



March 26, 2024

Josh Rovner, Director of Youth Justice, *The Sentencing Project*, SB 744 **Unfavorable**

Dear Chair Clippinger and members of the House Judiciary Committee,

The Sentencing Project **opposes SB 744**. We are re-submitting our written testimony from this committee's hearing held on February 8, 2024, on the House cross-file (HB 814) of this legislation. We have also submitted written testimony as a member of the Maryland Youth Justice Coalition (MYJC) in opposition of the bill. We respectfully urge an unfavorable vote on SB 744.

Sincerely,
Josh Rovner
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The Sentencing Project
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...

Established in 1986, The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. This bill would hastily reverse evidence-based recommendations from the Juvenile Justice Reform Council.

As discussed below, interventions like arrest, detention, and probation are generally harmful for youth when compared with alternatives. For those youth who are part of the system, contacts should be as brief as possible, referring youth to community-based service providers and avoiding lengthy contact with the court. This bill widens the net for system involvement, an approach more likely to backfire from its authors' stated goals of reducing youth offending and overall violence.

The Sentencing Project's opposition to HB 814 is rooted in its process and content. We oppose the way this bill is being rushed through the legislature, and we oppose the secretive process by which this bill was drafted.

More importantly, we oppose the substance of this bill.

- *More detention is likely to harm public safety.*
- *Diversion is beneficial for most children and adolescents, and this bill would restrict its use.*
- *This bill doubles terms of probation for most youth on probation.*
- *Arresting more 10-, 11- and 12-year olds will not ensure their access to services, only their access to court.*

The legislation is likely to harm all our children, but particularly youth of color.

HB814 is not beneficial to children and adolescents or for public safety.

More detention is likely to harm youth well-being and public safety.

Unless charged with a handgun violation, current law does not allow detention of youth charged with misdemeanors. The current policy is the right one since research consistently shows that detention increases the likelihood of subsequent offending:

- A 2020 large-scale examination of Washington state's juvenile cases found that detention was associated with a 33% increase in felony recidivism.¹
- A 2013 study of more than 35,000 youth in the juvenile system of Cook County (Chicago), Illinois, found that incarceration in a locked juvenile detention facility resulted in a 22-26% increase in the likelihood of subsequent incarceration in an adult jail or prison.²
- A 2022 report in Michigan found that confinement in a juvenile detention center as a youth resulted in a 39% increase in adult arrests for violent offenses and a 40% increase in adult arrests for all felony offenses.³

Detention should only be reserved for youth who pose an immediate threat to public safety, not those who have been accused of misdemeanors. Another provision removes detention reviews that determine which youth should return home. This is a recipe for overcrowded facilities and for worse outcomes for youth and for public safety.

Diversion is beneficial for most children, and this bill would restrict its availability.

The proposal mandates all cases be forwarded to DJS for formal processing, eliminating even police-run diversion programs that refer youth to local care teams, youth service bureaus, prevention services and law enforcement-based diversion programs. The Sentencing Project strongly objects to this harmful and thoughtless provision. Diverting more youth from formal court involvement would improve outcomes, and this bill restricts it.

As we report in a 2022 study of diversion, "Clear evidence shows that getting arrested in adolescence or having a delinquency case filed in juvenile court damages young people's futures and increases their subsequent involvement in the justice system. Compared with youth who are diverted, youth who are arrested and formally petitioned in court have far higher likelihood of

¹ Walker, S. C., & Herting, J. R. (2020). The impact of pretrial juvenile detention on 12-month recidivism: A matched comparison study. *Crime & Delinquency*, 66(13-14), 1865-1887.

² Aizer, A., & Doyle Jr, J. J. (2013). Juvenile Incarceration. *Human Capital and Future Crime: Evidence from Randomly-Assigned Judges*. NBER Working Paper No. 19102.

³ Baron, J.B., Jacob, B. & Ryan, J.P. (2022). Pretrial Juvenile Detention. NBER Working Paper No. 29861.

subsequent arrests and school failure. Pre-arrest and pre-court diversion can avert these bad outcomes.”⁴

It is possible that this provision is intended as a data collection measure, but the impact of the bill will be to clog the courts with children and adolescents who are best served elsewhere. This seems to be one of several provisions that would have benefited from public discussion.

Doubling terms of probation punishes youth for the government’s failures.

Legislative leaders argue that youth on probation occasionally time out of supervision without completing their services, often due to delays in finding appropriate and available providers. (Please note that the bill does not address this lack of providers.) In other words, youth would serve more time on probation not because of their own mistakes, but because of the government’s failure to find and fund appropriate services and then act promptly.

To be clear: current law *already* allows courts to extend probation if there is good cause to extend the probation and the purpose of the extension is to ensure the child completes a treatment or rehabilitative program or service.

That said, longer terms of probation are not likely to help youth thrive. The Office of Juvenile Justice and Delinquency Prevention has found the majority (63%) of youth nationwide referred to juvenile court are “one and done”: their first referral will be their only referral. On the other hand, the small proportion (14%) of youth who return to juvenile court more than four times generate almost half (45%) of all cases.⁵ For all the deserved attention on this latter group, the majority of youth who are referred to juvenile courts will not return, especially those diverted from formal court involvement entirely.⁶

Finding the correct response for referred youth is no easy task; practitioners cannot predict the future. However, for those youth who are referred to probation and are not re-arrested, no prediction is necessary: they are presently on a better path. A longer probation period is a recipe for catching more violations of probation, which are not criminal acts. And more violations means more surveillance of youth who are not committing crimes. This provision encapsulates the abrupt abandonment of the JJRC’s mission. Instead of finding the youth most in need of supervision and services, the legislature now intends to more closely monitor those at the lowest risk of reoffending.

Surveillance-based probation is not benign, and thus our goal should not be to hold onto these youths for as long as possible. Studies strongly suggest that probation doesn’t work -- with especially poor results for those youth with the lowest risk of rearrest.⁷

⁴ Mendel, R.A. (2022). Why Youth Incarceration Fails: An Updated Review of the Evidence. The Sentencing Project.

⁵ Puzzanchera, C. and Hockenberry, S. (2022). Patterns of Juvenile Court Referrals of Youth Born in 2000. Office of Juvenile Justice and Delinquency Prevention.

⁶ Mendel, R.A. (2022). Diversion: A Hidden Key to Combating Racial and Ethnic Disparities in Juvenile Justice. The Sentencing Project.

⁷ Annie E. Casey Foundation (2018). Transforming Juvenile Probation: A Vision for Getting It Right.

Instead of punishing youth with additional supervision for the government's failure to act swiftly, DJS should make sure the appropriate programs exist and ensure speedy placement of children and adolescents. The proposal on the table is an escape hatch for public-sector incompetence that punishes teenagers instead of holding DJS accountable.

Arresting more 10-, 11- and 12-year olds will not ensure their access to services, only their access to court.

For 10 years, between FY11 and FY20, 19,000 young children were referred to Maryland's juvenile courts. Formal complaints were filed in 6,000 of these cases. Half of the formally processed cases were dismissed, withdrawn, or otherwise did not proceed. In short: a decade of data revealed nearly 20,000 young children were arrested in order to adjudicate 3,000 of them, roughly 750 of whom were assigned to probation and 100 of whom were committed to DJS custody.⁸

The JJRC heard clearly how damaging this was and decided Maryland should stop arresting children who have not been accused of crimes of violence. Young children are not capable of meaningful participation in the judicial process. The responses to their behavior must take place outside of the courts.

...

While we await a racial impact statement, we fear this bill will disproportionately impact and harm youth of color. Prior to the JJRC -- FY2019 -- more than 60 percent of Maryland youth referred to court were Black, with disproportionality growing at each subsequent point of contact.⁹ Shrinking contact with the system meant better outcomes for all youth, but particularly for youth of color. The legislature cannot return to the superpredator era, wherein Black youth were targeted by law enforcement, prosecution and the courts leading to more than 100,000 youth locked up on a typical day at the turn of the last century.¹⁰

We oppose the way this bill is being rushed through the legislature

The text of HB814/SB744 was released to the public late in the afternoon on Wednesday, January 31. This hearing was announced the next day, and the Senate Judiciary Committee's hearing was announced the day after that. The General Assembly has conspired to rush the bill forward before the public can understand its likely impact. There is neither a fiscal analysis nor a racial impact statement to consider, though we do have recent data showing crime -- contrary to public perception -- is trending downward.¹¹

⁸ TSP analysis of Data Resource Guides published by the Department of Juvenile Services.

⁹ TSP analysis of 2019 Data Resource Guide published by the Department of Juvenile Services

¹⁰ Rovner, J. (2023). Youth Justice by the Numbers. The Sentencing Project.

¹¹ Archibald, R. (2024, Feb. 2). "Banner analysis: Homicides and shootings are trending further down in 2024." [Baltimore Banner](#).

It is obvious what has happened here. As Senate President Ferguson revealed at the press conference, this bill is about a “crime *perception* challenge in Maryland”¹² (emphasis added) but not about what is actually best for our children, adolescents, families, and communities.

We oppose the secretive process by which this bill was drafted.

In 2019, this legislature passed and Governor Hogan signed SB856/HB606, which created the Juvenile Justice Reform Council (JJRC). The JJRC held several community listening sessions. It invited local and national experts to share expertise about ways to right-size this state’s juvenile justice system. It put forward recommendations -- less reliance on detention and commitment, shorter terms of probation, more diversion from formal court involvement.. It voted on and overwhelmingly passed those recommendations. The recommendations shaped a bill, the Juvenile Justice Reform Act (JJRA), that passed the House and stalled in the Senate in 2021. In 2022, having had a full year to consider that failed bill, the JJRA then passed the General Assembly by overwhelming majorities.

This bill, on the other hand, was not drafted with the input of those same national or local experts who appeared by invitation at the JJRC (and certainly not those most impacted by the justice system) and without running drafts past the Department of Juvenile Services or the Office of Public Defender. The Maryland Youth Justice Coalition, of which we are a member, was kept in the dark. It is hard to believe that the Committee could write this bill without asking the Juvenile Justice Strategy Group at the Annie E. Casey Foundation -- based in Baltimore and an invited witness for this Committee’s briefings -- how its provisions compare with other states.

The process comparison between the Juvenile Justice Reform Act and this bill -- which abruptly abandons it -- could not be more clear. The bill’s recommendations are not backed by evidence.

We urge the Committee to return to the deliberative process by which the JJRA was passed. This bill must be defeated.

¹² Wintrobe, B. and Wood, P. (2024, Jan. 31.) “Lawmakers’ crime plan expands probation, would mean more children face charges.” [Baltimore Banner](#).