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Juvenile (In)Justice: How Juvenile Pretrial Detention in Maryland Violates the Juvenile Causes Act & Supreme Court Jurisprudence

By Sarah McHenry

ABSTRACT

Maryland's Juvenile Causes Act states that children alleged delinquent should only be removed from the home as a last resort and subsequently provided a safe, humane, and caring environment while in the custody in the state. However, children in Maryland are regularly detained prior to adjudication, and many for non-violent offenses, such as technical violations. These children are detained in pretrial detention centers, where safety concerns and abuse allegations are reported regularly.

This comment will argue that Maryland is violating its juvenile statutes & case law by detaining children prior to adjudication in its pretrial detention centers. The statutory role of Juvenile Services, if the juvenile is in State custody, is to provide for "safe, humane, and caring environment[s]" and to secure for the child "custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents" only if it is necessary to remove a child at all from the home.¹ Maryland instead unnecessarily detains juveniles prior to adjudication: first, at rates higher than necessary; second, for offenses that should not be weighed in the public interest (such as technical violations); third, in conditions that do not

¹ See MD. CODE CTS. & JUD. PROC § 3-8A-02(a)(5) (2017).

satisfy the “safe, humane, and caring environment” requirement of the statute.²

The comment discusses Maryland’s Courts & Judicial Proceedings Article, §3-8A-02, along with the case law that explains it. The comment argues that Maryland is violating its code and case law by unnecessarily detaining children in placements that are fundamentally unsafe, dehumanizing, and ineffective. It explains how the Supreme Court has differentiated between adults and children in recent cases (ranging from *Roper v. Simmons* to *Montgomery v. Louisiana*) and then provides empirical evidence from scientific studies in order to lay the foundation that children are extraordinarily different from adults in that they are more susceptible to the psychological trauma of incarceration. The comment concludes by recommending that alternatives to detention, such as community-based treatment and therapeutic foster care, are in the best interest of the child, the community, and the state for therapeutic, safety, and financial reasons.

I. INTRODUCTION

Until the day of the school fight in the spring of 2013, Tanika had been a perfect student.³ Though no one was injured in the skirmish between her and another girl, the state of Maryland nonetheless decided to charge her with second-degree assault.⁴ Tanika had been an honors student and did not have a history of delinquent behavior, and therefore, the Department of Juvenile Services recommended the case be dismissed.⁵ The prosecutor,

² *See id.*

³ *See* Erica Goode, *Judge in Maryland Locks Up Youths and Rules Their Lives*, N.Y. TIMES (Dec. 19, 2014), http://www.nytimes.com/2014/12/20/us/judge-in-maryland-locks-up-youths-and-rules-their-lives.html?_r=0 [<https://perma.cc/QY99-VUD8>].

⁴ *See id.* (noting that there were no injuries to any parties during the fight, although there was property damage); *see also* MD. CODE CRIM. LAW §§ 3-201, 3-203 (2017) (defining the crime of second-degree assault in Maryland).

⁵ *See id.* (noting that the Maryland Department of Juvenile Service has the option to recommend dismissal of a charge or can informally adjust the matter of a juvenile).

however, went forward with the charge.⁶ When Tanika missed her court date, the presiding judge issued a writ to detain her in a secure facility pending adjudication.⁷

Tanika spent an entire month detained in Thomas J. Waxter Children's Center (Waxter), a maximum-security detention center for girls in Laurel, Maryland.⁸ The judge sent her there despite her outstanding grades, her close relationship with her mother, and her otherwise spotless discipline record.⁹ At Waxter, Tanika lived in a traumatizing environment with girls who had significantly more severe behavioral and mental health needs.¹⁰ Tanika was miserable and frequently broke down crying.¹¹ When Tanika finally returned to the court and pled guilty to her charge, Judge Walton ruled that she was delinquent and needed services from the court, disregarding Tanika's spotless history.¹²

⁶ See *id.*; see also MD. CODE CTS. & JUD. PROC. § 3-8A-10(h) (2017) (recognizing that a State's Attorney can pursue a matter if any party appeals, including the victim, the person who filed the complaint, and the arresting police officer).

⁷ See Goode, *supra* note 3 (highlighting presiding judge's power over Tanika's case).

⁸ See Goode, *supra* note 3 (reporting that Tanika was sent to Laurel for pretrial detention); Tamiaka Briscoe, *Rise in Suicidal Behavior at Waxter Girls' Detention Center*, CAP. NEWS SERV., PHILIP MERRILL C. JOURNALISM (Apr. 18, 2014), <http://cnsmaryland.org/2014/04/18/rise-in-suicidal-behavior-at-waxter-girls-detention-center/> (stating that Waxter Children's Center is a female juvenile detention facility in Laurel) [<https://perma.cc/2XNY-TC87>].

⁹ See Goode, *supra* note 3 (noting the mitigating factors that Judge Walton had available when ruling to detain Tamika).

¹⁰ See Briscoe, *supra* note 8 (reporting on the rise in suicidal behavior at Waxter Children's Center and prevalence of trauma in detained juveniles); Scott McFarlane, *Dozens of Girls in Maryland Juvenile Detention Centers Are Victims of Sex Trafficking*, NBC NEWS 4 WASH. (Sept. 11, 2014), <http://www.nbcwashington.com/investigations/Dozens-of-Girls-in-Maryland-Juvenile-Detention-Centers-Are-Victims-of-Sex-Trafficking-274832081.html> (reporting on the rise of sex trafficking reports at Waxter Children's Center) [<https://perma.cc/8XAK-BDL4>].

¹¹ See Goode, *supra* note 3 (describing Tanika's volatile emotional state during detention).

¹² See *id.*; see also MD. RULE 11-112(a) (permitting pretrial detention of juveniles).

The Maryland Juvenile Causes Act emphasizes the interest of the State in the maintenance and strengthening of the family unit.¹³ While the Act gives judges the power to remove a child from their home, it specifies that removing a child is only to be done when necessary for the welfare of the child or the good of public safety.¹⁴ If detention is absolutely necessary, the State has an obligation under the Act to provide a comfortable and safe environment for the youth.¹⁵ In the case of Tanika, as well as many other youths, the State of Maryland grossly violates these statutory obligations, resulting in a generation of traumatized children who are more likely to have mental health issues and become involved in the adult criminal justice system.¹⁶

This Comment argues that Maryland courts violate the purposes of the Juvenile Causes Act by excessively and inappropriately detaining children before trial in unsafe detention centers.¹⁷ Part II discusses the development of Supreme Court juvenile precedent and explains the Maryland Juvenile Causes Act.¹⁸ Part III argues that Maryland courts violate the Act's

¹³ See *id.*; see also § 3-8A-02(a)(5) (stressing that conserving a child's ties to his family should be the priority of the System).

¹⁴ See MD. RULE 11-112(a) (authorizing judges or intake officers to detain a child if it is in the best interest of the child or the community); see also MD. CODE § 3-8A-02(a)(5) (2017); see also MD. CODE § 3-8A-15(b) (granting judges, magistrates, and intake officers the power to detain a child prior to a hearing if the child is likely to leave the jurisdiction).

¹⁵ See MD. CODE § 3-8A-02(a)(6)-(7) (mandating the Department of Juvenile Services to provide a safe, caring, and humane environment to children in custody, along with access to required services and care as close as possible to what should have been provided by his parents).

¹⁶ See Patrick McCarthy et al., *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, HARV. KENNEDY SCH. (Oct. 2016) https://www.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/ntcc_the_future_of_youth_justice.pdf (providing a meta-analysis of studies that conclude juvenile detention and commitment increase the risk of lower educational attainment, mental illness, and criminal behavior) [<https://perma.cc/N6A7-PP8R>].

¹⁷ See MD. CODE CTS. & JUD. PROC. § 3-8A-01 (2017).

¹⁸ See *infra* Part II (discussing the Maryland Juvenile Causes Act, Maryland statutory interpretation, and Supreme Court Eighth Amendment jurisprudence as it applies to juveniles).

unambiguous purpose clause sections pertaining to children alleged delinquent by unnecessarily detaining them in violent detention centers.¹⁹ Part III additionally argues that even if the Juvenile Causes Act is ambiguous, recent Supreme Court juvenile jurisprudence mandates a stricter standard for pretrial detention.²⁰

This Comment recommends in Part V that the state of Maryland drastically reduce all pretrial detention of juveniles and instead invest in community-based interventions to serve youth awaiting adjudication.²¹ Finally, this Comment concludes that Maryland's current practice of inappropriately detaining children prior to adjudication violates the Juvenile Causes Act and is contrary to Supreme Court juvenile jurisprudence.²²

II. BACKGROUND

A. The Maryland Juvenile Causes Act

Until the turn of the twentieth century, Maryland, along with the vast majority of the country, prosecuted children over the age of seven in the adult court system.²³ This "barbaric" penal system resulted in cases such as *State v. Guild*, where the court imposed the death penalty on a twelve-year-old child after finding that his uncorroborated confession was sufficient evidence to convict him of murder.²⁴

¹⁹ See *infra* Part III (explaining how juveniles alleged delinquent, as defined by the Maryland law, are inappropriately detained in punitive facilities).

²⁰ See *infra* Part III (arguing that the current pretrial detention practices of Maryland violate the Eighth Amendment's Cruel and Unusual Punishment Clause).

²¹ See *infra* Part IV (advancing the recommendations of best practices in juvenile justice reform).

²² See *infra* Part V (arguing that Maryland's current practice of unnecessarily detaining youth prior to trial in unsafe detention violates the Juvenile Causes Act, as well as the Eighth Amendment).

²³ See *In re Johnson*, 255 A.2d 419, 422 (Md. 1969) (describing the background of the Juvenile Causes Act, noting that children below the age of seven were considered incapable of criminal intent).

²⁴ See *State v. Guild*, 10 N.J.L. 163, 189 (1828) (affirming the conviction and death sentence of a twelve-year-old boy despite an uncorroborated confession, which would be

In response to the growing public outrage over the inhumane treatment of juveniles, Maryland established a separate jurisdiction for children alleged delinquent under the age of sixteen in 1902.²⁵ In 1969, the General Assembly of Maryland passed a comprehensive set of laws, known today as the Juvenile Causes Act, to further protect the rights of juveniles in court.²⁶ The following year, in *In re Hamill*, the Court of Special Appeals interpreted the Act, holding that the Legislature intended to preserve juvenile court as a special, non-punitive type of proceeding that addresses the unique needs of adolescents.²⁷

Today, Maryland circuit courts may sit as juvenile courts and retain exclusive jurisdiction over any child under the age of eighteen alleged to be delinquent, with limited exceptions.²⁸ The Juvenile Causes Act guides Maryland courts, ensuring that the proceedings fall under the civil law, rather than criminal law.²⁹ The Act guarantees the preservation of the family

unconstitutional under Supreme Court precedent today); *see also In re Johnson*, 255 A.2d at 421; Abe Fortas, *Equal Rights - For Whom?* 42 N.Y.U. L.REV. 401, 405-06 (1967) (describing the outcry against the prosecution of juvenile matters in adult courts) [<https://perma.cc/5E5A-RWGD>].

²⁵ *See In re Johnson*, 255 A.2d at 422 (noting that Maryland created a separate jurisdiction for juveniles in 1902 as a result of public opinion and evolving standards of decency).

²⁶ *See* 1969 Md. Laws 82; *see also In re Hamill*, 271 A.2d 762, 764 (Md. Ct. Spec. App. 1970) (noting that the Juvenile Laws were substantially revised in 1969 but retained the same purposes).

²⁷ *See In re Hamill*, 271 A.2d at 764 (interpreting the nature of the statute found in 1969 Md. Laws 82).

²⁸ *See* MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03 (2017) (expanding the jurisdiction of the court to all children under eighteen who are alleged delinquent, except children over fourteen who are alleged to have committed a crime punishable by life imprisonment and children over sixteen who are alleged to have committed a specified set of crimes stated in § 3-8A-03(d)(4) or have violated the Transportation Article).

²⁹ *See In re Victor B.*, 336 Md. 85, 90 (Md. 1994) (announcing that Maryland Courts have consistently interpreted juvenile laws to reflect the special civil nature of juvenile proceedings).

unit except when the child's welfare or public safety demands it.³⁰ For example, the Maryland Court of Special Appeals ruled in *In re Julianna B.* that a judge may confine any juvenile who presents a "present threat" to public safety.³¹ If a child is removed from the home, the Act demands a safe and humane environment for children in state custody.³² In *State v. Kanavy*, this provision was tragically tested when a child died while in Department of Juvenile Services (DJS) custody.³³ Finally, due to the 1997 amendments to the Juvenile Causes Act, the court may now consider a variety of factors during the disposition of a delinquent child, including public safety, the accountability of the child to the community due to the delinquent act, and the development of the child's character.³⁴

The purposes of the Juvenile Causes Act are varied and apply to different actors in the system.³⁵ For example, Maryland must provide the same level

³⁰ See *In re Hamill*, 271 A.2d at 764; *In re Appeal No. 179*, 327 A.2d 793, 794 (Md. Ct. Spec. App. 1974) (ruling that no juvenile may be separated from his family unless public safety or his welfare demands it).

³¹ See *In re Julianna B.*, 947 A.2d 90, 134 (Md. Ct. Spec. App. 2008) (insisting the lower court abused its discretion for denying community visits to a juvenile who presented no evidence of violent behavior; also noting that the juvenile was initially detained and subsequently committed due to the severity of her second-degree murder charge) (*vacated on other grounds*, 967 A.2d 776 (Md. 2009)).

³² See *State v. Kanavy*, 4 A.3d 991, 995 (Md. 2010) (reviewing the language of MD. CODE, CTS. & JUD. PROC. § 3-8A-02 in finding that DJS employees owed a duty of medical care and provision of a safe and humane environment to the child who died in their custody).

³³ See *id.* at 996 (explaining that DJS employees were clearly subjected to the plain language of § 3-8A-02 when a child died in DJS custody).

³⁴ See *In re Saifu K.*, 978 A.2d 881, 889 (Md. Ct. Spec. App. 2009) (analyzing the 1997 amendments to the Juvenile Causes Act to reach the conclusion that the legislature sought to change the purpose of juvenile justice law for delinquent youth to a system of accountability); MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(1) (2017) (stating that the Juvenile Justice System must ensure the balance of certain objectives for children who have committed delinquent acts).

³⁵ See MD. CODE, CTS. & JUD. PROC. §§ 3-8A-02(a)(1)-(2), 3-8A-02(a)(5), 3-8A-02(a)(7) (2017) (specifying different responsibilities for various actors coming within the provisions of the subtitle, including delinquent children, the Juvenile Justice System, and parents of delinquent children).

of care and services provided to children at home and in custody.³⁶ A judge or magistrate may only remove a child to state custody from the home if necessary for his or her welfare or for public safety purposes.³⁷ Overall, the Act is “civil in nature” and not intended to be punitive.³⁸

B. Maryland Statutory Interpretation

The canons of statutory construction are “well-settled” in Maryland.³⁹ The trier of fact’s goal is to determine the intent of the General Assembly.⁴⁰ The trier of fact focuses their inquiry on the plain words of the statute, being careful not to add, delete, overemphasize, or underemphasize words or phrases.⁴¹ For example, in *Taylor v. NationsBank*, the Court of Appeals looked at a statutory definition according to the canons of statutory construction when determining whether information disclosed orally was considered “account information.”⁴² The Court looked at the plain language of the statute to make its ruling. As the statute’s plain language did not contain the word “oral,” it held that statute was not violated because the definition made no reference to oral information and solely concerned written records or copies.⁴³

³⁶ See *id.* § 3-8A-02(a)(6)-(7) (ensuring that the parental “custody, care, and discipline,” as well as safe and humane care, will be provided to any child in State custody).

³⁷ See *id.* § 3-8A-02(a)(5) (stating that the principal purpose is to conserve and strengthen the family unit, and to only separate it if absolutely necessary).

³⁸ See *In re Victor B.*, 646 A.2d 1012, 1016 (Md. 1994) (holding that the Maryland Courts have consistently interpreted the purpose of juvenile proceedings as “civil in nature”).

³⁹ *Taylor v. NationsBank*, 776 A.2d 645, 654 (Md. 2001) (providing the background of statutory interpretation in Maryland).

⁴⁰ See *id.* (emphasizing that the ultimate objective for the canons of construction is to discern a legislature’s intent).

⁴¹ See *id.* (explaining the steps of statutory interpretation).

⁴² See *id.* (reviewing §§ 1-302 and 1-301(b)(1) of the Financial Institutions Article in their “plain terms”).

⁴³ See *id.* at 656 (holding that because the respondent possessed no financial records as defined by § 1-301(b)(1), he did not violate the statute).

C. United States Supreme Court Juvenile Jurisprudence

Over the past twelve years, the United States Supreme Court has increasingly recognized the special nature of children in the criminal justice system.⁴⁴ Beginning with *Roper v. Simmons* in 2005, the Supreme Court struck down the death penalty for children and has since developed a precedent that distinguishes children as radically different from adults.⁴⁵

In *Roper v. Simmons*, the Supreme Court held that the execution of any person under the age of eighteen was unconstitutional under the Cruel and Unusual Punishment Clause of the Eighth Amendment.⁴⁶ In reaching this conclusion, the Court relied upon a consensus among states against the practice and the diminished capacity of youth.⁴⁷ The Court found a consensus among states by first looking at the twenty states that permitted capital punishment and how infrequently they issued a death sentence.⁴⁸ The Court then found that the underdevelopment of a youth's personality and morals results in lessened culpability in the eyes of the law, as a youth's impulsive destructive act stems from immaturity, rather than premeditation.⁴⁹

The Supreme Court extended the holding of *Roper* in 2010 by ruling in *Graham v. Florida* that mandatory life without parole sentences for

⁴⁴ See, e.g., *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016) (holding that children are constitutionally different than adults).

⁴⁵ *Roper*, 543 U.S. at 569 (holding the death penalty for juveniles violates the Eighth Amendment's Cruel and Unusual Punishment Clause).

⁴⁶ See *id.* (holding the death penalty for juveniles violates Cruel and Unusual Punishment Clause of the Eighth Amendment of the Constitution due to juveniles' reduced capacity of culpability).

⁴⁷ See *id.* (noting that the irresponsibility of juveniles renders them unable to plan ahead, understand the scope of their actions, or appreciate consequences before it is too late, and therefore their actions are less morally reprehensible).

⁴⁸ See *id.* at 565 (noting that even in the twenty jurisdictions that permitted the death penalty for juveniles, only three had so done in the past ten years).

⁴⁹ See *id.* (holding that the immaturity and lack of capacity for premeditation renders youths to have a diminished capacity, and thus unable to receive capital punishment).

juveniles who commit nonhomicidal offenses violated the Cruel & Unusual Punishment Clause.⁵⁰ The Court found a national consensus against the sentencing practice.⁵¹ In thirty-seven jurisdictions where laws permitted courts to sentence juvenile nonhomicide offenders to life without parole, the lower courts were not applying the sentences.⁵² Subsequently, the majority looked to why the practice was cruel, finding most notably that children's brains are radically different than those of adults.⁵³ As the brain continues to grow throughout adolescence, children are more capable of change than adults.⁵⁴

After *Graham*, the Court applied its reasoning in *Miller v. Alabama* and retroactively in *Montgomery v. Louisiana*, determining that juvenile life sentences for homicide offenses were logically analogous to the death penalty.⁵⁵ The Court reemphasized that children could not be treated as miniature versions of adults.⁵⁶ The Court further developed the reasoning from three precepts formed in *Roper* by using the support of advancements in social and biological science.⁵⁷ First, children have a severe lack of maturity, which leads to an increased likelihood of recklessness and

⁵⁰ See *Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding mandatory life without parole for juveniles who commit nonhomicidal offenses violates the Eighth Amendment's Cruel and Unusual Punishment Clause); see also *Roper*, 543 U.S. at 569 (holding the death penalty for juveniles violates Eighth Amendment's Cruel and Unusual Punishment Clause).

⁵¹ *Graham*, 560 U.S. at 59, 61–62 (explaining which type of legal test to apply to *Graham*).

⁵² See *id.* at 62 (finding that the actual sentencing of juveniles to life without parole was so infrequent that it was indicative of a consensus against the practice).

⁵³ See *id.* at 68 (discussing the recent developments in neuropsychology and social science that distinguish children from adults).

⁵⁴ See *id.* (determining that children are less likely to be incorrigible than adults due to their increased capacity for change).

⁵⁵ *Miller v. Alabama*, 567 U.S. 460, 470 (2012) (holding mandatory juvenile life sentences unconstitutional); *Montgomery v. Louisiana*, 136 S. Ct. 718, 731 (2016) (holding that mandatory juvenile life sentences are unconstitutional retroactively).

⁵⁶ See *Miller*, 567 U.S. at 470 (emphasizing that children are not miniature adults due to their development and vulnerability).

⁵⁷ See *id.* (quoting *Roper*, 543 U.S. at 569 (2005)).

impulsivity.⁵⁸ Second, children are psychologically and socially more vulnerable than adults.⁵⁹ Finally, a child's character and personality is neither socially nor neurologically formed before the age of eighteen; it continues to mature until he reaches adulthood.⁶⁰ These developments in neuroscience and psychology support the notion that children are significantly less likely to become incorrigible and can benefit from rehabilitation.⁶¹

The Court incorporated the reasoning of *Roper-Graham-Miller-Montgomery* in the 2011 Fifth Amendment case of *J.D.B. v. North Carolina*.⁶² The Court determined that any Miranda custody analysis must include consideration of a suspect's age.⁶³ Justice Sotomayor, writing for the Court, emphasized that police interrogations are particularly traumatic for children.⁶⁴ Compared to adult defendants, children are more psychologically helpless, more likely to falsely confess, more likely to be manipulated by adults, and less likely to understand the process of an interrogation.⁶⁵ The Court again stressed that children are not to be treated like miniature adults at any stage of the criminal process because of their vulnerability and lack of maturity.⁶⁶

⁵⁸ See *id.* (noting that the immaturity of juveniles leads to impulsive decision-making and reckless actions).

⁵⁹ See *id.* at 470 (noting the children's increased vulnerability and differences in loci of control between children and adults, due to institutional limits on children).

⁶⁰ See *id.* (comparing the neuroplasticity between youths and adults).

⁶¹ See *id.* at 476.

⁶² See *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (noting that the Court has already observed in *Roper*, *Miller*, and *Graham* that children are more susceptible to outside pressures than adults).

⁶³ See *id.* at 264 (holding that because interrogations are inherently coercive, the Miranda custody analysis should include consideration of a suspect's age).

⁶⁴ See *id.* at 269 (citing amici curiae briefs that highlight the exceptional rate of false confessions from youth).

⁶⁵ See *id.* at 269–72 (explaining the multiple disadvantages of youth while in custody due to their misplaced trust in police and lack of experience, perspective, and judgment).

⁶⁶ See *id.* at 272.

The Court has not always set such progressive precedent for children's rights, however.⁶⁷ *Schall v. Martin*, in 1984, upheld a New York statute that authorized juvenile pretrial detention against claims that it violated due process.⁶⁸ Justice Rehnquist, writing for the Court, opined that New York State's legitimate interest in protecting the community from juvenile crime outweighed a juvenile's interest in freedom.⁶⁹ The Court determined that the New York statute did not amount to punishment because it included provisions such as expedited hearings and suitable conditions of confinement.⁷⁰ The legitimacy of the New York statute was additionally supported by the prevalence of similar statutes in every state and the District of Columbia, including a comparable statute found in the Maryland Annotated Code today.⁷¹

⁶⁷ See *Schall v. Martin*, 467 U.S. 253, 256–57 (1984) (upholding a New York State statute against a due process challenge, authorizing pretrial detention for juveniles).

⁶⁸ See *id.* (determining the New York statute served a legitimate state regulatory objective by protecting public safety and the juveniles themselves without serving as a punishment).

⁶⁹ See *id.* at 265 (recognizing that a juvenile is always in custody, whether in that of his parents or of the state, because children are assumed to not be able to take care of themselves).

⁷⁰ See *id.* at 269 (noting the expedited procedural protections afforded to youths detained under the New York statute).

⁷¹ See *id.* at 267 (giving weight to the fact that the practice was followed by a large number of jurisdictions because it helps to determine whether a practice offends key principal of justice) (citing *Leland v. Oregon*, 343 U.S. 790, 798 (1952)) (internal quotations omitted); MD. CODE, CTS. & JUD. PROC. § 3-8A-15 (2017) (authorizing a judge or intake officer to take a child into custody prior to a hearing).

III. ANALYSIS

A. Through the Unnecessary Use of Pretrial Detention in Unsafe Facilities, the Maryland Courts Violate the Stated Purposes of Juvenile Causes Act

1. Maryland Unnecessarily Uses Pretrial Detention in Violation of the Juvenile Causes Act

The Purposes clause of the Juvenile Causes Act directs a magistrate or judge to remove a child from the home only when necessary.⁷² While a trier of law may commit a delinquent child to the custody of the State based on a finding of delinquency, the same Purpose clause subtitles do not apply to a child alleged delinquent. However, Maryland unnecessarily detains children alleged delinquent in violation of the Act by removing them when it is neither for their welfare nor in the interest of public safety.⁷³

An analysis of the text of the Juvenile Causes Act demonstrates that the Act makes several distinctions between key actors in the Juvenile Justice System.⁷⁴ The Act distinguishes a delinquent child from a child alleged as delinquent.⁷⁵ A delinquent child, according to the Act, is one who the court has found involved in a delinquent act *and* requires guidance, treatment, or rehabilitation.⁷⁶ Guidance, treatment, and rehabilitation for a delinquent

⁷² See MD. CODE, CTS. & JUD. PROC. § 3-8A-02(6) (2017) (stating that a child should be separated from his or her home only if necessary).

⁷³ See ANNIE E. CASEY FOUNDATION, *DOORS TO DJS COMMITMENT: WHAT DRIVES JUVENILE CONFINEMENT IN MARYLAND?* 4 (2015), <http://djs.maryland.gov/Documents/publications/AECF%20Assessment%20of%20MD%20Dispositions%20-%20Updated%20March%2016%20-%20Final%20PDF.pdf> (describing how Maryland courts unnecessarily detain children prior to trial through technical violations) [<https://perma.cc/M7PA-K5DN>].

⁷⁴ See MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(1)-(7) (2017) (differentiating purpose clauses based on the actor, such as the responsibilities of a parent of a delinquent child in § 3-8A-02(a)(3), contrasted with the State's obligation to a delinquent child in § 3-8A-02(a)(1)).

⁷⁵ See *id.* § 3-8A-01(m) (providing the statutory definition of delinquent).

⁷⁶ Compare MD. CODE, CTS. & JUD. PROC. § 3-8A-01(m), *and* 3-8A-02(a)(1)-(3) (providing the statutory definition of delinquent and the statutory obligations for delinquent children), *with* §§ 3-8A-02 (a)(4)-(7) (mentioning only "children" and

child comes in the form of services from the court and DJS, which may involve commitment to a facility, drug treatment, or therapy, depending on the child's needs.⁷⁷ A child alleged delinquent is one who has received a citation for a violation of the Criminal or Education Laws, but the court has not yet found that the child was involved in the delinquent act or needs guidance, treatment, or rehabilitation.⁷⁸

The higher courts of Maryland have appropriately followed this distinction between delinquent children and children alleged delinquent.⁷⁹ Delinquent children are subjected to a variety of factors when the System (referring to the juvenile justice system, including the court, the State's Attorney, DJS, and social services) is considering disposition, including public safety of the community, the accountability of the child to the community due to the delinquent act, and the development of the child's character.⁸⁰ This statutory language, such as the state having the obligation of maintaining "public safety and protection of the community" for delinquent children, allows judges to commit delinquent children to long-

"children coming within the provisions of this subtitle"); *see also* *In re George V.*, 589 A.2d 521, 522 (Md. Ct. Spec. App. 1991) (describing the bifurcated process in in Maryland juvenile court of first determining involvement in the delinquent act, and then whether the child needs services).

⁷⁷ *See In re Demetrius J.*, 583 A.2d 258, 259–60 (Md. 1991) (detailing the scope of DJS's responsibilities concerning placement and services).

⁷⁸ *See* MD. CODE, CTS. & JUD. PROC. § 3-8A-13 (describing the petition process for a child alleged delinquent); *see also In re George V.*, 589 A.2d at 522 (describing the bifurcated process in Maryland juvenile court of first determining involvement and then whether the child is delinquent and needs services).

⁷⁹ *See* MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(1)–(7) (2017) (differentiating purpose clauses based on the actor, such as the responsibilities of a parent of a delinquent child in § 3-8A-02(a)(3), contrasted with the State's obligation to a delinquent child in § 3-8A-02(a)(1)).

⁸⁰ *See In re Saifu K.*, 978 A.2d at 889 (analyzing the 1997 amendments to the Juvenile Causes Act to reach the conclusion that the legislature sought to change the purpose of juvenile justice law for delinquent youth to a system of accountability); MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(1) (2017) (stating that the Juvenile Justice System must ensure the balance of certain objectives for children who have committed delinquent acts).

term placement after a finding of delinquency and an assessment for rehabilitation needs.⁸¹ Children alleged delinquent, however, have no such obligations imposed by the Act; instead, children alleged delinquent continue to be only subject to Purpose clause subtitles that do not apply to delinquent children.⁸² Similar to the early statutory mandates of 1969, these subtitles today include the state's duty to preserve the family unit and separate a child from his parents only if necessary for the child's welfare or in the interest of public safety.⁸³

Some may argue that the Juvenile Causes Act has changed over its fifty-year history; therefore, case law interpreting its earlier versions does not apply today. When interpreting the language of a Maryland statute, however, one must use the "well-settled" canons of statutory construction.⁸⁴ The trier of law must discern the intent of the Legislature by looking at the plain language of the statute, being careful not to add, delete, overemphasize, or underemphasize words or phrases.⁸⁵ If a statute uses two different terms or omits a term, it signifies that those terms are to be treated differently.⁸⁶ For example, in *Taylor v. NationsBank*, the Court of Appeals

⁸¹ See MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(1)–(7) (2017); *In re George V.*, 589 A.2d 521, 522 (Md. Ct. Spec. App. 1991) (describing the bifurcated process by which a judge or magistrate first determines whether a juvenile was involved in a delinquent act, and then whether he is in need of services).

⁸² Compare MD. CODE, CTS. & JUD. PROC. §§ 3-8A-02(a)(4)–(7) (2017) (mentioning only "children" and "children coming within the provisions of this subtitle,") with §§ 3-8A-02(a)(1)–(3) (specifying "children who have committed delinquent acts" and "children found to be delinquent").

⁸³ See *id.* § 3-8A-02(a)(6) (placing the emphasis on the strengthening of the family unit and forbidding the removal of a child from his home unless in his welfare or in the interest of public safety).

⁸⁴ See *Taylor v. NationsBank*, 776 A.2d 645, 654 (Md. 2001) (providing the background of statutory interpretation in Maryland); see also *Mayor & City Council of Baltimore v. Chase*, 756 A.2d 987, 991 (2000) (establishing the tradition of statutory interpretation in Maryland).

⁸⁵ See *Taylor*, 776 A.2d at 654 (explaining the steps of statutory interpretation).

⁸⁶ See *id.* (explaining that the trier of law should not attempt to give the text a forced meaning or attempt to add or delete words in the text, as the trier of law should take the statute at plain meaning).

interpreted a section of the Financial Institutions Code of Maryland.⁸⁷ In determining whether information disclosed orally was considered “account information,” the Court examined the statutory definition according to the canons of statutory construction.⁸⁸ As the definition made no reference to oral information and solely concerned written records or copies, the Court held that the statute was not violated.⁸⁹

Applying this same logic to the Juvenile Causes Act, children alleged delinquent are not subject to the Purpose clause of the Act that apply to delinquent children because they do not meet, and have never met, the statutory definition.⁹⁰ For example, the young woman we encountered in this Comment’s Introduction, Tanika, was only a child alleged delinquent when she was first detained at Waxter Children’s Center.⁹¹ She had only missed her status date, for which she was detained for a month in a traumatizing jail, isolated from her friends and family.⁹²

The Juvenile Causes Act directs the Juvenile Justice System to refrain from removing a child from the home unless it may be in the interest of public safety.⁹³ The Maryland Court of Special Appeals ruled in *In re Julianna B.* that a judge may confine any juvenile who presents a “present

⁸⁷ See *id.* at 655–56 (determining whether the respondent acted in violation of § 1-302 of the Financial Institutions Article when he disclosed information via telephone).

⁸⁸ See *id.* at 655. (reviewing §§ 1-302 and 1-301(b)(1) of the Financial Institutions Article in their “plain terms”).

⁸⁹ See *Taylor v. NationsBank*, 776 A.2d 645, 654 (Md. 2001) (holding that because the respondent possessed no financial records as defined by § 1-301(b)(1), he did not violate the statute).

⁹⁰ Compare MD. CODE, CTS. & JUD. PROC. §§ 3-8A-02(a)(4)–(7) (2017) (mentioning only “children” and “children coming within the provisions of this subtitle,”) with §§ 3-8A-02(a)(1)–(3) (2017) (specifying “children who have committed delinquent acts” and “children found to be delinquent”).

⁹¹ See Goode, *supra* note 3 (reporting that Tanika was sent to Laurel for pretrial detention after missing her court date).

⁹² See *id.*

⁹³ See *id.* § 3-8A-02 (allowing authorities of the system to remove a child only if it is in the best interest of the child or the community).

threat” to public safety.⁹⁴ However, Maryland admits that juvenile confinement is not reserved for youth who pose a risk to the public.⁹⁵ Rather, a technical violation of probation or court rules, such as misuse of an electronic monitoring bracelet, is the most likely reason for a judge to confine a youth.⁹⁶ Again, the young woman we encountered in this Comment’s Introduction, Tanika, was unnecessarily detained prior to trial due to a technical violation.⁹⁷ Tanika’s charged offense was a minor school fight, so inconsequential that the intake officer had initially wanted to dismiss it.⁹⁸ However, the judge detained Tanika when she missed her court date.⁹⁹ Missing a court date is violating a court order, which in Maryland may be grounds for detention.¹⁰⁰ At the time, Tanika was a youth alleged delinquent, which means the judge could not apply the Purpose subtitles relevant to delinquent youth in order to justify her detention.¹⁰¹ While Tanika was detained at Waxter Children’s Center, she suffered extreme emotional distress.¹⁰² She found the separation from her mother intolerable,

⁹⁴ See *In re Julianna B.*, 947 A.2d 90, 134 (Md. Ct. Spec. App. 2008) (insisting the lower court abused its discretion for denying community visits to a juvenile who presented no evidence of violent behavior) (*vacated on other grounds*, 967 A.2d 776 (Md. 2009)).

⁹⁵ See ANNIE E. CASEY FOUNDATION, *supra* note 73, at 4.

⁹⁶ See *id.* (unraveling the most common reasons behind juvenile confinement in Maryland).

⁹⁷ See Goode, *supra* note 3 (observing that the judge detained Tanika for missing her court date).

⁹⁸ See *id.* (stating that DJS originally refused to pursue the complaint because no one was injured in the fight and Tanika did not have any prior involvement with the juvenile justice system).

⁹⁹ See *id.* (noting that the judge has the power under Maryland to detain a child if he poses a flight risk).

¹⁰⁰ See *In re Ann M.*, 525 A.2d 1054, 1058 (Md. 1987) (explaining that various Maryland and state courts have used the contempt power when a juvenile disobeys juvenile court orders).

¹⁰¹ See MD. CODE, CTS. & JUD. PROC. §§ 3-8A-01(m), 3-8A-02(a)(1) (2017) (providing the statutory definition of delinquent and the Purpose clause sections relevant to delinquent children).

¹⁰² See Goode, *supra* note 3 (describing Tanika’s emotional state while detained, particularly due to the separation from her mother).

and the effects of her detention continue to taint her formerly spotless life as an Honor Student.¹⁰³

The mental health of youth removed from home is a pressing concern of child advocates. A DJS intake officer, magistrate, or judge has the authority to remove a child from the home for the child's welfare.¹⁰⁴ In determining whether to detain an alleged delinquent child, a magistrate weighs a number of factors concerning the child's welfare, including the mental health of the child and the child's compliance in taking medication.¹⁰⁵ The Department of Juvenile Services estimates that 75 percent of girls and 57 percent of boys in detention centers have moderate to severe mental health needs.¹⁰⁶ However, most of the detention centers do not have adequate mental health services.¹⁰⁷ Therefore, removing a child with mental health needs is not necessary for the welfare of a child, and in fact usually adversely affects a child's mental health.¹⁰⁸

The standard for the removal of a child has always been stringent.¹⁰⁹ The earliest version of the Juvenile Causes Act forbade the System from

¹⁰³ See *id.* (detailing the negative impacts of detention on Tanika's life, including emotional trauma, limited social interactions, and no opportunity to participate in her spiritual life).

¹⁰⁴ See MD. CT. RULE 11-112(a) (giving authorization to any judge or intake officer to remove a child from the home if it is in the best interest of the child or the community); MD. CODE, CTS. & JUD. PROC. § 3-8A-15 (authorizing a judge or intake officer to take a child into custody prior to a hearing).

¹⁰⁵ See MD. CODE, CTS. & JUD. PROC. § 3-8A-02 (2017).

¹⁰⁶ See NICK MORONEY ET AL., MARYLAND JUVENILE JUSTICE MONITORING UNIT, 2016 SECOND QUARTER REPORT 34 (2016), http://www.marylandattorneygeneral.gov/JJM%20Documents/16_Quarter2.pdf [hereinafter SECOND QUARTER REPORT] (estimating the mental health needs of juveniles in out-of-home placements) [<https://perma.cc/N6A7-PP8R>].

¹⁰⁷ See SECOND QUARTER REPORT, *supra* note 106, at 36 (explaining that children's mental health needs are best served in the community, rather than an institution).

¹⁰⁸ See PATRICK MCCARTHY, ET AL., *supra* note 16, at 4-6 (describing how social scientists have linked institutional environments with more severe mental illness, lower employment outcomes, and higher recidivism).

¹⁰⁹ See, e.g., *In re Joseph G.*, 617 A.2d 1086, 1090 (Md. Ct. Spec. App. 1993); *In re Jertrude O.*, 466 A.2d 885, 893 (Md. Ct. Spec. App. 1983) (emphasizing that the removal of a child from the home is "drastic").

separating youth from families unless necessary for the youth's well-being or in the interests of public safety.¹¹⁰ The Maryland Court of Special Appeals interpreted the statute the following year in *In re Hamill*.¹¹¹ Based on the plain language of the statute, the Court held that Legislature intended to maintain the delicate, non-criminal nature of juvenile proceedings in order to address the unique needs of adolescents, including disposing of cases in the interest of the child's protection or rehabilitation, rather than punishment.¹¹² Therefore, the court held that a child should be in a healthy family environment whenever possible, and that an institution is an improper venue for a child, whether delinquent or not, to receive rehabilitation unless absolutely necessary.¹¹³ Moreover, the alcoholism or drug addiction of a parent does not necessitate the removal of a child from his home, nor does suspected child abuse.¹¹⁴ However, if a child is using drugs and habitually running away, and the parents cannot or will not provide custody, the court may deem the detention of a child necessary to

¹¹⁰ See 1969 Md. Laws 82 (stating a primary purpose of the Act was to separate a child from his parents "only when necessary for his welfare or in the interests of public safety").

¹¹¹ See *In re Hamill*, 271 A.2d 762, 764 (Md. Ct. Spec. App. 1970) (interpreting the nature of the statute found in 1969 Md. Laws 82).

¹¹² See *id.* (noting that "the purposes of the Act were *plainly* outlined" because the text stated that the act "' provide[s] for the care, protection and wholesome mental and physical development of children . . .'" (quoting 1969 Md. Laws 82)) (emphasis added).

¹¹³ See *id.* (explaining the Legislature's preference for parent custody over institutional custody).

¹¹⁴ See *In re Joseph G.*, 617 A.2d 1086, 1090 (Md. Ct. Spec. App. 1993) (stating that depriving a child of his parents is "drastic," and may not be based on suspected allegations, even if the allegations are child abuse); *In re William B.*, 533 A.2d 16, 19 (Md. Ct. Spec. App. 1987) (finding that substance abuse on its face is not sufficient grounds for the removal of a child from his home because the State may only do so if the parents are unwilling to provide him ordinary care and attention).

protect the child’s welfare.¹¹⁵ An extremely severe crime, such as murder, may necessitate the detention of a child in order to protect the public.¹¹⁶

2. Maryland Detains Youth in Unsafe and Inhumane Detention Centers in Violation of the Juvenile Causes Act

If a judge determines that pretrial detention is indeed necessary for a youth alleged delinquent, the Juvenile Causes Act and Maryland common law require the state to provide a safe and humane environment with access to necessary services.¹¹⁷ The state of Maryland violates this provision by detaining children prior to trial in unsafe facilities that are ill-suited to their needs.¹¹⁸

The environment in Maryland’s juvenile detention centers is inappropriately punitive and unsafe.¹¹⁹ Regardless of whether a child has been detained for their protection or on behalf of public safety, the state has only maximum-security (or “hardware-secure”) detention centers for his or her detention.¹²⁰ These maximum security detention centers support

¹¹⁵ See *In re Caitlin N.*, 994 A.2d 454, 458 (Md. Ct. Spec. App. 2010) (not contesting the trial court’s finding that emergency detention was necessary when the respondent was using drugs and her mother was unable to provide supervision at home).

¹¹⁶ See *In re Julianna B.*, 947 A.2d 90, 95 (Md. Ct. Spec. App. 2008) (noting that the respondent had been detained prior to trial on second-degree murder charges) (*vacated on other grounds*, 967 A.2d 776 (Md. 2009)).

¹¹⁷ See MD. CODE, CTS. & JUD. PROC. § 3-8A-02(7) (2017) (mandating the provision of a “safe, humane, and caring environment” and access to required services for detained children); *Williams v. Wilzack*, 573 A.2d 809, 814 (Md. 1990) (adopting Supreme Court precedent granting to persons in State custody safe conditions of confinement, freedom from unnecessary bodily restraints, and at least minimal training of staff).

¹¹⁸ See SECOND QUARTER REPORT, *supra* note 106 at 18–43 (reporting the high levels of violence and abuse in Maryland’s juvenile detention centers).

¹¹⁹ See *id.* (noting the inappropriate use of physical restraints and isolation; the high levels of violence; and the high levels of mental health needs at Maryland juvenile detention facilities).

¹²⁰ See *Schall v. Martin*, 467 U.S. 253, 271 (1984) (differentiating between the conditions in minimum-security and maximum-security detention centers for juveniles); SECOND QUARTER REPORT, *supra* note 106 at 18–43 (detailing the available detention facilities for children, including Lower Eastern Shore Children’s Center, Western Maryland Children’s Center, Alfred D. Noyes Children’s Center, Thomas Waxter Children’s

punitive policies such as strip-searching children, isolation, and shackling certain children when they move in between units.¹²¹ These detention centers are not substitutions for parental custody; rather, they are hotbeds of violence and suicidality.¹²² Frightening levels of violence exist at detention facilities, such as the Baltimore City Juvenile Justice Center (BCJJC) and Cheltenham Youth Facility, with as many as sixty-four assaults occurring in one quarter, or one roughly every three days.¹²³ With ninety uses of physical restraint in the same quarter, the staff of BCJJC is not providing the “custody, care, and discipline” that should be provided to youth in DJS custody.¹²⁴ According to the statute, the discipline provided should be that of a reasonable parent.¹²⁵ A reasonable parent’s discipline, under Maryland law, does not include excessive physical abuse or exposure to a violent and chaotic environment.¹²⁶ Moreover, Maryland common law guarantees to

Center, Charles H. Hickey School, Cheltenham Youth Facility, and Baltimore Juvenile Justice Center. Note: Liberty House Shelter is a minimum-security shelter care facility, but only has 10 beds and is only available to Baltimore youth).

¹²¹ See SECOND QUARTER REPORT, *supra* note 106, at 19, 22 (noting the inappropriate usage of seclusion and shackling); Erica L. Green, *Juveniles in Maryland’s Justice System Are Routinely Strip-Searches and Shackled*, BALTIMORE SUN (March 13, 2016), <http://www.baltimoresun.com/news/maryland/investigations/bs-md-strip-and-shackle-20160129-story.html> (detailing the excessive use of strip-searching and shackling for youth in DJS custody) [https://perma.cc/3AZ4-GU46].

¹²² See SECOND QUARTER REPORT, *supra* note 106, at 1 (noting the prevalence of suicidal ideation at DJS-operated facilities during the quarter).

¹²³ See SECOND QUARTER REPORT, *supra* note 106, at 18 (reporting the number of youth on youth assaults or fights from April 1 to June 30, or 91 days).

¹²⁴ See MD. CODE, CTS. & JUD. PROC § 3-8A-02(a)(6) (2016).

¹²⁵ See *id.*; see also *In re Christiana G.*, 530 A.2d 771, 774 (Md. Ct. Spec. App. 1987) (holding that the parent’s discipline was unreasonable and constituted physical abuse, therefore in part justifying the removal of the child from the home).

¹²⁶ See *In re Christiana G.*, 530 A.2d at 774 (finding that the chaotic environment of the home, including physical abuse, posed a risk to the child’s well-being and thus justified the drastic step of removing the child from the home).

individuals in state custody the right to be free from unreasonable bodily restraints.¹²⁷

Many Maryland juvenile detention centers are also chronically understaffed and overwhelmed by the needs of the population.¹²⁸ A lack of staffing in detention centers may result in drastic consequences for a mentally ill child, whose mild agitation may escalate if a staff member is not available to respond.¹²⁹ Escalations of behavior may result in physical altercations, seclusion, or shackling.¹³⁰ When the custodians of a child in custody do not provide proper care, death can occur.¹³¹ In *State v. Kanavy*, a juvenile died while in the custody of the Department of Juvenile Services at the Bowling Brook juvenile facility.¹³² The Maryland Court of Appeals ruled that the laws of Maryland impose a duty to provide the child with medical care, as well as a safe, humane, and caring environment.¹³³ The Court found that the State could prove the employees knew of their duties to the child and disregarded them, denying the child a safe, humane, and caring environment.¹³⁴ The Court, therefore, allowed for the grand jury to indict the DJS employees on reckless endangerment charges.¹³⁵

¹²⁷ See *Williams v. Wilzack*, 573 A.2d 809, 814 (Md. 1990) (adopting Supreme Court precedent granting to persons in State mental hospitals, and thus state custody, safe conditions of confinement on Fourteenth Amendment due process grounds).

¹²⁸ See SECOND QUARTER REPORT, *supra* note 106, at 30 (describing the effect of staffing shortages on the operations of the facilities, including shortages of emergency mental health treatment).

¹²⁹ See *id.* (detailing incident 136578, where an agitated youth did not receive prompt assistance and her behavior escalated into a physical altercation with a DJS staff member).

¹³⁰ See *id.* (describing the need for more influence from mental health staff to reduce the incidences of shackling and seclusion).

¹³¹ See *State v. Kanavy*, 4 A.3d 991, 994 (Md. 2010) (describing the death of a juvenile in a state facility due to the reckless endangerment of DJS staff).

¹³² See *id.* (voicing concern about the conduct of state employees and their duties to the juveniles in their care).

¹³³ See *id.* at 995 (stressing the duty that the plain language of MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02 imposes on the Department of Juvenile Services).

¹³⁴ See *id.* at 998 (finding that reckless endangerment charges were appropriate, as the State must prove the respondents owed a duty of care to the deceased; the respondents

Although the Bowling Brook facility today is no longer in use, Maryland continues to operate similar facilities.¹³⁶ Several of these facilities have had alarming issues with violence, including abuse of juveniles by staff.¹³⁷ Though the Maryland Department of Juvenile Services is statutorily obligated to provide the children in its custody with “access to required services” and a “safe, humane, and caring environment,” it fails its duty and endangers the lives of the children in its care.¹³⁸

B. Even if the Juvenile Causes Act Was Ambiguous, United States Supreme Court Jurisprudence Demonstrates That Maryland Should Drastically Reduce the Use of Pretrial Detention

1. The *Roper-Miller-Graham-J.D.B.-Montgomery* Canon Mandates that Unnecessary Juvenile Pretrial Detention is Prohibited by the Eighth Amendment

The Cruel and Unusual Punishment Clause of the Eighth Amendment of the U.S. Constitution guarantees to all individuals the right not to be punished excessively for a transgression.¹³⁹ In order to establish whether a

were aware of the duty; the omission of the duty of care created a substantial risk of physical harm; under the circumstances, the respondents would not have disregarded the duty of care; and the respondents consciously disregarded their duties).

¹³⁵ See *id.* at 998 (vacating the previous order of the trial court and reinstating the indictments so that the Department of Juvenile Services employees may be prosecuted on charges of reckless endangerment).

¹³⁶ See *DJS Pulls Remaining Youths from Bowling Brook*, MD. DEP’T JUV. SERV. (Mar. 2, 2007), <http://www.djs.maryland.gov/Documents/press/pr030207.pdf> (stating that Bowling Brook was shut down after the death of the child in *Kanavy*) [<https://perma.cc/V59M-5F8A>]; SECOND QUARTER REPORT, *supra* note 106, at 4–43 (noting that Bowling Brook is not a facility currently in use by the Department of Juvenile Services; however, many of the detention and commitment centers have issues with staffing, youth safety, and providing adequate psychiatric and medical care).

¹³⁷ See *id.* at 34 (reporting incident 137417, where a child reported being choked by a staff member and losing feeling in his chin after being in a physical restraint).

¹³⁸ See MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(6)–(7) (2017) (providing the statutory duty for the Department of Juvenile Services concerning children in its custody).

¹³⁹ See U.S. CONST. amend. XIII; see also *Roper v. Simmons*, 543 U.S. 551, 560, 569 (2005) (holding that the death penalty was an excessive punishment for a juvenile

practice violates the Cruel and Unusual Punishment Clause, a court must evaluate the jurisdictions' evolving standards by analyzing the objective indicia of a consensus against the practice, as well as whether the practice serves legitimate penological goals.¹⁴⁰

Based on the national and state consensus against pretrial detention and its lack of penological goals, pretrial detention of juveniles in Maryland violates the Cruel & Unusual Punishment Clause of the Eighth Amendment.¹⁴¹ Contrary to assertions made thirty-three years ago in *Schall v. Martin*, the national consensus now demonstrates that Maryland's practice of sending alleged delinquent juvenile to pretrial detention no longer meets our standards of decency.¹⁴² A court's inquiry into the nation's evolving standards of decency can incorporate legislation and state practice, along with the court's own judgment on the acceptability of the practice.¹⁴³ Based on the declining rates of pretrial detention, there exists a consensus in both Maryland and the United States in favor of ending confinement

because children have an underdeveloped sense of self, and thus their actions cannot be as morally reprehensible).

¹⁴⁰ See *Roper*, 543 U.S. at 560 (describing how a court evaluates a practice to determine whether there is a violation of the Eighth Amendment); see also *Graham v. Florida*, 560 U.S. 48, 67 (2010) (explaining that severe punishments that serve legitimate penological goals may be upheld by courts).

¹⁴¹ See U.S. CONST. amend. XIII (forbidding the imposition of cruel or unusual punishment); MD. CONST. DECL. OF RTS. art. 25; see also *Robinson v. California*, 370 U.S. 660, 666 (1962) (incorporating the Eighth Amendment into the Due Process clause of the Fourteenth Amendment); *Thompson v. Grindle*, 688 A.2d 466, 485 (1997) (affirming that the Eighth Amendment of the U.S. Constitution is construed *in pari materia* with Article 25 of the Maryland Declaration of Rights).

¹⁴² See *Schall v. Martin*, 467 U.S. 271, 278 (1984) (upholding the New York statute authorizing pretrial detention of juveniles in part because of the majority of states that had a similar statute, in addition to the determination that it served a legitimate state regulatory objective by protecting public safety and the juveniles themselves without serving as a punishment); ANNIE E. CASEY FOUNDATION, *supra* note 73, at 2 (detailing the nationwide shift in juvenile detention policy from incarceration to community-based services).

¹⁴³ See *Atkins v. Virginia*, 536 U.S. 304, 311 (2002); *Roper*, 543 U.S. at 564.

practices.¹⁴⁴ Moreover, the Supreme Court precedent of treating juveniles less harshly further demonstrates that pretrial detention is not necessary.¹⁴⁵ Therefore, the practice of pretrial detention in Maryland violates the Cruel and Unusual Punishment Clause of the Eighth Amendment.¹⁴⁶

The practices and policies of the United States and the Maryland Attorney General reflect a general consensus that the practice of unnecessary pretrial detention is cruel and costly.¹⁴⁷ Despite the early-1990s fear-mongering of the supposed juvenile “superpredator,” juvenile crime nationwide has steeply declined over the past two decades.¹⁴⁸ In response, nearly every state has adopted policies to reduce the confinement of juveniles, reflecting a nationwide agreement that juveniles are best served in the community.¹⁴⁹ Moreover, the Maryland Office of the Attorney General has officially stated in multiple reports that the courts and the Department of Juvenile Services should collaborate to lower the rate of pre-trial

¹⁴⁴ See ANNIE E. CASEY FOUNDATION, *supra* note 73, at 2 (describing the national shift in juvenile detention policy from incarceration to community-based services); see also SECOND QUARTER REPORT, *supra* note 106, at 2 (describing targeted efforts by DJS to reduce intake referrals and thus reduce the number of detained and incarcerated children).

¹⁴⁵ See *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) (stressing the differences in culpability and penological goals for children and adults).

¹⁴⁶ U.S. CONST. amend. XIII; see MD. CONST. DECL. OF RTS. art. 25.

¹⁴⁷ See SECOND QUARTER REPORT, *supra* note 106, at 36 (citing the research on juvenile confinement of the Annie E. Casey Foundation in adopting the position that juvenile detention and incarceration is extremely costly while providing no additional benefit for public safety or outcomes for children); JUSTICE POLICY INSTITUTE, FACTSHEET: THE TIP OF THE ICEBERG: WHAT TAXPAYERS PAY TO INCARCERATE YOUTH (2015) (reporting the average of juvenile incarceration as \$401 per day, per juvenile) (hereinafter JUSTICE POLICY INSTITUTE 2015) [<https://perma.cc/W3AX-2K95>].

¹⁴⁸ See ANNIE E. CASEY FOUNDATION, *supra* note 73, at 2 (reporting on the steep decline nationwide in juvenile crime).

¹⁴⁹ See JUSTICE POLICY INSTITUTE, CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION, 5 (2014) http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf (highlighting the “juvenile deincarceration” trend that has steadily progressed since 2001, due to advances in research and policymaking) [hereinafter JUSTICE POLICY INSTITUTE 2014].

detention.¹⁵⁰ The Office of the Attorney General has also implemented additional “deincarceration” programs in recent years, such as the nationally-known Juvenile Detention Alternatives Initiatives of the Annie E. Casey Foundation, which attempts to divert youth out of the juvenile justice system during the early stages of delinquency proceedings.¹⁵¹

When evaluating whether a general consensus against a practice exists, the U.S. Supreme Court looks at how often a practice is actually used.¹⁵² In *Graham*, the Court examined the actual sentencing practices of the thirty-seven states that permitted life without parole sentences for nonhomicide juvenile offenders.¹⁵³ The Court found that because the sentences were imposed so infrequently, this was indicative of a consensus against the use of the practice.¹⁵⁴ Applying the same logic, there exists a general consensus against the widespread use of pretrial detention because many courts across the nation have ceased the practice despite laws authorizing it.¹⁵⁵ Indeed, many states, including Maryland, continue to reauthorize statutory juvenile

¹⁵⁰ See SECOND QUARTER REPORT, *supra* note 106, at 4; NICK MARONEY ET AL., MARYLAND JUVENILE JUSTICE MONITORING UNIT, 2016 THIRD QUARTER REPORT 3 (2016) http://www.marylandattorneygeneral.gov/JJM%20Documents/JJMU%20Q3%202016%20Report_%20final_Dec%202022.pdf [hereinafter THIRD QUARTER REPORT] (encouraging the Maryland courts and the Department to work together to limit detention and commitment for fiscal and efficiency reasons).

¹⁵¹ See THIRD QUARTER REPORT, *supra* note 150, at 3–4 (encouraging the expansion of initiatives such as the Juvenile Detention Alternatives Initiative because such community-based interventions positively effect youth outcomes and are more cost-efficient).

¹⁵² See *Graham v. Florida*, 560 U.S. 48, 62 (2010) (“There are measures of consensus other than legislation.” (quoting *Kennedy v. Louisiana*, 554 U.S. 407, 433 (2008))).

¹⁵³ See *id.* at 62 (incorporating recent studies of juvenile life without parole sentencing practices to find that the practice was infrequently implemented).

¹⁵⁴ See *id.* at 62–63 (finding there was a general consensus against the practice, despite the State’s contention that the studies were not peer-reviewed and incomplete).

¹⁵⁵ See ANNIE E. CASEY FOUNDATION, *supra* note 73, at 2 (citing SARAH HOCKENBERRY U.S. DEPT. OF JUSTICE, JUVENILES IN RESIDENTIAL PLACEMENT, 2013, JUVENILE JUSTICE STATISTICS, NATIONAL REPORT SERIES, May 2016, at 6, <https://www.ojjdp.gov/pubs/249507.pdf> (noting that despite the continued existence of statutes that permit juvenile pretrial detention, the population of detained delinquents has decreased thirty-six percent from 1997-2003)).

pretrial detention schemes.¹⁵⁶ Nationwide, the practice of detaining youth has declined dramatically since 1997, from over 26,000 to just below 17,000 residents.¹⁵⁷

Furthermore, the U.S. Supreme Court juvenile jurisprudence lends to the logical conclusion that juvenile pretrial detention violates the right of the juvenile to be free from cruel and unusual punishment. Under the *Roper-Miller-Graham-J.D.B.-Montgomery* line of cases, the Supreme Court established a firm precedent that “age is more than a chronological fact,” and that adult penalties and procedures may not apply to children as harshly.¹⁵⁸ To support this conclusion, the Court identified three primary characteristics of children particularly relevant to treatment within the criminal justice system.¹⁵⁹ First, due to the underdevelopment of the juvenile brain, children lack maturity and responsibility, causing them to be more prone to risk-taking and reckless decision-making.¹⁶⁰ The structure of the human brain responsible for executive functioning does not mature until very late adolescence; therefore, children lack the fully-formed brain

¹⁵⁶ See, e.g., TEX. HUM. RES. CODE § 152.0015 (2017) (permitting the pretrial detention of children); ALA. CODE § 12-15-208 (2017); CONN. GEN. STAT. § 46b-133(b)–(e) (2017); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-15 (2017).

¹⁵⁷ See ANNIE E. CASEY FOUNDATION, *supra* note 73, at 2 (citing U.S. DEPT. OF JUSTICE, JUVENILES IN RESIDENTIAL PLACEMENT, 2013 6 (2016) <https://www.ojjdp.gov/pubs/249507.pdf>) (noting that only 2011 data was available, but 2013 is now the most recent available).

¹⁵⁸ See, e.g., *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (finding that the diminished culpability of juveniles, due to their age, cannot rationalize major penological justifications); *Graham v. Florida*, 560 U.S. 48, 68 (2010) (prohibiting sentences of life without parole for nonhomicide offenders); *J.D.B. v. North Carolina*, 564 U.S. 261, 275 (2011) (emphasizing that children are more psychologically vulnerable and thus are deserving of additional protections in the criminal justice system); *Miller v. Alabama*, 567 U.S. 460, 470 (2012) (prohibiting mandatory life sentences without parole for juvenile offenders under the Eighth Amendment); *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016) (holding that the *Miller* rule should be applied retroactively).

¹⁵⁹ See *Roper*, 543 U.S. at 553 (establishing the three broad reasons as to why the conduct of juveniles is not as “morally reprehensible”).

¹⁶⁰ *Id.* at 569; see also *Graham v. Florida*, 560 U.S. 48, 68 (2010) (relying on amici briefs to support the contention that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”).

structure that is responsible for planning, decision-making, and evaluating risk.¹⁶¹ A child has no influence over his or her brain maturation and thus cannot be found as liable for his or her transgressions.¹⁶² Therefore, detaining a child prior to adjudication is an excessive sanction for any alleged offense.¹⁶³

Second, children are more vulnerable to outside influences and psychological trauma, rendering them more susceptible to negative pressure of authority figures and peers.¹⁶⁴ This vulnerability, coupled with children's lack of institutional independence, also limits children's abilities to extricate themselves from "crime-producing" settings, such as abusive homes, violent neighborhoods, and bullying in schools.¹⁶⁵ Given the violent and unsafe nature of the Maryland detention centers, the vulnerability of children in Maryland detention centers is of particular concern.¹⁶⁶ As the neuronal development of children is fragile and more susceptible to trauma, the confinement of a child in unsafe and violent detention center prior to trial is disproportionately harsh.¹⁶⁷

¹⁶¹ See Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America as Amici Curiae Supporting Petitioners, at 24–28; *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621), 2009 WL 2236778, at *40–43.

¹⁶² See *id.*

¹⁶³ See *Miller*, 132 S. Ct. at 2463–64 (explaining that juveniles have diminished culpability due, in part, to the underdevelopment of the brain, and thus mandatory sentencing schemes that do not consider the transient recklessness of youth are unconstitutional).

¹⁶⁴ See *Roper*, 543 U.S. at 569–70; see also *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) (recognizing the increased psychological vulnerability of children); cf. *J.D.B. v. North Carolina*, 564 U.S. 261, 275 (2011) (ordering the consideration of age into the Miranda analysis, in part because children are significantly more susceptible to manipulation and pressure).

¹⁶⁵ See *Roper* at 553, 569–70 (observing a child's lack of control over his or her lack of environment, and therefore rendering a juvenile's conduct less "morally reprehensible").

¹⁶⁶ See THIRD QUARTER REPORT, *supra* note 150, at 1, 10–13 (describing the lack of staffing, increase in assaults and fights, and inappropriate use of restraints at Maryland youth detention centers).

¹⁶⁷ See *id.*; *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) (discussing how the increased psychological vulnerability of children can be taken into account during sentencing).

Third, a child's character and personality are not well-formed throughout childhood and adolescence.¹⁶⁸ Children struggle to define their identities; therefore, qualities such as rebelliousness and impulsiveness are often impermanent and fade with maturation into adulthood.¹⁶⁹ Thus, a crime committed by a child struggling to define his identity cannot be considered evidence that the child is incorrigible,¹⁷⁰ especially when the alleged crime is a small skirmish, such as Tamika's case.

Moreover, the *Roper-Miller-Graham-J.D.B.-Montgomery* line of Supreme Court juvenile jurisprudence directly seeks to overturn *Schall v. Martin*.¹⁷¹ In the early 1980s, juveniles accounted for 17.3 percent of arrests for violent person and property crimes.¹⁷² Justice Rehnquist opined at the time that the harm to society caused by juvenile crime was greater than that of adult crime.¹⁷³ Today, however, children under the age of eighteen account for just 2 percent of all property offense arrests and 6 percent of all violent offense arrests.¹⁷⁴ Additionally, the Court based its decision in part on what they saw as adequate conditions of confinement for juveniles in

¹⁶⁸ See *Roper*, 543 U.S. at 553, 570 (2005) (describing how qualities such as recklessness in youth are often fleeting and impermanent, and thus it is improper to compare the failings of children with adults).

¹⁶⁹ See *id.* (citing advancements in behavioral science to support the notion that children struggle to define their identities and thus have unstable self-concepts).

¹⁷⁰ See *id.* (stating that it would be morally indefensible to compare the "failings" of a child with an adult, as a child's unstable self-concept renders him less capable of incorrigibility).

¹⁷¹ See, e.g., *J.D.B. v. North Carolina*, 564 U.S. 261, 275 (2011) (emphasizing that children are significantly more susceptible to manipulation and should be given special considerations in custody); *Roper*, 543 U.S. at 553, 569–70 (observing a child's lack of control over his or her lack of environment, and therefore rendering a juvenile's conduct less "morally reprehensible").

¹⁷² See *Schall v. Martin*, 467 U.S. 253, 265 fn.14 (1984) (citing Department of Justice statistics in support of the State's assertion that juvenile crime was a public safety issue).

¹⁷³ See *id.* at 265 (explaining that juvenile offenders may harm society worse due to their increased potential for recidivism).

¹⁷⁴ BRIAN A. REAVES, PH.D., U.S. DEPT. OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 – STATISTICAL TABLES, 5–6 (Dec. 2013) (providing the most recent age demographics of defendants committing violent personal and property crimes) [<https://perma.cc/4FC4-K825>].

pretrial detention.¹⁷⁵ These conditions included “nonsecure detention,” without any locked doors, bars, or shackling; or secure detention, where children were allowed to wear “street clothes” and partake in educational and recreational programs.¹⁷⁶ Maryland, meanwhile, only provides secure detention for juveniles in pretrial detention.¹⁷⁷ In these secure facilities, violence, suicidality, and abuse is rampant.¹⁷⁸ In certain facilities, on average, at least one reported assault occurs every three days.¹⁷⁹ As children move through the facilities or are transported elsewhere, such as court or health appointments, they are routinely strip-searched and shackled.¹⁸⁰ These strict policies even apply to children who are detained on low-level offenses.¹⁸¹ During the day at the facilities, detained children are provided the bare bones of an educational opportunity, but little else.¹⁸² The dated precedent of *Schall* does not stand in light of the demands of the *Roper-Miller-Graham-J.D.B.-Montgomery* line of cases, the evolving national consensus, and the changing statistics.¹⁸³

¹⁷⁵ See *Schall*, 467 U.S. at 270 (noting that the conditions of confinement for juveniles reflected the regulatory purposes of New York’s statute).

¹⁷⁶ See *id.* at 271 (describing the conditions of confinement as testified to in the trial).

¹⁷⁷ See SECOND QUARTER REPORT, *supra* note 106, at 4–39 (detailing that Maryland detention centers for juveniles are all maximum-security, or hardware-secure).

¹⁷⁸ See SECOND QUARTER REPORT, *supra* note 106, at 1, 18-19, 25-27, 31, 33-35 (reporting the incidences of suicidality, assaults, and staff-on-child abuse that occurred in detention centers).

¹⁷⁹ See SECOND QUARTER REPORT, *supra* note 106, at 18 (reporting the number of youth on youth assaults or fights from April 1 to June 30, or 91 days).

¹⁸⁰ See Green, *supra* note 121 (reporting on the excessive use of strip-searching and shackling of youth in Maryland detention facilities and the psychological trauma inflicted on youths).

¹⁸¹ See Green, *supra* note 121, (noting that the strip-searching and shackling policies apply to every youth, even those who pose little to no risk of flight or a threat).

¹⁸² See SECOND QUARTER REPORT, *supra* note 106; Green, *supra* note 121, *id.* at 22–24 (describing the multiple issues with education and activities access, including but not limited to staffing problems, persistent boredom, youth having insufficient schoolwork, and a youth earning his diploma but not having access to any higher education).

¹⁸³ REAVES, *supra* note 174, at 6, Table 3 (providing the statistics that detail a dramatic drop from the early 1980s to today in crimes committed by juveniles); see *J.D.B. v. North Carolina*, 564 U.S. 261, 275 (2011) (citing the *Roper*, *Miller*, *Graham* line of cases while

IV. POLICY RECOMMENDATION

A. Maryland Must Severely Curtail Pretrial Detention of Juveniles and Offer Community-Based Services to Juvenile Offenders Awaiting Trial

It is clear that judicial discretion allows for the rampant unnecessary detention of Maryland juveniles in unsafe facilities.¹⁸⁴ The detention of Maryland juveniles is enormously expensive, as well, costing an average of \$341 per day.¹⁸⁵ In order to severely curtail this practice, Maryland must invest in a two-pronged approach that challenges judicial discretion and provides effective community services for juveniles awaiting trial.

Maryland should first dramatically expand funding to the Detention Response Unit of the Maryland Office of the Public Defender (OPD). In 1995, OPD formed the Detention Response Unit in order to respond to the growing problem of children detained before trial.¹⁸⁶ Individual teams, comprised of a lawyer and a social worker, investigated each claim, found temporary shelter solutions, and argued to move the child to less restrictive alternatives.¹⁸⁷ The program cost \$74 per day on average, yet the unit saved the state \$1,480 per child.¹⁸⁸ The holistic, juvenile-focused approach of the OPD unit, which also received special training and controlled caseloads, was identified as a highly effective program for indigent juveniles by social

discussing the drastic differences between children and adults, and why children therefore must be afforded special considerations in the criminal justice system).

¹⁸⁴ See SECOND QUARTER REPORT, *supra* note 106, at 1, 18 (reporting the high levels of suicidality and violence that exists at detention centers); see ANNIE E. CASEY FOUNDATION, *supra* note 73, at 4–6 (describing how Maryland courts unnecessarily detain children prior to trial through technical violations).

¹⁸⁵ See JUSTICE POLICY INSTITUTE 2015, *supra* note 147, at 2, note 50 (reporting the average cost of confinement of juveniles in Maryland in 2014).

¹⁸⁶ EDWARD W. SIEH, COMMUNITY CORRECTIONS AND HUMAN DIGNITY, 315 (1st ed. 2005) (noting that the Detention Response Unit was one of two research-backed OPD units that addressed specific populations in order to decrease incarceration and increase positive community outcomes).

¹⁸⁷ See *id.* (describing the respective roles of the social worker and the lawyer team).

¹⁸⁸ See N. LEE COOPER ET AL., *Fulfilling the Promise of In Re Gault: Advancing the Role of Lawyers for Children*, 33 WAKE FOREST L. REV. 651, 660 n.90 (1998) (lauding the cost-benefit analysis of the Unit's Final Progress Report).

scientists in the 1990s.¹⁸⁹ By re-implementing the Detention Response Team across the state, Maryland will set up a check against trial court judges who wish to expand the meaning of “necessary to public safety” and limit commitment to youth who have committed very dangerous crimes.¹⁹⁰

Maryland should additionally divest in large youth detention centers and reinvest in small, community-based programming. In 2013, researchers from the National Bureau of Economic Research published a study that found a correlation between youth confinement and a 13.3 percent drop in the likelihood of graduation from high school, as well as a nearly 25 percent higher adult recidivism rate.¹⁹¹ Multiple jurisdictions have reacted by implementing pipeline-reduction initiatives, including New York City.¹⁹² When New York City implemented the Close to Home initiative, a program that closed large, upstate facilities and moved youth to small home-like placements, youth incarceration fell by 55 percent, and youth arrests declined by half.¹⁹³ The Close to Home initiative also included a range of detention alternatives, including short-term crisis management, Multisystemic Therapy, and Functional Family Therapy, resulting in reduced detention and pre-adjudication arrest rates.¹⁹⁴ The State of

¹⁸⁹ *See id.* (imparting the importance of retaining knowledgeable and well-trained juvenile attorneys representing children so that clients are not inappropriately detained).

¹⁹⁰ *See* MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(5) (2017) (allowing the court to remove a child from a home if in the interest of public safety); PATRICK MCCARTHY, ET AL., *supra* note 16, at 18 (discussing how youth confinement and youth offending declined when states limited the power of judges to detain children to statutorily-defined offenses).

¹⁹¹ *See* JUSTICE POLICY INSTITUTE 2014, *supra* note 147, at 22, 30 (citing Aizer & Doyle’s 2013 study on nearly 37,000 youth processed by the Juvenile Court of Cook County in Chicago to study the impacts of confinement).

¹⁹² PATRICK MCCARTHY, ET AL., *supra* note 16, at 11, 14, 20, 23 (noting that Texas, New York City, Massachusetts, and California experienced dramatic reductions in crime and youth arrests when the jurisdictions implemented initiatives to reduce the amount of confined youths).

¹⁹³ *See id.* at 23 (describing the reform efforts implemented by New York City to appropriately match child needs while in custody and improve outcomes).

¹⁹⁴ *See id.* (noting that by initiating a new risk-assessment tool and a range of detention alternatives, New York City likely also reduced youth committed post-adjudication).

Maryland should implement similar alternatives to pretrial detention, such as evidence-based, economically-friendly programs like the Adolescent Diversion Project, mentoring programs, Multisystemic Therapy, Functional Family Therapy, and Communities that Care.¹⁹⁵ These programs can cost as little as \$75 per day while achieving better outcomes.¹⁹⁶ The Annie E. Casey Foundation's Juvenile Detention Alternative Initiatives, a similar program, was established in Baltimore City in 2012. The program has already experienced success in limiting the number of juveniles committed post-adjudication.¹⁹⁷ The Attorney General of Maryland has declared support for these initiatives and urges the State and the Department of Juvenile Services to take further action for the benefit of the children and taxpayers alike.¹⁹⁸

V. CONCLUSION

Under the Juvenile Causes Act, a child who is alleged delinquent should not be separated from his or her family unless the welfare of the child or public safety is threatened.¹⁹⁹ If the child is detained in the custody of the State, the Department of Juvenile Services must provide a safe, humane,

¹⁹⁵ See *id.* at 10-13 (presenting various evidence-based, research-based, and promising practices for children in the juvenile justice system, including the excellent cost-benefit analysis on each).

¹⁹⁶ See PATRICK MCCARTHY, ET AL., *supra* note 16 at 21 (noting that community-based services for youth are a "win-win" in that they provide more effective programs at a lower cost).

¹⁹⁷ See RICHARD E. MENDEL, JUVENILE DETENTION ALTERNATIVES INITIATIVE PROGRESS REPORT 2014, 14-16 (2014) <http://www.aecf.org/m/resourcedoc/aecf-2014JDAIProgressReport-2014.pdf#page=18> (reporting that although Baltimore City experienced a 43 percent drop in commitments, the average daily population in facilities rose by seven percent) [<https://perma.cc/EE4L-SBVP>].

¹⁹⁸ See SECOND QUARTER REPORT, *supra* note 106 at 2, 43 (adopting the position that juvenile detention and incarceration is extremely costly while providing no additional benefit for public safety or outcomes for children).

¹⁹⁹ See MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(5) (2017) (stating the importance of strengthening and preserving the family unit).

and caring environment.²⁰⁰ Maryland's current practice of inappropriately detaining juveniles prior to adjudication violates the stated purposes of the Juvenile Causes Act for children alleged delinquent.²⁰¹ Maryland's courts unnecessarily detain its youth and subsequently detain them in abhorrent conditions that provide neither a safe nor comfortable environment.²⁰² Moreover, this practice is contrary to Supreme Court juvenile jurisprudence under Constitutional Law.²⁰³ By unnecessarily detaining children prior to trial in unsuitable conditions, Maryland violates the Eighth Amendment and denies juveniles the special protections afforded to children in the criminal justice system.²⁰⁴ In order to mitigate this crisis, Maryland must invest in initiatives to drastically curtail the population of children in detention.²⁰⁵

²⁰⁰ See *id.* § 3-8A-02(a)(6)–(7) (emphasizing the importance of securing for a child a similar environment to that which should have been provided by his parents).

²⁰¹ Compare MD. CODE, CTS. & JUD. PROC. § 3-8A-02(a)(5) (2002), with SECOND QUARTER REPORT, *supra* note 106 at 18–40 (reporting and investigating the high incidences of assault, uses of physical restraint and shackling, and suicidal behavior in Maryland).

²⁰² See ANNIE E. CASEY FOUNDATION, *supra* note 73 at 4 (noting that the most common reason for juvenile confinement in Maryland is technical violations of court orders); SECOND QUARTER REPORT, *supra* note 106, at 19, 22 (noting the inappropriate usage of seclusion and shackling).

²⁰³ *Miller v. Alabama*, 567 U.S. 460, 470 (2012); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) (stressing the differences penological goals for children and adults).

²⁰⁴ See *Roper*, 543 U.S. at 570 (finding that the young age of juveniles affords them special protections because “youth is more than a chronological fact”).

²⁰⁵ See JUSTICE POLICY INSTITUTE 2014, *supra* note 147, at 38; PATRICK MCCARTHY, ET AL., *supra* note 16, at 21–23 (recommending community-based programs, probation reforms, targeted public defender strategies, and prosocial development to reduce detention and commitment at a lower cost while reducing crime).