

**Greater Baltimore
Grassroots
Criminal Justice
Network**

Alternative Directions
American Friends Service
Committee
Clean Slate America, Inc.
Civic Works, Inc.
F.A.C.E. (Freedom
Advocates Celebrating
Ex-Offenders)
Families Against Injustice
Fusion Partnerships, Inc.
Homeless Persons
Representation Project
Jericho ReEntry
Job Opportunities Task
Force
Justice Policy Institute
Living Classrooms
Foundation
Marian House
Maryland New Directions
Maryland Restorative
Justice Initiative
National Women's
Prison Project
Open Society Institute –
Baltimore
Out for Justice, Inc.
People Encouraging People
Power Inside
United Workers Association

November 14, 2012

Thomas M. Mackall, Chair
Maryland State Advisory Committee to the
United States Commission on Civil Rights
c/o Eastern Regional Office
U.S. Commission on Civil Rights
624 Ninth St., NW, Suite 500
Washington, DC 20425

Dear Chairman Mackall:

Thank you for presiding over a briefing in Annapolis, Maryland on June 5, 2012 to investigate racial disparities in Maryland's criminal justice system. The Greater Baltimore Grassroots Criminal Justice Network (Network) comprises over 20 non-profit organizations and individuals in the Baltimore region. Its mission is to advance reform efforts to create a fair criminal justice system and second chances for individuals who leave the system. Several members of the Network attended the day-long briefing during which local and national experts provided detailed and compelling testimony about racial disparities at every point of the state's criminal justice system – from arrests to release from prison – and demonstrated how these disparities raise civil rights concerns. After the briefing, our members worked closely with these experts to submit additional written testimony to the Maryland State Advisory Committee. Ivy Davis, Regional Director of the U.S. Commission on Civil Rights acknowledged receipt of this testimony. We write to inquire about the status of the investigation and to learn when the Committee expects to release its report.

Network members and the communities they serve confront racial differences in Maryland's criminal justice system every day. Whether it is the African-American Baltimore City resident who is locked up at the city jail because he cannot afford to pay a low bail amount of \$1,000, or the African-American woman who is interviewed but not called back for a job because she has a 20-year old conviction, Marylanders of color with criminal records are more likely to have their civil rights infringed than their white neighbors.

The racial disparities are staggering. Please consider the following facts that were included in written testimony submitted to the State Advisory Committee:

- According to the Maryland Division of Corrections, 72% of people who entered Maryland's prison system in 2010 were African American, yet, they comprised only 29% of the overall population in the state.¹

The Greater Baltimore Grassroots Criminal Justice Network (the Network) comprises criminal justice reform advocates, service providers, and people affected by the justice system who work to collectively remove barriers faced by people who are formerly incarcerated or who have criminal records. The mission of the Network is to share information and support each other's policy reform movements to create a fair criminal justice system and second chances for individuals who leave the system.

- In its June 2010 report “Baltimore Behind Bars,” the Justice Policy Institute examined Baltimore’s complex system of policing practices and court and bail processes that contribute to crowding and excessive use of jails for pre-trial supervision. According to the report, the Baltimore jail holds around 4,000 people on any given dayⁱ and 9 out of 10 have only been accused of a crime and are awaiting their trials; most of the jail population is there for nonviolent offenses, such as drug offenses and violations of probation. This is particularly damaging to African Americans because despite making up only 64 percent of Baltimore residents, they make up 89 percent of the people held at the city’s jail.
- The overrepresentation of African-American youth at the Baltimore jail (99 percent) is even higher than the overrepresentation of African-American adults at the jail. This is consistent with national trends and studies that have found that African- American youth are viewed as more “adult-like” and more responsible for their actions than are their peers of other races, whose actions are typically attributed to age-appropriate adolescent behavior.ⁱⁱ Indeed, at least one study found that African-American boys were viewed as and treated like an 18-year-old adult.ⁱⁱⁱ There is also strong documented evidence showing that decision-makers in the criminal and juvenile justice fields, such as police officers, dehumanize African-American boys by implicitly associating them with apes.^{iv} Consequently, these boys are more likely to be victims of excessive use of force at the hands of police officers.^v
- People of color and people with fewer resources are the most likely to be affected by high bail amounts. People living in impoverished communities are the most likely to find that money bail is beyond their financial capacity. The Pretrial Release Project at the University of Maryland conducted a study of bail review hearings in five Maryland counties, including Baltimore City and found that 75 percent of people who were expected to pay a bond believed it would be “very difficult” or “difficult” to provide the money. In addition, high bail amounts are also likely to disproportionately affect communities of color. Research from the Department of Justice on jails across the country shows that African Americans and Latinos receive higher bail amounts than whites, indicating possible disparate treatment by judges when setting bail.^{vi}
- More than one in four U.S. adults –roughly 65 million people—have an arrest or conviction that shows up in routine criminal background checks. This means that over one million Marylanders with criminal records face unprecedented barriers to employment. With the rapidly expanding use of background checks, employers are routinely excluding all job applicants who have criminal records from consideration, no matter how minor or dated their offense. It is well documented that members of some minority groups are much more likely to be arrested and convicted than whites. It is also well established that possession of a criminal record presents a tremendous barrier to securing employment. According to a 2010 study by the Society for Human Resource Management, 92 percent of employers conduct criminal background checks. In addition, empirical studies from across the United States have regularly found that employers are generally reluctant to hire individuals who have criminal records.

But, the solutions are clear:

- The courts and Maryland’s Division of Pre-Trial Detention and Services should set up a mechanism for screening and recommending release on personal recognizance for people who are low-risk of reoffending.
- The Maryland Department of Public Safety and Correctional Services should expand its Pretrial Release Supervision Program. Pretrial release is both less expensive and less harmful than pretrial incarceration. Individuals who are released pretrial can stay with their families and maintain employment and community ties. The Pretrial Release Supervision Program has shown low failure-to-appear rates and low re-arrest rates for people under its supervision. Increasing the number of people supervised under this program will reduce the jail population, potentially saving millions of dollars and untold hours of labor.
- Maryland policymakers should end the automatic prosecution of youth as adults. The U.S. Supreme Court recently acknowledged in *Miller v. Alabama*, 567_ (June 25, 2012) the growing body of research showing that children are developmentally different from adults, and therefore more impulsive and more amenable to treatment and rehabilitation. Based on these scientific findings, the court concluded that youth convicted of murder should not automatically receive a sentence of life without the possibility of parole. Likewise, we believe that youth should not be automatically charged as adults in Maryland. Instead, all youth who are charged with a crime should be served in the juvenile justice system, unless a judge, after considering a number of factors, such as the age of the child and amenability to treatment in the juvenile system, determines that that system cannot serve a particular youth.^{vii}
- The courts should reform the bail system and use other methods of ensuring people return to court. Cities and counties should expand their options for ensuring appearances in court beyond relying primarily on money bail. Money bail discriminates against people of lower income and the use of commercial bonding companies takes the release decision-making power away from judges and puts it into the hands of a for-profit industry. Fully utilizing pretrial release supervision and diversion programs that provide appropriate services and supervision while a person awaits trial.^{viii}
- State policymakers should support policy reform efforts to increase employment opportunities for Marylanders with criminal records, such “banning the box” on state employment applications that requires people to state whether they have been convicted of an offense. Banning this box will allow qualified applicants with criminal records to explain the record during an interview.

The Maryland State Advisory Committee is in a unique position to highlight the civil rights violations highlighted above and stimulate reforms that would improve outcomes for Marylanders and their families and communities. As the terms of Committee members expire at the end of this year, we are hopeful that the Committee will release a report that will document the information gathered to date and recommend changes needed to ensure fair and equal

treatment for all residents in the State of Maryland. We are happy to assist in any way possible in moving this forward so please feel free to contact Keith Wallington at 202-558-7974 ext. 310 or Greg Carpenter 410-294-1414 at your convenience.

Sincerely yours,

cc: Ivy Davis, Regional Director, U.S. Commission on Civil Rights
[Maryland congressional delegation]

The Honorable Barbara Mikulski
The Honorable Ben Cardin
The Honorable Andy Harris
The Honorable Dutch Ruppersberger
The Honorable Donna F. Edwards
The Honorable Steny H. Hoyer
The Honorable Roscoe Bartlett
The Honorable Elijah Cummings
The Honorable Chris Van Hollen

ⁱ Division of Pretrial Detention and Services

ⁱⁱ *Id.* See also, Phillip Atibagoff, et al, *The Essence of Innocence: Consequences of Dehumanizing Black Children* (pending publication and cited with permission of the lead researcher). Copies of this study may be obtained from Phillip Goff at goff@psych.ucla.edu.

ⁱⁱⁱ *Id.*

^{iv} *Id.*

^v *Id.*

^{vi} State Court Processing Statistics, 2002, provided by David Levin, Pretrial Justice, September 4, 2007; See Jailing Communities: The Impact of Jail Expansion and Effective Public Safety Strategies for more detail http://www.justicepolicy.org/images/upload08-04_REP_JailingCommunities_Ac.pdf

^{vii} Under Maryland law, juvenile court judges currently have the discretion to waive the court's jurisdiction and send a youth to the adult criminal justice system after they consider the following factors: "(1) Age of the child; (2) Mental and physical condition of the child; (3) the child's amenability to treatment in any institution, facility, or program available to delinquents; (4) The nature of the offense and the child's alleged participation in it; and (5) The public safety." See Md. Courts and Jud. Proc. Code § Ann. 3-8A-06 (2012).

^{viii} Justice Policy Institute, 2010 Baltimore Behind Bars: How to reduce the jail population, save money and improve public safety, http://www.justicepolicy.org/images/upload/10-06_REP_BaltBehindBars_MD-PS-AC-RD.pdf