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# Brief of Amici Curiae in Support of Respondent, Robert Calvin Brown, III v. State of Maryland, No. 08-118

Brenda Bratton Blom

*University of Maryland Francis King Carey School of Law, [bbloom@law.umaryland.edu](mailto:bbloom@law.umaryland.edu)*

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In The  
COURT OF APPEALS OF MARYLAND

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SEPTEMBER TERM, 2008

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No. 118

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ROBERT CALVIN BROWN, III,

*Petitioner*

v.

THE STATE OF MARYLAND,

*Respondent*

---

ON APPEAL FROM THE COURT OF SPECIAL APPEALS OF MARYLAND

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BRIEF OF *AMICI CURIAE* CONCERNED CITIZENS,  
ORGANIZATIONS AND LEGAL PROFESSIONALS  
IN SUPPORT OF RESPONDENT

---

\*BRENDA BRATTON BLOM  
500 W. Baltimore St.  
Baltimore, Maryland 21201  
(410) 706-2041  
*Counsel for Amici Curiae  
Representing Concerned Citizens,  
Organizations and Legal Professionals*

\*Admitted in the State of Maryland

ROBERT CALVIN BROWN, III,	*	IN THE
Petitioner	*	COURT OF APPEALS
v.	*	OF MARYLAND
STATE OF MARYLAND	*	SEPTEMBER TERM, 2008
Respondent	*	No. 118

\* \* \* \* \*

UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Certain citizens and community based organizations in Maryland and across the nation who have been involved in the effort to develop justice system processes that respect the needs of communities and individuals in a restorative manner, by their representatives, Brenda Bratton Blom, Esq., Leigh Maddox, Esq., A.J. Bellido de Luna, Esq.,<sup>1</sup> move, pursuant to Maryland Rule §8-511, for leave to file an *amicus curiae* brief on behalf of Respondent in the above-captioned case. In support of this Motion, counsel states the following:

1. The above case is scheduled for oral arguments in this Court on April 2, 2009.
2. The case raises critical issues on the constitutionality and statutory legitimacy of problem solving and alternative remedy dockets run out of the District and Circuit Courts of Maryland, including the Baltimore City Adult Felony Drug Treatment Court and Mental Health Court.
3. Since 2003, concerned citizens of Maryland, victims of crime (whether individuals or communities), ex-offenders, legal educators, lawyers, student attorneys, service providers, government administrators, police, judges and court administrators, community based organizations, and nationally recognized individuals, leaders in community justice initiatives

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<sup>1</sup>Attorneys for the *Amici Curiae* gratefully acknowledge the support and work of the following Maryland Rule 16 student attorneys from the University of Maryland School of Law: Julie Galbo, Robin Jacobs, Lydia Nussbaum, Jaymin Parekh, Joshua Richardson and Jonathan Scruggs.

and organizations have worked together to support, envision and build problem solving courts dockets. As individuals and organizations, *Amici* (Appendix A-1) are deeply committed to advocating for problem solving and alternative remedies not effectively accommodated by much of the current legal and adjudicatory process. *Amici* support a model of justice that attempts to repair the harm rendered by a criminal offense and, with community partners, knit together an array of support services and dispute resolution strategies that provide an effective alternative to the traditional criminal justice system: holding in tension offender accountability and victim restoration, whether the victim is an individual or a community. Problem solving courts like the Baltimore City Adult Drug Treatment Court and Mental Health Court are consistent with the overall aim of promoting community based multi-faceted alternatives that address criminal issues and restore a sense of justice to the community at large.

4. An amicus brief is desirable in this case because the future of 39 Maryland problem solving courts and other alternative remedy programs, as they currently operate, are potentially at stake. Furthermore, the constitutionality of problem solving courts is an issue, which, to the best of our knowledge, has not been litigated heavily at the appellate level in this State and other jurisdictions. Accordingly, this Court's decision in the case will inevitably impact practitioners and judges throughout the state and the nation in the way they discuss, litigate and evaluate their jurisdictional problem solving courts.

5. The *amici curiae* plans to address the legal issues raised by Petitioner and emphasize the policy considerations surrounding the existence and continuation of Maryland problem solving and alternative remedy dockets. This discussion includes the vital contributions these forums provide to the public in effectively rehabilitating offenders, providing support and assistance to victims of crime, whether they are individuals or communities, by addressing the



root causes of crime and restoring public confidence in the criminal justice system.

6. No entity has made a monetary or other contribution to the preparation or submission of the *Amicus Curiae* brief.

7. Nancy S. Forster, counsel for Petitioner, and Michelle W. Cole, counsel for Respondent, have been consulted and do not oppose this Motion.

WHEREFORE, certain citizens and community based organizations in Maryland and across the nation that have been involved in the effort to develop justice system processes that respect the needs of communities and individuals in a restorative manner, by their representatives, respectfully request leave to file an *Amicus Curiae* brief on behalf of Respondent.

Respectfully submitted,

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BRENDA BRATTON BLOM, ESQ.\*  
Director, Clinical Programs  
University of Maryland School of Law  
500 W. Baltimore St., Suite 360  
Baltimore, Maryland 21201  
(410) 706-8031  
Counsel for *Amicus Curiae*

---

A.J. BELLIDO DE LUNA, ESQ.\*  
Managing Director, Clinical Programs  
University of Maryland School of Law  
500 W. Baltimore St., Suite 360  
Baltimore, Maryland 21201  
(410) 706-3037  
Counsel for *Amicus Curiae*

---

LEIGH M. MADDOX, ESQ.\*  
Clinical Law Instructor  
University of Maryland School of Law  
500 W. Baltimore St., Suite 360  
Baltimore, Maryland 21201  
(410) 706-4086  
Counsel for *Amicus Curiae*

\*Admitted to Practice in the State of Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_ day of \_\_\_\_\_, 2009, a copy of the foregoing *Unopposed Motion for Leave to File Amicus Curiae Brief* was mailed, first-class postage prepaid, to Nancy S. Forster, Public Defender, 6 St. Paul St., Suite 1400, Baltimore, MD 21202, and Michelle W. Cole, Assistant Attorney General, 200 Saint Paul Place, Baltimore, Maryland 21202.

\_\_\_\_\_  
BRENDA BRATTON BLOM, ESQ.\*

\_\_\_\_\_  
A.J. BELLIDO DE LUNA, ESQ.\*

\_\_\_\_\_  
LEIGH M. MADDOX, ESQ.\*

\*Admitted to Practice in Maryland

ROBERT CALVIN BROWN, III,	*	IN THE
Petitioner	*	COURT OF APPEALS
v.	*	OF MARYLAND
STATE OF MARYLAND	*	SEPTEMBER TERM, 2008
Respondent	*	No. 118

\* \* \* \* \*

**ORDER**

Upon consideration of the Unopposed Motion for Leave to File Amicus Curiae Brief filed in the above-captioned case, it is this \_\_\_\_ day of \_\_\_\_\_, 2009, by the Court of Appeals of Maryland,

**ORDERED**, certain citizens and community based organizations in Maryland and across the nation who have been involved in the effort to develop justice system processes that respect the needs of communities and individuals in a restorative manner, by their representatives, Brenda Bratton Blom, Esq., Leigh Maddox, Esq., and A.J. Bellido de Luna, Esq. be, and hereby are, granted leave to file an amicus curiae brief on behalf of Respondent, with said *Amicus* brief to be filed by the date on which the Brief of Respondent is due to be filed.

\_\_\_\_\_  
JUDGE

## APPENDIX A-1

### *AMICI* MEMBERS: CONCERNED CITIZENS, ORGANIZATIONS AND LEGAL PROFESSIONALS

Lauren Abramson, Ph.D.  
Founder, Executive Director  
Community Conferencing Center  
2300 N. Charles St., 2<sup>nd</sup> Floor  
Baltimore, MD 21218

Thomas Akras  
1303 N. Charles St  
2nd Floor Front  
Baltimore MD, 21201

Andrew Albertson  
8 North Howard St., Apt 416B  
Baltimore, MD 21201

Donnie Andrews  
36 Terron Court  
Baltimore, MD 21234

Emilie Aracil, J.D.\*  
One House at a Time, Inc.  
3553 Chestnut Ave., #2N  
Baltimore, MD 21211

Christopher Awad, J.D.  
5505 Ramblewood Ave.  
Clinton, MD 20735

Terry Hickey, J.D.\*  
Adjunct Professor  
University of Maryland School of Law  
500 West Baltimore St.  
Baltimore, MD 21201

Craig Johnson\*  
Sergeant, Maryland State Police (Ret.)  
Department of Public Safety and  
Correction Services  
Division of Parole and Probation  
2100 Guilford Ave.  
Baltimore, MD 21218

Corporal Philip Johnson\*  
Maryland Transport Authority (Ret.)  
1635 Parkman Ave.  
Baltimore, MD 21230

Lena Kim, J.D.  
202 Presstman St.  
Baltimore, MD 21217

Earl Kratsch\*  
Baltimore City Homicide Detective  
(Ret.)  
810 River Road  
Sykesville, MD 21784

Jennifer J. Langdon, Ph.D. \*  
Assistant Professor  
Sociology, Anthropology, and Criminal  
Justice  
Towson University  
8000 York Road  
Towson MD 21252

Angie Battaglia, M.S.\*  
Program Director  
Office of Medical Education  
University of Maryland School of  
Medicine  
655 W. Baltimore St.  
Baltimore, MD 21201

Charlotte Lyn Bright, Ph.D., MSW  
5718 Pimlico Rd. Apt. 2A,  
Baltimore, MD 21209

Donald P. Brown  
901 Deer Court  
Abingdon, MD 21009

Terry T. Brown  
Vice President of Resource  
Development  
Baltimore Behavioral Health  
1101 West Pratt St.  
Baltimore, MD 21223

Justin Callaway  
518 W. Fayette St., Apt. 406  
Baltimore, MD 21201

George L. Carlson, Ph.D, LCSW-C\*  
Senior Director of Programs  
The Woodbourne Center  
1301 Woodbourne Avenue  
Baltimore, MD 21239

Michael A. Lewis  
Sheriff  
Wicomico County Sheriff's Office  
410 Naylor Mill Road  
Salisbury, MD 21804

Raymond Lorion\*  
Dean  
College of Education  
Towson University  
8000 York Road  
Towson, MD 21252

Bill Marker\*  
Citizens of Pigtown  
774 McHenry St.  
Baltimore, MD 21230

Maryland Crime Victims' Resource  
Center  
1001 Prince George's Blvd., Suite 750  
Upper Marlboro, MD 20774

Cathy B. McClain  
Executive Director  
Cherry Hill Trust  
1839 Montreal Road  
Severn, MD 21144

Carol Ann McCoy  
2821 Maudlin Ave.  
Baltimore, MD 21230

Elysha Carouge  
908 St. Paul St.  
Baltimore, MD 21202

Center for Court Innovation  
525 8<sup>th</sup> Ave.  
18<sup>th</sup> Floor  
New York, NY 10018

Cherry Hill Learning Zone  
806 Cherry Hill Road  
Baltimore, MD 21225

Cherry Hill Senior Manor  
901 Cherry Hill Road  
Baltimore, MD 21225

Cherry Hill Trust, Inc.  
804 A Cherry Hill Rd.  
Baltimore, MD 21225

Cherrydale Resident Corporation  
1118 Cherry Hill Rd.  
Baltimore, MD 21225

Mediation & Conflict Resolution Center  
Howard County Community College  
10901 Little Patuxent Parkway, ELB-DH  
Columbia, MD 21044

Peter Meleney\*  
Youth Program Manager of Conflict  
Resolution Center of Montgomery  
County  
MidCounty Regional Services Building  
2424 Reedie Dr. #301  
Wheaton, MD 20902

Mandy Miliman  
8207 Bendon Rd.  
Baltimore, MD 21208

David B. Mitchell, Esq.\*  
Johns Hopkins University, Faculty  
Division of Public Safety Leadership  
6740 Alexander Bell Drive, Suite 350  
Columbia, Maryland 21046  
Former Superintendent, Maryland State  
Police  
Former Chief, Prince George's County  
Police

Kenneth C. Montague, Jr., J.D.  
513 E. 39<sup>th</sup> St.  
Baltimore, MD 21218

Michael J. Phillips  
Chief of Police  
Fruitland Police Department  
401 E. Main St.  
P.O. Drawer "F"  
Fruitland, Maryland 21826

Joe Coffey, President  
Washington Village/Pigtown  
Neighborhood Planning Council  
904 Washington Blvd.  
Baltimore, MD 21230

Community Conferencing Center  
2300 N. Charles St., 2<sup>nd</sup> Floor  
Baltimore, MD 21218

Peter and Kathy Cwik  
1710 Morrell Park Ave.  
Baltimore, MD 21230

Miguel Dennis  
Chief  
Saint Michaels Police Department  
109 Talbot St  
Saint Michaels, MD 21663

Kristine Dunkerton, J.D.  
Executive Director  
Community Law Center, Inc.  
3355 Keswick Road, Suite 200  
Baltimore, MD 21211

Elizabeth DuVerlie  
Mediator  
3120 Abell Ave.  
Baltimore, MD 21218

Misty Fae  
150 Park Ave.  
Baltimore, MD 21217

William C. Ferguson IV  
500 W. Baltimore St.  
Baltimore, MD 21201

Janet Price\*  
Community Justice Resource  
Coordinator  
University of Maryland School of Law  
500 W. Baltimore St.  
Baltimore, MD 21201

Terri R. Ricks, J.D.  
1049 Plaza Circle  
Joppa, MD 21085

Belinda Reed  
1512 Hollins Street  
Baltimore, MD 21223

Judith Sachwald\*  
Senior Policy Advisor  
Crime and Justice Institute  
16106 Audubon Lane  
Bowie, MD 20716

Regan Savalla, J.D.  
4510 34<sup>th</sup> St. #4  
San Diego, CA 92116

Corey Shdaimah, LL.M., Ph.D.  
210 Williamsburg Rd.  
Ardmore PA 19003

Tony Shore\*  
Professor  
Maryland Institute College of Art  
2802 Evergreen Ave.  
Baltimore, MD 21214

Augusta Siribuo, J.D.  
13500 Gadwell Court  
Upper Marlboro, MD 20774

Carson Fox  
Director of Operations  
National Association of Drug Court  
Professionals  
4900 Seminary Road, Suite 320  
Alexandria, VA 22311

Anastasia W. Smith, J.D.  
6500 Ranging Hills Gate  
Columbia, MD 21044

Neill Franklin  
5011 Norrisville Road  
White Hall, MD 21161

Lou Takacs\*  
Washington Village/Pigtown  
Neighborhood Planning Council  
904 Washington Blvd.  
Baltimore, MD 21230

Dorcas R. Gilmore, J.D.\*  
Skadden Fellow  
Community Law Center, Inc.  
3355 Keswick Road, Suite 200  
Baltimore, MD 21211

Toby Treem Guerin, J.D.\*  
27 N. Belnord Ave.  
Baltimore, MD 21224

Barbara S. Grochal\*  
Deputy Director  
School Conflict Resolution Programs  
Center for Dispute Resolution  
University of Maryland School of Law  
500 West Baltimore St.  
Baltimore, MD 21201

Yamy Vang\*  
Assistant City Attorney  
St. Paul City Attorney's Office  
15 W. Kellogg Blvd., Ste. 500  
St. Paul, MN 55102

Vernon R. Herron\*  
Director  
Office of Homeland Security  
9200 Basil Court, Suite 308

Washington Village/Pigtown  
Neighborhood Planning Council  
904 Washington Blvd.  
Baltimore, MD 21230

Duane Weber  
2320 James St.  
Baltimore, MD 21230

Roger Wolf, J.D.\*  
Professor  
University of Maryland School of Law  
500 W. Baltimore St.  
Baltimore, MD 21201

\*Signing as an individual but using an institutional address.



## **APPENDIX A-2**

### **STATEMENT OF IDENTITY FOR *AMICI* ORGANIZATIONS**

#### **Baltimore Behavioral Health**

Baltimore Behavioral Health (“BBH”) is committed to improving the health of its patients by providing comprehensive and coordinated services within the community. BBH is a health care treatment provider serving ambulatory adults with mental health disorders, addictions, and co-occurring illnesses. BBH offers individualized treatment in a setting that provides a full continuum of care. In this format, patients achieve their specific treatment goals efficiently and realize a high rate of success.

#### **Center for Court Innovation**

The Center for Court Innovation (“CCI”) began as a public/private partnership between the New York State Unified Court System and the Fund for the City of New York. CCI is a non-profit think tank that helps courts and criminal justice agencies aid victims, reduce crime, and improve public trust in justice. CCI combines action and reflection to spark problem-solving innovation both locally and nationally. CCI’s success in making justice more visible and more meaningful led the court’s planners, with the support of New York State’s chief judge, to establish CCI to serve as an engine for ongoing court reform in New York.

In New York, CCI functions as the court system’s independent research and development arm, creating demonstration projects to test new ideas. These projects include: community courts, drug courts, reentry courts, domestic violence courts, and mental health courts. Beyond New York, CCI disseminates the lessons learned from innovative programs, helping criminal justice practitioners around the world launch their own problem-solving experiments.

#### **Cherry Hill Learning Zone**

The Cherry Hill Learning Zone initiative represents a partnership among the Baltimore City Public School System, Baltimore City government, Towson University and Cherry Hill's grassroots organizations. Working together, the partnership is leveraging its resources to build upon the strengths of the Cherry Hill community to meet its needs and nurture its potential in areas related to community development, economic development and educational development.

By engaging in sensitive and deliberative conversations with Cherry Hill's civic leaders, community organizations and citizens, the Learning Zone will serve as a resource for the academic success of Cherry Hill's youth and improved quality of life of its residents.

### **Cherry Hill Trust, Inc.**

Cherry Hill Trust (formerly Cherry Hill 2000) was founded in 1994 as an umbrella organization for community development. Its goal is to improve the quality of life for Cherry Hill residents by reducing crime; organizing job fairs for ex-offenders, adults and youth ages 14 and up; supporting affordable preventative health care; encouraging neighborhood beautification projects; overseeing design and construction of projects in Cherry Hill Homes and Cherry Hill Senior Manor; and improving the overall economic health of the community.

### **Community Conferencing Center**

The Community Conferencing Center ("CCC") is a conflict transformation and community justice organization that provides ways for people to safely, collectively and effectively prevent and resolve conflicts and crime. The work of the CCC has been recognized nationally and internationally for its use of conflict management strategies in a variety of settings, including criminal justice, education, community development and business. The CCC's efforts in Baltimore are unique: it is the only broad-based conferencing program in a large American inner-city that provides its services at no cost.

### **Community Law Center**

After 20 years, the Community Law Center ("CLC") remains Baltimore's only legal services organization dedicated solely to strengthening neighborhoods. The CLC's mission is to provide legal services and technical assistance to improve the quality of life and economic viability of communities. We seek partnerships with community organizers, nonprofit housing developers, urban planners, educators, and law enforcement agencies to realize each client's strategic goals.

### **The Maryland Crime Victims' Resource Center, Inc.**

The Maryland Crime Victims' Resource Center ("MCVRC") was originally formed as the Stephanie Roper Foundation and Committee after the kidnapping, rape, and murder of Stephanie Roper in 1982 and the treatment of her parents in the aftermath of crime.

See [http://www.mdcrimevictims.org/\\_pages/d\\_about\\_mcv/d1\\_aboutmcv\\_intro.htm](http://www.mdcrimevictims.org/_pages/d_about_mcv/d1_aboutmcv_intro.htm) (last visited March 2, 2009). MCVRC's mission is "To ensure that victims of

crime receive justice and are treated with dignity and compassion through comprehensive victims' rights and services." MCVRC was the chief proponent of Article 47 of the Declaration of Rights, which provides that certain members of the community – victims – be treated with dignity, sensitivity, and respect as well as with rights, including the rights to be informed, present and heard. MCVRC advocates that this constitutional mandate applies to specialty courts and that it should be broadly construed as such by this Court. *See e.g.* A Guide to Crime Victims Rights in Mental Health Courts, 2008 by the Council of State Governments Justice Center. For more information visit: <http://consensusproject.org/downloads/guidetocvinmhc.pdf>

### **Mediation & Conflict Resolution Center - Howard County Community College**

The Mediation & Conflict Resolution Center ("MCRC") at Howard Community College promotes peaceful resolution of conflict by providing mediation and conflict resolution services, education and training for the Howard County community. MCRC embraces the ideals of Restorative Justice processes that promote the empowerment of all persons affected by a conflict to collectively identify and address harm, needs and obligations in order to make things as right as possible.

MCRC helps people improve their lives by helping them handle conflict in healthy ways. MCRC contributes to the community through early conflict intervention and proactive conflict prevention. MCRC promotes the power of dialogue through open communication amongst all members of our community. MCRC provides high quality, convenient and financially accessible conflict resolution services. MCRC supports lifelong learning about conflict resolution techniques for all residents of Howard County.

### **National Association of Drug Court Professionals**

The National Association of Drug Court Professionals ("NADCP"), a not-for-profit organization, was founded in 1994 by a group of visionaries to reduce the negative social impact of substance abuse, crime, and recidivism by: promoting and advocating the establishment, growth, and funding of drug courts; providing for the collection and dissemination of information; and providing sophisticated training, technical assistance and mutual support to association members.

The NADCP understands the need for professionals who work in drug courts throughout the country to join forces for education and advocacy on behalf of new courts. It also recognizes the need to alter the way that business is done in the justice arena among citizens addicted to alcohol and other drugs. Its philosophy is

that we best serve society by addressing underlying domains faced by those caught in the justice system and that continuously incarcerating alcohol and other drug-addicted citizens has no long term benefit. NADCP believe that these challenges can best be addressed through a blending of judicial accountability and effective treatment.

**Washington Village/Pigtown**

Washington Village/Pigtown Neighborhood Planning Council ("WPNPC") is a community-based organization comprised of residents, businesses, and agencies. WPNPC focuses on economic revitalization, public safety and community development and coordination to strengthen the Baltimore City neighborhoods along the Washington Boulevard corridor.

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\*BRENDA BRATTON BLOM  
500 W. Baltimore St.  
Baltimore, Maryland 21201  
(410) 706-2041  
*Counsel for Amici Curiae  
Representing Concerned Citizens,  
Organizations and Legal Professionals*

\*Admitted in the State of Maryland

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In The  
COURT OF APPEALS OF MARYLAND

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SEPTEMBER TERM, 2008

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No. 118

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ROBERT CALVIN BROWN, III,

*Petitioner*

v.

THE STATE OF MARYLAND,

*Respondent*

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ON APPEAL FROM THE COURT OF SPECIAL APPEALS OF MARYLAND

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BRIEF OF *AMICI CURIAE* CONCERNED CITIZENS,  
ORGANIZATIONS AND LEGAL PROFESSIONALS  
IN SUPPORT OF RESPONDENT

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**INTERESTS OF *AMICI CURIAE***

This *amicus curiae* brief is submitted on behalf of concerned citizens, organizations, and legal professionals, in Maryland and across the nation, that are

involved in the effort to develop justice system processes that respect the needs of communities and individuals and address those needs in a restorative manner.<sup>1</sup>

Since 2003, these *Amici*, comprised of concerned citizens of Maryland, victims of crime (whether individuals or communities), ex-offenders, legal educators, lawyers, student attorneys, service providers, government administrators, police, judges and court administrators, community based organizations, and nationally recognized individuals who are leaders in community justice initiatives and organizations, have worked together to envision, build and support problem solving court dockets.<sup>2</sup> The *Amici* are deeply committed advocates for problem solving and alternative remedies, which are not effectively accommodated by much of the current legal and adjudicatory process. The *Amici* support a model of justice that works to repair the harm rendered by a criminal offense and, with community partners, knit together an array of support services and dispute resolution strategies that provide an effective alternative to the traditional criminal justice system: holding in tension offender accountability and victim restoration, whether the victim is an individual or a community. Problem solving courts like the Baltimore City Adult Drug Treatment Court and Mental Health Court are consistent with the overall aim of promoting community-

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<sup>1</sup> See Appendix A-1 for a complete list of the *Amici*; see Appendix A-2 for Statement of Identity for *Amici* Organizations.

<sup>2</sup> In the view of the *Amici*, conversations of “problem-solving,” “therapeutic,” and “non-traditional” court processes are plagued by imprecise language. The “problem-solving courts” in Maryland are not new *courts* in that they are not separate, free-standing judicial institutions. Rather, Maryland’s problem-solving courts are specialized, alternative-sentencing dockets that offer diversionary programs to qualified offenders; these dockets are run out of Maryland’s district and circuit courts and will hereinafter be referred to as such.

based, multi-faceted alternatives that address criminal issues and restore a sense of justice to the community at large.

In the view of the *Amici*, there are many ways for justice to be served in the State of Maryland. The existence of special dockets within Maryland's courts allows judges, prosecutors, defense attorneys, and defendants to engage in an appropriate, and sometimes less adversarial process in order to achieve a restorative justice outcome for defendants and crime victims alike. Petitioner's argument that these special dockets lack constitutional and statutory validity is without merit.

### **QUESTIONS PRESENTED**

1. Do Maryland's problem-solving courts lack fundamental jurisdiction by violating the Maryland Constitution and exceeding judicial authority?
2. Do problem-solving courts engage in procedures that violate criminal due process rights and exercise judicial bias?

### **STATEMENT OF FACTS**

*Amici* accept and adopt the statement of facts that is set forth in the Brief of Respondent.

### **SUMMARY OF ARGUMENT**

The specialized dockets within the Maryland judiciary system are constitutional. The Maryland Constitution and rules adopted by this Court grant courts a broad and extensive authority, which includes the authority to structure these specialty dockets within Maryland's judicial system and to utilize these

specialty dockets in the administration of justice. In addition, drug treatment dockets, such as the Baltimore City Circuit Court's Felony Drug Initiative, are specifically authorized by the statutory scheme governing probation and drug treatment. This legislative approval quells separation of powers concerns. Moreover, the deficiency of Petitioner's jurisdictional claims regarding due process violations, judicial bias and double jeopardy emerges once these assertions are examined against the appropriate statutory background.

Specialized drug treatment dockets provide a vital community-based, effective alternative that functions to reduce recidivism and to promote justice by addressing the underlying motivations of offenders. These problem-solving courts, which include domestic violence, drug, and mental health courts, while often very different in focus, share a number of common principles: (1) enhanced information about issues and participants; (2) community engagement; (3) collaboration among justice officials and community organizations; (4) individualized justice; (5) accountability; and (6) analysis of outcomes. *See generally* Robert V. Wolf, "Principles of Problem-Solving Justice," *Center for Court Innovation* (2007).

Finally, although Petitioner's argument against the existence of problem-solving dockets fails, the Petitioner raises important questions for Maryland's judiciary to consider: should there be state-wide, minimum standards for these special dockets? What are the benefits and detriments of implementing standardization in Maryland?

## ARGUMENT

### **I. Maryland's Specialized Dockets are Formed Pursuant to the Court's Administrative Powers under Article IV, Section 1 of the Maryland Constitution.**

The Petitioner incorrectly alleges that Maryland problem solving courts lack fundamental jurisdiction. The Maryland Constitution authorizes Maryland's drug-treatment and other problem-solving dockets – including the Baltimore City Circuit Court Adult Drug Treatment docket. There is no question that in the State of Maryland, “all judicial power is vested in the Court of Appeals, such intermediate courts of appeals as the General Assembly may create by law, Circuit Courts, Orphans Courts, and a District Court.” MD. CODE ANN., CONST. ART. VI §20 (1998). This judicial authority “encompasses all the judicial power of the State.” *Magruder v. Swann*, 25 Md. 173, 4 (1866). Article IV, Section 20 of the Maryland Constitution grants the Circuit Courts “all the power, authority and jurisdiction, original and appellate, which the Circuit Courts of the counties exercised on the effective date of these amendments, and the greater or lesser jurisdiction hereafter prescribed by law.” MD. CODE ANN., CONST. ART. VI §20 (1998).

Maryland case law broadly interprets the authority of the courts to exercise this power within the judicial branch. *Wright v. Wright*, 2 Md. 429, 452 (1852). Judicial authority includes the “inherent power to administer justice” and provide procedure where no procedure exists. *Attorney General of Maryland v. Waldron*,



289 Md. 683, 691, 426 A.2d 929, 934 (1981) (quoting *State v. Cannon*, 196 Wis. 534, 221 N.W. 603, 603-04 (1928)). Like the Court's power to regulate legal practice and provide procedure, the establishment of specialized dockets presents a Constitutional expression of the judiciary's power to ensure administration of justice through procedure.

Drug courts fall within this narrow application of inherent judicial powers, *Wynn v. State*, 388 Md. 423, 436, 879 A.2d 1097, 1105 (2005), because drug treatment dockets are reasonably necessary for the proper functioning of the courts. *Id.* The Baltimore City Felony Drug Treatment program merely created a specialized docket administered in the Baltimore City Circuit Court. The plain language of the Maryland Constitution authorizes the Court of Appeals' creation of procedures for lower courts. MD. CODE ANN., CONST., ART. IV §18 (1998). Based on this Constitutional authority to create procedures such as specialized dockets, Judge Bell established a drug court process. Order Governing the Establishment of Drug Treatment Courts, (filed Oct. 23, 2001), [http://www.courts.state.md.us/adminorders/ao\\_212.pdf](http://www.courts.state.md.us/adminorders/ao_212.pdf) (recognizing "principles of therapeutic jurisprudence" and acknowledging that "a drug treatment court is a specialized docket designed to divert non-violent individuals who commit crimes." ).<sup>3</sup>

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<sup>3</sup>Judge Bell signed the order, "pursuant to the authority conferred by Article IV, Section 18, of the Maryland Constitution."

The sentencing procedures employed by the courts serve as further evidence of the extensive power granted to the Maryland judiciary. When the transfer of a case to a specialized docket occurs in conjunction with sentencing, the District and Circuit Courts in our State may utilize their historic sentencing function to appropriately consider a community approach to sentencing, with the consent of the defendant, in order to accomplish the myriad of sentencing objectives. *See Logan v. State*, 289 Md. 460, 482 (1981) ("In this State, a sentencing judge is vested with virtually boundless discretion. . . . [There is] a paucity of restraints being placed on a judge possessing the responsibility to impose punishment, lest he be 'forced to bridle himself with mental blinders and thus enter the process of imposing sentence with impaired vision.'"). The involvement of the community in the sentencing process through the traditional respective agents of the criminal justice system, as well as through victims, treatment providers, and others, allows the court to appropriately weigh and consider a multitude of factors in order to impose and monitor the sentencing process for which courts are "entitled – even encouraged – to consider the rights and interests of the public in imposing a sentence in a particular case." *Ingoglia v. State*, 102 Md. App. 659, 670-671 (1995) (quoting *Wisconsin v. Johnson*, 158 Wis. 2d 458, 463 N.W.2d 352 (1990)).

## **II. Maryland's Drug Treatment Dockets Operate within the Circuit and District Courts Pursuant to State Law Governing Probation and Drug Treatment.**

Drug treatment dockets like the Baltimore City Circuit Court's Felony Drug Initiative ("FDI") fall squarely into the existing statutory scheme governing probation and commitment for drug treatment in Maryland courts. The Maryland Code provides, under Criminal Procedure Article §6-221, that a court may suspend a sentence and place the defendant on probation "on the conditions that the court considers proper." MD. CODE ANN., CRIM. PROC. §6-221 (2001). Maryland has long recognized a trial court's very broad authority and discretion when devising conditions of probation. *Bailey v. State*, 355 Md. 287, 734 A.2d 684 (Md. 1999); *Brown v. State*, 80 Md. App. 187, 198, 560 A.2d 605, 610 (Md. 1989). Maryland's appellate courts will uphold reasonable conditions of probation, striking only those requirements deemed arbitrary and capricious or with no rational basis. *White v. State*, 100 Md. App. 1, 21, 639 A.2d 194, 204 (1994); *Brown*, 80 Md. App. at 187, 560 A.2d at 610 (1989).

The Maryland legislature formally legitimized the imposition of drug treatment as a condition of probation or release when it enacted the state's first drug treatment statute in 1966, which ultimately evolved into §8-507 of the Health-General Article. *See State v. Thompson*, 332 Md. 1, 13-19, 629 A.2d 731, 737-741 (1993) (clarifying that in conformity with a sentencing judge's "virtually boundless discretion," a trial court under §8-507 may discharge eligible participants if successfully rehabilitated, thereby providing criminal defendants with an incentive to complete the treatment program). This section allows a court to commit for treatment any eligible criminal defendant with an alcohol or drug

dependency “as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment.” MD. CODE ANN., HEALTH-GEN. §8-507 (2004). Before committing a defendant to drug treatment, the legislature directs the court to “obtain the written consent of the defendant (i) [t]o receive treatment; and (ii) [t]o have information reported back to the court.” Moreover, the statute mandates court-ordered supervision of the defendant by either a pretrial release agency, the Division of Parole and Probation “in accordance with §§ 6-219 through 6-225 of the Criminal Procedure Article,” or by the Department of Corrections if the defendant remains in custody. The legislature therefore anticipated and blessed the precise arrangement that Petitioner condemns as a judicially-propelled, improper exercise of power.

Furthermore, defendants may elect *not* to consent to participation in the specialty court process or they may challenge the process or application of law on a case-by-case basis if they feel that their rights have been violated while participating in a specialized docket.

In this case, after the Petitioner pled guilty to two separate felony drug charges on April 21, 2004, the Circuit Court acted pursuant to the aforementioned statutory authority when it suspended nineteen years and eight months of Petitioner’s twenty-year prison sentence in favor of three years of probation. (E-24-25). The Court’s requirement that Petitioner complete the FDI fell within the trial court’s discretion under §6-221 of the Criminal Procedure Article, which bestows upon courts the power to establish conditions of probation, as well as §8-

507(a), which provides a more specific authorization for courts to commit the defendant for treatment. In compliance with the provisions of §8-507(b)(2)(i) and (ii), Petitioner consented in writing to treatment and agreed to have information reported back to the court when he signed the FDI Agreement. (E-1). The special conditions of probation contained in Petitioner's agreement included a stipulation that the court may apply sanctions should Petitioner miss a treatment appointment, fail to report to an agent, submit a positive urinalysis, or fail to provide a urinalysis. (E-1). Petitioner's agreement indicates that the court will request a Court Review Hearing and, if appropriate, administer sanctions such as jail time or a request for a bench warrant for violation of probation. (E-1).

When Petitioner failed to abide by the conditions of his probation with his expulsion from five different drug treatment centers, culminating in his failure to report for treatment on March 8, 2005, the court applied a sanction of jail time at a Court Review Hearing and finally terminated Petitioner's probation in a separate proceeding. (E-13, 25, 29).

Throughout Petitioner's probationary period, the Circuit Court acted well within the confines of the statutory authority granted by the Maryland legislature. The Petitioner deliberately ignores the existence of the aforementioned statutory mandates and attempts to misrepresent the trial court's actions as exceeding judicial authority. Petitioner's attempts to disguise his assault on the conditions of his probation as a jurisdictional challenge must fail, since an invalid condition of probation would neither implicate the jurisdiction of the Circuit Court as a whole

in its supervision of FDI participants nor that of any Maryland drug treatment program operating within the Circuit Court pursuant to its statutory authority.<sup>4</sup>

**A. Because Statutory Authority Exists for Imposing Conditions of Probation, Specialized Drug Treatment Dockets Do Not Violate the Separation of Powers Doctrine.**

Drug courts do not violate Article 8 of the Maryland Declaration of Rights, the separation of powers doctrine, because the judiciary acts pursuant to statutory authority when imposing conditions of probation. Both ample legislation and case law provide the judiciary power to order and oversee and order drug treatment. MD. CODE ANN., HEALTH-GEN. §8-507 (2004). MD. CODE REGS. 14.22.01(4) (2009). *State v. Thompson*, 332 Md. 1, 9-10, 629 A.2d 731, 735-36 (1993), *Collins v. State*, 89 Md. App. 273, 291, 598 A.2d 8, 16 (1991). In *Sugarloaf Citizens Assoc., Inc. v. Gudis*, 319 Md. 558, 573, 573 A.2d 1325, 1333 (1990), the Court held unconstitutional a public interest standard requiring policy determinations by the judiciary. Unlike *Sugarloaf*, the Maryland Code allows the judiciary, on the basis of an adjudication, to impose “conditions that the court considers proper” when suspending a sentence or probation. MD. CODE ANN.,

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<sup>4</sup> One of Petitioner’s main objections to the FDI and indeed, to drug treatment dockets in general, consists of vague assertions that “a total absence of standards, rules, or statutes in place” may affect the due process rights of program participants. (Petr.’s Br. 12). As to the genesis of these objectionable policies or procedures, however, Petitioner points to the conditions of probation outlined in drug treatment agreements voluntarily executed by participants in various counties. (Petr.’s Br. 21-23). What Petitioner mischaracterizes as *ad hoc* rulemaking in actuality constitutes an exercise of the trial court’s general statutory discretion to impose conditions of probation “that the court considers proper” further bolstered by the specific drug treatment provisions of §8-507. Even if one of these highlighted conditions of probation did infringe upon the due process rights of a program participant, and the aggrieved probationer successfully challenged its state or federal constitutionality or its validity pursuant to the Maryland Rules, such an outcome would merely preclude Maryland courts from requiring that future program participants abide by that invalid condition.

CRIM. PROC. §6-221 (2001). The statutory authority granted to the judiciary to set conditions of probation in the first place undermines the argument that the judiciary acts as the legislature because the judicial powers are exercised pursuant to legislative approval. Moreover, the drug dockets' oversight of drug treatment and recovery pursuant to §6-225 allows both prosecutors and defense counsel to request that the Court alter conditions of probation. MD. CODE ANN., CRIM. PROC. §6-225 (2001).

Indeed, the legislature has long endorsed the concept of providing rehabilitation opportunities to offenders. Over forty years ago, the Maryland General Assembly passed the State's first drug treatment statute, recognizing that drug addiction posed a serious challenge, both nationally and locally, and effective treatment of the addiction was the most efficient means to address the crisis. MD. CODE ANN., CRIME AND PUNISHMENT, Art. 27, §306B (1957, 1967 Repl.); *see also State v. Thompson*, 332 Md. 1, 13, 629 A.2d 731, 737 (1993) (stating that the legislative history indicated that the legislature, in passing the drug treatment statute recognized that addiction should be treated and sought to provide "a better means of dealing with that problem"). In 1969, the General Assembly repealed §306B and enacted Article 43B, titled the "Comprehensive Drug Abuse Control and Rehabilitation Act." MD. CODE ANN., Art. 43B (1970 Cum. Supp). In enacting the statute, the legislature demonstrated its belief that "in order to combat the growing crime problem . . . it was necessary to address the root causes of criminal behavior" which particularly necessitated "the treatment of drug addicts."

*Clark v. State*, 348 Md. 722, 726-27, 705 A.2d 1164, 1167 (1998) (citing the Summary of Committee Report of the Senate Judicial Proceedings Committee, Senate Bill 74 of 1986). Accordingly, to indicate that drug treatment dockets are engaging in judicial activism or “social engineering,” (Petr.’s Br. 16), is not in line with the traditional role of courts in providing avenues of rehabilitation for offenders. Furthermore, the legislature gave its endorsement that the judiciary should facilitate such treatment to drug addicts when feasible.

The judiciary’s holding in *Brown* also did not violate separation of powers with the executive branch by supervising therapy plans. Judicial powers include the power to continue “to conduct hearings and make any changes in the original disposition warranted.” *Horsev v. State*, 56 Md. App. 667, 674, 468 A.2d 684, 687, (1983). When a court determines that an assertion of inherent judicial authority overlaps with executive power, the Maryland Court of Appeals will weigh the respective interests of the judicial and executive branches to determine which branch has a greater interest at stake. *Wynn v. State*, 388 Md. 423, 443-439, 879 A.2d 1097, 1107-1109 (2005). In *Wynn*, the Court found the executive interest in prosecuting outweighed the court’s inherent authority to control its docket by dismissing a case based on a largely unreviewable requirement in a scheduling order. *Id.* at 444, 1110-11 (Wilner, J., concurring). Unlike *Wynn*, this case does not involve a judicial exercise of power that tramples on executive prosecutorial powers by imposing arbitrary and unreviewable requirements. See *Douglas v. State*, 130 Md. App. 666, 676, 747 A.2d 752, 757 (2000) (holding that



conditions of probation set by the judiciary may be reviewed for reasonableness and deemed invalid). The drug treatment dockets therefore oversee defendants' treatment programs pursuant to statutory and judicial authority.

**B. Petitioner's Due Process Claims Fail Due to the Circumstances of His Probation.**

Although Petitioner claims that the practices and procedures of the drug treatment dockets implicate the due process rights of probationers, he neither offered examples of perceived due process violations in his FDI Agreement, nor did he ever object to the conditions of his probation as a violation of his due process rights. Petitioner therefore failed to preserve this issue for review.

Pursuant to Maryland Rule 8-131(a), "[o]rdinarily, the appellate court will not decide any . . . issue [other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court." *See Klauenberg v. State*, 355 Md. 528, 540, 735 A.2d 1061, 1067 (1999) (finding that Petitioner waived issues by neglecting to "make timely or appropriate objections"). Petitioner cannot circumnavigate this rule by couching his opposition to the conditions of his probation in jurisdictional terms. *Brown v. State*, 169 Md. App. 442, 464, 901 A.2d 846, 859 (2006). The appellate court has discretion, however, to review an issue not raised and decided below, although the Court will typically exercise this discretion only when the "unobjected to error [is] compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Shirley v. State*, 64 Md. App. 625, 498 A.2d 284 (1985) (finding error not raised

below compelling when probationer's due process right to an impartial tribunal at her termination proceeding was compromised by independent factual investigation conducted by hearing judge's law clerk) (quoting *State v. Hutchinson*, 287 Md.198, 203, 411 A.2d 1035 (1980)). Petitioner did not isolate any specific due process defect that occurred in his own trial. Furthermore, Petitioner did not point to any of the special conditions of his probation, spelled out in his own FDI Agreement, as unconstitutional or invalid.

Petitioner does denounce an extensive listing of conditions of probation in *other* counties as offensive to "Maryland statutes, the Maryland Constitution, and the federal Constitution." (Petr.'s Br. 21). He fails to analyze any perceived constitutional deficiencies, however, in light of the more limited due process rights afforded to parolees and probationers like Petitioner. Probation, as "a matter of grace," does not afford probationers the same procedural protections as those granted to a criminal defendant at trial. *Smith v. State*, 306 Md. 1, 6, 506 A.2d 1165, 1168 (1986). A trial court may revoke probation if "the judge reasonably could be satisfied that the conduct of the probationer has not been what he agreed it would be" and violation of the established conditions need not be proven beyond a reasonable doubt. *Horsev v. State*, 56 Md. App. 667, 672, 468 A.2d 684, 686 (1983); see also *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 2604 (1972) (outlining the more limited due process safeguards afforded in parole

revocation proceedings);<sup>5</sup> *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S.Ct. 1756, 1759 (1973) (extending the protections articulated in *Morrissey* to probation revocation); MD. RULE 4-347 (authorizing the court to “conduct the revocation hearing in an informal manner and, in the interest of justice, may decline strict application of the rules [of evidence set forth] in Title 5”); *Thompson v. State*, 156 Md. App. 238, 244, 846 A.2d 477, 480 (2004) (“Md. Rule 4-347 embodies the concept that probation revocation hearings are civil proceedings [and] the ‘full panoply’ of Constitutional rights . . . in a criminal trial are not available”).

In *Scarpelli*, the Supreme Court held that because probation revocation resulted in a loss of liberty, due process entitled probationers to a preliminary and final revocation hearing. 411 U.S. at 782, 93 S.Ct. at 1760. Other jurisdictions have interpreted this selective bestowal of due process safeguards to termination hearings to signify that defendants who plead guilty in order to enter a diversionary program have a protected liberty interest only in revocation proceedings since they can no longer assert their innocence if ejected from the program. *State v. Rogers*, 144 Idaho 738, 741, 170 P.3d 881, 884 (2007). Such courts take for granted that “[i]ntermediate sanctions imposed in these programs

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<sup>5</sup> These “minimum requirements of due process . . . include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses . . . (e) a neutral and detached hearing body . . . (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. . . . there is no thought to equate . . . parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.” *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 2604 (1972).

do not implicate the same due process concerns, and continued use of informal hearings and sanctions need not meet the procedural requirements articulated [in *Morrissey*].” *Id.* at 743, 886. Against this background, Petitioner’s extensive listing of special conditions that allegedly offend probationers’ constitutional rights – most of which arise in the context of these informal hearings during the probationary period – grows increasingly nuanced. Because these constitutional inquiries are hardly clear-cut, as Petitioner asks the Court to believe, his contention that the practices and procedures of the drug courts “radically chang[e] the character” of the Circuit Court must fail. (Petr.’s Br. 14) (quoting *Quenstedt, Warden v. Wilson*, 173 Md. 11, 194 A. 354 (1937)). Where due process ultimately begins and ends for Maryland probationers in intermediate or review proceedings will depend on judicial resolution of the facts of each particular case, but will not answer the jurisdictional question at issue here.

**C. Judges Overseeing Specialty Dockets Facilitate Justice by Furthering the Rehabilitative Goals of Probation.**

While drug treatment dockets may reshape the way judges operate in the probationary context, they do so in accordance with the traditional role of courts in providing avenues of rehabilitation for offenders. Drug treatment docket judges do act as part of a collaborative decision-making team that includes a specialized treatment team, court personnel, prosecutors and defense counsel. Rather than constituting “social engineering” as claimed by Petitioner, (Petr.’s Br. 16), this engagement with a “treatment team” concurs with the rehabilitative character of

probation or parole as described by the Supreme Court. *See Gagnon v. Scarpelli*, 411 U.S. 778, 785 (1973) (emphasizing “the rehabilitative rather than punitive focus of the probation/parole system”). The methodology of drug treatment dockets epitomizes the overriding goal “of the probation-parole movement . . . to keep men in the community, working with adjustment problems there, and using revocation only as a last resort when treatment has failed or is about to fail.” *Id.* at 783. The movement underlying the formation of the drug treatment dockets recognized that the current system fell short of achieving these objectives for probationers. These dockets have demonstrated through their recidivism rates that the development and continued enhancement of drug treatment courts may bring the probation system closer to these rehabilitative goals. *See infra* Section III. The Court acknowledged in *Scarpelli*, however, that a “modification in attitude” may affect these shared aspirations at the initiation of termination proceedings; therefore, the Court mandated preliminary and final revocation hearings to safeguard the probationer’s narrower due process rights while resolving any factual disputes. *Id.* at 785-6. Until termination is triggered, however, the probation system and its actors work “to help individuals reintegrate into society as constructive individuals as soon as they are able.” *Id.* at 783.

During his revocation hearing, Petitioner never claimed he was deprived of a neutral and detached arbiter, nor did he request recusal or allege any bias on the part of Judge Heller. In fact, Judge Heller provided Petitioner with numerous opportunities to comply with various treatment programs in lieu of incarceration

throughout his probation. (E-25). Moreover, there is no indication that being a member of the treatment team compromised her judicial neutrality; indeed, after Petitioner admittedly disregarded the terms of his probation, the Judge reimposed only eight years of Petitioner's twenty-year sentence. (E-29).

**D. The Prohibition Against Double Jeopardy Does Not Apply in the Context of Petitioner's Probation Revocation.**

The Double Jeopardy Clause of the Fifth Amendment, which protects defendants in a "criminal proceeding" against multiple punishment for the same offense, *U.S. v. Miller*, 797 F.2d 336 (6th Cir. 1986), does not pertain to the circumstances of Petitioner's case given his status as a probationer and the nature and purpose of the drug treatment dockets. Precedent shows that double jeopardy does not attach in disciplinary and probation, parole, or bond revocation proceedings, because such proceedings are not concerned with adjudicating guilt or innocence for the previously committed offense; therefore, they do not place a defendant at risk of punishment for the same offense. *U.S. v. Miller*, 797 F.2d 336 (6th Cir. 1986); *U.S. v. McInnis*, 429 F.3d 1, 5 (1st Cir. 2005) (double jeopardy not to apply to revocation of supervised release because it is considered part of the original sentence); *U.S. v. Carlton*, 442 F.3d 802, 809 (2nd Cir. 2006). The revocation of probation is "not a second punishment added upon the original sentence; it represents rather, the withdrawal of favorable treatment originally accorded the defendant." *Gibson v. State*, 328 Md. 687, 690 (1992) (quoting *Clipper v. State*, 295 Md. 303, 313, 455 A.2d 973 (1983)). Probation is, by

definition, conditional; the defendant is on notice that breaching those conditions may lead to the reinstatement of his original sentence. *Clipper v. State* 295, Md. 303, 455 A.2d 973 (1983). Thus, criminal behavior during a probationary period can be grounds for both successful criminal prosecution by the court and revocation of probation for a violation based on the underlying facts. *See Dunn v. State*, 65 Md. App. 637, 501 A.2d 881 (1985), *rev'd on other grounds*, 308 Md. 147 (1986), and cases cited therein.

In this case, Petitioner's claim that imposing a sanction of jail time<sup>6</sup> for violating an FDI rule, when followed by probation revocation "for the same act after the sanction of 35 days was served," violates the double jeopardy prohibition has no merit in view of Petitioner's status as a probationer. (Petr.'s Br. 26). Although Petitioner did receive jail time as a sanction for violating the conditions of his probation under the FDI,<sup>7</sup> he was subject to only one probation termination

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<sup>6</sup> Use of sanctions for the purpose of the drug courts in rehabilitating offenders is common. The National Drug Court Institute finds that use of sanctions in drug court, including the use of jail time, is instrumental in the change in behavior among drug court participants, further stating that sanctions are most effective in reducing drug use and criminal behavior, when the sanctions are immediate, of increasing severity, and predictable. National Drug Court Institute, "*Fact Sheet: The Critical Need for Jail as a Sanction in the Drug Court Model*" (2000) available at <http://www.ndci.org/publications/EffectiveSanctionsFactSheet.pdf>.

<sup>7</sup> Petitioner agreed to participate in the FDI program as a valid condition of his probation. By agreeing to the conditions of probation in the FDI agreement, he subjected himself to sanctions deemed appropriate by the court, including the possibility of jail time if he violated those conditions. *See supra* Section II. When Petitioner failed to comply with the rules of the FDI, it was proper for the court to sanction him and subsequently revoke his probation. As previously stated, probation is a "matter of grace" and does not afford probationers the same procedural protections as those granted to a criminal defendant at trial. *Smith v. State*, 306 Md. 1, 6, 506 A.2d 1165, 1168 (1986).

hearing resulting in revocation and the imposition of a portion of his original sentence.<sup>8</sup>

### **III. Drug Treatment Dockets Enhance the Administration of Justice in Maryland Courts.**

The drug treatment dockets, along with other specialty dockets, were developed to help resolve the underlying issues that led defendants to commit offenses in the first place and to address offenders' needs for basic services and support. Drug treatment dockets developed because the traditional, adversarial justice system lacked competence to handle defendants charged with non-violent crimes stemming from addiction or mental health disorders. These dockets do not and cannot replace public health services; rather, they enable the justice system to have the proficiency required to achieve a restorative justice outcome for defendants and crime victims alike.

Specialized drug treatment courts first took shape in the late-1980s in response to the dramatic increase of arrests related to substance and drug abuse, particularly crack-cocaine and heroin addiction. The first of these specialized treatment venues appeared in Miami-Dade County, Florida, through a collaborative effort undertaken by the State Chief Judge, States Attorney's Office and Public Defender, to respond to the overwhelming number of cases being processed by the courts. This coordinated effort to tackle the drug problem facing

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<sup>8</sup> Moreover, Petitioner received all the procedural safeguards afforded a probationer; his continued failure to comply with the drug treatment facilities finally resulted in the revocation of his probation. (E-29).



the judiciary quickly transformed into a national phenomenon. For example, by 1992, there were ten drug courts operating nationwide and a decade later there were nearly 1,100. NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS, PAINTING THE CURRENT PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM SOLVING COURT PROGRAMS IN THE UNITED STATES 1 (May 2008) [hereafter NADCP]. As of December 2007, there were approximately 2,150 drug treatment dockets or courts in operation across the United States, a 32% increase from 2004. *Id.* at 1-2. Furthermore, over a decade of research has verified that drug treatment dockets or courts outperform other judicial approaches in reducing recidivism and alleviating quality-of-life crimes associated with drug abuse, all at lower taxpayer expense. See U.S. Government Accountability Office. *Adult Drug Courts*. (2005), available at [www.gao.gov/new.items/d05219.pdf](http://www.gao.gov/new.items/d05219.pdf) (finding that adult drug court participants maintain lower re-arrest and conviction rates and fewer recidivism events than comparison group members and positive cost/benefits); see also NADCP at 6-7 (stating that “drug courts significantly reduce crime rates on average of approximately 7 to 14 percentage points” and “cost an average of \$4,333 per client, but save \$4,705 for taxpayers and \$4,395 for potential crime victims, thus yielding a net cost-benefit of \$4,767 per client”).<sup>9</sup>

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<sup>9</sup> Furthermore, Douglas B. Marlowe, J.D., Ph.D. along with his colleagues at the University of Pennsylvania Treatment Research Institute concluded that, to the best of their knowledge, “drug courts outperform virtually all other strategies that have been used with drug-involved offenders.” (Douglas Marlowe, David DeMatteo, and David Festinger, “A Sober Assessment of Drug Courts,” 16 *Federal Sentencing Reporter* 153 (2003)).

Maryland's experience with drug treatment dockets has been similar. In 1994, Baltimore became one of the first cities to develop a drug treatment docket. Since then, Maryland has witnessed the emergence of 39 drug courts within its jurisdiction.<sup>10</sup> These dockets, which are constitutional and statutorily authorized, provide a vital service to the public and the criminal justice system by "focus[ing] on problem solving or alternative remedies not effectively accommodated by the current legal and adjudicatory process." MARYLAND JUDICIARY: ADMINISTRATION OF OFFICE OF THE COURTS, ANNUAL REPORT OF THE PROBLEM SOLVING COURTS IN MARYLAND 4 (2007). These alternative remedies are crafted on a case-by-case basis in a judicially-led system that engages specialists from various fields to ensure that immediate, intensive and comprehensive drug treatment is provided and supported through a "cadre of incentives and sanctions." *Id.* at 9. Furthermore, in response to "the grim reality that more than half of all individuals arrested in Maryland are alcohol or other drug dependent," the Maryland judiciary established in 2002 a commission to further develop these specialized drug dockets and establish uniform principles to govern their operations. *Id.* at 3. Specialty courts allow judges to seek an outcome that best serves justice for the defendant under the circumstances of his or her case. Here, Petitioner was released from five treatment facilities. The court referenced his mental condition as a factor in his dismissal from these programs. (E-13-14, 26-29). Perhaps a

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<sup>10</sup> National Association of Drug Court Professionals, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States* (2008) at Table 3.

more appropriate forum for the Petitioner would have been the mental health court because it may have allowed for more expansive treatment for his dual diagnosis.<sup>11</sup>

The judiciary, the legislature, and the public's support for these programs stems from the outstanding outcomes these dockets produce. Maryland's drug treatment dockets have been widely evaluated, possibly more than any other community justice program in history. MARYLAND JUDICIARY: ADMINISTRATION OF OFFICE OF THE COURTS, ANNUAL REPORT OF THE PROBLEM SOLVING COURTS IN MARYLAND 4 (2007). The Baltimore City Adult District and Circuit Court drug treatment dockets in particular have produced profound results. Participants in these dockets have been re-arrested 31.4% fewer times than those in the comparison model, and the dockets incurred 24.2% less in criminal justice system costs than the comparison sample<sup>12</sup> and represented a three-year, 136% "return" on the amount invested. *Id.* at 6-7.

Drug courts represent a successful, though still evolving, example of court systems that hold individuals accountable for breaking the law, while providing an opportunity for both individuals and communities to be restored. Communities as well as individuals suffering from the consequences of addiction cannot afford for Maryland's courts to give up on this traditional and developing enterprise to provide for justice. Courts of limited jurisdiction and powers do not single-

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<sup>11</sup> The Baltimore City Mental Health Court was established in 2002, two years before Petitioner was originally sentenced. Judge Charlotte Cooksey and Judge Mimi Cooper, *Mental Health Programs*, MARYLAND JUDICIARY (Mar. 3, 2009), <http://www.courts.state.md.us/district/archive/mental%20health.pdf>.

<sup>12</sup> Projected on the average of 758 program participants during the study period, more than \$2.7 million in total criminal justice system savings were determined.

handedly presume to solve such large societal problems on their own,<sup>13</sup> but courts, like the drug treatment court here, answer the call from other branches to find legal solutions to these challenges. Drug treatment and other specialized dockets should continue to build on their successes by adopting best practices.

#### **IV. The Current Lack of Absolute Uniformity of Policies and Procedures Is Not Cause to Discontinue Drug Treatment Dockets.**

There are important strengths to uniformity for conditions of probation in cross-county drug treatment agreements; however, significant strengths also are found in a more decentralized system. For example, non-uniform policies and procedures may enable a tailored judicial response to meet the needs of probationers in specific regions. It is precisely the courts' ability to utilize non-confrontational, informal, and often streamlined procedures in their specialized dockets that enables these courts to respond to the particular circumstances of each defendant.

However, the relationship between judicial flexibility in the non-adversarial approach of specialized court dockets and the success of these dockets does not mean courts cannot look to models for best practices. While the federal constitution sets a floor, Maryland's legislature and judiciary can strive for additional protections as they see fit. *See Dorsey v. State*, 56 Md. App. 54, 61, 466 A.2d 546 (1983) ("We recognize, of course, that while states may not circumscribe federal constitutional rights, they may grant greater rights under their

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<sup>13</sup> Drug courts should not be a substitute for well-funded voluntary treatment programs.

own constitutions, provided those greater rights do not impinge upon federal constitutional rights.”).

The Maryland judiciary, like courts in other jurisdictions striving to develop best practices, is in the process of weighing the advantages of uniformity and seeking to develop standardized conditions for drug treatment participants.<sup>14</sup> Currently, a certification process does exist in the State. For a proposed court to obtain status as a certified problem solving court in Maryland, the applicant must satisfy several steps, including submission of a formal application and policies and procedures manual to the Office of Problem Solving Court (“OPSC”). In the formal application and manual, the applicant must disclose a wide range of information including the proposed court’s internal operations, treatment services and providers, and personnel and fiscal management. ADMIN. OFFICE OF THE COURTS, MARYLAND PROBLEM SOLVING COURT APPLICATION RULES, (Jan. 1, 2008), [http://www.courts.state.md.us/opsc/pdfs/psc\\_rules20080319.pdf](http://www.courts.state.md.us/opsc/pdfs/psc_rules20080319.pdf). The proposed court may also be subject to on-site inspection. *Id.* at 3. Only upon the written approval of the Chief Judge may the applicant operate as a problem solving court. *Id.* at 4. Post certification, the court is subject to various

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<sup>14</sup> The National Association of Drug Court Professionals has developed a set of universal ten (10) key components for the fair and effective operation of drug treatment courts and specialized dockets. The Maryland Office of Problem Solving Courts is in the process of incorporating similar key components into their problem solving court certification protocol. ADMIN. OFFICE OF THE COURTS, MARYLAND PROBLEM SOLVING COURT APPLICATION RULES, (Jan. 1, 2008) [http://www.courts.state.md.us/opsc/pdfs/psc\\_rules20080319.pdf](http://www.courts.state.md.us/opsc/pdfs/psc_rules20080319.pdf). The key components for Drug Courts include integrating alcohol and other drug treatment services with justice system case processing, indentifying participants early and promptly placing them into the drug court program, providing access to a continuum of alcohol, drug, and other related treatment and rehabilitation services, and ongoing judicial interaction with each drug court participant. *Id.*

administrative actions necessary to ensure compliance with the OPSC's rules, "including, but not limited to reviews, surveys, or inspections, either scheduled or unannounced." *Id.*

Maryland, in many ways, is following the example set by Indiana, which is the first state to adopt a comprehensive accreditation system for its drug courts. Indiana's certification protocol was formed in 2003 through a collaborative effort undertaken by the judiciary and legislature. Generally, to operate as a drug treatment court in Indiana, the applicant must demonstrate full compliance with the drug court rules developed by a judicial subcommittee, the drug court statute, and the NADCP Ten Key Components. INDIANA JUDICIAL CENTER, DRUG COURT RULES (2008), <http://www.in.gov/judiciary/pscours/docs/dc-rules.pdf>.

The accreditation process involves satisfying the initial application and administration procedures and then conforming to detailed requirements (for operations, facilities, fiscal and personnel management) and implementing the NADCP Ten Key Components. *Id.* For example, §15 of the Indiana Drug Court Rules mandates that a certified drug treatment court must, at the very least, consist of a specially trained judge, a prosecutor, a criminal defense attorney, at least one treatment provider, and at least one case manager. *Id.* at 11. Furthermore, this team must develop a written "policies and procedures" manual for day-to-day operations that incorporate each of the NADCP key components. *Id.* Courts that satisfy and comply with the above requirements receive full certification as a drug treatment court; however, every three years, these drug treatment courts must

submit to recertification. *Id.* at 6-7. Indiana's certification process significantly reduces the possibility of "rogue" drug treatment courts operating within its jurisdiction, but at the same time affords individual drug treatment courts a level of independence to deal with the unique problems existing within their locality. Similar certification protocols have been developed in a variety of other states.

In the future, the Maryland judiciary may consider taking further action to ensure uniformity including, but not limited to, creating mandatory drug treatment court guidelines and mandating specific key personnel. Nevertheless, the complete abandonment of Maryland's system of problem-solving dockets, as prayed by Petitioner, simply because absolute uniformity has not yet been established, would neither be prudential nor in the best interest of the residents of our State. Drug treatment dockets are still in their adolescence. With time and commitment, these programs will only build upon their well recognized ability to reduce the quality of life crimes associated with drug addiction and provide the communities most affected by drug addiction and drug trafficking with an active role in the adjudicatory process.

### **CONCLUSION**

WHEREFORE, for the foregoing reasons, this *Amicus Curiae* brief is submitted on behalf of Respondent by concerned citizens, organizations and legal professionals in Maryland and across the nation who are deeply committed to developing justice system processes that respect the needs of communities and

individuals in a restorative manner. Public confidence in Maryland's courts demands that the Court utilize its powers in a constitutional manner to address problems and improve the judicial system. Specialized dockets are an important element in that effort.

Respectfully submitted,

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BRENDA BRATTON BLOM, ESQ.\*  
LEIGH M. MADDOX, ESQ.\*  
A.J. BELLIDO DE LUNA, ESQ.\*  
500 W. Baltimore Street  
Baltimore, MD 21201  
(410) 706-2041

*Counsel for Amici Curiae Representing Concerned Citizens, Organizations and Legal Professionals*<sup>15</sup>

\*Admitted to Practice in Maryland

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<sup>15</sup> Attorneys for the *Amici Curiae* gratefully acknowledge the support and work of the following Maryland Rule 16 student attorneys from the University of Maryland School of Law: Julie Galbo, Robin Jacobs, Lydia Nussbaum, Jaymin Parekh, Joshua Richardson and Jonathan Scruggs.



## APPENDIX A-1

### *AMICI* MEMBERS: CONCERNED CITIZENS, ORGANIZATIONS AND LEGAL PROFESSIONALS

Lauren Abramson, Ph.D.  
Founder, Executive Director  
Community Conferencing Center  
2300 N. Charles St., 2<sup>nd</sup> Floor  
Baltimore, MD 21218

Thomas Akras  
1303 N. Charles St  
2nd Floor Front  
Baltimore MD, 21201

Andrew Albertson  
8 North Howard St., Apt 416B  
Baltimore, MD 21201

Donnie Andrews  
36 Terron Court  
Baltimore, MD 21234

Emilie Aracil, J.D.\*  
One House at a Time, Inc.  
3553 Chestnut Ave., #2N  
Baltimore, MD 21211

Terry Hickey, J.D.\*  
Adjunct Professor  
University of Maryland School of Law  
500 West Baltimore St.  
Baltimore, MD 21201

Craig Johnson\*  
Sergeant, Maryland State Police (Ret.)  
Department of Public Safety and  
Correction Services  
Division of Parole and Probation  
2100 Guilford Ave.  
Baltimore, MD 21218

Corporal Philip Johnson\*  
Maryland Transport Authority (Ret.)  
1635 Parkman Ave.  
Baltimore, MD 21230

Lena Kim, J.D.  
202 Presstman St.  
Baltimore, MD 21217

Earl Kratsch\*  
Baltimore City Homicide Detective  
(Ret.)  
810 River Road  
Sykesville, MD 21784

Christopher Awad, J.D.  
5505 Ramblewood Ave.  
Clinton, MD 20735

Jennifer J. Langdon, Ph.D. \*  
Assistant Professor  
Sociology, Anthropology, and Criminal  
Justice  
Towson University  
8000 York Road  
Towson MD 21252

Angie Battaglia, M.S.\*  
Program Director  
Office of Medical Education  
University of Maryland School of  
Medicine  
655 W. Baltimore St.  
Baltimore, MD 21201

Michael A. Lewis  
Sheriff  
Wicomico County Sheriff's Office  
410 Naylor Mill Road  
Salisbury, MD 21804

Charlotte Lyn Bright, Ph.D., MSW  
5718 Pimlico Rd. Apt. 2A,  
Baltimore, MD 21209

Raymond Lorion\*  
Dean  
College of Education  
Towson University  
8000 York Road  
Towson, MD 21252

Donald P. Brown  
901 Deer Court  
Abingdon, MD 21009

Bill Marker\*  
Citizens of Pigtown  
774 McHenry St.  
Baltimore, MD 21230

Terry T. Brown  
Vice President of Resource  
Development  
Baltimore Behavioral Health  
1101 West Pratt St.  
Baltimore, MD 21223

Maryland Crime Victims' Resource  
Center  
1001 Prince George's Blvd., Suite 750  
Upper Marlboro, MD 20774

Justin Callaway  
518 W. Fayette St., Apt. 406  
Baltimore, MD 21201

Cathy B. McClain  
Executive Director  
Cherry Hill Trust  
1839 Montreal Road  
Severn, MD 21144

George L. Carlson, Ph.D, LCSW-C\*  
Senior Director of Programs  
The Woodbourne Center  
1301 Woodbourne Avenue  
Baltimore, MD 21239

Carol Ann McCoy  
2821 Maudlin Ave.  
Baltimore, MD 21230

Elysha Carouge  
908 St. Paul St.  
Baltimore, MD 21202

Mediation & Conflict Resolution Center  
Howard County Community College  
10901 Little Patuxent Parkway, ELB-DH  
Columbia, MD 21044

Center for Court Innovation  
525 8<sup>th</sup> Ave.  
18<sup>th</sup> Floor  
New York, NY 10018

Peter Meleney\*  
Youth Program Manager of Conflict  
Resolution Center of Montgomery  
County  
MidCounty Regional Services Building  
2424 Reedie Dr. #301  
Wheaton, MD 20902

Cherry Hill Learning Zone  
806 Cherry Hill Road  
Baltimore, MD 21225

Mandy Miliman  
8207 Bendon Rd.  
Baltimore, MD 21208

Cherry Hill Senior Manor  
901 Cherry Hill Road  
Baltimore, MD 21225

David B. Mitchell, Esq.\*  
Johns Hopkins University, Faculty  
Division of Public Safety Leadership  
6740 Alexander Bell Drive, Suite 350  
Columbia, Maryland 21046  
Former Superintendent, Maryland State  
Police  
Former Chief, Prince George's County  
Police

Cherry Hill Trust, Inc.  
804 A Cherry Hill Rd.  
Baltimore, MD 21225

Kenneth C. Montague, Jr., J.D.  
513 E. 39<sup>th</sup> St.  
Baltimore, MD 21218

Cherrydale Resident Corporation  
1118 Cherry Hill Rd.  
Baltimore, MD 21225

Michael J. Phillips  
Chief of Police  
Fruitland Police Department  
401 E. Main St.  
P.O. Drawer "F"  
Fruitland, Maryland 21826

Joe Coffey, President  
Washington Village/Pigtown  
Neighborhood Planning Council  
904 Washington Blvd.  
Baltimore, MD 21230

Janet Price\*  
Community Justice Resource  
Coordinator  
University of Maryland School of Law  
500 W. Baltimore St.  
Baltimore, MD 21201

Community Conferencing Center  
2300 N. Charles St., 2<sup>nd</sup> Floor  
Baltimore, MD 21218

Terri R. Ricks, J.D.  
1049 Plaza Circle  
Joppa, MD 21085

Peter and Kathy Cwik  
1710 Morrell Park Ave.  
Baltimore, MD 21230

Belinda Reed  
1512 Hollins Street  
Baltimore, MD 21223

Miguel Dennis  
Chief  
Saint Michaels Police Department  
109 Talbot St  
Saint Michaels, MD 21663

Judith Sachwald\*  
Senior Policy Advisor  
Crime and Justice Institute  
16106 Audubon Lane  
Bowie, MD 20716

Kristine Dunkerton, J.D.  
Executive Director  
Community Law Center, Inc.  
3355 Keswick Road, Suite 200  
Baltimore, MD 21211

Elizabeth DuVerlie  
Mediator  
3120 Abell Ave.  
Baltimore, MD 21218

Misty Fae  
150 Park Ave.  
Baltimore, MD 21217

William C. Ferguson IV  
500 W. Baltimore St.  
Baltimore, MD 21201

Carson Fox  
Director of Operations  
National Association of Drug Court  
Professionals  
4900 Seminary Road, Suite 320  
Alexandria, VA 22311

Neill Franklin  
5011 Norrisville Road  
White Hall, MD 21161

Regan Savalla, J.D.  
4510 34<sup>th</sup> St. #4  
San Diego, CA 92116

Corey Shdaimah, LL.M., Ph.D.  
210 Williamsburg Rd.  
Ardmore PA 19003

Tony Shore\*  
Professor  
Maryland Institute College of Art  
2802 Evergreen Ave.  
Baltimore, MD 21214

Augusta Siribuo, J.D.  
13500 Gadwell Court  
Upper Marlboro, MD 20774

Anastasia W. Smith, J.D.  
6500 Ranging Hills Gate  
Columbia, MD 21044

Lou Takacs\*  
Washington Village/Pigtown  
Neighborhood Planning Council  
904 Washington Blvd.  
Baltimore, MD 21230

Dorcas R. Gilmore, J.D.\*  
Skadden Fellow  
Community Law Center, Inc.  
3355 Keswick Road, Suite 200  
Baltimore, MD 21211

Toby Treem Guerin, J.D.\*  
27 N. Belnord Ave.  
Baltimore, MD 21224

Barbara S. Grochal\*  
Deputy Director  
School Conflict Resolution Programs  
Center for Dispute Resolution  
University of Maryland School of Law  
500 West Baltimore St.  
Baltimore, MD 21201

Yamy Vang\*  
Assistant City Attorney  
St. Paul City Attorney's Office  
15 W. Kellogg Blvd., Ste. 500  
St. Paul, MN 55102

Vernon R. Herron\*  
Director  
Office of Homeland Security  
9200 Basil Court, Suite 308

Washington Village/Pigtown  
Neighborhood Planning Council  
904 Washington Blvd.  
Baltimore, MD 21230

Duane Weber  
2320 James St.  
Baltimore, MD 21230

Roger Wolf, J.D.\*  
Professor  
University of Maryland School of Law  
500 W. Baltimore St.  
Baltimore, MD 21201

\*Signing as an individual but using an institutional address.

## **APPENDIX A-2**

### **STATEMENT OF IDENTITY FOR *AMICI* ORGANIZATIONS**

#### **Baltimore Behavioral Health**

Baltimore Behavioral Health (“BBH”) is committed to improving the health of its patients by providing comprehensive and coordinated services within the community. BBH is a health care treatment provider serving ambulatory adults with mental health disorders, addictions, and co-occurring illnesses. BBH offers individualized treatment in a setting that provides a full continuum of care. In this format, patients achieve their specific treatment goals efficiently and realize a high rate of success.

#### **Center for Court Innovation**

The Center for Court Innovation (“CCI”) began as a public/private partnership between the New York State Unified Court System and the Fund for the City of New York. CCI is a non-profit think tank that helps courts and criminal justice agencies aid victims, reduce crime, and improve public trust in justice. CCI combines action and reflection to spark problem-solving innovation both locally and nationally. CCI’s success in making justice more visible and more meaningful led the court’s planners, with the support of New York State’s chief judge, to establish CCI to serve as an engine for ongoing court reform in New York.

In New York, CCI functions as the court system’s independent research and development arm, creating demonstration projects to test new ideas. These projects include: community courts, drug courts, reentry courts, domestic violence courts, and mental health courts. Beyond New York, CCI disseminates the lessons learned from innovative programs, helping criminal justice practitioners around the world launch their own problem-solving experiments.

#### **Cherry Hill Learning Zone**

The Cherry Hill Learning Zone initiative represents a partnership among the Baltimore City Public School System, Baltimore City government, Towson University and Cherry Hill's grassroots organizations. Working together, the partnership is leveraging its resources to build upon the strengths of the Cherry Hill community to meet its needs and nurture its potential in areas related to community development, economic development and educational development.

By engaging in sensitive and deliberative conversations with Cherry Hill's civic leaders, community organizations and citizens, the Learning Zone will serve as a resource for the academic success of Cherry Hill's youth and improved quality of life of its residents.

#### **Cherry Hill Trust, Inc.**

Cherry Hill Trust (formerly Cherry Hill 2000) was founded in 1994 as an umbrella organization for community development. Its goal is to improve the quality of life for Cherry Hill residents by reducing crime; organizing job fairs for ex-offenders, adults and youth ages 14 and up; supporting affordable preventative health care; encouraging neighborhood beautification projects; overseeing design and construction of projects in Cherry Hill Homes and Cherry Hill Senior Manor; and improving the overall economic health of the community.

#### **Community Conferencing Center**

The Community Conferencing Center ("CCC") is a conflict transformation and community justice organization that provides ways for people to safely, collectively and effectively prevent and resolve conflicts and crime. The work of the CCC has been recognized nationally and internationally for its use of conflict management strategies in a variety of settings, including criminal justice, education, community development and business. The CCC's efforts in Baltimore are unique: it is the only broad-based conferencing program in a large American inner-city that provides its services at no cost.

#### **Community Law Center**

After 20 years, the Community Law Center ("CLC") remains Baltimore's only legal services organization dedicated solely to strengthening neighborhoods. The CLC's mission is to provide legal services and technical assistance to improve the quality of life and economic viability of communities. We seek partnerships with community organizers, nonprofit housing developers, urban planners, educators, and law enforcement agencies to realize each client's strategic goals.

#### **The Maryland Crime Victims' Resource Center, Inc.**

The Maryland Crime Victims' Resource Center ("MCVRC") was originally formed as the Stephanie Roper Foundation and Committee after the kidnapping,



rape, and murder of Stephanie Roper in 1982 and the treatment of her parents in the aftermath of crime.

See [http://www.mdcrimevictims.org/\\_pages/d\\_about\\_mcv/d1\\_aboutmcv\\_intro.htm](http://www.mdcrimevictims.org/_pages/d_about_mcv/d1_aboutmcv_intro.htm) (last visited March 2, 2009). MCVRC's mission is "To ensure that victims of crime receive justice and are treated with dignity and compassion through comprehensive victims' rights and services." MCVRC was the chief proponent of Article 47 of the Declaration of Rights, which provides that certain members of the community – victims – be treated with dignity, sensitivity, and respect as well as with rights, including the rights to be informed, present and heard. MCVRC advocates that this constitutional mandate applies to specialty courts and that it should be broadly construed as such by this Court. See e.g. A Guide to Crime Victims Rights in Mental Health Courts, 2008 by the Council of State Governments Justice Center. For more information visit: <http://consensusproject.org/downloads/guidetocvinmhc.pdf>

### **Mediation & Conflict Resolution Center - Howard County Community College**

The Mediation & Conflict Resolution Center ("MCRC") at Howard Community College promotes peaceful resolution of conflict by providing mediation and conflict resolution services, education and training for the Howard County community. MCRC embraces the ideals of Restorative Justice processes that promote the empowerment of all persons affected by a conflict to collectively identify and address harm, needs and obligations in order to make things as right as possible.

MCRC helps people improve their lives by helping them handle conflict in healthy ways. MCRC contributes to the community through early conflict intervention and proactive conflict prevention. MCRC promotes the power of dialogue through open communication amongst all members of our community. MCRC provides high quality, convenient and financially accessible conflict resolution services. MCRC supports lifelong learning about conflict resolution techniques for all residents of Howard County.

### **National Association of Drug Court Professionals**

The National Association of Drug Court Professionals ("NADCP"), a not-for-profit organization, was founded in 1994 by a group of visionaries to reduce the

negative social impact of substance abuse, crime, and recidivism by: promoting and advocating the establishment, growth, and funding of drug courts; providing for the collection and dissemination of information; and providing sophisticated training, technical assistance and mutual support to association members.

The NADCP understands the need for professionals who work in drug courts throughout the country to join forces for education and advocacy on behalf of new courts. It also recognizes the need to alter the way that business is done in the justice arena among citizens addicted to alcohol and other drugs. Its philosophy is that we best serve society by addressing underlying domains faced by those caught in the justice system and that continuously incarcerating alcohol and other drug-addicted citizens has no long term benefit. NADCP believe that these challenges can best be addressed through a blending of judicial accountability and effective treatment.

#### **Washington Village/Pigtown**

Washington Village/Pigtown Neighborhood Planning Council ("WPNPC") is a community-based organization comprised of residents, businesses, and agencies. WPNPC focuses on economic revitalization, public safety and community development and coordination to strengthen the Baltimore City neighborhoods along the Washington Boulevard corridor.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_ day of March, 2009, a copy of the foregoing **Brief of the *Amici Curiae*** was mailed, first-class postage prepaid, to Nancy S. Forster, Public Defender, 6 St. Paul St., Suite 1400, Baltimore, MD 21202, and Michelle W. Cole, Assistant Attorney General, 200 Saint Paul Place, Baltimore, Maryland 21202.

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BRENDA BRATTON BLOM, ESQ.\*

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A.J. BELLIDO DE LUNA, ESQ.\*

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LEIGH M. MADDOX, ESQ.\*

\*Admitted to Practice in Maryland