

Testimony in Support of Senate Bill 0853
Juvenile Law – Juvenile Justice Reform

To: Senator William J. Smith, Jr., and Members of the Judicial Proceedings Committee

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We are student attorneys in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, and other means, as well as individuals who are serving life sentences for crimes they committed when they were children (“juvenile lifers”) and who are now eligible to be considered for parole. We write in support of Senate Bill 0853, which seeks to implement sorely needed reforms to Maryland’s juvenile justice system.

If passed, SB 0853 would set the minimum age of criminal responsibility in Maryland at 13 years of age. Except in narrow circumstances, children under 13 years-old would not be subject to the juvenile court’s jurisdiction and could not be charged with a crime. Setting a minimum age of criminal responsibility would be a positive step towards aligning Maryland with the science of adolescent brain development, which has proved that the part of the brain that allows us to make rational, deliberative decisions is not fully developed until we reach 25 years of age.¹ Therefore, children lack the ability to contemplate and understand the long-term consequences of their actions. As a result, children are less culpable than adults, and children under 13 years-old lack the capacity to be criminally culpable.

Additionally, SB 0853 makes clear that schoolchildren should not be criminalized for acts that traditionally have been subject to the schools’ disciplinary administrative process. It has often been said—because it is sadly true—that schoolchildren in Maryland are criminalized today for behaviors that in previous generations would have resulted in administrative discipline. Divorcing children who engage in behaviors that are part of normal adolescent development from the juvenile and criminal justice systems is necessary to disrupt and hopefully end the school-to-prison pipeline. The pipeline has criminalized students and impacted families in Maryland, particularly Black students and families. In the 2018-2019 school year, Black students represented 56% of

¹ UNIV. ROCHESTER MED. CTR., UNDERSTANDING THE TEEN BRAIN, <https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentTypeID=1&ContentID=3051>.

school-based arrests in Maryland’s public schools,² even though they only comprised 33% of the student population.³ Approximately 94% of these arrests were for incidents, situations, and circumstances that did not involve weapons.⁴ It is clear that the behaviors and issues resulting in these arrests would be better addressed through alternative, non-criminal responses as well as racial bias trainings.

While racial bias trainings are necessary for several reasons, one factor that contributes to the racialized impact of the school-to-prison pipeline is authority figures and other decision-makers who see, perceive, and interpret Black children differently than White children. One influential study found that beginning at 10 years of age, Black male children are viewed as “less innocent” than non-Black male children in every other age group.⁵ They are seen and interpreted as older than their actual ages, as well as their peers of the same ages. The same is true of Black girls, who are also disproportionately criminalized in schools, in large measure because of the adultification bias that attaches to their race and gender. As with Black boys, adultification bias sees Black girls as more “adult” than their same age non-Black peers. One recent study by the Center on Poverty and Inequality at Georgetown Law Center found that beginning at 5 years-old, Black girls are viewed as “more adult than their white peers *at almost all stages of childhood . . .*”⁶ Put simply, Black children do not enjoy the same “privilege of innocence” as their non-Black classmates. As a result, they and their behaviors are seen differently. They are criminalized for the same conduct that for their White peers is not noticed or not criminalized.

In sum, Maryland’s children deserved to be treated as children. Criminal culpability should align with child brain development, and children in our schools should not be criminalized for matters that are best addressed through school administrative processes. For these reasons, we ask for a favorable report on this bill.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

² MD. STATE DEP’T OF EDUC., MARYLAND PUBLIC SCHOOLS ARREST DATA 7-8 (2018-19), <http://marylandpublicschools.org/stateboard/Documents/2020/0623/MarylandPublicSchoolsArrestData20182019.pdf>.

³ MD. STATE DEP’T OF EDUC., MARYLAND PUBLIC SCHOOL ENROLLMENT BY RACE/ ETHNICITY AND GENDER AND NUMBER OF SCHOOLS 4 (2019), <http://www.marylandpublicschools.org/about/Documents/DCAA/SSP/20192020Student/2020EnrollRelease.pdf>

⁴ MARYLAND PUBLIC SCHOOLS ARREST DATA, *supra* note 2, at 8 & 129. <http://marylandpublicschools.org/stateboard/Documents/2020/0623/MarylandPublicSchoolsArrestData20182019.pdf>.

⁵ Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY AND SOCIAL PSYCH., 526, 529 (2014).

⁶ REBECCA EPSTEIN ET AL., GEORGETOWN LAW CTR. ON POVERTY AND INEQUALITY GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS’ CHILDHOOD, CTR. ON POVERTY AND INEQUALITY 8 (2017) (emphasis in original), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.