

People's Commission to Decriminalize Maryland

Policy Recommendation Outline

November 2020

Full report will be released January/February 2021

**THE PEOPLE'S
COMMISSION**
TO DECRIMINALIZE MARYLAND
@DecrimMaryland

Table of Contents

Overview	2
Endorsing Organizations	3
Defining Decriminalization	4
People’s Commission Priority Areas	4
Drug Policy	5
The Problem	5
The Solution	5
Recommendations for Policy Actions	5
Homelessness	7
The Problem	7
The Solution	7
Recommendations for Policy Actions	7
Poverty	10
The Problem	10
The Solution	10
Recommendations for Policy Actions	10
Sex Work	12
The Problem	12
The Solution	12
Recommendations for Policy Actions	12
Youth	13
The Problem	13
The Solution	13
Recommendations for Policy Actions:	13
Endnotes	16

Overview

The People’s Commission to Decriminalize Maryland exists to reduce the disparate impact of the justice system on youth and adults who have been historically targeted and marginalized by local and state criminal and juvenile laws based on their race, gender, disability or socio-economic status. Through a statewide collaboration with organizations and affected individuals, the People’s Commission conducted an examination of the existing Maryland code and court systems to identify the specific ways juvenile and criminal laws disproportionately harm historically marginalized groups.

Beyond identifying the issues, the workgroups worked together to envision ways that the laws can be changed, rewritten, or eliminated altogether to reduce disparate impact; reduce the prison industrial complex; and improve public health, community accountability, and overall well-being in Maryland. As Maryland, and other states around the nation grapple with calls to disinvest from law enforcement, it is crucial that we examine the laws police are tasked with enforcing and consider how we as a state can begin to engage in more effective ways to accomplish community safety and accountability.

This high-level outline serves as a preview to the Commission’s interim report, which will be released in January 2021. Please visit the Commission’s website for updates at www.decrimmaryland.org.

Endorsing Organizations

Advocates for Children and Youth
Baltimore Action Legal Team
Baltimore Harm Reduction Coalition
Baltimore Safe Haven
Baltimore Youth Arts
Cause Engagement Associates
Center for Children’s Law and Policy
Community for Law in Action
Disability Rights Maryland
FreeState Justice
Health Care for the Homeless
Homeless Persons Representation Project
Job Opportunities Task Force
Justice Policy Institute
Maryland Justice Project
NARAL Pro-Choice Maryland
National Alliance on Mental Illness - Maryland
National Council on Alcoholism and Drug Dependence- Maryland Chapter
Open Society Institute - Baltimore
Out for Justice
Power Inside
Public Justice Center
Rebuild, Overcome, and Rise (ROAR) Center at University of Maryland, Baltimore (UMB)
The Human Trafficking Prevention Project at the University of Baltimore School of Law
Sex Workers Outreach Project - Baltimore
University of Maryland School of Law
Women's Law Center of Maryland
Youth as Resources
Youth Empowered Society

Defining Decriminalization

Decriminalization is the elimination of policies and practices that expose marginalized communities to increased justice involvement primarily because of behaviors and conduct that arise from their status or identity—as opposed to a legitimate public safety concern. Decriminalization also includes the implementation of policies and practices that do not rely on the police, courts, and corrections to respond to this category of behaviors and conduct.

People’s Commission Priority Areas

<i>Drug Policy</i>	Eliminating criminal and financial penalties associated with possession and use of drugs and pursuing policies grounded in public health data to address issues of chronic substance abuse and addiction.
<i>Homelessness</i>	Reducing the harm inflicted by criminalizing people who have to live their private lives in public due to being unhoused and reallocating resources from criminalization into equitable housing options and community-based crisis intervention services.
<i>Poverty</i>	Eliminating the laws that reinforce cycles of poverty by inflicting criminal-legal sanctions (incarceration, loss of license, excessive fees, and criminal records) on individuals because of their inability to pay or economic status.
<i>Sex Work</i>	Eliminating all criminal penalties for prostitution under the state codes (specified below) and passing administrative policies to protect those engaged in sex work from exploitation.
<i>Youth</i>	Changing and eliminating laws that bring young people—disproportionately youth of color—to the attention of the justice system for behaviors that are either typical in adolescence or a reflection of how we have marginalized large segments of Maryland’s youth.

Drug Policy

The Problem

Criminalizing drug users worsens the social determinants that lead to unhealthy families and communities,¹ creates barriers in accessing harm reduction services, and serves to further destabilize communities where drug abuse is an issue. The disruption that comes from arrest, pre-trial detention, and long prison sentences for crimes like possession of drugs or drug paraphernalia weakens the human and social capital of communities, putting community resources in constant fluctuation.² moving large numbers of people from under-resourced communities into carceral settings contributes to instability of local labor and housing markets.³ Communities that are characterized by chronic under-employment due to overcriminalization are also more likely to be food insecure, and lack access to healthcare and safe, affordable housing. Chronic unemployment also makes it more difficult for individuals from these communities to obtain social services, job training, and the potential to earn higher wages, perpetually reinforcing economic disadvantage and the social determinants of poor community health and safety.⁴

The Solution

The American Public Health Association and WHO both support and recommend decriminalization of drugs and related activities as a policy stance to improve the social determinants of health for marginalized groups. Furthermore, decriminalization has the public health benefit of increasing uptake of drug treatment, with cost savings from redirecting resources from criminal justice to the health system.

Recommendations for Policy Actions

Decriminalize Possession of Drug Paraphernalia for use under §5-620 and §5-619.

Amend paraphernalia possession statutes (5-620, 5-619) to remove language about items used to consume drugs. This would effectively decriminalize possession of items that could be used to use drugs.

Other programs that should be bolstered to ensure drug treatment and safety:

Install safe deposit boxes: Safe deposit boxes provide a safe way to dispose of paraphernalia decreasing the improper disposal of drug paraphernalia. Eliminating criminal penalties associated with paraphernalia will also encourage their use.

Reduce Penalties and Eliminate Escalating Penalties for Narcotics Under §5-607, §5-608, and §5-609

Change each aforementioned offense from a felony to a misdemeanor. Eliminate all fines and fees attached to §§5-602-5-606, reduce each maximum sentence by half, and eliminate escalation for repeat offenses.

Examples:

- §5-607- Penalties (§5-602-§5-606)
 - Reduce to a misdemeanor
 - Maximum 2.5 years
- 5-608 – Penalties for Schedule I-II Narcotics.
 - Reduce to a misdemeanor
 - Maximum 10 years
 - Eliminate all Escalation language (b)-(d).
- §5-609 Penalties- Schedule I + II Hallucinogenic Substances
 - Maximum of 10 years
 - Eliminate all escalation language (b)-(d)

Establish a Higher Standard of Proof for Possession with Intent to Distribute (PWID) (§5-602)

Adding a knowledge and intent requirement to the definition of PWID would deter law enforcement from arresting an individual solely based on the amount of drugs in their possession. Proving the offense would require a person to have a high volume of drugs and other indicators of an intent to distribute (e.g., records, witnesses, scales, cutting agents, packaging material, etc.)

Homelessness

The Problem

Unlike individuals who can lead their private lives inside safe and secure homes, those who are experiencing homelessness have no other choice than to lead their private lives in public spaces. Currently, criminal penalties or fines can attach to individuals for existing and leading their lives in public spaces or generally on land that is not their own; despite the fact that oftentimes they have no other choice. Statutes that facilitate the criminalization of homelessness include Trespass, Fourth Degree Burglary, failure to obey, and local ordinances against panhandling, loitering, and indecent exposure.

The global pandemic will likely exacerbate issues of homelessness as a result of mass evictions. Roughly 292,000 households are unable to pay rent and find themselves at risk of eviction in Maryland.⁵ Arresting and incarcerating these individuals will not improve their quality of life or do anything to address the growing crisis of homelessness in Maryland.

The Solution

The solution to Maryland's homelessness crisis is to expand access to equitable housing options and community-based crisis intervention services, not incarceration or unnecessary interactions with the criminal justice system that may result in harm. Maryland can see a significant cost-savings and improve overall community health and wellness by reallocating resources that are currently being used to criminalize those who are experiencing homelessness into stable equitable housing and investing in trained mental health professionals to serve as first responders when appropriate.

Recommendations for Policy Actions

Repeal §10-201(c)(3) Failure to Obey a Lawful Order

Failure to obey a lawful order to prevent a disturbance of the peace is an overly broad and vague offense that leaves interpretive discretion to law enforcement—usually the very same officer who gave the “order.” This provision of the Maryland code can criminalize behaviors that would otherwise not be considered criminal, or problematic, if not for the interpretation of law enforcement⁶. This offense can also be tacked onto existing charges by prosecutors for the purpose of extending sentences, incentivizing settlement agreements, admitting guilt, establishing probable cause, and building narratives portraying people as violent or dangerous to judges and to the public.⁷

Full repeal would allow the law to treat speech from law enforcement officers as speech from any other public employee. Individuals could be compelled to obey orders in order to receive services, but it would not be a criminal act to disobey an order from an officer. For example, if

an individual disregards a directive from a MTA driver who is a public employee, that may preclude the individual from being able to use MTA services, but they would not face criminal penalties. Similarly, if an individual disregards a directive from a police officer, a public employee, the officer may deny services to the individual and² the individual would not be subjected to criminal penalties.

Repeal §6-205 Fourth Degree Burglary

People experiencing homelessness will often occupy abandoned homes and buildings for shelter when there are no other options available. §6-205(a) and (b) gives police the authority to harass and arrest people who do not commit or have any intent to commit another crime or an act of violence. It also gives the courts power to incarcerate individuals who are experiencing homelessness without any public safety justification.

Full repeal of this statute would not put privately owned property at risk because anyone who breaks and enters with the requisite intent to commit a crime or violent act would remain subject to criminal penalties pursuant to Maryland Criminal Law Code §§6-202-6-204. Criminal Penalties under §6-403 Trespass are also available.

Amend §6-403 and §11-107 to make an exception for those experiencing homelessness.

§11-107 Indecent Exposure

This intent of this statute is to prevent lewd, malicious, and/or unwanted public exposure of human genitals. However, this statute is also used against people experiencing homelessness with mental health impairments and/or performing normal bodily functions like urinating when other private spaces may not be available. Those who are experiencing homelessness or who have mental health issues should be provided options, including treatment, instead of facing a maximum criminal penalty of three years in prison or a fine. Furthermore, the law should be narrowly tailored to only criminalize indecent exposure that is found to have lewd or malicious intent or can be likened to an assault. Current law does not contain these elements.⁸

§6-403 Wanton Trespass

People experiencing homelessness often seek refuge in abandoned homes or on private property when they have no other viable options for shelter. This act makes them vulnerable to criminalization for wanton trespass on private property under Maryland law. Creating an exception to criminal penalties to wanton trespass for those experiencing homelessness, have mental health challenges, or who are seeking shelter would allow these individuals the opportunity to obtain basic needs of safety and housing.

Remove criminal penalties for fare evasion under 17-705 and make it a civil offense without the possibility of jail time.

The criminalization of fare evasion has a disproportionate impact on people experiencing homelessness who cannot afford the fare. Lack of identification can turn the criminal citation for fare evasion into an arrest. Decriminalizing fare evasion means that failing to pay a fare will result in a ticket, not an arrest or any interaction with the criminal justice system. This change should also allow those who are unable to pay the fare due to indigency to be subject to a civil fine in the amount of the ticket cost.

Eliminate municipal codes that penalize panhandling in public spaces as it is unconstitutional to criminalize free speech and it has a disproportionate impact on people experiencing homelessness.

In the middle of a recession, pandemic, and homelessness crisis, panhandling may be a person's best option for obtaining the money they need to survive, purchase food, public transportation fare, medication, or other necessities. Eliminating municipal codes that criminalize panhandling could be accomplished through legislation prohibiting any policy, law, ordinance, executive order, etc. from assigning criminal or civil penalties for this behavior. Panhandling is a charitable solicitation which is recognized by courts as protected speech under the First Amendment.⁹ Supreme Court precedent in *Reed v. Town of Gilbert*, found that a restriction on speech is content-based. Any governmental regulation that seeks to restrict content-based speech will be subject to strict judicial scrutiny.¹⁰ If any restriction on speech that draws distinctions based on the message conveyed, it is content-based speech and will only be constitutional if it is narrowly tailored to achieve a compelling government interest. Applying the test in *Reed*, a large number of courts across the country have held that begging bans or anti-panhandling laws are unconstitutional content-based bans on speech under the First Amendment.¹¹ *Reed*, has started a chain reaction and other courts in Florida, Colorado, and Massachusetts have found panhandling ordinances unconstitutional and other states still have cases pending at this time.¹² Eliminating municipal codes that criminalize panhandling may also result in a cost savings of avoiding litigation fees that challenge the constitutionality of the municipal code.

Provide an exemption from penalty for municipal codes that restrict camping as they disproportionately target those who are homeless and criminalizing this survival amounts to a violation of the 8th Amendment's cruel and unusual punishment prohibition.

The lack of equitable housing in Maryland, compounded by the pandemic and the dangers of crowded shelters have created a scene where camping outside may be the only option available for some people experiencing homelessness. Unfortunately camping without a permit may result in a fine. The Ninth Circuit found that punishing people experiencing homelessness for sleeping and existing in public places where there are no shelter options available to be a violation of the Eighth Amendment's protection against cruel and unusual punishment¹³. Other Federal Circuits have made similar decisions, resulting in many jurisdictions repealing ordinances that assign criminal penalties or citations to those who are homeless.¹⁴ Enacting state legislation limiting municipal codes that assign criminal penalties to homeless individuals for survival will also reduce the state's vulnerability to litigation over these matters. A real solution to this is to provide more equitable housing options than to pour money into criminalizing someone who has nowhere else to sleep. Furthermore, removing the criminal penalty for seeking shelter would prevent stacking individual's criminal records with offenses that could result in a barrier to obtaining permanent equitable housing.

Poverty

The Problem

Our research has shown that Maryland's laws, policies, and practices identified below unnecessarily criminally penalize the poor for being poor. For those experiencing poverty, these policies increase their chances of being unnecessarily arrested, charged with a crime, or imprisoned solely because they are poor. Furthermore, the inaccessibility of expungement of criminal records increases their chances of being turned down for a job or public benefit—making a criminal record both a cause and consequence of poverty. Through these policies, among others, Maryland is not only criminalizing poverty, but doing so in a way that disproportionately impacts people of color.

The Solution

Decriminalization is the beginning of addressing the issue of poverty. In this context decriminalization of poverty means amending the laws and policies that criminally punish individuals who are unable to pay court fines and fees. Additionally, Maryland must change other laws that further marginalize those who are experiencing poverty; this includes: continuing to expand access to expungement, reforming child support laws to avoid the accrual of fees and other penalties for those who are unable to pay and eliminating wealth discrimination in auto insurance.

Recommendations for Policy Actions

Revise §5-201 such that electronic monitoring fees are based off of the defendant's ability to pay.

When someone is detained and awaiting trial, they are offered, at the court's discretion, the opportunity to participate in GPS monitoring or home detention. While this is often considered a more humane alternative to detention, GPS monitoring is often a source of severe economic violence against those who struggle to pay the costs. Private companies, such as ASAP Home detention, charge defendants hundreds of dollars a month for the surveillance devices.¹⁵ When defendants are unable to pay for these devices, they receive warrants for their arrests for non-payment, increasing the possibility that an indigent defendant who *has not been convicted* of a crime can be incarcerated for being unable to pay for their own detention.¹⁶ Even if the defendant is later found innocent, they will still owe money to the GPS monitoring agency. There is a direct link between poverty and increased or prolonged rates of incarceration as a result of electronic GPS monitoring fees.

Make expungement more easily accessible.

In the state of Maryland, a criminal record is acquired upon arrest, whether or not a person is ever convicted of a crime. Anything that occurs after arrest is documented on an individual's criminal record and will remain publicly visible until the charges and dispositions are expunged. The existing code (MD Code Ann., Crim. Proc. §10-105) only allows expungement of non-convictions after the defendant's successful petition to the court.

Individuals who have not been convicted of crimes should not face any consequences since they were not found guilty. However criminal records made publicly available result in these individuals still facing social stigma and other significant barriers to carrying on their life as normal.¹⁷

- **Automatic Expungement for Non-Convictions**--expungement should be automatic for charges that don't carry guilty verdicts. This would reduce barriers to employment after interaction with the criminal legal system.
- **Repeal the Unit Rule** (Md. Code Ann., Crim. Proc. §10-107) The "Unit Rule" adds tremendous barriers to employment for individuals with non-convictions. By preventing the expungement of eligible charges if they are included within a unit of other charges that are ineligible, this rule unnecessarily increases barriers to expungement and, as a result, presents more barriers to employment for those who have had contact with the criminal-legal system.

Stop wealth discrimination in auto insurance.

- **Eliminate the Use of Non-driving factors when underwriting Auto Insurance Policies.** Prohibiting insurers from using non-driving related factors in setting premiums can help to ensure that low-income individuals and people of color are not forced to pay disproportionately high premiums.
- **Create a Low-Cost Auto Insurance Program for Indigent Individuals.** The most effective and comprehensive solution to address the need for affordable auto insurance for low-income Marylanders is to implement a low-cost auto insurance program.
- **Eliminate arrests for driving without insurance.** Maryland has a multiplicity of other avenues that can penalize its citizens for lack of auto insurance without using incarceration.

Child Support Reform

Limit the use of punitive efforts of wage garnishment and driver's license suspension that undermine noncustodial parent's ability to earn the income needed to pay child support.

An individual who is having their wages garnished is incentivized to work in the underground economy.¹⁸ Driver's license suspension also places a major mobility barrier to employment; and child support orders that exceed a parent's ability to pay may add significant strain to a noncustodial parent's relationship with their child and family. These punitive measures demolish the obligor's ability to work and should be revised, as follows:

1. Eliminate the accrual of Child support arrears while the parent is incarcerated.

Incarcerated citizens by definition, do not have the freedom to pay their child support obligations but the bills continue to mount up during their stint behind the wall, most likely leading to an increased amount of arrears owed to the state.¹⁹ If the custodial parent is receiving TCA or SNAP benefits from the state government while the non-custodial parent is incarcerated, the state chooses to recoup the losses via arrearages leading to many incarcerated citizens returning to society with an unbearable amount of debt to be paid immediately. Lack of payment can lead to rearrest, penalties, increased fines, and the suspension of the individual's driver's license as listed above. This ought not be the case. Accrual of child support arrears should be halted while the parent is incarcerated.

2. Set child support orders based on the non-custodial parent's ability to pay.

As the goal of the child support program is to ensure that both parents abide by their legal duty to support their child based on their ability to provide that support, Maryland must make greater efforts to determine ability to pay and ensure that all child support orders are based on actual

income rather than income imputation. This may also require revision of the child support guidelines.

Sex Work

The Problem

Criminalizing adult prostitution and prostitution-related offenses under Maryland criminal codes §11-303, §11-304, §11-306, and §11-307 only serve to further marginalize sex workers who are engaging in sex work to survive. Most frequently, individuals who engage in sex work are trans and queer people of color who are already experiencing intersecting systems of discrimination, stigmatization, and disadvantage due to their social status, sexual orientation, and race.²⁰ Furthermore, laws criminalizing consensual adult prostitution perpetuate the narrative of these individuals as immoral or as victims—often conflating consensual sex work with human trafficking.

The Solution

The Maryland Legislature can reduce the harm and dangers faced by those engaged in sex work by choice or circumstance by repealing laws that criminalize adult sex workers.

Decriminalization will allow law enforcement and prosecutors to focus their energies on identifying and prosecuting individuals who traffic others into sex trade and pose a genuine threat to public safety and increase the health and safety of those engaged in consensual sex work, providing them with better opportunities and self-determination.

Recommendations for Policy Actions

- **Eliminate the following statutes:**
- **§11-303.** This code criminalizes persons who engage in prostitution or assignation “by any means” or occupy a building, structure or conveyance for the purpose of prostitution or assignation.
- **§11-304.** This code criminalizes managers, third parties and other support staff that are of service to sex workers who do not desire to work independently for safety reasons. Assigning criminal penalties to these individuals most negatively impacts those engaging in sex work because without those who help in the process, sex workers are more susceptible to violence.
- **§11-306.**²¹ This code criminalizes any person who knowingly procures or solicits prostitution.
- **§11-307.** This code makes it a crime for an owner of any building, structure, or conveyance to be used for prostitution, or allow any person in the building to engage in prostitution. The code also makes it illegal to set up any building, structure or conveyance for the purpose of prostitution.

Along with repealing these statutes, the legislature should **add a provision that automatically expunges prostitution-related offenses from the records of those who have been charged or convicted of these offenses.** Furthermore, other agencies such as the Department of Health, Department of Labor, Department of Human Services, etc. Should collaborate with peer led organizations in addressing the needs of adult consenting sex workers.

Youth

The Problem

Maryland's code contains many laws that bring youth of color disproportionately to the attention of the criminal-legal system.²² Most often, this is for behaviors that are either typical adolescent behaviors or a reflection of how we have marginalized large segments of Maryland's youth. The vast majority of young people's contact with the system results from someone making a determination that either typical adolescent behavior, or behavior stemming from trauma, abuse, neglect, or poverty, constitutes "criminal" conduct, as opposed to seeing that behavior as an indicator of a need for support to help that young person thrive.

The Solution

All young people in Maryland, particularly young people of color, should have the benefit of their youth. That means (1) redefining the jurisdiction of Maryland's juvenile justice system to exclude common adolescent behaviors, (2) expanding and standardizing diversion of youth away from the juvenile justice system to ensure that all of Maryland's youth receive the opportunity for diversion, and (3) prohibiting the use of short- or long-term incarceration for common adolescent behaviors that do not pose a risk to public safety.

Recommendations for Policy Actions:

Eliminate "status offenses" "violations" and "Child in Need of Supervision" from the "Juvenile Causes" section of the Maryland Code.

Maryland law allows cases to be filed in court for "Child[ren] in Need of Supervision" or CINS. This includes youth skipping school, who are "disobedient" at home, who run away from home, or who have "committed an offense applicable only to children" (known as "status offenses" because they are behaviors that are treated as offenses only because of a young person's age [e.g., being under 18]). Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(e). Youth can also be cited and referred to the Maryland Department of Juvenile Services for "violations" that are not defined as "delinquent acts" but are behaviors that still can result in court and juvenile justice involvement. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(dd); Md. Code Ann., Cts. & Jud. Proc. § 3-8A-33. "Violations" include underage use or possession of tobacco or alcohol, possessing or using a fake ID, and use or possession of small amounts of marijuana, among other behaviors.

Many of these behaviors are part of normal adolescent development (and behaviors that many adults engaged in while adolescents), but children and youth can end up in court, placed under the supervision of the justice system, or removed from their homes. Even if a young person does need some help or support, it does not have to be through the justice system. The Maryland Department of Juvenile Services reported that over 2,400 youth were reported to DJS with CINS referrals or citations as their most serious alleged offense in Fiscal Year 2019, which was 13% of all referrals to DJS.²³

Narrow the definition of “delinquent act” in Maryland to focus on public safety, not minor misbehavior. Maryland law defines “delinquent act” as “an act which would be a crime if committed by an adult.” Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(I). By defining “delinquent act” as any act that would be a crime if committed by an adult, Maryland law makes it possible to label a huge array of normal adolescent behavior as a “delinquent act” committed by a “delinquent child,” from a fight at school to shoplifting. The definition of “delinquent act” should exclude common minor misbehavior (i.e., disturbing school activities or being involved in a fight at school) from the jurisdiction of the juvenile justice system. This could be accomplished by excluding behaviors from the definition of “delinquent act,” or by directing the Department of Juvenile Services to implement a developmentally appropriate framework for determining such behaviors do not qualify as “delinquent acts.” While those behaviors would no longer fall within the definition of “delinquent act,” youth could still be referred to social service agencies, community-based organizations, schools or local management boards.

Similarly, the definition of “delinquent child” should be revised to exclude children age 13 and under, or to create a strong presumption that behaviors of young children are not criminal. Because the definitions of “delinquent act” and “delinquent child” do not set a minimum age of juvenile court jurisdiction, behavior of very young children can be – and is – criminalized. For example, in Fiscal Year 2019, 1,882 complaints were referred to DJS intake for youth age 12 and under, with 83% of the most serious charges in those referrals being misdemeanors. Additionally, Black youth represented two-thirds (65.8%) of youth age 12 and under referred to DJS.²⁴ It may be appropriate to refer some youth to social service agencies, community-based organizations, schools, or local management boards, but labeling their behavior as criminal should not be an option.

Greatly expand and standardize access to community-based diversion options:

- Require – at a minimum – diversion of all first and second-time referrals for misdemeanor and non-violent felonies to the Maryland Department of Juvenile Services, without consultation with the State’s Attorney and victim, by amending Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10. Victim consent is not required to divert adults from the adult criminal justice system, and it should not be allowed to force youth into a system that is likely to leave them – and public safety – worse off than if they were diverted to a community-based program.²⁵
- The statute should also give judges explicit authority to return a case that has been initiated back to intake for diversion.

- Maryland should ensure that in state law, agency policy, and actual practice, arrest and intake records for diverted youth are kept separately from other court records, are only consulted for the purpose of determining eligibility for diversion and are erased after a set period of time.
- To promote the use of diversion of youth by law enforcement to community-based resources prior to referring a case to DJS, Maryland’s Attorney General issue a directive similar to that issued by New Jersey’s Attorney General that standardizes access to diversion by police.²⁶ State law should also require the Maryland Police and Correctional Training Commissions to a new model diversion policy aligned with that directive.
- Maryland should create a program similar to California’s Youth Reinvestment Grant Program to provide resources to community-based organizations and localities to develop pre-arrest and post-arrest but pre-referral diversion programs.

Prohibit incarceration of youth for engaging in common adolescent behavior, minor misbehavior, and other reasons that do not pose a legitimate risk to public safety. This could be accomplished by Revising Md. Code Ann., Cts. & Jud. Proc. § 3-8A-15 to narrow the use of detention such that it is only used when the youth poses a significant risk of harm, or the youth is likely to leave the jurisdiction of the court. With respect to out-of-home placement and incarceration, Maryland should revise Md. Code Ann., Cts. & Jud. Proc. § 3-8A-19 to limit the use of commitment and out of home placement. At the very least, Maryland law should prohibit the use of detention and commitment to DJS for technical violations of probation or community detention.

For more information about policies and programs to reduce the disparate impact of the justice system on Marylanders contact:

The People’s Commission to Decriminalize Maryland
www.decrimmaryland.org
Info@decrimmaryland.org

Endnotes

¹ The World Health Organization defines “social determinants of health” as: “. . .the conditions in which people are born, grow, live, work and age. These circumstances are shaped by the distribution of money, power and resources at global, national and local levels. The social determinants of health are mostly responsible for health inequities - the unfair and avoidable differences in health status seen within and between countries.” See https://www.who.int/social_determinants/en/

² Frost and Gross, 2012. <https://link.springer.com/article/10.1007/s10611-012-9373-2>

³ Clear, Todd R. (2008). The Effects of High Imprisonment Rates on Communities. *Crime and Justice*. 37. 97-132. 10.1086/522360.

⁴ *Id.*

⁵ Leckrone, B. (2020, July 24). Fears and uncertainties abound for Md. tenants, landlords and courts as eviction moratorium ends. Retrieved October 10, 2020, from <https://wtop.com/maryland/2020/07/fears-and-uncertainties-abound-for-tenants-landlords-and-courts-as-eviction-moratorium-ends/>

⁶ Kerr, O. (2019, April 20). Sandra Bland and the 'lawful order' problem. Retrieved October 1, 2020, from <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/07/23/sandra-bland-and-the-lawful-order-problem/>

⁷ The Power of Police Officers to Give "Lawful Orders", 129 *Yale L.J.* 1569

⁸ There are three elements of the crime of indecent exposure: (1) a public exposure; (2) made willfully and intentionally, as opposed to inadvertently or accidentally; (3) which was observed, or was likely to have been observed, by one or more persons, as opposed to performed in secret, or hidden from the view of others.

Duran v. State, 180 Md. App. 65, 78, 948 A.2d 139, 146 (2008)

⁹ *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013).

¹⁰ *Reed v. Town of Gilbert*, Ariz., 135 S. Ct. 2218, 2228 (2015).

¹¹ For example, a panhandling ordinance that defined "panhandling" as making a "vocal appeal[] . . . for immediate donation[] of money or other gratuity" in Springfield, Illinois was struck down as a violation of the First Amendment because it was a content-based restriction that did not serve a compelling interest and was not narrowly drawn to achieve that interest. *Norton v. City of Springfield*, 324 F. Supp. 3d 994, 997 (C.D. Ill. 2018).

¹² Palazzolo, J. (2017, August 08). As Panhandling Laws Are Overturned, Cities Change Policies.

Retrieved November 5, 2020, from <https://www.wsj.com/articles/as-panhandling-laws-are-overturned-cities-change-policies-1502204399>

¹³ *Martin v. City of Boise*, 920 F.3d 584 (2019)

¹⁴ Cites that have either repealed or amended ordinances, modified policies or practices, and/or increased constructive approaches in response to Martin, as gathered from public news sources includes: Aberdeen, WA, Austin, TX, Berkeley, CA, Buena Park, CA, Costa Mesa, CA, Crescent City/ Del Norte County, CA, Englewood, CO, Eureka, CA, Grand Junction, CO, Harrisonburg, VA, Honolulu, HI, Lacey, WA, Los Angeles, CA, Marysville/Yuba County, CA, Minneapolis, MN, Modesto, CA, Moses Lake, WA, Nevada County, NV, Oakland, CA, Orange County, CA, Olympia, WA, Portland, OR, Redding, CA, Roseburg, OR, Sacramento, CA, San Clemente, CA, San Francisco, CA, Santa Ana, CA, Santa Cruz, CA, Sutter County, CA, Tacoma, WA, Thousand Oaks, CA, Turlock, CA, Ukiah, CA, and Visalia, CA.

¹⁵ Prudente, T. (2020, September 09). Delayed trials, home detention and hundreds of dollars in ankle-monitoring costs. Retrieved November 1, 2020, from https://www.washingtonpost.com/local/public-safety/delayed-trials-home-detention-and-hundreds-of-dollars-in-ankle-monitoring-costs/2020/09/09/0dc354e6-f215-11ea-b796-2dd09962649c_story.html¹⁵

-
- ¹⁶Law, V., & Schenwar, M. (2020, July 28). House Arrest Is Touted as a Humane Punishment. It's Not. Retrieved November 19, 2020, from <https://gen.medium.com/house-arrest-is-touted-as-a-humane-punishment-its-not-2ea61c078c2d?gi=sd>. See also:
- Jungen, A. (2016, May 3). GPS Ankle Bracelet Monitoring of Low-Risk Offenders Costs More than Anticipated. Retrieved November 19, 2020, from <https://www.govtech.com/public-safety/GPS-Ankle-Bracelet-Monitoring-of-Low-Risk-Offenders-Costs-More-than-Anticipated.html>, and
- Thompson, O. (2018, June 14). Shackled: The Realities of Home Imprisonment. Retrieved November 19, 2020, from <https://equaljusticeunderlaw.org/thejusticereport/2018/6/12/electronic-monitoring>
- ¹⁷ Job Opportunities Task Force. (2018). "Collateral Consequences of a Criminal Record" in The Criminalization of Poverty. 55-73. Retrieved 2020, from https://jotf.org/wp-content/uploads/2018/08/cop-report-013018_final.pdf
- ¹⁸ Sarah Scherer, R. (2020, August 18). How Child Support Affects Low Income Fathers. Retrieved November 1, 2020, from <https://www.ncsl.org/research/human-services/how-child-support-affects-low-income-fathers.aspx>
- ¹⁹ Id. at 20-23
- ²⁰ See Freestate-Justice's "Pushing Back: a Blueprint for Change" Dec. 2018 on pg. 31-32, and "Meaningful Work: Transgender Experiences in the Sex Trade" Erin Fitzgerald and the Red Umbrella Project. (Dec. 2015). pg. 5 and 16.
- ²¹ Prior to October 1, 2019, both the selling and buying of sex, along with allowing a structure or building to be used for prostitution, were all criminalized under § 11-306. Based on a CJIS query of prostitution-related offenses, §11-306 was the most frequently charged in Baltimore City and Anne Arundel County and was used overwhelmingly against women (of the 700 individuals charged with this offense between 2018-2019, 71% were women.)
- ²² Maryland Department of Juvenile Services, Data Resource Guide: Fiscal Year 2019, pg. 22 (December 2019), available at https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf (showing that youth of color are 2.56 times more likely than white youth to be referred to juvenile court/intake).
- ²³ Maryland Department of Juvenile Services, Data Resource Guide: Fiscal Year 2019, pg. 22 (December 2019), available at https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf
- ²⁴ Maryland Department of Juvenile Services, Data Resource Guide: Fiscal Year 2019, pg. 22 (December 2019), available at https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2018_full_book.pdf.
- ²⁵ Wilson, H. A., & Hoge, R. D. (2013). The effect of youth diversion programs on recidivism: A meta-analytic review. *Criminal Justice and Behavior*, 40(5), 497–518. <https://doi.org/10.1177/0093854812451089>
- ²⁶ See Attorney General Executive Directive No. 1990-1. at <https://www.state.nj.us/lps/dcj/agguide/3juvenil.pdf>