



**Testimony for the Senate Judicial  
Proceedings Committee**

**February 21, 2013**

**SB 791  
Juvenile Law – Dispositions – Placement Guidance  
SUPPORT**

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND

MAIN OFFICE  
& MAILING ADDRESS  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
or 240-274-5295  
F/410-366-7838

FIELD OFFICE  
6930 CARROLL AVENUE  
SUITE 610  
TAKOMA PARK, MD 20912  
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND  
DIRECTORS  
ALLI HARPER  
PRESIDENT

SUSAN GOERING  
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN  
GENERAL COUNSEL

We urge you to issue a favorable report for SB 791, which provides that youth whose most serious offense is one of eight minor misdemeanor offenses should not be sent to long-term juvenile facilities except in certain circumstances. The offenses listed in SB 791 include trespass, disorderly conduct, de minimis marijuana possession, misdemeanor theft, prostitution, malicious destruction, inhalants, and possession of a non-controlled substance. Last year more than 35% of youth in long-term juvenile facilities – more than 600 youth – had never been adjudicated for any crime more serious than one of these offenses.

SB 791 is intended to reduce over-reliance on incarceration for youth with very minor offenses, but it is not absolute. It preserves broad judicial discretion for judges to override the rule for the safety of the youth or the public, and excludes youth who have multiple prior offenses. It makes no change to judges' ability to impose other conditions of supervision (such as probation, house arrest, or electronic monitoring); to order the child to participate in treatment in his or her community; or to place the youth with another child-serving agency willing to receive the young person.

Managing these youth in the community instead of facilities would generate significant benefits without compromising public safety. The Department of Legislative Services estimates that, even with the exceptions in SB 791, DJS placements could be reduced by 20% by adopting this legislation, resulting in savings of up to \$12.5 million.

The following testimony highlights the need for this legislation:

- **Most Youth in DJS Facilities are Low-Level Offenders**
- **Research Shows Poor Outcomes When Youth with Minor Offenses are Sent to Residential Facilities**
- **Unlike Other States, Maryland Does Not Limit When Youth With Minor Offenses May be Placed in Long-Term Juvenile Facilities**
- **SB 791 has significant fiscal and system benefits**

## Most Youth in DJS Facilities are Low-Level Offenders

In 2011, DJS began publicly reporting data regarding the offenses of youth in long-term facilities. That data shows that the overwhelming majority of youth in long-term facilities are not serious offenders, but rather youth with low-level offenses:<sup>1</sup>

- In 2012 more than two-thirds of boys and 85% of girls in long-term DJS facilities had never committed a crime of violence or any other felony.<sup>2</sup> Even in the state's most secure facility, Victor Cullen, 50% of youth had never been adjudicated for any felony offense.
- In 2012, approximately 35% of youth in long-term facilities were there for the offenses enumerated in SB 791. More young people were sent to juvenile facilities for trespassing and disturbing the peace than for drug distribution.
- In the last ten years, youth referrals to DJS have declined by more than 34% and probation dispositions have declined by 31%, but the number of youth committed to DJS to be placed in facilities decreased by only 2%.<sup>3</sup>

AMERICAN CIVIL  
LIBERTIES UNION OF  
MARYLAND

## Research Shows Poor Outcomes When Youth with Minor Offenses are Sent to Residential Facilities

Maryland's over-reliance on facilities for minor offenders runs counter to a growing body of rigorous research that shows that, for low-risk youth, residential interventions tend to achieve no better results than non-intervention. Studies consistently show that "the best public safety outcomes coincide with the least restrictive interventions for youth, rather than more traditional processing and incarceration."<sup>4</sup>

In fact, a recent report by the Annie E. Casey Foundation compiles research from across the country showing that when low-risk youth with minor delinquency are sent to juvenile facilities, their likelihood of reoffending actually *increases* compared to similar youth who are supervised in the community:

In a recent Ohio study, low- and moderate-risk youth placed into community supervision programs proved less likely to re-offend

---

<sup>1</sup> See DJS Data Resource Guide for 2012, p. 122-125.

<sup>2</sup> In addition to gender disparities, youth of color are disproportionately represented in such facilities. DJS does not report offense data by race, but in 2012, *75% of youth in long-term facilities were young people of color.* In the state's most secure facilities, African-American youth may comprise as much as 90% of the facility population.

<sup>3</sup> See DJS Data Resource Guide for 2012, pp. 85-87.

<sup>4</sup> National Juvenile Justice Network: The Truth About Consequences, 2012 (citing Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburger, "Formal System Processing of Juveniles: Effects on Delinquency." *Campbell Systematic Reviews*, 2010:1 (January 29, 2010)).

than similar youth placed into correctional facilities and only one-fifth as likely to be incarcerated for subsequent offenses. In Florida, a 2007 study involving more than 40,000 youthful offenders found that those assessed as low risk who were placed into residential facilities not only re-offended at a higher rate than similar youth who remained in the community, they also re-offended at a higher rate than high-risk youth placed into correctional facilities. In Virginia, low-risk youth released from correctional facilities had substantially higher re-arrest rates than similar youth placed on probation.<sup>5</sup>

In addition to the harmful impacts of incarceration on offending, placing youth in juvenile facilities also has a host of other consequences, such as interrupting the young person's education and disrupting supportive family ties.

### **Unlike Other States, Maryland Does Not Limit When Youth With Minor Offenses May be Placed in Long-Term Juvenile Facilities**

Unlike other states, Maryland law sets no threshold for when youth with minor offenses may be committed to the custody of the juvenile justice system to be placed in long-term facilities. Rather, in making a disposition, judges are urged to ensure that their decisions are consistent with the general priorities of the juvenile justice system as laid out in § 3-8A-02.

By contrast, since 2000, Virginia law has mandated that a young person cannot be sent to a juvenile facility unless he or she has been found guilty of at least one felony or four separate misdemeanors. Since enacting that law, placements in Virginia have declined by 52%. And other states have adopted similar rules banning or significantly limiting when youth with misdemeanor offenses may be sent to juvenile facilities:<sup>6</sup>

- In 1998, North Carolina enacted legislation that prohibits sending youth to juvenile facilities for minor misdemeanors. Placements declined by 73%
- In 2007, Texas adopted legislation barring commitment of youth with misdemeanor offenses in its juvenile facilities. Placements declined by 69%.
- Most recently, in 2011, Florida adopted legislation barring placement of misdemeanants in juvenile facilities absent special circumstances.
- Washington and Ohio limit commitment of youth whose delinquency history is comprised solely of low-level offenses.

---

<sup>5</sup> Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration* (2011), p. 12 (citations omitted).

<sup>6</sup> Data regarding reductions in commitment come from Annie E. Casey Foundation, *No Place for Kids*, 2011, p. 29

## **SB 791 has significant fiscal and system benefits**

Although SB 791 represents a modest step relative to the laws adopted in other states, the bill nonetheless presents significant fiscal benefits. The Department of Legislative Services estimates that the bill would affect 20% of youth in DJS long-term placements, which average a six month length of stay at \$100-\$560/day. DLS notes that 20% of DJS's projected expenditures for per diem residential programs in 2014 amounts to \$12.5 million.

In addition, by prioritizing residential placement for more serious offenders, and utilizing existing non-residential alternatives to manage youth with minor offenses, Maryland can improve the quality of its juvenile justice system more generally. Bloating juvenile justice facilities with youth with minor offenses undermines the juvenile justice system's ability to manage youth who do present public safety concerns, and encourages the harmful practice of sending those kids out of state or to the adult system. The young people who should be the target population for Maryland's juvenile justice system – youth sentenced as adults, youth sent out of state, and youth who may sit in detention because of a lack of residential bed space – are less likely to get the supervision and rehabilitative programming they need because Maryland is using its juvenile justice facilities to house youth with minor offenses. SB 791 is a critical step towards “right-sizing” Maryland's reliance on juvenile facilities.

For the above reasons, we urge you to issue a favorable report for SB 791.