



HUMAN RIGHTS *for* KIDS

TESTIMONY IN SUPPORT OF SB 93 BEFORE THE MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE

February 16, 2023

Dear Chairman Smith and Members of the Maryland Senate Judicial Proceedings Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our support for SB 93. We are grateful to Senator Carter for her leadership in introducing this bill and appreciate the Maryland Legislature's willingness to address these important human rights issues concerning Maryland's children.

Over the years too little attention has been paid to the most vulnerable casualties of mass incarceration in America — children. From the point of entry and arrest to sentencing and incarceration our treatment of children in the justice system is long overdue for re-examination and reform. Human Rights for Kids is a Washington, D.C.-based non-profit organization dedicated to the promotion and protection of the human rights of children. We work to inform the way the nation understands Adverse Childhood Experiences (ACEs) from a human rights perspective, to better educate the public and policymaker's understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & strategic litigation to advance critical human rights on behalf of children in the United States.

Human Rights for Kids supports SB 93 because it will end the process of automatically sending children to adult court in Maryland. The continuing practice of disregarding child status and automatically sending children to adult criminal court is a clear human rights abuse. Specifically, Article 10 and 14 of the International Covenant on Civil and Political Rights require that “juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status . . . the procedure shall be such as will take account of their age and the

desirability of promoting their rehabilitation.” As such, automatically treating children as adults, regardless of the underlying charge, is a human rights abuse.

Adverse Childhood Experiences

In the vast majority of cases, children who come into conflict with the law are contending with early childhood trauma and unmitigated adverse childhood experiences (ACEs), including psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness or are suicidal, or are formerly incarcerated. Studies have shown that approximately 90% of children in the juvenile justice system have experienced at least 2 ACEs, and 27% of boys and 45% of girls have experienced at least 5 ACEs.

Childhood trauma is the primary driver and root cause for how and why so many kids end up in the criminal legal system. Policies that permit children to be automatically charged as adults ignore this truism and divest juvenile court judges – who are trained in child development – from making a decision of what is in the best interest of the child and society.

Because most of the children accused of crimes have been victims themselves, automatic adult charging policies ignore and disregard both the victim and child status of these offenders. That is not to say that in appropriate cases public safety considerations may require the court to waive juvenile court jurisdiction, but that that decision rightfully should rest with juvenile court judges. These judges are in the best position to weigh a child’s trauma history with their potential for rehabilitation if kept within the juvenile system.

Juvenile Brain & Behavioral Development Science

Studies have shown that children’s brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment.

Children’s underdeveloped brains and proclivity for irrational decision-making is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities.

Dynamic mapping of human cortical development



Source: "Dynamic mapping of human cortical development during childhood through early adulthood," Nitin Gogtay et al., Proceedings of the National Academy of Sciences, May 25, 2004; California Institute of Technology.

In this picture the blue areas can be thought of as representing 'more mature' sections of brain. The frontal areas are among the last to mature.

It is for these reasons that children should also not be automatically subject to criminal court jurisdiction. In every aspect of our society, we require individuals who work with or make decisions about our children to be specially trained in child development, i.e. teachers, day care workers, pediatricians, nurses, etc. However, Maryland's policy of automatically charging so many children as adults and vesting judges in criminal court with ultimate decision-making authority over them is counter to how we treat children in every other aspect of our society. Like pediatricians and teachers in health care and learning settings, we should bestow decision making authority over our children in the legal system with juvenile court judges who have been trained specifically on child development.

Human Rights Violations

Because of the way children are treated in the criminal justice system, we designated Maryland one of the "Worst Human Rights Offenders" in the nation in our 2020 National State Ratings Report. Maryland was penalized in our assessment, in part, for its automatic charging policy that has resulted in the state being second in the nation, only to Alabama, in the number of youth charged in adult court every year. It should be noted that more than 80% of youth charged as adults in Maryland are Black. Such practices are contrary to human rights law and have made Maryland a national outlier.

While it is important to note that the vital reforms to the juvenile justice system passed since the aforementioned 2020 report resulted in Maryland's recognition as the "most improved state" in the 2022 edition of our National State Ratings Report, Maryland is still penalized for its automatic charging policy.

In late 2022, Human Rights for Kids requested and received data from the State of Maryland on people who are currently incarcerated for crimes they were convicted of as children. According to our analysis of the data provided by the State, there are 1,132 currently incarcerated people who fit this description. This number represents 6.09% of Maryland's overall prison population, which is more than double the national average of 3%. Maryland ranks 5th highest in the nation

for the percentage of its overall prison population that has been incarcerated since they were children. Only Michigan, Louisiana, Wisconsin, and South Carolina have higher percentages.

When considering the current law on automatic charging, Maryland's status as one of the top incarcerators of children in the entire country should not be surprising. The state's high rates of incarcerating children are a direct result of the longstanding policy of automatically charging high numbers of children as adults.

Redemption for Maryland

Nelson Mandela once said, "*There is no keener revelation of a society's soul than the way in which it treats its children.*" What does it say about our soul then if we allow so many children, the vast majority of whom are Black, to be automatically charged as adults?

By beginning so many children in adult court and thereby becoming a mass incarcerator of children, Maryland is disregarding international human rights norms, juvenile brain and behavioral development science, and the fact that so many of these children are themselves victims of crime.

With the passage of SB 93, Maryland can find redemption by recognizing that kids are different and should be treated differently in the legal system. We have juvenile courts and juvenile court judges for a reason – to determine how children should be treated when they come into conflict with the law.

It is for the foregoing reasons that Human Rights for Kids respectfully requests that the Committee issue a favorable report on SB 93 by Senator Carter.

Thank you for your time and consideration.

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