



POSITION ON PROPOSED LEGISLATION

BILL: HB68 - Baltimore City and Prince George's County -
Diversionary and Reentry Program
POSITION: OPPOSE
DATE: January 28, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 68, Baltimore City and Prince George's County - Diversionary and Reentry Program. While we commend any effort to increase diversion options in the youth legal systems, the SAO is not the appropriate entity to establish or run youth development programming, this legislation conflicts with existing law, HB68 fails to establish constitutionally required guardrails, and this bill lacks any grounding in evidence or best practices.

The State's Attorney Office is Not the Appropriate Entity

The powers and duties of the State's Attorney are prescribed by state statute and the Maryland constitution, but in Maryland those powers and duties are not specifically enumerated or defined. Under the Maryland Code, the primary charge of the State's Attorney is to prosecute and defend all cases in which the State may be interested. The Department of Juvenile Services (DJS), however, is designated as the "central administrative department for..., predelinquent diversion services, and aftercare services; and (2) the State juvenile diagnostic, training, detention, and rehabilitation institutions." The law mandates that:

(b) The Department shall:

- (1) develop programs for predelinquent children whose behavior tends to lead to contact with law enforcement agencies;
- (2) promote predelinquent programs, including greater utilization of youth services bureaus under § 9-234 of this subtitle, that provide services to divert children from the juvenile justice system;
- (3) collaborate with local governments to encourage the use of predelinquent programs provided by youth services bureaus under § 9-234 of this subtitle in response to identified community needs; and
- (4) provide technical assistance to local governments and youth services bureaus under § 9-234 of this subtitle to identify alternative funding sources for predelinquent programs.

For further information please contact Krystal Williams, Director, Government Relations Division, by email at krystal.williams@maryland.gov or by phone at 443-908-0241.

The law also mandates that the Department shall create re-entry plans for youth in custody and provide re-entry services, specifically:

- (i) a network of programs that provide education and rehabilitation; and
- (ii) services and treatment to ease the transition of children from the custody of the Department to their homes and communities.

The proposed statute would usurp the power and legislatively designated role of DJS without any of the attendant forms of oversight or accountability outlined in the Human Services article for DJS. If the SAO wishes to expand diversionary and aftercare options, the SAO should work to partner with its local DJS office to expand and improve these options.

In addition, Md. Cts. & Jud. Proc. 3-8A-10(c)(4)(ii) does not provide for SAO involvement prior to DJS intake, only for “law enforcement” diversion.

HB68 Conflicts with existing law and fails to protect a child’s Constitutional rights

HB68 would require the SAO in two counties to establish diversion centers who would serve three populations:

1. Students suspended or expelled from school;
2. Individuals “referred” by the court; and
3. Young people committed to DJS or “sentenced” to short-term detention or incarceration.

This bill would require a child who was involuntarily enrolled in the program to “CONTINUE UNTIL THE AT-RISK YOUTH REACHES THE AGE OF 18 YEARS.” This requirement provides no procedure for appeal. Young people in categories 1 and 2 could be compelled to participate in this program without having been found delinquent, adjudicated as involved in a delinquent offense or even charged with a delinquent offense. Furthermore, some of these youths have no guaranteed legal representation violating the Due Process requirements of the U.S. and Maryland constitutions.

This bill divests the juvenile court of its authority and responsibilities under the Maryland Code. Under the Maryland Code, the juvenile court may commit a child to DJS “on terms that the court considers appropriate to meet the priorities set forth in Section 3-8A-02 of this subtitle.” The juvenile court, not SAO, should control the re-entry plan for a committed child.

In addition, the bill runs afoul of privacy of police records under 3-8A-27 and privacy of educational records. The bill does not address how the centers or their staff would overcome these barriers.

HB68 fails to comply with best practices and is not evidence-based

The Office of the State’s Attorney is not an appropriate entity to establish or operate youth development programs. If funds are going to be allocated to establish diversion [and aftercare] programming, it should be directed to the agencies who have the training, expertise, and knowledge of child development, best practices, and evidence-based programming.

There is an extensive body of literature on the best practices in youth development and diversion. This bill does not comport with any of the basic best practices principles of diversion. Diversion is intended to prevent youth from penetrating deeper into the delinquency and criminal justice systems and reduce future criminal behavior. Diversion programs have additional benefits of reducing stigma, lessening disparate outcomes for Black youth, providing more proportionate response to developmentally appropriate misbehavior, reducing court workloads, reducing costs, and preserving resources for those who have the need for high levels of service.

But diversion is not an unmitigated good. Poorly designed or implemented diversion programs run three major risks: net widening, increased recidivism, and increasing racial and gender-based disparities. This bill would do all three.

Net widening refers to the phenomenon of bringing more youth into contact with the legal system who would not otherwise encounter the system. Service providers often inadvertently “widen the net” because they feel pressure to maintain a steady number of referrals and to “grow” programming in order to demonstrate success. HB68 on its own terms would widen the net by drawing students who have never had any contact with the delinquency or criminal legal system (children who have been suspended from school and kids who are “referred” by the court.)

Another significant risk of diversion programs is that poorly designed interventions can actually increase, rather than decrease, recidivism. When young people view diversion programs akin to traditional probation or punitive programming, they are subject to increased levels of surveillance and greater referrals to law enforcement. As Annie E. Casey Foundation has explained retaining the threat to reopen or process the cases of youth who fail to meet the conditions of the diversion program “is unnecessary and counterproductive because most youth grow out of delinquent behavior without any intervention, and formal processing substantially increases the likelihood of future arrests, while doing little or nothing to improve behavior.”¹

¹ Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting it Right*, May 7, 2018, available at <https://www.aecf.org/resources/transforming-juvenile-probation/>.

Further, there are widely accepted, national best practices standards for diversion programs.² The University of Maryland Institute for Innovation & Implementation has identified seven best practices for youth diversion programs:

1. Use standardized screening and assessment tools
2. Clearly define target populations
3. Develop and use a wide network of community-based providers
4. Build on strong cross-agency partnerships
5. Use written diversion agreements
6. Prevent future prosecution and expunge arrest records; and
7. Ensure equity and cultural competence

HB68 fails to meet or address any of these best practices and could easily. While it requires the program to conduct assessments of program participants, it does not require use of standardized screening or assessment tools, it does not clearly define the target population but uses the generic and vague term of serving "at-risk" youth. The term at-risk is not defined in anyway and is a term that is so vague that it could apply to almost any young person.

HB68 has no requirement or standards for HB68 requires the center to run a "self-actualization program model." Self-actualization program model is not defined nor is there any widely-accepted definition of "self-actualization program model" in the academic literature related to delinquency, diversion, or youth development.

² Jill Farrell, Aaron Betsinger, and Paige Hammond, *Best Practices in Youth Diversion: Literature Review for the Baltimore Youth Diversion Committee*, The Institute for Innovation and Implementation, University Of Maryland School Of Social Work (August 2018), available at <https://bit.ly/3c9Vxrp>.