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POSITION ON PROPOSED LEGISLATION

BILL: HB 856 Correctional Services – Baltimore City Convicted Gun Offenders Pilot Program

FROM: Maryland Office of the Public Defender

POSITION: Oppose

DATE: 3/3/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 856. HB 856 seeks to authorize the Division of Parole and Probation (DPP) to create obligations and impose a heightened level of surveillance on individuals who are on parole or probation for a gun conviction. It does not provide any definitions for eligibility in the program nor parameters for the plans or goals that are to be developed.

Maryland caselaw makes clear that conditions of probation or parole must be imposed by the court, not DPP. See Edwards v. State, 67 Md. App. 276, 281–82 (1986) (reversing a violation of parole for not complying with a mandatory installment payment schedule because “[t]he Division's directive was not in furtherance of the court's order”); Costa v. State, 58 Md. App. 474, 484 (1984) (“We hold that as the order of the probation officer directing appellant to participate in the drug therapy program was beyond the general or special terms of probation, and therefore without authority of the sentencing judge, it was improper.”); Phelps v. State, 17 Md. App. 341, 344 (1973) (“A requirement for custodial care or treatment of an institutional nature should be imposed only by the court, and not, as a rule of conduct, by the probation agent.”).

While this bill allows for the court to impose participation in the program, it does not ensure that the obligations comply with the understandings and expectations of the parties and the judge at the time of the court’s order. This will hinder plea agreements in Baltimore City. DPP will establish individualized plans, guidance and supervision after sentence is imposed,

making it impossible for our attorneys (or any defense counsel) to advise clients on their risks and obligations for a term of probation or parole. Without the ability to know what obligations may be imposed upon a plea of guilt, the plea cannot be considered knowing and voluntary.

This bill will also increase racial disparities, which remain prevalent from arrest to sentencing, particular on gun charges. The lack of clear objective criteria both for inclusion in the program and for the specific conditions imposed make this program especially prone to further biases within the system and have a disproportionate impact on Black Marylanders.

Disparities in the criminal justice system do not end at the conditions imposed but continue through monitoring and enforcement. Balancing visits to probation and related monitoring with maintaining employment and other daily life functions is inherent challenging and often conflictual. Employers may have limited or no tolerance for time off needed to meet with a probation officer, or for an officer making an unannounced visit to a workplace to confirm one's employment. Ultimately, the result of this bill will be to increase instabilities, both in unrealistic requirements that individuals will try to meet and any subsequent incarceration that results from any perceived violation.

While HB 856 uses 'treatment' language suggesting a rehabilitative value, this bill is about enhanced surveillance and monitoring of individuals. DPP has neither the expertise nor mission to conduct clinical assessments and develop treatment plans. Its authority and mission is to provide supervision and monitoring.

Increased surveillance will not address the safety concern that lead Marylanders to own and carry guns in the first instance nor will it impact gun activity. Rather, it will target communities that experience violence and increase the instability of its residents.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 856.

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

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