



## POSITION ON PROPOSED LEGISLATION

**BILL:** SB222 - Juveniles Charged as Adults – Study and Confinement  
**POSITION:** FAVORABLE WITH AMENDMENT  
**DATE:** March 24, 2021

The Office of Public Defender is supportive of the general aim and intent of SB222, and we are grateful to the Department of Juvenile Services for working with us and accepting many of our proposed amendments. We do, however, offer this statement to express several concerns that remain with the current language in this bill and the unintended consequences presented with its passage without any further revisions. In particular, and most importantly, the Office of the Public Defender is concerned that SB222, in its current proposed construction, does not in its entirety address the issue of housing children and youth under the age of 18 in adult jails and prisons.

Children under 18 should never be housed in adult jails or prisons. Human rights groups have been documenting the horrible conditions children face in adult facilities in Maryland for decades.<sup>1</sup> Adult jails and prisons in Maryland regularly violate federal laws prohibiting sight and sound separation for youth. Adult facilities cannot provide the mandatory education services all children are entitled to under the law. Children housed in adult jails and prisons are at high risk of violence – especially sexual assault.

For that reason, the U.S. Congress renewed the Juvenile Justice Delinquency Prevention Act<sup>2</sup> (JJDP) in 2018. **The JJDP has four core requirements: *deinstitutionalization of status offenders, separation of juveniles from adults in secure facilities, sight and sound separation between juveniles and adults in jails and lockups, and the reduction of racial and ethnic disparities within the juvenile justice system.*** For years, Maryland has failed to ensure the separation of juveniles and adults in correctional facilities. **Maryland continues to be out of compliance with this important federal legislation.** SB222 is necessary to bring Maryland into compliance with federal law, a prerequisite for receiving critical federal juvenile justice funding.

The Office of the Public Defender strongly supports mandating children be housed in juvenile facilities pending transfer determinations and establishing clear prohibitions on having sight or sound contact with adult inmates while a child is awaiting trial or other legal process. However, the current proposed construction of SB222 does not properly address the issue of sight and sound separation for young people.

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<sup>1</sup> Vincent Schralid & Marc Schindler, *Op-Ed Maryland must overhaul its juvenile justice system*, BALTIMORE SUN, Dec. 17, 1999. [www.baltimoresun.com/news/bs-xpm-1999-12-17-9912170111-story.html](http://www.baltimoresun.com/news/bs-xpm-1999-12-17-9912170111-story.html).

<sup>2</sup> 34 U.S.C.A. § Subt. I, Ch. 111.

In 2014, this body passed SB515 to ensure sight and sound separation between children and adult in adult jails and prisons.<sup>3</sup> Criminal Procedure § 4-202 was revised to make transfer to a juvenile facility mandatory for youth charged as adults while pending a transfer hearing unless the child was released, there were no beds available at any juvenile facility, or there was a specific danger to the child or others if housed at a juvenile facility. The proposed legislation would eliminate a number of the protections Maryland put in place by SB515 in 2014.

While this bill would expand the universe of youth eligible to be held in a juvenile facility, it would also expand the exceptions to the general rule that youth should not be held at adult facilities. The current iteration of the bill provides vague guidance to judges and allows for exceptions that could be used to fit every circumstance where a child would be held in an adult facility. For example, the third factor in the proposed exceptions is the nature and circumstances of the alleged offense. For a child to be charged as an adult the allegations will always be serious and anyone could make the argument that that factor weighs in favor of holding every youth charged as an adult in an adult facility.

The Office of the Public Defender believes that this bill should outright bar children from being held in adult detention centers prior to a finding of guilt.

If the committee is unwilling to commit to protecting children from the harms of pretrial detention in adult jails, we suggest instead of several, disjunctive (“or”) exceptions to default detention in juvenile facility, the bill should be amended to include a higher standard for any exception to default juvenile detention, as well several conjunctive (“and”) mandatory considerations.

As such, we are offering several amendments that could address this issue.

- a. 4-202.3(B)(2): AFTER A HEARING AND IN WRITING, THE COURT FINDS THAT **THERE IS A SPECIFIC ARTICULABLE IMMINENT DANGER**~~IT IS IN THE INTEREST OF JUSTICE TO~~ PERMIT THE CHILD TO BE HELD IN A CORRECTIONAL FACILITY ~~OR TO HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES.~~
- b. 4-202.3 (C) Strike all provisions allowing for youth to be held in adult correctional facilities and utilize the Colorado standards as a guide. The new provisions of subsection C (1-7) would read as follows: **(1) WHETHER, IN ORDER TO PROVIDE PHYSICAL SEPARATION FROM ADULTS, THE JUVENILE WOULD BE DEPRIVED OF CONTACT WITH OTHER PEOPLE FOR A SIGNIFICANT PORTION OF THE DAY OR WOULD NOT HAVE ACCESS TO RECREATIONAL FACILITIES OR AGE-APPROPRIATE EDUCATIONAL OPPORTUNITIES;**  
**(2) THE JUVENILE'S CURRENT EMOTIONAL STATE, INTELLIGENCE, AND DEVELOPMENTAL MATURITY, INCLUDING**

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<sup>3</sup> 2014 Maryland Laws Ch. 178 (S.B. 515)

**ANY EMOTIONAL AND PSYCHOLOGICAL TRAUMA, AND THE RISK TO THE JUVENILE CAUSED BY HIS OR HER PLACEMENT IN AN ADULT JAIL, WHICH RISK MAY BE EVIDENCED BY MENTAL HEALTH OR PSYCHOLOGICAL ASSESSMENTS OR SCREENINGS MADE AVAILABLE TO THE STATE'S ATTORNEY AND TO DEFENSE COUNSEL;**

**(3) WHETHER DETENTION IN A JUVENILE FACILITY WILL ADEQUATELY SERVE THE NEED FOR COMMUNITY PROTECTION PENDING THE OUTCOME OF THE CRIMINAL PROCEEDINGS;**

**(4) WHETHER DETENTION IN A JUVENILE FACILITY WILL NEGATIVELY IMPACT THE FUNCTIONING OF THE JUVENILE FACILITY BY COMPROMISING THE GOALS OF DETENTION TO MAINTAIN A SAFE, POSITIVE, AND SECURE ENVIRONMENT FOR ALL JUVENILES WITHIN THE FACILITY;**

**(5) THE RELATIVE ABILITY OF THE AVAILABLE ADULT AND JUVENILE DETENTION FACILITIES TO MEET THE NEEDS OF THE JUVENILE, INCLUDING THE JUVENILE'S NEED FOR MENTAL HEALTH AND EDUCATIONAL SERVICES;**

**(6) WHETHER THE JUVENILE PRESENTS AN IMMINENT RISK OF HARM TO HIMSELF OR HERSELF OR OTHERS WITHIN A JUVENILE FACILITY;**

The Office of the Public Defender further suggests the following clarifying amendment to Section D.

**(D) THE COURT AT A BAIL REVIEW HEARING MAY ORDER THAT A CHILD WHO IS ELIGIBLE TO BE HELD IN A SECURE JUVENILE FACILITY UNDER THIS SECTION **TO BE** ELIGIBLE FOR COMMUNITY DETENTION, AS DEFINED IN § 3-8A-01 OF THE COURTS ARTICLE.**

We therefore urge a favorable report by the Committee on SB222, with amendments.