



**Testimony for the
Senate Judicial Proceedings Committee
February 21, 2013**

**SB 793 – Task Force to Study the Use of Private Diversion Programs
Support**

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OF MARYLAND

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The ACLU of Maryland supports SB 793, which would establish a task force to study the use of private diversion programs.

The bill seeks to study a growing trend,¹ both in Maryland and around the country, of allowing private, for-profit companies to threaten criminal prosecution using prosecutors' official letterhead, targeting offenses such as alleged bad check writing, even if prosecutors have not conducted any meaningful review of the allegations. The letters tell recipients that they can avoid prosecution by paying hundreds of dollars to attend "financial accountability" classes offered by the private companies. In exchange, the prosecutor's office gets a share of the money raised from the classes' attendance fees.

These programs raise many troubling questions, such as whether the local prosecutor is actually investigating the claims that a crime has occurred, the adequacy of the proof of criminal violations, the degree of supervision by prosecutorial staff, the conflict of interest when investigations are conducted by companies with a financial stake in the outcome, the financial benefits to prosecutors' offices that get a portion of the program fees, and the constitutional rights of individuals subjected to these practices.

The practice of turning over core prosecutorial functions to private companies is also expanding beyond the bad check cases to other offences, such as shoplifting or driving without a valid license. All of this has taken place outside the public spotlight, with little study or debate, and without any specific statutory authorization by the General Assembly.

In other areas, the General Assembly has appropriately taken care to ensure that when law enforcement functions are privatized, such as when private contractors are used to operate speed camera programs, rules are set up to mitigate the inherent conflict of interest that arises when investigations are conducted by persons with a financial stake in the outcome. And recent press reports about wildly inaccurate cameras in Baltimore, and a complete lack of accountability by either the company involved or the police who were supposed to be supervising has led to administrative reforms and

¹ Jessica Silver-Greenberg, *In Prosecutors, Debt Collectors Find a Partner*, New York Times, A1, Sept. 16, 2012, <http://www.nytimes.com/2012/09/16/business/in-prosecutors-debt-collectors-find-a-partner.html>

calls for further legislative controls. The same concerns exist with the privatized diversion programs that the bill seeks to scrutinize.

CorrectiveSolutions, the company with contracts to operate private diversion programs in eleven Maryland counties,² is the successor company to American Corrective Counseling Services, which declared bankruptcy in 2009 in the wake of a barrage of class action suits challenging its practices, and is already the subject of a class action suit in California.

In order to shed further light on the practices surrounding these private diversion programs, the ACLU filed public information requests³ with the state's attorneys in each county where CorrectiveSolutions is known to operate. While responses have just begun to come in, already one jurisdiction has reported that it does not have any responsive documents in its own custody, reporting that they are all in the hands of CorrectiveSolutions. In and of itself, this response raises concerns about the adequacy and even existence of prosecutorial supervision of the diversion program.

For the foregoing reasons, the ACLU of Maryland supports SB 793.

² ACLU Questions State's Attorneys About Authorizing Private Companies to Threaten Prosecution for Profit, Jan. 14, 2013, http://www.aclu-md.org/press_room/95.

³ http://www.aclu-md.org/uploaded_files/0000/0381/prosecutor_mpia_request_merged.pdf