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TTY USERS CALL VIA MD RELAY

June 22, 2010

Ms. Hathaway Ferebee
Executive Director
Baltimore's Safe and Sound Campaign
2 East Read Street, 3rd Floor
Baltimore, Maryland 21202

Dear Ms. Ferebee:

Thank you for your June 14th letter, in which you share your views about how best to serve Maryland youth who are charged as adults and note your opposition to the construction of a new detention facility designed specifically for these youth.

Before responding to the specific recommendations in your letter, I believe some background information can provide context for our decision-making process. Hopefully, it will be clear that we share your goals of ensuring the public's safety and achieving better outcomes for juvenile offenders.

From calendar year 2007 to 2009 there was a 46 percent decrease in juvenile homicides statewide. So far this year there has been an additional 46 percent decrease over last year with a 63 percent reduction in Baltimore City. While there is always more work to be done, these reductions have helped us move closer to our goal of reducing all violent crime by 20 percent by the end of 2012 and to reduce crimes against women and children by 25 percent also by the end of 2012.

As you are aware, the capital budget includes approximately \$100 million for a facility to serve juvenile offenders charged as adults. Planning for this facility began in 2005 and \$12 million has been spent to date. The facility will have six separate housing areas, one 16-unit female unit, one 32-unit segregation unit for the most unruly and violent offenders and four 32-unit general male housing units. As a result, the general male housing units have a capacity of 128 individual single units with some future capacity to double cell some units as needed.

The facility will include features designed specifically for youth, such as outdoor and indoor recreation areas and a three-story education wing, and will allow staff to implement best practices that are more youth appropriate. For example, staff will be able to manage youth in smaller groups – which can be critical in dealing with gang-related issues and the need to

occasionally separate youth from one another for their own safety – and to use the non-violent “de-escalating” incident management techniques that are more effective with volatile youth.

On June 16th, there were 90 youth charged as adults detained in the Baltimore City Detention Center (BCDC). All of these youths are facing very serious felony charges including murder, rape and assault with a handgun. Eighty-five of the 90 youth are charged with multiple violent felonies and 35 of them have open and active detainers with other law enforcement agencies. While the fact that they are juveniles makes it inappropriate under federal law to serve them in a traditional adult facility, the serious and often violent nature of their crimes makes it inappropriate to serve them in a detention setting with other juveniles charged with less serious and non-violent offenses.

The safety and security of all of our juvenile offenders – and of the community – is a primary concern to us and for our decision to build the new facility. The new facility will allow youth who must be charged as adults under Maryland law to receive the services to which they are entitled under federal law in a safe and secure environment, away from incarcerated adults. At the same time, juvenile offenders with lesser offenses will be treated away from youth that are charged as adults and in facilities intended for youth facing charges in juvenile court.

Response to Recommendation One

“The State should stop automatically charging youth as adults. In the short term and until the transfer laws can be revised, we recommend detaining youth charged as adults in a juvenile detention facility, a practice that is gradually expanding nationwide.”

As you note, Maryland “transfer laws” require that older youth charged with serious felonies be automatically charged as adults – initially. Thus, by law, the State cannot “stop automatically charging youth as adults.” The State is in full compliance with the law. Local prosecutors and police, as well as the State agencies that detain juvenile offenders, have no discretion about where to initially charge juveniles accused of committing serious felonies.

If a 16- or 17-year old is charged with a serious felony – or if a 14-, 15-, 16-, or 17- year old is charged with first-degree murder or first-degree rape – State law requires that the charges initially be brought in adult court.¹ In most cases, the judge in adult court may conduct a hearing to decide whether the juvenile should be transferred to juvenile court, though significantly, older teenagers (16- and 17-year olds) charged with first-degree murder must stay in adult court.² For the cases in which an adult court judge has discretion as to whether transfer the case to juvenile court, the judge must consider factors set forth in the law, including the child’s age, mental and physical condition, and amenability to treatment, as well as the nature of

¹ See Maryland Annotated Code, Courts and Judicial Proceedings, § 3-8A-03(d), listing the most serious felonies, requiring 16- and 17- year-olds to be charged in adult court initially: abduction; kidnapping; second degree murder (or an attempt); manslaughter, except involuntary manslaughter; second degree rape (or an attempt); robbery (or an attempt); second and third degree sexual offenses; using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime; use of a firearm; carjacking or armed carjacking; first-degree assault)

² Maryland Annotated Code, Criminal Procedure, § 4-202(b), § 4-202 (c)(3).

the alleged crime and the public's safety.³ The adult court judge ultimately must decide whether there is a preponderance of evidence that a transfer to juvenile court is "in the interest of the child or society."⁴

The second part of your first recommendation is that youth charged as adults should be detained in a juvenile detention facility. As you know, the sole juvenile detention facility in Baltimore City is the Baltimore City Juvenile Justice Center (BCJJC). BCJJC treats juveniles whom a juvenile court judge has ordered to be detained. As noted below in the response to your second recommendation, the youth detained at BCJJC have significant offense histories. Despite our increased use of evidenced-based practices and detention alternatives, described more in detail below, the juvenile offenders charged in juvenile court and treated at BCJJC pose a significant risk to public safety and have been ordered to be detained by a judge. Notably, whenever a juvenile offender is detained in the BCJJC (or elsewhere), a judge has made a recommendation that detention is the most appropriate placement for the juvenile.

Response to Recommendation Two

"Reduce the youth population at the City's juvenile detention center by using and expanding community-based alternatives to detention."

"1. Effective Population Management: Stop holding youth who do not need to be detained."

Baltimore City youth who are in juvenile detention have been through a comprehensive intake process and all detention decisions have been affirmed by the circuit court. When a juvenile is arrested and DJS makes the decision to detain a youth that decision must be reviewed and affirmed by the court on the next available docket.

Maryland – Baltimore City, in particular – has been a participating site in the Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) for the last four years. In the fall of 2007, as part of JDAI, DJS implemented the Detention Risk Assessment Instrument (DRAI) in Baltimore City. The instrument was designed to assist intake workers across the state in making reasonable detention decisions in accordance with the law. The DRAI further ensures that that youth are placed in the least restrictive pre adjudication placement possible while maintaining public safety. All youth who are referred to DJS by police in Baltimore City are subject to the DRAI. The DRAI then produces a recommended outcome varying from release to detention. Over 80 percent of all intake decisions are a result of DJS' use of the DRAI. In Baltimore City, more than half of the youth who are currently in detention have committed felony offenses. Of all Baltimore City youth currently detained, more than 70 percent have committed felonies or crimes of violence, including assault, deadly weapon on school grounds, and handgun possession.

³ Maryland Annotated Code, Criminal Procedure, § 4-202 (d).

⁴ Maryland Annotated Code, Criminal Procedure, § 4-202 (b)(3).

In addition to the use of the DRAI, Baltimore City has JDAI expeditors who conduct daily reviews of all youth placed in detention. Expeditors then work with the courts to move eligible youth into appropriate community placements.

Moreover, as noted above, DJS has worked very hard to keep its juvenile facilities safe and effective. For the past three years, the Baltimore City Juvenile Justice Center has been making significant improvements, in part in response to a “findings letter” written by the U.S. Department of Justice about the Justice Center in August 2006. Given the Department of Justice’s (DOJ) concerns about problems at the facility, DJS voluntarily entered into federal supervision of the Justice Center in May 2007. For the past three years, federal monitors have closely scrutinized the Justice Center and have reported the facility’s steady progress. When DJS entered into the agreement with DOJ, DJS was found to be out of compliance in 29 areas. As of today, DJS is in substantial compliance in all 29 covered areas and has drastically changed the environment of the center. The stabilization of this facility was due in large part to DJS’s identification of appropriate youth for detention, the right services available in the community and in the center, and the decision to reduce the capacity of the facility from the rated 144 beds it initially offered to a maximum of 120 youth served in the facility currently.

“2. *Effective Interventions: Fund services and opportunities that assist youth to make good choices and connect with positive people and institutions.*”

Between 2008 and 2009, the number of youth killed in Baltimore City was reduced by 53 percent. This year Baltimore City is on track to again have a total year-over-year reduction. This enormous accomplishment would have been impossible without DJS’ recognition that effective supervision must be partnered with comprehensive services. In 2008, DJS established the Violence Prevention Initiative (VPI). VPI pairs intensive supervision and case management with intensive services provided by Operation Safe Kids. Operation Safe Kids is a unique program that studies violence as a public health issue and provides public health-oriented interventions to youth and their families. As a result, more serious juvenile offenders are served in their home communities.

Once the court and DJS determine that a youth can be released safely in the community, the appropriate balance of supervision and programming is critical. Currently, youth in the community awaiting adjudication participate in several alternatives to detention. These alternatives include Community Detention, a Day and Evening Reporting Center, the CHOICE program, the Youth Advocacy Program, the Pre-Adjudication Coordination and Training Center, the Detention Reduction Alternative Program, and shelter care. Among these alternatives, youth have access to educational support and services, job training and placement services, counseling, and resources development.

DJS continues to provide community-based supports to help youth connect to resources. Baltimore City has a comprehensive network of Spotlight on School workers. These are case managers who are in Baltimore City high schools full-time, coordinating services through multidisciplinary treatment teams, supervision of youth, and continual communication with school officials. DJS has also worked with the Department of Natural Resources to create a

Conservation Corps giving hundreds of Baltimore City DJS youth the opportunity to earn money while working in the state's parks. DJS continues to work with the Local Management Board, Baltimore City, and all the participating JDAI stakeholders in an effort to cultivate more community-based alternatives to detention.

This spring, DJS launched a diversion pilot program with the Baltimore City Police, and they are currently working with the Youth Services Bureaus to assist in increasing the State's diversion capacity. As part of the pilot program, diverted youth in the city will be made eligible for services that include Teen Court, mental health and substance abuse counseling, job training, and skill building. Perhaps the most beneficial aspect of the program is a decentralization of the police booking functions. By having district-based booking, youth are less likely to be detained or sheltered due the unavailability of a parent to pick them up. In addition, police can remain in the community instead of spending time transporting and processing youth outside their patrol areas.

"3. Prudent fiscal policies: Reduce state spending by supporting community-based alternatives that produce better results for youth and increase public safety."

These past several years I have been forced to make very difficult fiscal decisions. Even amidst the most difficult of economic times, DJS has been able to expand its use of Evidence-Based Practices by more than 300 percent. Today DJS has 324 available slots statewide for youth in an array of Evidence-Based Practices including Multi-Systemic Treatment (MST), Functional Family Therapy, and Multidimensional Treatment Foster Care.

A quarter of those slots are dedicated to additional services in Baltimore City. Evidence-Based Practices are proven mechanisms for rehabilitating youth in community-based settings where outcomes are proven to be better at significantly lower cost than out-of-home placements. DJS is committed to continuing its support for the use of Evidence-Based Practices wherever appropriate and throughout its continuum of care.

In Baltimore County, DJS continues to work with the Safe and Sound Foundation on its MST compact with Baltimore County's Local Management Board. We remain open to any support that our stakeholders will offer as we continue to work to provide the safest, most responsible, efficient and cost-effective services for youth.

Our approach attempts to balance public safety and the safety of the youth and correctional officers with the requirements of existing law, the seriousness of the youths' offenses and the fact that the offenders are juveniles. Ultimately, the best approach in dealing with this complex issue is for us to elicit opinions and input from all concerned parties and for us to be open to all points of view. To that end, I have ensured that members of my Administration, including Department of Public Safety and Correctional Services Secretary Gary Maynard and Department of Juvenile Services Secretary Don DeVore, are accessible to you and all other stakeholders in order to afford all sides the opportunity to voice their opinions or concerns.

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As a continuation of these efforts, I am inviting you to continue to meet with the Administration in an effort to exchange opinions and ideas on this issue. This will enable us to better understand your ideas and you to better understand our current rationale and planning efforts. Continuing an open dialogue is a critical part of ensuring that we make progress toward our common goal – that Maryland youth are served in the most appropriate setting.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin O'Malley". The signature is fluid and cursive, with a large initial "M" and "O".

Governor