

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 853
Juvenile Court – Juvenile Justice Reform
DATE: February 17, 2021
(3/3)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 853. This bill, which implements the recommendations of the Juvenile Justice Reform Council, would amend various provisions of Maryland Code.

While the Judiciary agrees that attention to the juvenile justice system is necessary to ensure that it meets its purpose and goals of rehabilitating the child while providing for the safety of the public, many of the amendments proposed by this bill raise serious questions of interpretation and/or application, and will limit the ability of the juvenile court to fully assess and act in recognition of the specific situation and the child's individual circumstances and needs, in full implementation of the purposes of the juvenile court. Courts and Judicial Proceedings § 3-8A-02.

First there are concerns regarding the delinquent act language. Language excluding from the definition of "delinquent act" an act that is "traditionally subject only to administrative discipline by the school" has no clear meaning and will lend itself to disparate interpretations throughout the State. For example, while the language apparently was intended to remove from the juvenile justice system, *e.g.*, school fights, under a theory that "traditionally" schools handled fights internally, a school or school system that has a recent tradition of calling the police for school fights can continue to do so based on this language.

Further, the Judiciary is concerned with the juvenile court jurisdiction. An unintended consequence of this language may not be a decrease in adult criminal cases involving juveniles but, rather, an increase in cases sent to the adult criminal court through the waiver process instead of through direct file.

The Judiciary supports the use of informal adjustment and believes it can be a valuable tool in the rehabilitation of the juvenile. Methods such as restorative justice conferences

can have a direct benefit to juvenile and victim alike. The Judiciary notes, however, its experiences over time with cases sent for informal adjustment without court involvement that have left far too late the court's involvement. The bill's broad mandate for informal adjustment, combined with the removal of State's Attorney review, may repeat that practice to the detriment of child and victim alike.

The Judiciary supports the reduced use of detention, and notes that during this COVID-19 period, use of detention has indeed decreased. The Judiciary notes, however, that the bill's limits on use of detention remove the juvenile court's discretion to consider fully what the juvenile has been alleged to have done and weigh that, along with all other relevant factors. The Judiciary also notes that weapons other than handguns may present severe risks to child and the community.

As the Judiciary noted in its opposition to House Bill 1028, which also would restrict commitment to the Department of Juvenile Services (DJS) for out-of-home placement, this bill limits the discretion of the juvenile court to fashion a disposition that will best rehabilitate and treat the child, the purposes of the juvenile justice system. Courts and Judicial Proceedings § 3-8A-02. Frequently, the best disposition includes placing the child outside the child's home. This placement may be a DJS facility, but it may equally be a foster home, group home, mental health treatment facility, or residential drug treatment program. This bill generally would preclude those options if the child is found involved in a misdemeanor. Practical responses to the bill may include children not receiving needed placement and cases not being tried as misdemeanors.

Finally, the Judiciary is concerned that these amendments would limit the ability of the juvenile court to structure an individualized and appropriate plan for the child. The Judiciary also notes that an unintended consequence of this language may be that the child is unable to complete the requirements of a community-based program during the limited probation period, resulting in the child having an unsuccessful closure on the child's juvenile court record.

cc. Hon. Jill Carter
Judicial Council
Legislative Committee
Kelley O'Connor