



**BILL:** Senate Bill 853 Juvenile Justice Reform

**POSITION:** Favorable

**DATE:** March 3, 2021

Maryland is one of the worst states in the nation when it comes to protecting the human rights of kids in our justice system.<sup>1</sup> SB853 gives Maryland an opportunity to reverse course, leverage the system reductions accomplished due to COVID-19, and to transform our juvenile justice system into one that works for young people, families, and the community. The Maryland Office of the Public Defender respectfully and enthusiastically requests that the Committee issue a favorable report on Senate Bill 853, the Juvenile Justice Reform Act.

An effective youth legal system is one that is fair and one that improves – rather than decreases – the odds that young people who come into contact with the system will make a successful transition to adulthood. That requires a system that locks up fewer youth and relies more on proven, family-focused interventions that create opportunities for positive youth development. In Maryland, juvenile complaints have declined by 60% in the last ten years alone. But our juvenile incarceration rates have not declined at the same rate. That is in part because:

- Maryland has no minimum age of juvenile court jurisdiction, which leads to children as young as six being arrested for low-level, developmentally appropriate childish misbehavior. The vast majority of these young children are Black (72% in FY20).
- Maryland incarcerates an inordinate amount of low-level offenders. 2/3 of children who are removed from their homes for non-felony offenses.<sup>2</sup>
- 1/3 of children incarcerated in Maryland are there for violations of probation.<sup>3</sup>
- Current law creates a number of barriers to informal supervision and diversion that do not exist in the adult criminal statute. This leads to situations where school police officers are allowed to appeal diversion decisions and funnel children directly into the school to prison pipeline.

The fix is simple. Maryland must take the first step of juvenile justice reform to shrink the massive incarceration system and shift our resources to focus data-driven, evidence-based programming for the youth at the highest risk of violence and re-offense. With a better understanding of cognitive development, there is a growing awareness around the country that juvenile justice systems that adopt a lighter touch can reduce costs and yield better outcomes

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<sup>1</sup> Human Rights for Kids, [National States Ratings Report](#), December 2020. See also, Jazz Lewis & Dana Stein, *Op-Ed Maryland among the worst in protecting kids in the justice system*, BALTIMORE SUN, December 21, 2021.

<sup>2</sup> Maryland Department of Juvenile Services, [Doors to Commitment](#) (2015.)

<sup>3</sup> *Id.*



with fewer racial disparities. Most states – across the country and the political spectrum – are already far ahead of Maryland. Arkansas, California, New York, California, Georgia, Kentucky, Hawaii, North Dakota, South Dakota, West Virginia, Kansas and Utah have all passed similar – or larger – juvenile system reforms in recent years.

It is time for Maryland to align the laws that impact children with the established science of adolescent development. Children need to be held accountable for wrongdoing in a developmentally appropriate, fair process that promotes healthy moral development. A system that penalizes children, particularly if they penalizing children with severe sanctions like removing them from their home and family, can lead to children to perceive the legal system as unjust. Distrust in the system reinforces delinquent behavior and does not foster prosocial development and increases recidivism.<sup>4</sup> SB853 does four major things to accomplish that goal:

1. **Removes Barriers to Diversion** – Keeps kids out of the court system that do not need to be there.
2. **Raises the Age of Juvenile Court Jurisdiction** – Brings Maryland in line with international human rights standards.
3. **Bans Incarceration for Low-Level Youthful Offenses** – Ends the practice of using incarceration to treat low-level misbehavior and focuses on proven, community-based interventions.
4. **Limits Indefinite Probation** – Gives children a realistic goal to work toward and acknowledges that children are works in progress and should not be expected to reach perfection in order for them to be allowed to move forward.

These changes would significantly reduce the use of outdated confinement practices while ensuring public safety, and reinvesting cost savings into other programming including community-based options designed to improve fairness and outcomes for children, families and communities.

## **Removing Barriers to Diversion**

Diversion of youth from the juvenile legal system is an essential aspect of case processing that should be utilized more comprehensively and equitably in Maryland. Diversion is defined by the Department of Juvenile Services (“DJS”) as “a program or practice where the primary goal is to reduce the occurrence of juvenile crime by diverting a youth from the traditional juvenile justice system and providing an alternative to formal processing.”<sup>5</sup> Examples of diversion are mental health services including evidence-based Multi-Systemic Therapy and Functional Family

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<sup>4</sup> National Research Council 2014. *Implementing Juvenile Justice Reform: The Federal Role*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/18753> at 17.

<sup>5</sup> Department of Juvenile Services, *Data Resource Guide 2019*, p. viii.



Therapy, mentoring, teen courts, and restorative justice practices such as family conferences, victim/youth conferences and mediations. DJS effectuates diversion through what is called an informal adjustment under Maryland law.<sup>6</sup>

The benefits of juvenile diversion include: Preventing association with delinquent peers; holding youth accountable for their actions; providing proportionate responses to delinquent behavior; providing youth with opportunities to connect with services in the community; reducing court caseloads, detentions, and out-of-home placements; reducing justice system costs and preserving resources for youth who pose a greater public safety risk or have greater needs for services; and improved relations between youth and community.<sup>7</sup> One of the most important benefits of diversion is reducing recidivism by keeping low-risk youth away from the stigma of the juvenile justice system.<sup>8</sup> National research has shown that low-risk youth placed in diversion programs re-offend less often – up to 45% less often – than similar youth who were formally processed and are more likely to succeed in and complete school.<sup>9</sup>

Maryland’s own data shows that diversion works. Approximately 80% of young people who participate in diversion through DJS successfully complete it and 90% of young people who complete diversion do not recidivate within one year.<sup>10</sup>

Maryland data, however, also suggests significant room for expansion of diversion and a reduction in racial disparities in the use of diversion. Despite the research which calls for avoiding formal system involvement for youth charged with misdemeanors and non-violent felonies, in FY19 DJS forwarded over 30% of all misdemeanors and 85% of all felonies for formal charging.<sup>11</sup> Further, DJS reported disturbing racial disparities in the use of diversion. Youth of color were well over twice as likely to have their cases referred to DJS, 50% more likely to have their cases petitioned with formal charges, and over 30% less likely to have their cases referred to diversion.<sup>12</sup> Youth of color were offered diversion less often than white youth in both misdemeanor and felony cases.<sup>13</sup> Black youth were the least likely to receive diversion for low-level offenses.<sup>14</sup>

Senate Bill 853/ House Bill 1187 addresses the need to expand diversion and utilize it equitably by requiring informal adjustment of misdemeanors (excluding handgun possession) and non-violent felonies for all youth who have not previously been adjudicated delinquent. This measure

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<sup>6</sup> Md. Code Ann., Cts. & Jud. Proc. 3-8A-10.

<sup>7</sup> Farrel, Betsinger, & Hammond, *Best Practices in Youth Diversion: Literature Review for the Baltimore City Youth Diversion Committee*, Univ of Md. School of Social Work (Aug 2018).

<sup>8</sup> Models for Change Juvenile Diversion Work Group, *Juvenile Diversion Guidebook* at 11 (2011.)

<sup>9</sup> Wilson, H.A., & Hoge, R.D. (2013). *The effect of youth diversion programs on recidivism: A meta-analytic review*, CRIMINAL JUSTICE AND BEHAVIOR at 8; Josh Weber et al., *Transforming Juvenile Justice Systems to Improve Public Safety and Youth Outcomes* at 4 (2018).

<sup>10</sup> [Juvenile Justice Reform Council Final Report January 2021 \(maryland.gov\)](#) at 36.

<sup>11</sup> [Juvenile Justice Reform Council Final Report January 2021 \(maryland.gov\)](#) at 35-36.

<sup>12</sup> Department of Juvenile Services, Data Resource Guide 2019, p. 230.

<sup>13</sup> [Juvenile Justice Reform Council Final Report January 2021 \(maryland.gov\)](#) at 36.

<sup>14</sup> [Juvenile Justice Reform Council Final Report January 2021 \(maryland.gov\)](#) at 35.



will expand the use of diversion and reduce any racial disparities caused by the discretionary decisions of DJS and the State's Attorney.

SB853 would also eliminate the requirement that DJS forward complaints of non-violent felonies to the State's Attorney for approval of informal adjustment. This measure will expand the use of diversion while preserving the State's Attorney's opportunity to petition formal charges if the informal adjustment is unsuccessful. It will also increase the number of youth who receive interventions. In FY19, 46% of all juvenile cases forwarded to the State's Attorney for petitioning of formal charges did not result in court ordered probationary or commitment services, mostly due to dismissal, nolle pros, or stet of the cases.<sup>15</sup>

Finally, this bill would eliminate the requirement of complaining witness consent, but maintaining requirement that DJS make reasonable efforts to contact the alleged victim in order for informal adjustment to proceed. Currently, many cases where the complaining witness does not wish to go forward cannot be diverted due to lack of contact with the alleged victim. In other cases, while complaining witness satisfaction is desirable, alleged victims should not be in control of whether diversion is utilized for a young person. Complaining witness consent is not required for the diversion of adult criminal court<sup>16</sup> and should not be required for the diversion of a young person's case, particularly when research demonstrates that diversion is healthier for young people and achieves very good public safety outcomes in Maryland.

Eliminating complaining witness consent will also increase victim satisfaction. Ninety percent of youth who successfully complete diversion do not recidivate within one year, making victims' communities safer.<sup>17</sup> Additionally, DJS will continue to offer alleged victims the opportunity to participate in a restorative justice diversion. National research shows that restorative justice programs provide higher levels of victim satisfaction with the process and outcomes, including a greater likelihood of successful restitution completion than traditional justice programs.<sup>18</sup> Maryland hosts a number of restorative justice programs across the state that are utilized for youth diversion, including Restorative Response Baltimore ("RRB") RRB's results reflect the national research. 85% of victims recover restitution through RRB.<sup>19</sup> In a RRB FY20 survey, 84% of participants were satisfied with the conference and 87% of participants would recommend the conference to others.<sup>20</sup>

## **Raise the Age**

In violation of widely accepted international human rights standards, Maryland does not have a minimum age of criminal jurisdiction (MACR). Maryland regularly charges elementary school

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<sup>15</sup> Department of Juvenile Services, Data Resource Guide 2019, p. 22.

<sup>16</sup> [Maryland Youth Justice Coalition Diversion Recommendations](#) at 4.

<sup>17</sup> [Juvenile Justice Reform Council Final Report January 2021 \(maryland.gov\)](#) at 36.

<sup>18</sup> [Family Group Conferencing: Implications for Crime Victims \(ncjrs.gov\)](#) at 1.

<sup>19</sup> [Restorative Response Baltimore – Collective Action To Resolve Conflict.](#)

<sup>20</sup> [Restorative Response Baltimore – Collective Action To Resolve Conflict.](#)



children – some as young as *six* years old – with delinquent acts.<sup>21</sup> To put these age limits in context, the average seven (7) year old is in the 2<sup>nd</sup> grade. Maryland law prohibits a child under the age of 8 years from being left unattended at home, at school, or in a car without adult supervision and children must be at least 13 years old in order to be responsible enough to babysit.<sup>22</sup> If a child is not old enough to stay home alone without a babysitter, we contend that child is not old enough to be sent to juvenile court, make decisions about a plea bargain, or to comply with court orders.

Maryland is funneling thousands of very young, mostly Black children into the juvenile justice system despite extensive research that has demonstrated that children under the age of 13 are statistically unlikely to be competent to stand trial.<sup>23</sup> Pre-adolescent children demonstrate poor understanding of trial matters, in addition to poorer reasoning and ability to recognize relevant information for a legal defense. In fact, 1/3 of children under 13 function with impairments at a level comparable with mentally ill adults who have been found incompetent to stand trial.<sup>24</sup>

Internationally, 174 countries have established a MACR, and establishing a MACR is a requirement for signatories to the Convention on the Rights of the Child (CRC).<sup>25</sup> The majority of other U.S. states that set a minimum age for criminal responsibility (MACR) require a child to be at least ten (10) years old before they can be prosecuted.<sup>26</sup> But in recent years a number of

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<sup>21</sup> Prior to 1994, Maryland relied on the common-law doctrine of *doli incapax*, which held that from age 7 to 14 children were presumed not to have criminal capacity and required the prosecution to prove criminal capacity beyond a reasonable doubt. The presumption of infancy was removed by the legislature in 1994. *In re Devon T.*, 85 Md. App. 674 (1991); Acts 1994, c. 629, § 1, eff. Oct. 1, 1994.

<sup>22</sup> Maryland Code Annotated, Family Law Article §5-801.

<sup>23</sup> Bath, E., & Gerring, J. (2014). National trends in juvenile competency to stand trial. *Journal of the American Academy of Child & Adolescent Psychiatry*, 53, 265-268; Bonnie, R. J., & Grisso, T. (2000). Adjudicative competence and youthful offenders. In T. Grisso & R. G. Schwartz (Eds.), *Youth on trial: A developmental perspective on juvenile justice* (pp. 73-103). Chicago, IL: University of Chicago Press; Costanza, M. B. (2017). *The development of competency to stand trial-related abilities in a sample of juvenile offenders* (Doctoral dissertation). Retrieved from ProQuest; Grisso, T. (2014). Protections for juveniles in self-incriminating legal contexts, developmentally considered. *The Journal of the American Judges Association*, 50(1), 32-36; Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press; Grisso, T. (2004). *Double jeopardy: Adolescent offenders with mental disorders*. Chicago, IL: University of Chicago Press; Grisso, T., & Kavanaugh, A. (2016). [Prospects for developmental evidence in juvenile sentencing based on Miller v. Alabama](#). *Psychology, Public Policy, and Law*, 22(3), 235-249; Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology (2009).

<sup>24</sup> Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N. D., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27(4), 333-363. <https://doi.org/10.1023/A:1024065015717>;

<sup>25</sup> The United States is not a signatory to the Convention.

<sup>26</sup> National Juvenile Defender Center, Minimum Age for Delinquency Adjudication—Multi-Jurisdiction Survey, January 22, 2020, <https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey>. Internationally, 174 countries have established a MACR, and establishing a MACR is required by major human rights instruments. Article 40(3)(a) of the [Convention on the Rights of the Child](#) (CRC) requires states to establish a MACR and Article 4.1 of the [United Nations Minimum Rules for the Administration of Juvenile Justice \(Beijing Rules\)](#) states that that MACR “shall not be fixed at too low an age level, bearing in mind the factors of emotional, mental and intellectual maturity”. Both Canada and Mexico set the MACR at 12 while the majority of the European Union (including Spain, Germany, Italy, and Poland) sets



states have raised the floor for juvenile court jurisdiction. In addition to California, Massachusetts<sup>27</sup> and Utah<sup>28</sup> have set 12 as the minimum age of juvenile jurisdiction and other states are moving forward with efforts to raise the minimum age including Texas (13),<sup>29</sup> Illinois (13)<sup>30</sup>, Washington (13)<sup>31</sup>, Maine (12)<sup>32</sup>, Oklahoma (12),<sup>33</sup> Connecticut (12)<sup>34</sup>, and North Carolina (12.)<sup>35</sup>

Over the past five years, more than 8,600 pre-adolescent children have faced juvenile complaints in Maryland. In FY2020, there were 1,469 delinquent complaints for children under the age of 13. Disturbingly, the vast majority of these children were Black (72%). Only 25% of those cases (374) were forwarded for prosecution in Juvenile Court and only 6 of the 1,469 children under 13 who were charged in Maryland resulted in commitments to the DJS. None of those very young children who were committed was even found guilty of a felony. In fact, four of the children under 13 who were committed to DJS were found facts sustained of property crimes – misdemeanor breaking & entering and malicious destruction of property. The other two children were committed for committing misdemeanor second degree assault.<sup>36</sup> More than half of all kids under 13 who were charged were for misdemeanors second degree assault, misdemeanor theft, or destruction of property.<sup>37</sup> Despite these facts, 37 children under the age of 13 were incarcerated pending trial. This is not just a problem in population centers. In Somerset County, more than 30% of young people charged in FY20 were under 13 years old. In Dorchester County that number is nearly 25% - 3 times the state average.<sup>38</sup> In FY19, 50 children under the age of 13

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the MACR at age 14. *See*, Child Rights International Network, The minimum age of criminal responsibility, <https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility>.

<sup>27</sup> <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section52>

<sup>28</sup> <https://www.njcn.org/article/utah-raises-lower-age-of-juvenile-jurisdiction>

<sup>29</sup> <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB01783I.pdf#navpanes=0>

<sup>30</sup> [www.ilga.gov/legislation/BillStatus.asp?GA=102&DocTypeID=SB&DocNum=65&GAID=16&SessionID=110&LegID=128313](http://www.ilga.gov/legislation/BillStatus.asp?GA=102&DocTypeID=SB&DocNum=65&GAID=16&SessionID=110&LegID=128313)

<sup>31</sup> <https://app.leg.wa.gov/billsummary?billnumber=5122&year=2021>

<sup>32</sup> [http://legislature.maine.gov/legis/bills/display\\_ps.asp?LD=320&snum=130](http://legislature.maine.gov/legis/bills/display_ps.asp?LD=320&snum=130)

<sup>33</sup> <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB%20217&Session=2100>

<sup>34</sup> <https://ctmirror.org/2020/02/10/juvenile-justice-advocates-lets-raise-the-age-again/>

<sup>35</sup> In the 2020, the *North Carolina Task Force for Racial Equity in Criminal Justice* issued a Report to the Governor from the Attorney General and an Associate Justice of the Supreme Court, the group recommended a number of significant reforms - including raising the MACR to age 12. [https://ncdoj.gov/wp-content/uploads/2020/12/TRECReportFinal\\_12132020.pdf](https://ncdoj.gov/wp-content/uploads/2020/12/TRECReportFinal_12132020.pdf)

<sup>36</sup> Department of Juvenile Services, 2020 DJS Data Resource Guide, at 26-27. <https://djs.maryland.gov/Pages/Data-Resource-Guides.aspx>

<sup>37</sup> *Id.* At 27.

<sup>38</sup> In Baltimore City, DJS started the Under-13 Initiative in 2013. It is a school-based intervention for youth ages 12 years and younger that are brought to Department of Juvenile Services' intake offices. It is a collaborative project between Department of Juvenile Services, local Department of Social Services (DSS) and the local school system. The Under-13 Initiative is based on the premise that if a child is being arrested at such a young age that there are usually problems at home; thus the focus is on both the child and his/her family. The goal is to provide the youth and family the opportunity to receive services and support so the youth can avoid going deeper into the juvenile justice system. The meetings are coordinated by the local school system and are held in a local school. Currently, Baltimore City is the only jurisdiction to have this program in place, although there are plans to start it in Prince George's County as well. *See*, Maryland Department of Juvenile Services, Initiatives, Under-13 <https://djs.maryland.gov/Pages/Initiatives.aspx>.



were held in secure detention in Maryland – a nearly 50% *increase* from FY18 – despite a change in the law that was intended to restrict the use of secure detention for pre-adolescent children.<sup>39</sup> In FY20, that number was still 37 children.

The process of charging and processing thousands of pre-adolescent children does damage to those kids, but it is also a huge waste of resources. Executive functioning refers to the cognitive processes that direct, coordinate, and control other cognitive functions and behavior. They include processes of inhibition, attention, and self-directed execution of actions. Much research has been conducted about adolescent’s executive functioning as it relates to youth justice policy; but because so few places prosecute very young kids comparatively little research has been done about *pre*-adolescent children in the youth justice systems.<sup>40</sup> Most research about the executive functioning in pre-adolescents has been done with a focus on implications for education and occupational therapy. It is clear that the level of executive functioning of an elementary and middle school aged child is vastly different than that of high school students.<sup>41</sup> Studies of working memory of children show that it continues to develop until children reach about 15 years old.

Given the established fact that 1/3 of children under 13 are incompetent to stand trial, failing to raise competency in most cases for very young Respondents would amount to ineffective assistance of counsel. For that reason, defense counsel raise competency in an overwhelming majority of cases involving children under age 13. Evaluating competency is a cost intensive process that can take years to resolve.<sup>42</sup> The prolonged process of competency attainment for small children means that the youngest children, who are the least culpable, often don’t face court intervention until months or years after their alleged misbehavior. In order for rehabilitation to work, children need to be held accountable for wrongdoing in a fair process that promotes healthy moral development.<sup>43</sup> A system that penalizes children at a time far removed from the underlying incident leads children to perceive the legal system as unjust. Distrust in the system reinforces delinquent behavior and does not foster prosocial development and increases recidivism.<sup>44</sup> If we want a truly rehabilitation juvenile justice system in Maryland – we must raise the minimum age of jurisdiction to 13.

## **Limit Indefinite Probation**

After the Supreme Court’s decisions in the trio of cases *Roper*, *Graham*, and *Miller*, courts have an obligation to take into account the fundamental truths of adolescence, and the differences

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<sup>39</sup> DJS Data Resource Guide, FY19 at 112. This increase is especially distressing as the law changed in FY19 to limit the detention of children under the age of 12. See, 2019 Maryland Laws Ch. 560 (H.B. 659.)

<sup>40</sup> *Supra*, note 21.

<sup>41</sup> *Id.*

<sup>42</sup> Md. CJ 3-8A-17-17.8

<sup>43</sup> National Academies of Science, *Reforming Juvenile Justice: A Developmental Approach* (2013) pg 183-210.

<sup>44</sup> National Research Council 2014. *Implementing Juvenile Justice Reform: The Federal Role*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/18753> at 17.



between children and adults.<sup>45</sup> We know that during adolescence, youth are more impulsive, susceptible to peer pressure, and have a diminished capacity to make thoughtful choices because their decisions are driven by short term rewards instead of long term consequences. It is for this reason that juvenile courts, including ours here in Maryland, are focused on “rehabilitation consistent with the child’s best interests and the protection of the public interest,” instead of punishment.<sup>46</sup>

And yet, even given the vast amount of scientific research, philosophical and legal literature, as well as the increasing body of case law that justifies treating kids as kids, juvenile courts still wholly import systems and practices from the adult criminal court context, without interrogating how or ensuring that these systems and practices actually fulfill the rehabilitative mandate of juvenile justice. As noted in Professor Chaz Arnett’s recently published article *Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Court*, “[o]ne of the most cited critiques of early juvenile institutions and courts is that they used the illusory promise of rehabilitation to mask their adult-like treatment of youth, in a warped logic that promoted the institutions’ goals over interrogation of the means and outcomes used to achieve those goals.”

One of the first ways juvenile justice was “adultified” was the creation of juvenile probation. Probation is the most likely disposition for all adjudicated youth. It is overly relied upon by courts, and poorly designed to actually function as a rehabilitative mechanism for youth who have been adjudged delinquent. “The fundamental flaw with probation is that it is not rooted in a theory of change and lacks a commonly articulated vision.” There is a disagreement about whether the purpose of probation is to promote long-term behavioral change and how to achieve that, or merely ensure compliance with a court order and probation officers.

Moreover, we know that youth and adults on probation respond more to positive incentives rather than sanctions for negative behavior. However, particularly when youth are placed on indefinite periods of probation, doing well on probation does not bring a youth closer to the light at the end of the tunnel, yet doing poorly can quickly land a youth in a form of detention. Experts recommend that youth be placed on a period of six to nine months of probation, if they need to be placed on probation at all, and that “even for those who struggle to meet their goals, the period of probation should generally not exceed one year.”<sup>47</sup>

Perhaps most importantly, consistent with research on youth desistance from “delinquent” behavior, the majority of youth should be diverted and not placed on probation, instead reserving legal sanctions and court oversight for young people who have a history of serious or chronic delinquency and pose a significant risk to public safety.

SB853 is an essential reform to Maryland’s current juvenile probation structure. Under the

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<sup>45</sup> *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 28 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>46</sup> Md. Code. Cts. & Jud. Proc. § 3-8A-02(4); *In re Victor B.*, 336 Md. 85, 91–2 (1994).

<sup>47</sup> Annie E. Casey, *Transforming Probation: A Vision for Getting it Right*, 2018.  
[www.aecf.org/resources/transforming-juvenile-probation/](http://www.aecf.org/resources/transforming-juvenile-probation/).





current structure, juvenile probation can be indefinite. The average length of probation statewide is 458.5 days, or fifteen months, nearly double the recommended length of juvenile probation. Many counties have an even longer average length of probation, including: Baltimore City (514 days); Montgomery County (516 days); Prince George’s County (529 days) ; and Kent County (567.7 days). By limiting the length of probation to six months for misdemeanors and two years for felonies, with limited opportunities to extend probation, this bill comports with our understanding of adolescent development. It gives children a realistic goal to work towards, and acknowledges that children are works in progress and should not be expected to reach perfection in order for their probation case to be closed.

## **Ban Youth Incarceration for Misdemeanors & Technical Violations of Probation**

The dangers of youth incarceration are well-documented but rarely acknowledged: placing children in cages for “rehabilitation” not only fails to promote positive behavioral change, it places youth at risk of physical harm, causes psychological harm, disrupts education, physically and emotionally separates youth from their families, negatively impacts future employment outcomes, and *increases* recidivism.<sup>48</sup>

Maryland incarcerates young people accused of low-level crimes at an alarmingly high rate<sup>49</sup> and then provides them minimal programming, based on superficial group interventions that do not work and especially ill-suited for young kids.<sup>50</sup> In Maryland, 2/3 of children sent to youth prisons (“out of home placements”) are there for non-felony offense.<sup>51</sup> One in three children are removed from their homes for technical violations of probation.<sup>52</sup>

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<sup>48</sup> The research on the harms of juvenile detention is extensive and demonstrates that detention increases recidivism and hurts public safety, detention affects dropping out and educational attainment, detention may exacerbate or cause mental illness and trauma, detention exposes youth to increased abuse, and interferes with what is required for healthy adolescent development. Anna Aizer and Joseph J. Doyle, Jr., [Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges](#), National Bureau of Economic Research, NBER Working Paper No. 19102 (2013), at pp. 3-6, 9, 25, [h](#); Justice Policy Institute, Barry Holman and Jason Ziedenberg, [The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities](#) (2006), p. 8; Richard A. Mendel, [No Place for Kids: The Case for Reducing Juvenile Incarceration](#) (2011), The Annie E. Casey Foundation, p. 12, National Academies of Science, [Reforming Juvenile Justice: A Developmental Approach](#) (2013), ; Richard A. Mendel, [Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update](#), The Annie E. Casey Foundation (2015), pp. 6-29;; Thomas J. Dishion and Jessica M. Tipsord, [Peer Contagion in Child and Adolescent Social and Emotional Development](#), 62 Annual Review of Psychology 189 (2011),. Karen Abram, et al., [Suicidal Thoughts and Behaviors Among Detained Youth](#), [OJJDP Juvenile Justice Bulletin](#) (July 2014), pp. 1-8;; Sue Burrell, [Trauma and the Environment of Care in Juvenile Institutions](#), National Child Traumatic Stress Network (2013), pp. 2-5;; Edward Cohen and Jane Pfeifer, [Costs of Incarcerating Youth with Mental Illness, for the Chief Probation Officers of California and California Mental Health Directors](#) Association (2007).

<sup>49</sup> Maryland Department of Juvenile Services, [Doors to Commitment](#) (2015.)

<sup>50</sup> Maryland Attorney General’s Juvenile Justice Monitoring Unit (JJMU), First Quarter 2020 Report, [https://www.marylandattorneygeneral.gov/JJM%20Documents/20\\_Quarter1.pdf](https://www.marylandattorneygeneral.gov/JJM%20Documents/20_Quarter1.pdf).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*



Sending low-level offenders to out of home placements often increases recidivism compared to similarly situated youth who are not removed from the home.<sup>53</sup> Thus, in Maryland the state is taking hundreds of young people out of their homes and communities, warehousing them in youth prisons that are all located in Western Maryland and then returns those young people to their homes worse off than they departed. The current system of youth incarceration in Maryland putting those kids – and our communities – at risk.

The devastating impact of these policies does not fall on all Maryland residents equally. Black youth make up 35% of the population of 10-17 year olds in Maryland,<sup>54</sup> but Black youth account for 77.4% of the population in juvenile jails.<sup>55</sup> Black youth who are accused of misdemeanors are arrested, charged, and committed at higher rates than their white peers.

Maryland operates 7 detention centers - one in every region of the state and two in the Metro region, but all of its youth prisons are located in Western Maryland. Maryland securely detains thousands of youth pending trial and pending placement throughout the state in large hardware secure juvenile jail facilities that resemble adult jails in structure, design, and operation. For 42% of the youth securely detained pending trial and 54.7% of youth detained pending placement after trial, the child's charge for which they were detained was a misdemeanor.<sup>56</sup>

The Attorney General's Juvenile Justice Monitoring Unit has documented for years DJS' juvenile facilities challenges, including: deteriorating facilities, understaffing, lack of staff training, lack of quality mental health services, continued use of outdated physical and mechanical restraints, continued use of solitary confinement, lack of programming for youth (including poor education continuity), and lack of family engagement efforts.<sup>57</sup> SB853/SB853 addresses these challenges by banning the use of juvenile jail and youth prison for kids whose most serious alleged offense is a misdemeanor or a technical violation of probation. This change will end the harms of juvenile incarceration for low-level offenders and allow DJS to better leverage its resources to provide small, high-quality programming for those young people who face the most serious charges and are at the highest risk of re-offense.

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<sup>53</sup> *Id.* See also, Supra note 48.

<sup>54</sup> OJJDP, Easy Access to Juvenile Populations, <https://www.ojjdp.gov/ojstatbb/ezapop/>.

<sup>55</sup> *Supra*, DJS Data Resource Guide FY19, Note 49.

<sup>56</sup> Department of Juvenile Services, *Data Resource Guide FY19* (2020) at 109.

<sup>57</sup> *Supra*, JJMU Report, Note 50.