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## **TESTIMONY IN SUPPORT OF HB 1107 BEFORE THE MARYLAND HOUSE JUDICIARY COMMITTEE**

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*February 24, 2025*

Dear Chairman Clippinger and Members of the Maryland House Judiciary Committee:

Human Rights for Kids respectfully requests a favorable report on HB 1107. We are grateful to Delegate Bartlett for her leadership in introducing this bill and we appreciate the opportunity to express our support.

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 policymakers' understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research and public education, coalition-building and grassroots mobilization, and policy advocacy and strategic litigation to advance critical human rights on behalf of children in the United States.

We support HB 1107 because it will continue the important work to restrict the use of solitary confinement on children that this body began in 2019 with the passage of HB 1001.<sup>1</sup> In that legislation, the Department of Juvenile Services and the Department of Public Safety and Correctional Services became prohibited from placing a minor in “restrictive housing” unless there was clear and convincing evidence that certain qualifying conditions exist.

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<sup>1</sup> <https://mgaleg.maryland.gov/mgawebbsite/Legislation/Details/hb1001/?ys=2019rs>

While HB 1001 was a positive step in protecting the human rights of children who are detained or incarcerated, HB 1107 strengthens those protections in vital ways by placing a specific time limit on any use of solitary confinement, providing a clear path back to the general population for any child who is placed in solitary confinement, guaranteeing mental and physical health evaluations, and better defining when this practice can be used on a child.

HB 1107 also recognizes the fact that children should never be held in adult facilities regardless of the current protections that separate them from adults in such facilities. Those protections, while well-intentioned, mean that children are placed in what amounts to solitary confinement if they are held in adult facilities. This legislation will fully protect children against solitary confinement by prohibiting the placement of children in adult facilities. Instead, children would be placed in age-appropriate settings through the Department of Juvenile Services.

### **Summary of HB 1107**

HB 1107 would place important restrictions on the use of solitary confinement (referred to in Maryland's statutes as "restrictive housing") to ensure that a child is held in such placement for the least amount of time possible and only as a temporary response to emergent issues. The bill also prohibits the placement of children in adult facilities.

The bill does the following:

- Prohibits the use of solitary confinement for punishment, discipline, retaliation, administrative convenience, or as a response to staffing shortages.
- Specifies that a minor may only be placed in restrictive housing as a **temporary** measure and places a strict 6-hour time limit on its use.
- Places greater restrictions on when a minor may be placed in restrictive housing:
  - There must be no reasonable means to eliminate the risk with another measure.
  - It must be used only to the extent necessary to eliminate the risk.
  - It must take place under the least restrictive conditions practicable.
  - The minor must be promptly notified of the rationale for their placement in restrictive housing.
  - A plan must be developed that allows the minor to leave restrictive housing as soon as possible.
- A health care or mental health care provider must conduct a mental health screening within one hour of the minor's placement in restrictive housing.
- A minor may still be placed in restrictive housing at their request.
- Prohibits the placement of children in adult facilities.

### **Prior Legislative Efforts in Maryland**

As background, the protections against solitary confinement contained in this legislation were previously filed in 2024 through HB 855.<sup>2</sup> That bill as filed, however, still allowed children to be placed in adult facilities. Through the hearing on HB 855 in the House Judiciary Committee, it became clear that adult jails would not be able to comply with the provisions of HB 855 that prohibited solitary confinement because of federal “sight and sound” separation requirements.<sup>3</sup> This requirement states that if a child is held in an adult facility, they must be “sight and sound” separated from adults.

This requirement, intended to protect children from being harmed by adults, means that children are placed in what amounts to solitary confinement if they are held in an adult facility. County jails and correctional officers testified in 2024 that they would prefer to not have children in their facilities because of the difficulties of housing them and separating them from adults. However, they felt they could not comply with a prohibition against solitary confinement because of the federal “sight and sound separation” requirement.

At that point, the solution became clear, and all stakeholders agreed: children should not be held in adult facilities because such placements pose risks to a child’s physical and mental health.

### **Solitary Confinement on Children is a Human Rights Violation**

International human rights standards are clear: the use of solitary confinement on children is a violation of human rights. The United Nations Convention on the Rights of the Child (CRC) requires that children be protected from torture as well as cruel and unusual punishment,<sup>4</sup> and the U.N. Committee on the Rights of the Child has deemed solitary confinement a violation of Article 37 of the CRC.<sup>5</sup>

Subsequent U.N. publications have further noted the harms of solitary confinement on children and reiterated the strict ban on its use.<sup>6</sup> The Committee against Torture and the Special Rapporteur on Torture have also classified the use of solitary confinement on children as cruel, inhumane, and degrading treatment.

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<sup>2</sup> <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0855/?ys=2024rs>

<sup>3</sup> [https://www.act4jj.org/sites/default/files/resource-files/Jail%20Removal%20and%20Sight%20and%20Sound%20Separation%20Fact%20Sheet\\_0.pdf](https://www.act4jj.org/sites/default/files/resource-files/Jail%20Removal%20and%20Sight%20and%20Sound%20Separation%20Fact%20Sheet_0.pdf)

<sup>4</sup> U.N. Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) (“CRC”).

<sup>5</sup> 3 U.N. Comm. on the Rights of the Child, 44th Sess., General Comment No. 10, Children’s rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

<sup>6</sup> See U.N. Guidelines for the Prevention of Juvenile Delinquency, G.A. Res. 45/112, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, at 201 (Dec. 14, 1990) (“The Riyadh Guidelines”) and U.N. Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, 45 U.N. GAOR Supp. (No. 49A), U.N. Doc. A/45/49, ¶ 67 (Dec. 14, 1990) (“The Beijing Rules”).

### **Effects of Solitary Confinement**

Children placed in solitary confinement can experience profound negative physical, emotional and psychological effects, including but not limited to psychosis, depression, increased aggression and increased risk of suicide. The use of solitary confinement on children can also lead to their failure to develop positive social skills, limited their access to developmental and educational resources, and can cause stunted physical growth due to inadequate diet and exercise.<sup>7</sup> For children who have experienced trauma and abuse prior to their detention, the harmful effects can be even more profound.

Because of its well-documented negative effects of the use of solitary confinement on children, in 2012, the American Academy of Child and Adolescent Psychiatry (AACAP) issued a policy statement stating its concurrence with the United Nations standards and opposing the use of solitary confinement on minors.<sup>8</sup>

### **Bipartisan Efforts at the Federal Level**

In 2016, President Barack Obama instituted a ban on solitary confinement for juvenile offenders in the federal prison system, citing its overuse and “potential for devastating psychological consequences.”<sup>9</sup>

Congress took action to prohibit the use of solitary confinement on children in the federal system through the passage of the First Step Act in 2018 (S. 756) which was subsequently signed into law by President Trump. Senator Love’s HB 1107 is modeled after the language in this bipartisan legislation.

### **Children in Adult Jails and Prisons**

In the late 1980’s and early 1990’s states began passing laws to make it easier to transfer children into the adult criminal justice system which exposed them to the same treatment as adults, including being housed in the same facilities. Between 1993 and 1997 the number of children housed in adult jails more than doubled. On any given night in America there are more than 2,200 children in our jails and prisons. Approximately 87% of these youth are in local jails, while the other 13% are in state prisons.

Policymakers were driven by the now-debunked “Super-Predator Theory” which stated that a new generation of child predators were coming of age who were more violent and less remorseful than ever before. These children, the authors said, were “Godless, jobless, and fatherless” monsters and urged states to respond by treating them as adults and thereby exposing

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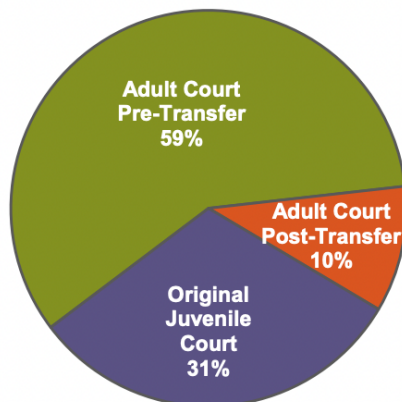
<sup>7</sup> James, K., & Vanko, E. (2021, April). *The Impacts of Solitary Confinement*. Brooklyn, New York: Vera Institute of Justice, 1-3.

<sup>8</sup> [https://www.aacap.org/aacap/Policy\\_Statements/2012/Solitary\\_Confinement\\_of\\_Juvenile\\_Offenders.aspx](https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx)

<sup>9</sup> Eilperin, Juliet (2016, Jan. 26). Obama bans solitary confinement for juveniles in federal prisons. *The Washington Post*. [https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8\\_story.html](https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8_story.html)

them to these inhumane, degrading, and cruel conditions. The severe harms that children face when placed in adult jails and prisons have been well documented. They include physical and sexual violence, solitary confinement, lack of mental health treatment, lack of educational programming, and isolation from family. These forms of child abuse frequently follow children as they age and become adults in prison.

Maryland Juvenile Detention Center Population  
(May 2023 – April 2024)  
Avg. Daily Pop = 257



*Over the last year, an average of 7 in 10 youth in detention were either being held on adult cases or had been transferred down to juvenile court*

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The population who would be most affected by this change are children charged as adults, who would be held in juvenile facilities. Many of these children, but not all of them, are already held in juvenile facilities. From May 2023 to April 2024, approximately 59% of the children held in Department of Juvenile Services facilities were children who were tried as adults and awaiting the outcome of their transfer hearing. DJS is already safely housing children who are charged in adult court. On any given day, approximately 35-40 children are left in adult jails across the state. Under HB 1107, these children would be housed alongside the other children tried as adults who are already placed in DJS facilities.

### **Adverse Childhood Experiences**

In the vast majority of cases in Maryland, children who come into conflict with the law are contending with early childhood trauma and unmitigated adverse childhood experiences (ACEs), including physical and emotional neglect; physical, emotional, and sexual abuse; parental separation, domestic violence, household substance abuse, mental illness, and incarceration. Our research has shown that over 60% of children tried as adults experienced both physical and

<sup>10</sup> Chart from Nate Balis, presentation at Attorney General's Maryland Equitable Justice Coalition. Figures in chart: juvenile detention data from Maryland Department of Juvenile Services Research and Evaluation Unit and the DJS Data Resource Guide.

emotional abuse prior to their offense. Another 40% experienced sexual abuse. Many children tried as adults came from homes where witnessing domestic violence (50%), substance abuse (82%), and mental illness (51%) were prevalent. This type of trauma often leads to early-onset PTSD and subsequently impacts a child's brain development, particularly the prefrontal cortex. This means that kids traumatized by violence in their homes and communities have impaired brain development that influences their behavior and decision making.

Adult jails and prisons neither have appropriate trauma-informed treatment for children, nor do they provide ideal conditions for meaningful therapy.

### **Lack of Educational Programming**

The educational programs that adult jails and prisons provide – mostly geared towards GEDs or professional training, are not designed for a child seeking a high school diploma, so much so that their time in class may not even be credited as progress. There are no individualized programs or accommodations for special needs, and if the prison imposes a period of isolation on or takes disciplinary action against a child, then what little educational programming that is provided may grind to a halt. Children are often unable to participate in educational programming within jails or prisons due to 'sight and sound' restrictions that are meant to protect them from physical or sexual violence at the hands of older adults in prison. Children who were given lengthy prison terms, like life or de facto life sentences, are often prohibited from participating in programming.

### **Isolation from Family**

By removing children from naturally occurring supports, such as connections to family, school and community mentors, children are denied pathways to build their resiliency and address the trauma at the root of their behavior. Furthermore, such removal inhibits the development of important familial connections, hindering development and negatively impacting children's mental health.

### **Mental Health Risks**

When children are held in adult jails and prisons, their mental health suffers due to isolation and increased risk to their physical wellbeing. Children who are held in adult facilities are 36 times more likely to commit suicide than children who are held in juvenile detention facilities.<sup>11</sup>

There are tragic stories across the country of children held in adult facilities who face life long detrimental effects. Perhaps the most high-profile is that of Kalief Browder, a 16-year-old New Yorker who was held at Rikers Island for three years, spending two of those years in solitary

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<sup>11</sup> Arya, Neelum. Getting to Zero: A 50-State Study of Strategies to Remove Youth from Adult Jails. Los Angeles, CA: UCLA School of Law, 2018.  
[https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo\\_k3xpk\\_DTmItV/view](https://drive.google.com/file/d/1LLSF8uBlrcqDaFW3ZKo_k3xpk_DTmItV/view)

confinement.<sup>12</sup> After he was released from incarceration, Mr. Browder died by suicide, never recovering from the effects of solitary confinement.

In January of 2024, 16-year-old Kayelyn Gwen Drake died by suicide in the Harrison County Adult Detention Center in Mississippi, just one day after she was booked into the facility which also held adults.<sup>13</sup> After her death, Kayelyn's family's attorney stated "She was made to believe that her life was over . . . That she was unable to get out and scared half to death. Unable to talk to her family and her mother . . . and it was more than she could bear."<sup>14</sup>

### **Racial Disparities**

National estimates show that 88% of youth held in adult jails are youth of color.<sup>15</sup> In Maryland, because 87% of youth who are automatically tried as adults are Black, we can assume that the national estimate is accurate for state facilities since the youth held in adult facilities are those who are tried in adult court.

### **Fiscal Impact of Noncompliance with Federal Law**

While the negative effects of placing a child in an adult jail cannot be overstated, committee members should consider the fiscal impact of this legislation as well. According to Maryland's State Advisory Group, the body charged with implementing the federal Juvenile Justice Delinquency Prevention Act (JJDP), the state stands to lose 20% of its federal grant allocation because of the state's current noncompliance with the JJDP. This is due to the number of children who are currently held in adult jails and lockups across the state. By prohibiting the placement of children in adult facilities with the passage of HB 1107, Maryland's federal funding will be preserved.

### **Conclusion**

Because the use of solitary confinement on children is strictly prohibited as a form of cruel and inhumane treatment under international human rights standards, the practice should be limited as a temporary response and should never be used for punitive reasons. Maryland should strengthen its current statute by adopting HB 1107 which would address facility safety concerns by allowing for a "cooling off" period that can be used in extreme cases, but only for as long as reasonably necessary for the child to be reintegrated with the rest of the children in the facility.

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<sup>12</sup> <https://www.nytimes.com/2015/06/09/nyregion/kalief-browder-held-at-rikers-island-for-3-years-without-trial-commits-suicide.html>

<sup>13</sup> <https://www.wxxv25.com/familylawsuit/>

<sup>14</sup> Id.

<sup>15</sup> Arya, Neelum. Getting to Zero: A 50-State Study of Strategies to Remove Youth from Adult Jails. Los Angeles, CA: UCLA School of Law, 2018.

