

Beyond Confinement Conference, Heather Warnken, Opening Remarks¹

Good morning. On behalf of the Center for Criminal Justice Reform at the University of Baltimore School of Law, I am thrilled to welcome you today.

Our center supports community-driven efforts to improve public safety and address the harm and inequity caused by the criminal legal system. One of the ways we strive to advance this mission is to serve as a convener - bringing together diverse stakeholders to examine how the system currently functions, and to collaborate on strategies that promote justice throughout the country and in our own backyard.

Today's conference exemplifies this - and we are so grateful to the Maryland Alliance for Justice Reform for your leadership and partnership in making it happen. And to every single one of you for spending your Saturday *showing up* for this important work.

Another way our center strives to advance this mission is supporting and empowering the next generation of the legal profession committed to challenging the status quo. Many are here in this room today.

Our center works alongside our law school's renowned clinical programs, creating a model for our students where the front lines of direct service can continually inform our policy work and vice versa, employing the diverse set of tools needed for transformative change.

So what is it that we are trying to transform?

¹ Suggested citation: **Warnken, Heather. Beyond Confinement: Rethinking Corrections & Rehabilitation in Maryland Conference**, 9 Sept. 2023, University of Baltimore School of Law. Opening Remarks.

2023 marks 50 years since the US prison population began its unprecedented, historic boom.²

Over 5 million people nationwide are under supervision by the criminal legal system³ – with nearly two million living in prisons and jails. This is compared to 360,000 in the early 1970s.⁴

The evidence is clear. As explained by the National Academy of Sciences in its groundbreaking study on the growth of incarceration, and an ever-growing body of research since, the massive explosion in the number of people behind bars was not due to a rise in crime and violence, **but rather, to deeply misguided changes to sentencing law and policy.**⁵

Mass incarceration *is not what keeps us safe*. As has been said by many, if it did, we'd be by far the safest nation on earth.

The human and fiscal costs of our failed experiment in punitive excess has instead left a trail of destruction in its wake. In addition to the immeasurable harm to families and communities, mass incarceration has undermined our public safety goals.

² Nellis, A. (2023). *Mass Incarceration Trends* The Sentencing Project. <https://www.sentencingproject.org/reports/mass-incarceration-trends/>.

³ Carson, E. A. (2022). *Prisoners in 2021—Statistical tables*. Bureau of Justice Statistics. <https://bjs.ojp.gov/library/publications/correctional-populations-united-states-2021-statistical-tables>.

⁴ Nellis, A. (2023). *Mass Incarceration Trends* The Sentencing Project. <https://www.sentencingproject.org/reports/mass-incarceration-trends/>.

⁵ National Research Council. (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. J. Travis, B. Western, & S. Redburn, (Eds). The National Academies Press. <https://nap.nationalacademies.org/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

Numerous wake up calls, led by the wisdom and organizing of directly impacted people, have propelled decarceration efforts in recent years. Maryland has made strides to be proud of since its peak year in 2007, reducing its incarcerated population by 23%.⁶

Yet, the number of human beings in cages is still nearly six times the prison population of 50 years ago.⁷ According to the Sentencing Project, at this current pace, it would take until 2098 to return to 1973's prison population, with needless suffering occurring behind the walls and in our communities every day.⁸

In Maryland and across the country - we are moving too slowly. Furthermore, fear-based rhetoric coupled with continued over reliance on policing, prosecution and prison as essential to public safety, all while we under-invest in community - threatens to roll back existing reforms.

Before I turn the mic over to our two keynote speakers, I'd like to ground our convening in an uncomfortable truth that I hope they - and all of us - have the courage to grapple with today.

Maryland, which proudly wears its progressive credentials and reputation across numerous issues, is full of contradictions when it comes to criminal justice. In fact, on some of these issues, Maryland ranks among the worst in the US.

For example:

⁶ Lewis, N. (2018, May 18). *This state freed the highest percentage of prisoners in 2017. Maryland Leads as Prison Populations Continue to Decline.* <https://www.themarshallproject.org/2018/05/18/maryland-leads-as-prison-populations-continue-to-decline>.

⁷ Ghandnoosh, N. (2023). *Ending 50 Years of Mass Incarceration: Urgent Reform Needed to Protect Future Generations.* The Sentencing Project. <https://www.sentencingproject.org/policy-brief/ending-50-years-of-mass-incarceration-urgent-reform-needed-to-protect-future-generations>.

⁸ *Id.*

Maryland sends more kids to adult court per capita than any other state except Alabama.⁹ 81% of children charged in adult court in Maryland are Black.¹⁰ Yet for the 13th year in a row, with a new governor, a democratic supermajority and AG support, the YES Act to end the automatic charging of kids in adult court could not get a vote.

Though Maryland is ranked as one of the worst in the US on compassionate release processes for chronically ill and elderly incarcerated people who pose no threat to public safety,¹¹ the bill to address this - saving taxpayers money and providing no negative public safety impact - did not advance, despite wide support including from the parole commission.

Maryland continues to impose a lifetime ban on jury service for anyone who has served a year or more of incarceration for a felony or misdemeanor.¹² This archaic disenfranchisement perpetuates discrimination throughout the system, reinforcing the fiction that we allow people - particularly Black and brown people - “a jury of their peers.”

⁹ The Sentencing Project. *Testimony of Josh Rovner in Support of SB 165*. Retrieved October 11, 2023, from <https://www.sentencingproject.org/app/uploads/2022/08/Maryland-transfer-bill-testimony-SB165.pdf>.

¹⁰ Juveniles Charged as Adults Dashboard. (2022, December 31). Retrieved October 11, 2023, <https://app.powerbigov.us/view?r=eyJrljoiNzQzYTBlhYmMtNzVmOC00OGE2LWFlkNzktZDliYzg5NzEyODU2liwidCI6IjYwYWZlOWUyLTQ5Y2QtNDliMS04ODUxLTY0ZGYwMjc2YTJlOCJ9>.

¹¹ Families Against Mandatory Minimums. (2022). *Grading the States: The State Compassionate Release Report Card Project*. Retrieved October 11, 2023, from <https://famm.org/wp-content/uploads/compassionate-release-report.pdf>.

¹² Md. Code Ann., Courts and Judicial Proceedings § 8-103(b)(4).

Notwithstanding Maryland's rankings regarding oppressive fines and fees imposed by the criminal legal system, a bill to merely study this issue through some basic transparency went nowhere last session.¹³

And while Maryland boasted its leadership in passing the Trans Health Equity Act, a standout across a national landscape of discrimination and hate, The Transgender Respect, Agency and Dignity Act meant to promote safety and address human rights abuses regularly endured by our trans incarcerated loved ones in Maryland's prisons and jails did not get a vote.¹⁴

In 2022, as part of an ongoing lawsuit and settlement dating back to the 90s, the ACLU noted in a letter following a visit to the Baltimore Central Booking and Intake Center people are "held in the harshest and most deprived conditions we have ever encountered in any prison or jail in the United States, including in death row and 'supermax' units."¹⁵

And lastly, while racial disparities pervade nearly every aspect of the criminal legal system in every state, Maryland holds the shameful distinction of ***first in the nation in over-incarceration of Black males.***¹⁶

31% of our population is Black while 69% of our prison population is black.¹⁷

¹³ HB 154, (Md. 2023), <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/HB0154>.

¹⁴ HB 453 (Md. 2022), <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/hb0453?ys=2022rs>.

¹⁵ Kendrick, C., & Fathi, D. (2022, August 26). *Duvall v. Hogan*, BCBIC Report of Plaintiffs' Counsel from August 2-3, 2022 Visit.

¹⁶ New Policy Brief. (2019, November 6). Retrieved October 11, 2023, from https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD_press_release.pdf.

¹⁷ Vera Institute of Justice. (2019). *Incarceration Trends in Maryland*. Retrieved October 11, 2023, from <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-maryland.pdf> <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-maryland.pdf>.

87% of those convicted in adult court as children who have now served over 20 years in the adult system - and who are now eligible for *potential* relief under the Juvenile Restoration Act - are Black.¹⁸ According to the Campaign for Fair Sentencing of Youth, this racial disparity is the worst in the entire nation.¹⁹

As many advocates in this room know, this is not a comprehensive list. It is merely a few examples highlighting *not just our need for a reckoning* - but our tangible, hopeful opportunities right here and now to create change.

We can work harder, faster, and more effectively.

We can commit to making policy that is both rooted in the evidence *and guided by human dignity*.

We can work to interrupt cycles of harm rather than perpetuate them.

This is a moment of tremendous opportunity, and it is exciting to have a Governor committed to being data-driven and heart-led. A Governor who has repeatedly pledged to *leave no one behind*.

I want the entire Administration to know how many committed partners they have in this room. I also want to remind them of the urgency and importance of this work to that agenda. Because truly, perhaps the worst way we can leave someone behind is unnecessarily in a cage.

So together, bravely, let's get to work.

¹⁸ Campaign for the Fair Sentencing of Youth. (2021). *Juvenile Restoration Act (HB409/SB494)*. Retrieved October 11, 2023, from https://cfsy.org/wp-content/uploads/HB409_SB494_JuvenileRestorationAct_FACTSHEET-1.pdf.

¹⁹ *Id.*