE SERVICES 22 (2022), available at [https://djs.maryland.gov/Documents/DRG/Data\\_Resource\\_Guide\\_FY2022.pdf](https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2022.pdf).*

Throughout the intake process, the focus is on positive youth development (recognizing and building on the strengths and assets of youth) and family engagement (actively involving the youth and family voice in all aspects of case planning) – both of which promote successful outcomes.<sup>2</sup>

While it is generally agreed that the juvenile justice system is intended to rehabilitate youth rather than simply to punish, a great amount of research suggests that formal involvement in the juvenile justice system, especially when used for lower-risk youth, may cause harm to youth.<sup>3</sup> Normal adolescent development often includes risk-taking and experimentation, but most youth mature out of these behaviors when allowed to maintain a normal life trajectory while being held accountable for their actions.<sup>4</sup> Some scholars have found that youth become less likely to naturally grow out of offending the deeper they penetrate into the system.<sup>5</sup> In fact, one study found that recidivism or reoffending rates were generally lower for programs that diverted youth from the formal system.<sup>6</sup>

The research and studies available make one thing clear: diversion works. DJS has embraced these findings and worked to identify lower-risk youth and divert them from court. HB 403 seeks to circumvent these evidence-based efforts.

The Misuse of Electronic Mail statute encompasses a wide range of behavior, from merely annoying another repeatedly to harassment with intent that the victim commit suicide. Because the statute sweeps so broadly, the statute encompasses behavior which is better served through informalization. However, automatic forwarding to a State's Attorney will necessarily increase prosecution for low-risk youth which defeats the rehabilitative purpose of the juvenile justice system. While DJS uses a validated tool to make their decisions, State's Attorneys are not required to consider any mitigating circumstances or evidence-based practices prior to their charging decision. This 'net widening' is contrary to the goals and purposes of the juvenile justice system.

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<sup>2</sup> *Id.* at 21

<sup>3</sup> *Diversion from Formal Juvenile Court Processing*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Feb. 2017), [https://www.ojjdp.gov/mpg/litreviews/Diversion\\_Programs.pdf](https://www.ojjdp.gov/mpg/litreviews/Diversion_Programs.pdf).

<sup>4</sup> Bonnie, R. J., Johnson, R. L., Chemers, B. M., & Schuck, S., *Reforming Juvenile Justice: A Developmental Approach*, Washington, D.C.: National Academies Press (2013) <https://doi.org/10.17226/14685>.

<sup>5</sup> McAra, L., & McVie, S. (2007). *Youth Justice?: The Impact of System Contact on Patterns of Desistance from Offending*, 4(3), 315–345. <https://doi.org/10.1177/1477370807077186>.

<sup>6</sup> Robert D. Hodge and Holly A. Wilson, *The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review*, *Criminal Justice and Behavior*, Vol.40, No.5, 497-518 (May 2013). <http://journals.sagepub.com/doi/pdf/10.1177/0093854812451089>; see also Sara Krantz, *Review: The Effects Of Youth Diversion Programs On Recidivism*, CRIMEFREEFUTURE.COM, available at <https://www.crimefreefuture.com/review-effects-youth-diversion-programs-recidivism/>

The current law already provides a method for victims to appeal a decision to informalize a case. Thus, victims are not denied the opportunity to have a case reviewed by the State's Attorney. HB 403 unnecessarily funnels specific cases to the State's Attorneys, circumventing DJS's evidence-based practice and potentially harming youth.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 403.**

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

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