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Re: Baltimore County Detention Center's Failure to Comply with Sight and Sound
Separation, PREA, and the IDEA

Dear Criminal Justice Stakeholders:

I bring to your immediate attention that the Baltimore County Detention Center fails to comply with the mandates prescribed under the Juvenile Justice and Delinquency Prevention Act (JJDP) Sight and Sound Separation requirement, Prison Rape Elimination Act (PREA), and the

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Individuals with Disabilities Education (IDEA) Act. The Maryland Office of the Public Defender (MOPD) seeks immediate transfer of detained juveniles to Department of Juvenile Services (DJS) facilities. The following information outlines the urgent need for action.

During the summer of 2018, the MOPD Juvenile Protection Division (JPD) conducted an investigation of the Baltimore County Detention Center (BCDC). The investigation showed BCDC's failure to provide sight and sound separation of juveniles from adults, inadequate supervision of juveniles, the use of isolation to maintain sight and sound separation, the lack of a free and appropriate public education and failure to follow individualized education plans for disabled students in violation of the Individuals with Disabilities Education Act (IDEA). A letter documenting these findings was presented to BCDC Director Watts. Consequently, BCDC Director Watts signed an Affidavit wherein he acknowledged:

- (1) Leadership at BCDC believe it is inappropriate to house youth at its facility because it is not equipped to properly do so, given it is an adult facility that must contend with various safety, transportation, and other concerns that could negatively impact youth.*
- (2) It is an on-going challenge for BCDC to provide programming, educational opportunities and rehabilitative supports to juveniles charged as adults in BCDC.*
- (3) Juvenile inmates charged as adults in BCDC are potentially at a greater risk of harm, abuse, and sexual assault housed at BCDC.*

It was uncertain whether any changes were made. As a result, JPD returned on November 17, 2022, conducted a BCDC site visit and interviewed the juvenile detainees charged as adults. The investigation centered on reports of Juvenile Justice and Delinquency Prevention Act (JJDP) core requirement violations, PREA violations, as well as Eighth Amendment prohibitions against cruel and unusual punishment. It was revealed that **the conditions for juveniles housed at BCDC have not improved since JPD's initial 2018 investigation.**

Specifically, JPD's investigation revealed:

- In the Intake Unit, newly detained juveniles sleep on mats on the floor of their cells.
- Juvenile detainees have very limited access to showers.
- Rodents have infested the Unit.
- Juvenile detainees wash their own jumpsuits and underwear in the sink in their cell.
- Plumbing regularly floods cells with contaminated toilet water and debris.
- Juvenile detainees are locked in their cells for 23 hours each day.
- Juvenile detainees' singular ability to get the attention of the guard is by banging on the cell door, which often goes ignored.
- Juvenile detainees are permitted out of their cells – one cell at a time - around 2:30 a.m. to use the phones. They are afforded a Hobson's choice of showering or speaking to their family. They cannot accomplish both.

- While juvenile detainees are on the Intake Unit, no schooling is provided, despite several have individualized education plans (IEPs) with federal mandate provisions requiring that services are provided.
- Juvenile detainees are left both isolated and idle and no access to television or books.
- Once juvenile detainees are placed on a housing unit, they attend virtual school utilizing the Apex online instruction program. For those who have IEPs, this a violation of the IDEA. Youth on administrative restriction do not receive any schooling.
- Requesting sick calls is an arduous and long process resulting in children not seeing the doctor/nurse. Before processing a sick call, detainees must have a \$4.00 co-pay authorized by Correctional Services §2-118 subtracted from their inmate account. Several of the juvenile detainees are Children in Need of Assistance (CINA) and do not have parents but rather a DSS Social Worker. Consequently, they do not have access to funds to see the doctor. Children with concussions and dental issues requesting to see a doctor have been waiting for 30 days for an appointment.
- There is no adult separation as adults walk by their cells and talk to them.
- Juvenile detainees do not go outside. One child who has been held for two years has not been outside during his detention.
- Juvenile detainees do not participate in any recreation or large muscle exercises.
- Juvenile detainees do not receive mental health services despite several making requests to speak to a counselor; (BCDC asserts juveniles receive unspecified “behavior counseling.”)
- Juvenile detainees must purchase their own hygiene products, i.e., soap, shampoo.
- Food provided is unhealthy and inadequate. There is poor food hygiene as plates are shoved through an opening in the cell door. Additionally, if the child is asleep or simply does not answer to receive the tray, no food is given.

An MPIA request was immediately made to BCDC that sought information about educational programs and mental health services for youth detainees. On February 2, 2023, JPD received BCDC’s responses to the MPIA request. The answers are attached hereto. As of the date of this letter, BCDC has failed to respond to JPD’s request for information relating to educational programs, despite its obligation to do so within 30 days of the date of the request pursuant to Maryland Code, General Provisions Article §4-203(a)(1).

BCDC is NOT In Compliance with the JJDP’s Core Requirements for Juveniles Pending Transfer/Trial

Title II, Part B of the JJDP sets out detailed requirements that a state must satisfy beginning on December 21, 2021 in order to be eligible to receive funding under the Act’s Formula Grants Program set forth at 34 U.S.C. §11133(a)(1)(33). Maryland submits a state plan that “provides for an effective system of monitoring jails, lockups, detention facilities, and correctional

facilities to ensure that the core requirements are met, and for annual reporting of the results of such monitoring to the Administrator” of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). 34 U.S.C. §11133(a)(14). The particular core requirement asserted herein is the removal of juveniles prosecuted as adults from adult facilities.

A juvenile who is charged as an adult cannot be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure adult facility except if one of the exceptions applies (Six-Hour Exception, Rural Exception, Travel Conditions Exception and Conditions of Safety Exception). In addition, a court may determine after a hearing, and in writing, that it is in the interest of justice to permit a juvenile to be detained in a jail or lockup for adults or have sight or sound contact with adult inmates in a secure facility. If the court makes an initial determination that it is in the interest of justice to detain a juvenile under those circumstances, the court must hold a hearing at least every 30 days to review whether it is still in the interest of justice to continue to detain the juvenile in an adult jail or lockup or such that he had contact with adult inmates in a secure facility. In determining whether it is in the interests of justice to detain (or continue to detain) a juvenile, the court must consider: (1) the age of the juvenile; (2) the physical and mental maturity of the juvenile; (3) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile; (4) the nature and circumstances of the alleged offense; (5) the juvenile’s history of prior delinquent acts; (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and (7) any other relevant factor(s).

It is well documented that isolation and other inhumane conditions exacerbate existing mental health problems and increase suicide ideation; and are the principle reason the federal government banned solitary confinement for juveniles in the federal prison system. A 2012 report notes that “[n]owhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.” The U.S. Department of Justice (DOJ) subsequently recommended that the use of solitary confinement for juveniles in federal prisons be prohibited, and President Obama adopted that recommendation in January 2016. As of January 2020 seventeen states as well as the District of Columbia limit or prohibit solitary confinement for minors. The DOJ Final Rule on Prisons and Jail Standards to Prevent, Detect, and Respond to Prison Rape under Prison Rape Elimination Act (PREA) note:

[A]gencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

The Prison Rape Elimination Act (PREA)

The conditions detailed above also violate the PREA and the constitutional provisions that underlie the federal statute. Congress enacted PREA to address the high incidence of sexual assault occurring in prisons and jails across the country, with particular concern for detained youth who are especially vulnerable to abuse. *“Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities – often within the first 48 hours of incarceration.”* 34 U.S.C. §30301(4).

Congress found that the prevalence of sexual abuse involves actual and potential violations of the United States Constitution, and concluded that national standards were necessary to prevent, detect, and respond to such abuse. See 42 U.S.C. §15601(13). Considering the various needs and challenges of correctional facilities, distinct standards were created for lockups, adult prisons and jails, community corrections, and juvenile facilities. Data gathered in the preparation of these standards confirmed the heightened risk for youth.

Juveniles made up 7.7% of all victims of substantiated acts of sexual violence in prison and jails carried out by other inmates, even though they made up less than 1% of the total detained and incarcerated population. National Prison Rape Elimination Commission Report at 155-156. As a result, each set of standards for adult facilities pays particular attention to vulnerability of youth. Lockups, which have fewer requirements, are still required to maintain sight and sound separation between juveniles and adults. 28 C.F.R. §115.114. Jails and prisons are subject to greater requirements:

- (a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area or sleeping quarters.
- (b) In areas outside of housing units, agencies shall either: (1) maintain sight and sound separation between youthful inmates, or (2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.
- (c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall have access to other programs and work opportunities to the extent possible. 28 C.F.R. §115.14

Consequences of PREA Noncompliance

By law, states are required to certify that their corrections facilities comply with the national PREA standards based on audits of each facility to be conducted at least once every three years. 34 U.S.C. §30307(e)(2). Failure to comply, will result in a loss of five percent of the state’s federal prison-related funding. 34 U.S.C. 30307(e)(2)(a).

In January 2014, the Maryland Attorney General addressed whether the PREA standards apply to local correctional facilities and noted the adverse consequences of noncompliance. “*For the State, the most immediate consequence is expressly provided as part of the statutory scheme: the State will lose five percent of its federal prison-related funding. For local facilities, the consequences of noncompliance flow implicitly from that scheme and include a potential increase in exposure to tort liability, ineligibility for contracts for the housing of federal inmates, and a potential loss of accreditation.*” 99 Md. Op. Atty. Gen. 3 (January 28, 2014).

In addition to the potential loss of federal funds, particularly funds that flow through the state to the county, noncompliance with the PREA standard can increase exposure to liability under a §1983 federal action or state tort claim. As noted in the Attorney General’s Opinion, “[A] court may ... consider a prison official’s noncompliance with the national standards in determining whether he or she has acted negligently ... the requirements of a legislative enactment such as PREA may serve as the standard of care for purposes of negligence claims.” *Id.* Moreover, the Eighth Amendment prohibition on cruel and unusual punishment requires prison officials to take reasonable steps to protect inmates from physical abuse. Failure to comply with mandated national standards could establish that prison officials are deliberately indifferent to a substantial risk of serious harm to the inmate’s safety. *Id.* at 834, 837 (citing *Farmer v. Brennan*, 511 U.S. 825, 832-22 (1994)).

Utilizing Juvenile Facilities to Ensure Constitutional Conditions

Beyond the potential liability under PREA, Maryland law further discourages detaining youth in adult facilities. Maryland Rule 4-223 provides:

[P]ending a determination of whether to transfer a District Court or circuit court criminal case to juvenile court pursuant to Code, Criminal Procedure Article §4-202, the court shall order the juvenile defendant to be held in a secure juvenile facility unless: (a) the juvenile defendant is released on bail, recognizance, or other conditions of pretrial release; (b) the Department of Juvenile Services determines that there is not available capacity in a secure juvenile facility; or (c) the court finds that detention in a secure juvenile facility would be a risk of harm to the juvenile defendant or others. The court shall state the reasons for the finding on the record.

DJS detention (hardware secure) facilities provide similar security measures as an adult jail – relying on the use of construction and hardware such as locks, bars and fences to restrict movement – but with the capability to address the unique developmental concerns of young detainees. Most notably, the lower staff-to-inmate ratio allows for greater supervision that both protects vulnerable youth from abuse and provides sufficient monitoring of the entire housing area. Juvenile detention facilities generally have a ratio of one staff member to every eight youths, while an average adult jail has a staff-to-inmate ratio of one to sixty-four. Campaign for Youth Justice,

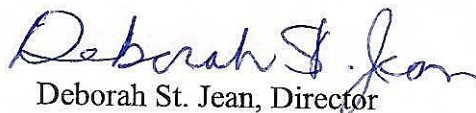
Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America, available at: <http://cfyi.org/research/cfyi-eports/item/jailing-juveniles>.

Juvenile facilities are also able to provide sight and sound separation from adult inmates. Developmentally, children are particularly vulnerable to criminal socialization and sensitive to peer pressure. As a result, youth confined in adult facilities are especially likely to engage in violent behavior and to develop identities linked to domination and control.

BCDC is not generally equipped to handle the special developmental needs of youth, including those related to their physical, emotional, and educational well-being. Youth in DJS detention facilities receive schooling five days a week for six hours a day year-round through the Juvenile Services Education Program (JSEP). While detained in a DJS facility, youth have access to medical, behavioral, counseling, dietary, and recreational activities as constitutionally required. They do not pay to see a doctor and receive all hygiene products free of charge.

In addition to DJS detention facilities designed for youth, there is also the Youth Detention Center (YDC), which is part of the Department of Public Safety and Correctional Services (DPSCS). YDC houses youth who are charged as adults and are not eligible for a transfer hearing as well as youth committed to DPSCS until they reach their 18th birthday. BCDC and the Baltimore County Public Schools could engage in a Memorandum of Understanding to house these youth at YDC and remove them from BCDC thereby bringing BCDC into compliance with constitutional and federal law. I request that you take immediate action for the transfer of all youth currently housed at BCDC.

Sincerely,



Deborah St. Jean, Director

Juvenile Protection Division

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Attachment

Good Morning,

Please see the compiled information pertaining to attached Freedom of Information Act Request.

- Educational programming for juveniles detained at BCDC to include the hours of educational instruction, days of educational instruction, whether the educational instruction is in person or virtual, subjects taught, and whether BCDC accesses student IEPs as well as whether the IEPs are implemented.

BCPS will be providing a separate response with information specific to the educational program.

- What mental health programming is available to juveniles housed at BCDC.

Juveniles while at BCDC receive behavior counseling and psychotropic medications when indicated.

- Does BCDC house juveniles in their cells for extended periods of time at any point during their detention

Juveniles are housed in their cells except for when they are attending classes or on their allocated walk time. Walk time is done two cells at a time on a constant rotating basis. Walk time starts after school ends at 2:30pm and is for a hour long period.

- Do juveniles have to pay \$4.00 co-pay to see a doctor

Medical sick call appointments are charged \$4.00 per policy. The fees are not associated with chronic care appointments nor behavior services.

- What is a typical schedule for a juvenile detained at BCDC to include programming, hygiene, phone calls and meals

Juveniles attend classes everyday between 8:30am-10:30am and 12:30pm-2:30pm. Juveniles receive meals at the same time as adult offenders. Meals are distributed as follows: breakfast 4am-5am; lunch 10:30am-11:30am; dinner 3:30pm-4:30pm. Juveniles are allowed access to the phone during their walk time. Juveniles can purchase hygiene packages weekly from commissary. Indigent juveniles receive hygiene packages weekly from the facility free of charge as long as they have put in a request. Juveniles are permitted to shower daily around their walk time.

Thank you,

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