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POSITION ON PROPOSED LEGISLATION

BILL: House Bill 814 Juvenile Law - Reform “Non-Technical Violations of Probation”

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 6, 2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 814, which proposes making two or more unexcused failures to appear at a treatment program ordered by the court a non-technical violation of probation.

Tying an unexcused failure to appear at a treatment program ordered by the court to a carefully and intentionally limited category of non-technical violations of probation, opening the door to the detention and commitment of a child for placement through the Department of Juvenile Services, ignores adolescent development and irrefutable brain science, and would further highlight significant racial and economic disparities among court involved youth.

First and foremost, the proposed statutory language is ambiguous and lacks necessary definition, which even the most reasonable of minds would struggle to collectively define. What constitutes an “unexcused failure”? Is that the failure of the child? Who may have no access to or ability to afford the internet for a virtual appointment? No cell phone or laptop to log in with? Is it the failure of a parent? Who is unable or unwilling to assist with the technological aspect? Who may lack a vehicle or the ability to take off of work to transport the child to an appointment at a program? And what about programs that require attendance upwards of 2-3 times per week? Who is obligated to categorize the absence as “excused?” The child, who may be 13 years old and likely lacks the contact information for the program, let alone a phone of their own? The parent, who is not the one on probation? And who, like *all* parents, should be forgiven for a few forgetful moments? Further, failures to appear - whether excused, unexcused, or otherwise - may not be wanton. They may not be willful. Who defines what a failure to appear is?

The proposition that a child, who is not old enough to either consent to or refuse medical treatment, needs assistance to get to a medical appointment, let alone a treatment program, and who cannot even excuse themselves from school for the day, should be subjected to a non-technical violation of probation and potential detention and out of home placement for missing two appointments at a treatment program, is absurd. The number of factors that are completely out of

a child's control in this situation are so many that they need not be listed to exhaustion. Further, the practical impact of this proposed legislation would result in virtually every single violation of probation proceeding resulting in a contested hearing, likely necessitating the involvement of the treatment program in the court proceeding, and making the treatment program the enemy of the child, rather than the rehabilitative resource and service that it is intended to be.

Additionally, this proposed addition to the world of non-technical violations is completely unnecessary, as the current legislation permits a youth's probation to be extended *at least* two times - or more, dependent on the underlying offense - where there is good cause found and where the purpose of extending the probation is to ensure that the child completes a treatment or rehabilitative program or service. Surely all involved parties can agree that the goal in such a situation would be to reintegrate the child into the treatment program and to work to resolve any issues to ensure their attendance. It would be nonsensical to punish a youth for failing to attend an appointment as few as two times. This defeats the entire purpose of the treatment program and is in direct conflict with the rehabilitative nature of juvenile court.

Last, this proposed legislation widens the door to commitment for court-involved youth, particularly low income youth of color. Looking back prior to the implementation of the JJRA, and before the distinction between technical and non-technical violations, there were times in Maryland when nearly 50% of probation violations resulted in placement, with what later became defined as technical violations accounting for 1 in 3 commitments statewide.¹ Youth were more than twice as likely to be committed for a VOP than for a violent felony. It would be irrational to argue that missing two appointments with a court ordered treatment program increases one's level of risk to an extent that would warrant removing that child from their home, detaining them, and committing them for placement.

The indeterminate harm that could result from this proposed amendment lacks justification, clear definition, or any rational reasoning.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 814.

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

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¹ The Annie E. Casey Foundation, *Doors to DJS Commitment: What Drives Juvenile Confinement in Maryland?* January, 2015.