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Testimony from:

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In SUPPORT of HB 271, “AN ACT concerning Public Safety- Law Enforcement Diversion Programs.”

March 18, 2021

Senate Judicial Proceedings Committee

Chair Smith, Vice Chair Waldstreicher, Sen. Bailey, Sen. Carter, Sen. Cassilly, Sen. Hettleman, Sen. Hough, Sen. Lee, Sen. Jackson, Sen. Sydnor, Sen. West:

Thank you for considering our testimony. My name is Camille Infantolino and I conduct research relating to criminal justice and civil liberties policy for the R Street Institute, a nonprofit, nonpartisan public policy research organization. I am writing with Lars Trautman, a resident senior fellow with R Street and a former prosecutor. R Street’s mission is to engage in policy research and outreach to promote free markets and limited, effective government, including through the promotion of a more equitable, effective and efficient criminal justice system. Given that HB 271 presents an opportunity to expand effective diversion opportunities prior to arrest and criminal court involvement, it is of special interest to us.

An arrest is an incredibly disruptive, and potentially costly, action. The individual’s removal from their community can create a cascading series of consequences that interfere with vital aspects of their lives such as current employment, family life and responsibilities, and housing, among others. Further, the consequences of a criminal record, even an arrest record, can extend far beyond the arrest itself or any subsequent sentence. It can affect voting rights, future employment opportunities, and important networking or social connections.¹ At the same time, an arrest and further involvement in the criminal justice system can drain community resources via law enforcement time, a jail or prison stay, court costs, additional needs for prosecutors and public defenders, and more. When taken into full context, an arrest and further criminal justice processing can cost thousands of taxpayer dollars.²

Although these costs may well be worth it in more serious instances, there is a growing recognition that especially for more minor transgressions or those that are behavioral health-related, an arrest is a disproportionate and often ineffective response. Law enforcement entities currently shoulder an inordinate share of the response burden for behavioral health crises, despite sometimes limited training on the subject and myriad other responsibilities. By shifting to behavioral health intervention and treatment instead of traditional justice system involvement, non-law enforcement professionals can



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assume a greater role in the response in more situations, thereby freeing law enforcement officers to focus on more significant threats to public safety. The discretion to divert individuals suspected of lower-level offenses can likewise allow law enforcement officers to concentrate instead on public safety priorities. Similarly, keeping these cases out of the court system will allow prosecutors to shift their own resources toward the prosecution and resolution of much more serious cases.

In considering the expansion and support of law enforcement diversion programs, Maryland joins a growing movement in favor of additional alternatives to arrest that spans the United States and the political spectrum. This includes jurisdictions in at least 40 states, which have adopted or expanded an alternative to arrest measure to help mitigate the COVID-19 pandemic, an ongoing crisis that has raised the costs of arrests and justice system involvement even higher.³ Given the local nature of law enforcement, much of this change has been driven at the local level by police chiefs, behavioral health providers and others interested in improving our crisis response systems. Yet, there remains a significant role for state government to play, supporting and helping to guide some of these local efforts.

The establishment of law enforcement diversion programs under HB 271 is a laudable step toward necessary reform. As a result of this bill, those who otherwise would experience the significant personal and financial consequences of arrests could be held accountable and get the services and support they need in a way that simultaneously permits them to continue to support their families financially, pursue work and education, and have a second chance to be a productive member of society. Their communities will also benefit when alternatives to arrest drive down recidivism rates, prevent damage to the economy, and avoid government expenditures on unnecessary and unproductive criminal justice processing. The authorization of state funding to support such programs also means they will be more in reach of more under-resourced communities. Further, the consequences of creating diversion programs that uniquely respond to local issues through behavioral health, evidence-based practices and harm-reduction approaches will not go unnoticed and can serve as valuable examples to other jurisdictions.

The bottom line is that arrests can often cause more harm than good, especially when we consider the availability of effective alternatives for responding to low-level offenses, in particular. Rather than solely relying on traditional enforcement mechanisms, policymakers should invest resources in alternatives to arrest, such as law enforcement diversion programs, that foster much better outcomes for both participants and the community alike. For these reasons, we support HB 271.

Thank you for your time and consideration,

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¹ See, Dorothy E. Roberts, “The Social and Moral Cost of Mass Incarceration in African American Communities,” *Penn Law: Legal Scholarship Repository*, 2004.

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1582&context=faculty_scholarship.
² “2017 State and Local Government Finance Historical Datasets and Tables,” United States Census Bureau, 2017. <https://www.census.gov/data/datasets/2017/econ/local/public-use-datasets.html>.

³ Lars Trautman and Camille Infantolino, “COVID-19 Inspired Alternatives to Arrest and Their Public Reception,” *R Street Institute Shorts*, No. 98, December 2020. <https://www.rstreet.org/wp-content/uploads/2020/11/final-SHORT98.pdf>.