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POSITION ON PROPOSED LEGISLATION

BILL: HB 698 Juvenile Law – Juvenile Court Jurisdiction – Age of Child

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/28/2023

In 2022, Maryland passed House Bill 459: the Juvenile Justice Reform Act (“JJRA”) - one essential provision of which raised the minimum age of juvenile court jurisdiction to 13 years old. Raising the minimum age of juvenile court jurisdiction better aligned Maryland with international human rights standards, followed in the footsteps of multiple other states, and recognized the founded research on adolescent development and brain science. Lowering the minimum age of juvenile court jurisdiction to 11 years old, as proposed by House Bill 698, would reverse the progress and purpose of the JJRA, without making our communities safer or promoting the welfare of Maryland’s children. The Maryland Office of the Public Defender strongly urges the Committee to issue an unfavorable report on House Bill 698.

An effective juvenile justice system is one that is fair, and one that strives to increase the odds that children will make a successful transition from childhood to adulthood. That requires a system that treats children as children, and one that utilizes proven, family-focused interventions - rather than criminalization - to create better opportunities for positive child development. The JJRA wThe JJRA, which took effect less than a year ago, appropriately raised the minimum age of juvenile court jurisdiction to 13 years old.¹ Prior to that, Maryland was in violation of widely accepted international human rights standards. We did not have a minimum age of criminal responsibility (MACR). Maryland regularly charged elementary school children – some as young as *six* years old – with delinquent acts. To put these age limits in context, the average seven (7) year old is in the 2nd grade. Maryland law requires that children must be at least 13 years old in order to be responsible enough to babysit.² If a child is not old enough to stay home alone, that child is not old enough to be sent to juvenile court, make decisions about a plea bargain, or comply with court orders.

¹ Prior to 1994, Maryland relied on the common-law doctrine of *doli incapax*, which held that from age 7 to 14 children were presumed not to have criminal capacity and required the prosecution to prove criminal capacity beyond a reasonable doubt. The presumption of infancy was removed by the legislator in 1994. In re Devon T., 85 Md. App. 674 (1991); Acts 1994, c. 629, § 1, eff. Oct. 1, 1994.

² Maryland Code Annotated, Family Law Article §8-501.

Looking to other jurisdictions, internationally, 174 countries have established a minimum age of criminal responsibility (“MACR”), and establishing a MACR is a requirement for signatories to the Convention on the Rights of the Child (CRC).³ Both Canada and Mexico set the MACR at 12, while the majority of the European Union (including Spain, Germany, Italy, and Poland) sets the MACR at age 14.⁴ In recent years, a number of states have raised the floor for juvenile court jurisdiction. In addition to California, Massachusetts⁵ and Utah⁶ have set 12 as the minimum age of juvenile jurisdiction and other states are moving forward with efforts to raise the minimum age including Texas (13)⁷, Illinois (13)⁸, Washington (13)⁹, Maine (12)¹⁰, Oklahoma (12)¹¹, Connecticut (12)¹², and North Carolina (12)¹³.

Reversing course and reducing the minimum age of juvenile court jurisdiction to 11 years old would further funnel a disproportionate number of very young, mostly Black children into the juvenile justice system - despite extensive research demonstrating that children under the age of 13 are statistically unlikely to be competent to stand trial.¹⁴ Research shows that pre-adolescent children demonstrate poor understanding of trial matters, in addition to poorer reasoning and ability to recognize relevant information for a legal defense. Maryland is no outlier in this. In 2020, the Maryland Department of Health’s Juvenile Forensic Services Office gave a presentation to the State Advisory Board for Juvenile Services which included statistical information about children who were found incompetent to stand trial. In the three year span discussed, between 63% and 74% of the children under 13 years old evaluated were found incompetent to stand trial. Accordingly, failing to raise competency in most cases

³ The United States is not a signatory to the Convention.

⁴ See, Child Rights International Network, The minimum age of criminal responsibility, <https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility>.

⁵ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section52>

⁶ <https://www.njcn.org/article/utah-raises-lower-age-of-juvenile-jurisdiction>

⁷ <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB01783L.pdf#navpanes=0>

⁸ www.ilga.gov/legislation/BillStatus.asp?GA=102&DocTypeID=SB&DocNum=65&GAID=16&SessionID=110&LegID=128313

⁹ <https://app.leg.wa.gov/billsummary?billnumber=5122&year=2021>

¹⁰ http://legislature.maine.gov/legis/bills/display_ps.asp?LD=320&snum=130

¹¹ <http://www.oklegislature.gov/BillInfo.aspx?Bill=SB%20217&Session=2100>

¹² <https://ctmirror.org/2020/02/10/juvenile-justice-advocates-lets-raise-the-age-again/>

¹³ In the 2020, the *North Carolina Task Force for Racial Equity in Criminal Justice* issued a Report to the Governor from the Attorney General and an Associate Justice of the Supreme Court, the group recommended a number of significant reforms - including raising the MACR to age 12.

https://ncdoj.gov/wp-content/uploads/2020/12/TRECRReportFinal_12132020.pdf

¹⁴ Bath, E., & Gerring, J. (2014). National trends in juvenile competency to stand trial. *Journal of the American Academy of Child & Adolescent Psychiatry*, 53, 265-268, Bonnie, R. J., & Grisso, T. (2000). Adjudicative competence and youthful offenders. In T. Grisso & R. G. Schwartz (Eds.), *Youth on trial: A developmental perspective on juvenile justice* (pp. 73-103). Chicago, IL: University of Chicago Press; Costanza, M. B. (2017). *The development of competency to stand trial-related abilities in a sample of juvenile offenders* (Doctoral dissertation). Retrieved from ProQuest; Grisso, T. (2014). Protections for juveniles in self-incriminating legal contexts, developmentally considered. *The Journal of the American Judges Association*, 50(1), 32-36; Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press; Grisso, T. (2004). *Double jeopardy: Adolescent offenders with mental disorders*. Chicago, IL: University of Chicago Press; Grisso, T., & Kavanaugh, A. (2016). [Prospects for developmental evidence in juvenile sentencing based on Miller v. Alabama](#). *Psychology, Public Policy, and Law*, 22(3), 235-249; Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology (2009).

for very young children would amount to ineffective assistance of counsel. For that reason, defense counsel raise competency in an overwhelming majority of cases involving children under age 13. Evaluating competency is a cost intensive process that can take years to resolve.¹⁵ The prolonged process of competency attainment for children means that the youngest children, who are the least culpable, often do not face court intervention until months or years after their alleged misbehavior. Further, under Maryland’s juvenile competency statute, there is no mechanism for the affording of therapeutic or rehabilitative treatment services to children pending competency proceedings or to children found incompetent to stand trial. In order for rehabilitation to work, children need to be held accountable for wrongdoing in a fair process that promotes healthy moral development.¹⁶ A system that penalizes children at a time far removed from the underlying incident leads children to perceive the legal system as unjust. Distrust in the system reinforces delinquent behavior, does not foster prosocial development, and increases recidivism.¹⁷

While the juvenile justice system, by nature, is designed to provide guidance, treatment, and rehabilitation to children, in our experience as juvenile defenders we have frequently encountered children under 13 years of age who are terrified, daunted, and confused by the judicial process. Our pre-adolescent clients are often reliant on their parent(s) to answer even the most basic of questions. This is not because they are defiant or non-cooperative; it is because they are kids - they simply do not yet have the capacity to adequately comprehend the judicial process. Labeling these kids as “delinquent” at such a young age can have a profoundly damaging impact on them. We have watched police body-worn camera footage of children so young and small that their wrists are too tiny for the police to effectively place handcuffs, where they are sobbing through tears, fearfully asking for their parents, and where they are visibly confused and shaken by an encounter with law enforcement. Lowering the minimum age of juvenile court jurisdiction to 11 years old would place these young children into a system that they hardly understand, where they are forced to make adult-like decisions far beyond their level of comprehension - a system where, even at its most helpful, can be a terrifying experience for a young child.

In addition to the damage it can cause to a young child’s psyche, the system of charging and processing thousands of children who have not even reached their teenage years is a waste of resources. Over the past five years, more than 8,600 pre-adolescent children have faced juvenile complaints in Maryland. In FY2020, there were 1,469 delinquent complaints for children under the age of 13. Disturbingly, the vast majority of these children were Black (72%). Only 25% of those cases (374) were forwarded for prosecution in juvenile court and only 6 of the 1,469 children under 13 who were charged in Maryland resulted in commitments to the DJS. None of those very young children who were committed was even found guilty of a felony. In fact, four of the children under 13 who were committed to DJS were found facts sustained of property crimes – misdemeanor breaking and entering and malicious destruction of

¹⁵ Md. CJ 3-8A-17-17.8

¹⁶ National Academies of Science, *Reforming Juvenile Justice: A Developmental Approach* (2013) pg 183-210.

¹⁷ National Research Council 2014. *Implementing Juvenile Justice Reform: The Federal Role*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/18753> at 17.

property. The other two children were committed for misdemeanor second degree assault.¹⁸ More than half of all kids under 13 who were charged were charged for misdemeanor second degree assault, misdemeanor theft, or destruction of property.¹⁹ Despite these facts, 37 children under the age of 13 were incarcerated pending trial.

Executive functioning refers to the cognitive processes that direct, coordinate, and control other cognitive functions and behavior. This includes processes of inhibition, attention, and self-directed execution of actions. Much research has been conducted about adolescent executive functioning as it relates to youth justice policy, but because so few jurisdictions prosecute very young kids, comparatively little research has been done about pre-adolescent children in the youth justice systems.²⁰ Most research about the executive functioning in pre-adolescents has been done with a focus on implications for education and occupational therapy. It is clear that the level of executive functioning of an elementary and middle school-aged child is vastly different than that of high school students.²¹ Studies of working memory of children show that it continues to develop until children reach about 15 years old. Accordingly, services and interventions offered through the juvenile justice system and designed for the guidance, treatment, and rehabilitation of adjudicated youth may not be appropriate or effective for pre-adolescent children.

Maintaining the minimum age of jurisdiction at 13 years old does not preclude the opportunity for a child and that child's family to avail themselves of age appropriate supportive services and resources. Instead of citing a young child with an alleged delinquent act, a police officer can provide resources and referrals to that child and to the family for community based service providers who can initiate family intervention support services, to include resources available through the Department of Social Services. Further, through an intake officer, the CINS petition process remains available to seek services and supervision for children under the age of 13 years old.²² Rather than criminalizing the behavior of young children, disproportionately impacting Black kids and further perpetuating the school to prison pipeline, the focus should be on utilizing the robustly available community based supportive resources to promote treatment and intervention.

Exposing pre-adolescents to a process that is both damaging to them and likely beyond their level of comprehension is a process we have already moved past with the passage of the JJRA. To take a step backwards is to deny young children the dignity they deserve while navigating their childhood. If we want a truly rehabilitative juvenile justice system in Maryland, we must maintain the minimum age of jurisdiction at 13 years old.

¹⁸ Department of Juvenile Services, 2020 DJS Data Resource Guide, at 26-27.

<https://djs.maryland.gov/Pages/Data-Resource-Guides.aspx>

¹⁹ *Id.* At 27.

²⁰ *Supra*, note 21.

²¹ *Id.*

²² *See* Md. Rule 11-502.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 698.

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