

**MD Catholic Conference\_FAV\_SB 769.pdf**

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ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

**March 3, 2022**

**SB 769**

**Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court**

**Senate Judicial Proceedings Committee**

**Position: Support**

The Maryland Catholic Conference offers this testimony in SUPPORT of Senate Bill 769. The Conference represents the public policy interests of the three (arch)dioceses serving Maryland, the Archdioceses of Baltimore and Washington and the Diocese of Wilmington, which together encompass over one million Marylanders.

In 2021, the Maryland General Assembly passed the Juvenile Restoration Act, which was supported by the Conference, prohibiting sentences of life without parole for youth offenders. The legislation also allowed for judicial review of a sentence for an offense committed under the age of eighteen after an individual has served twenty years of their sentence. Senate Bill 769 would add certain requirements to this sentencing review, largely based on the Supreme Court ruling in *Miller v. Alabama*.

In reviewing such a sentence, a court would be required to consider: 1.) the age of the minor at the time of the offense, 2.) the capacity of the minor for rehabilitation, 3.) the minor's family and community environment, 4.) the minor's ability to appreciate risks and understand the consequences of actions, 5.) the intellectual capacity of the minor, 6.) peer and familial pressure, 7.) the level of participation of the minor in the offense, 8.) the ability of the minor to meaningfully participate in the minor's legal defense, 9.) the involvement of the minor in the child welfare system, 10.) prior exposure of the minor to adverse childhood experiences and trauma history, 11.) faith and community involvement of the minor, 12.) if a comprehensive mental health evaluation of the minor was conducted by a mental health professional licensed in the state to treat adolescents, the outcome of the evaluation, and 13.) any other mitigating factor or circumstance.

In *Miller v. Alabama*, 567 U.S. 460, 471 (2012), the U.S. Supreme Court noted certain inherent characteristics of youthful offenders, such as "diminished capacity" and "greater prospects for reform". In doing so, the Court set about certain factors that should be considered in mitigating youth sentences. This case law and Catholic social teaching help formulate our position that youth justice should be approached restoratively. This includes not only addressing underlying circumstances that may contribute to youth committing offenses, but also considering those factors in sentencing, where warranted, so as to not ignore their inherent possibilities for rehabilitation. It is for these reasons that we urge your support and favorable report on Senate Bill 769.

# **HRFK Testimony - SB 769 - Maryland Senate Judicia**

Uploaded by: James Dold

Position: FAV



# HUMAN RIGHTS *for* KIDS

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## TESTIMONY IN SUPPORT OF SB 769 BEFORE THE MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE

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*March 3, 2022*

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 769. We are grateful to Senator Lee 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.

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.

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 supports SB 769 because, if it is signed into law, it will ensure that judges fully consider a child's background and trauma history, prior to sentencing them in adult court. It will also help to end the unjust practice of sentencing child victims of sex crimes and human trafficking to lengthy prison terms for crimes they commit against their abusers. Instead of locking exploited and abused children away in cages, these children will be treated the way child victims deserve – with care, compassion, and empathy. The reality is that most children who commit serious crimes are contending with severe trauma in their lives and it is essential that courts factor that into consideration when sentencing youth.

## **SB 769**

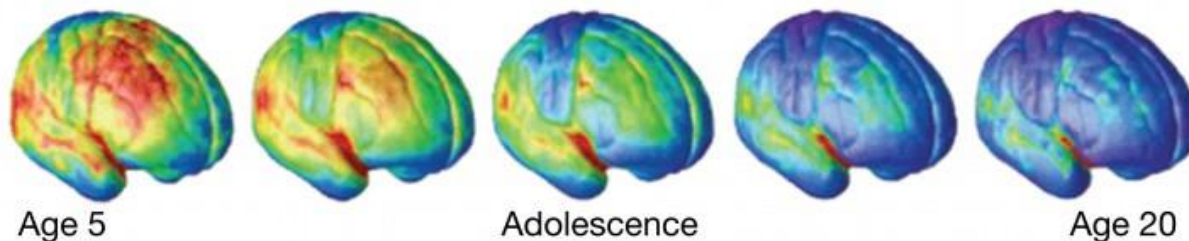
This bill specifies that the court shall consider specific mitigating factors of youth before sentencing a child who has been convicted as an adult. This section also specifies that if a court finds by “clear and convincing evidence” that during the previous year leading up to the commission of the offense by the child, the person against whom the offense was committed sexually abused or trafficked the child, the court may send the case back to the juvenile court for proper disposition.

The purpose of this bill is to ensure that judges give full consideration to the mitigating factors of youth and how children differ from adult offenders, and to give judges more options and greater flexibility when sentencing child sex crime and trafficking victims who have committed crimes against their abusers and traffickers.

## **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.

### **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.

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 until they’ve reach adulthood.

## **Adverse Childhood Experiences**

In the vast majority of all delinquent and criminal 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 48% have experienced 4 or more ACEs.

Nationally, approximately 73% of all juvenile justice involved girls have histories of physical and sexual abuse. This is known as the sex-abuse-to-prison-pipeline.

### **Sex Abuse & Trafficking**

In the United States, Child Protective Services estimates that 63,000 children are sexually abused each year. In the U.S., 1 in 9 girls and 1 in 53 boys under the age of 18 experience sexual abuse or assault at the hands of an adult, 93% of which are committed by an individual that the child knows. Children who are victims of sexual assault are four times more likely to become addicted to drugs, four times as likely to experience Post-Traumatic Stress Disorder, and three times more likely to experience a major depressive episode.

In 2015, the National Center for Missing and Exploited Children estimated that 1 in 6 endangered runaways are likely child sex trafficking victims and that approximately 100,000 U.S. children are sexually exploited every year. Child victims of sex trafficking are often subjected to physical and sexual abuse by their traffickers and the “johns” or “buyers” that exploit and rape them.

### **Traumatic Bonding and Post-Traumatic Stress Disorder**

The reasons why sexually abused or trafficked children may lash out against their offenders can be understood by examining psychological research. According to psychologist Dr. Michael Welner, abusers often make their victims undergo prolonged stages of grooming: (1) targeting the victim, (2) gaining the victim’s trust, (3) filling a need, (4) isolating the child, (5) sexualizing the relationship, and (6) maintaining control. According to Welner "...a skillful abuser, gets into the child's DNA and becomes a part of the child, and the child can't cast him off regardless of the age."

These grooming tactics lead to traumatic bonding, in which a victim develops a dysfunctional attachment to his or her abuser. Traumatic bonding is characterized by misplaced loyalty, and is found in situations of exploitative cults, incestuous families, or in hostage or kidnapping situations. Over the years, clinicians have referred to similar abnormal psychological attachments as “Stockholm Syndrome” and in the case of domestic violence, “Battered Person’s Syndrome,” which take place in different abusive situations.

This phenomenon, coupled with the fact that children’s brains are not fully developed, prevent them from understanding the consequences of their actions as it relates to individuals who have committed severe abuse against them. Children cannot control their emotions and impulses and cannot evaluate risks in the same manner as adults. In addition, children who suffer from repeated and brutal victimization often have no way of understanding that they could be incarcerated for an action that they believe is self-defense against their abuser.

### **Inadequacy of Self-Defense Claims**

While psychological research shows that children who have been victimized have real feelings of danger triggered by their abusers, the law does not always recognize this under the theory of self-defense.

A self-defense claim is usually valid in the law only when the individual feels that “the danger of being killed or suffering serious bodily harm is imminent” and the use of force was not “unreasonable and excessive.”

For many child victims of sex abuse or trafficking, they are not always in “imminent danger” under the legal definition when they commit crimes against their abusers. Sometimes these crimes are premeditated on the part of the child victim. Nevertheless, sound public policy should dictate that children who commit crimes against their abusers are provided with treatment and services, not criminal punishment. The child would not have committed a crime if it were not for the abuser having abused or trafficked the child in the first place. Therefore, the law should focus on treatment, not punishment, of the child victim.

### **The U.S. Supreme Court**

The Supreme Court has emphasized through its cases in *Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), and *Montgomery v. Louisiana* (2016) that **“the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.”** (Emphasis Added).

The Court has also found that, “only a relatively small proportion of adolescents” who engage in illegal activity “develop entrenched patterns of problem behavior,” and “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,” including “parts of the brain involved in behavior control.”

The Courts rulings in this area are especially relevant and helps to inform the need for judicial discretion and require judges to consider mitigating factors of youth at sentencing.

### **Racial Disparities**

Black children are disproportionately represented in the adult criminal justice system, comprising 58% of all children confined in adult prisons. In addition, roughly 83% of children prosecuted in the adult criminal justice system are racial minorities. Black children represent 87% of drug cases, 48% of property cases, and 63% of the public order offense cases where children are tried in the adult criminal justice system.

### **Conclusion**

Child status matters at sentencing. Human rights law and norms dictate that children must be treated differently than adults in the criminal legal system. This means sentencing children by different standards than we use for adults.

Children who commit crimes against their abusers are especially deserving of our support and compassion. They are categorically different than other types of offenders in the criminal legal system. Today we ask that you recognize these children as victims and give judges the flexibility to fashion an outcome that is more just and compassionate. These children deserve better. And we owe it to them to be better.

Child victims deserve our understanding, empathy, and love. They don’t deserve to be demonized and thrown away by the justice system.

As you consider this measure, I’d like you to ask yourself what if these children were your own son or daughter? What would you want done in cases like theirs?

Today we ask you to set a new standard and to protect the most vulnerable children in Maryland. We've failed these children too many times. Lets not fail again. You can make sure that we don't. Pass SB 769 and send an unmistakable message to child victims everywhere:

"We See You. We Hear You. We Will Protect You. And We Love You."

And for all children who are prosecuted as adults, send the message that their child status still matters.

It is for these reasons that we strongly encourage this committee to vote favorably on SB 769 to ensure child status is fully considered at sentencing and give judges greater flexibility in cases where child victims commit crimes against their abusers. Thank you for your consideration.

With hope,

A handwritten signature in black ink, appearing to read 'James L. Dold', with a long horizontal flourish extending to the right.

James. L. Dold  
CEO & Founder  
Human Rights for Kids

Below we've included a small sampling of stories from around the country of children who committed crimes against their abusers and traffickers. We hope their voices and stories illuminate the pressing need for SB 769. Our work is dedicated to them and we ask that you pass this measure in their honor.





# MARYLAND MATTERS

## Opinion: Md. Must Protect Child Trafficking and Sex Crime Victims in the Legal System

By Sara Kruzan

*The writer received a life sentence for killing her sex trafficker when she was 16 years old but is now free. This piece was submitted by the Washington, D.C., organization Human Rights for Kids.*

President Biden has declared January as [National Human Trafficking Prevention Month](#). Yet, some of the worst government-sanctioned human rights abuses are committed against child trafficking and sex crime victims right here in the United States.

I was in elementary school and only 11 years old when I met the man who robbed me of my childhood. Coming from a home and community where drugs and abuse were the norm, I was an easy target for a man with sinister intentions. From the time I was 13 years old until I was 16, I was a child sex trafficking victim who endured horrific abuse, rape and torture at the hands of my trafficker. I was eventually able to break free from the manipulative hold he had over me and returned shortly after that and killed him.

Despite being his victim of trafficking, sex abuse and rape, I was tried as an adult where none of the abuse and complex trauma I experienced throughout my childhood was admitted into evidence. The prosecution, the judge and the media depicted me as a sophisticated monster, the worst of the worst and sentenced me as such. The “justice” system sentenced me — a child sex trafficking and rape survivor — to life imprisonment without parole, plus four years, for killing the man who victimized me for nearly a third of my young life.

Injustices like this happen as a result of automatic transfer laws, as well as sentencing schemes that fail to center child status and trauma history when youth are tried as adults.

While I’m grateful that my sentence was commuted in 2013, I still spent nearly 20 years in prison. What happened to me was not justice. What has happened to other child sex trafficking victims like Alexis Martin and Cyntoia Brown, both of whom also received a life sentence for their involvement in the death of their trafficker and would-be rapist, is not justice. None of us should have been sent to prison in the first place — a far too common response for girls of color in our country — especially for actions taken against our abusers.

Imagine if we were your own daughter; how might you respond to the vile men who exploited and abused us? Is it so difficult to understand then how a 16-year-old girl, who was raped and abused and trafficked from the time she left elementary school, would end up killing the man who harmed her so? What should we do with her? Our answer to this question says a lot more about us than it does about her.

It is curious why a prosecutor would want to seek a life sentence for child sex trafficking victims who kill their rapists or traffickers, given what we know about traumatic bonding and the invisible chains that keep us bound in modern-day slavery. Yet, there has been little outrage for the too many child sex crime victims who are sitting in prison cells or awaiting prosecution for crimes committed against their rapists and traffickers.

The sad reality is that almost every girl who ends up in the juvenile or adult criminal legal system are victims of sexual or physical abuse, rape, human trafficking, domestic violence, or some form of severe trauma. Research has shown that 73% of girls experienced physical or sexual abuse prior to system involvement.

In addition, nearly one-third of girls in the juvenile justice system were sexually abused and nearly half experienced five or more Adverse Childhood Experiences (ACEs). Sexual abuse is one of the most common determining factors of girls becoming involved in the system. This sexual-abuse-to-prison pipeline, as Rights4Girls calls it, highlights a fundamental truth about youth delinquency and crime: unmitigated childhood trauma is the root cause for why children end up in the system to begin with. And yet, our justice system rarely recognizes or understands the impact that trauma has on children.

There is hope, however. The Maryland General Assembly has the opportunity this year to change the way that child victims like me are treated when they commit crimes. Senate Bill 165 by Sen. Jill Carter will end the practice of automatically charging children as adults, which will ensure that a juvenile court judge can properly weigh whether or not a child should be tried as an adult.

In addition, pending legislation by Sen. Susan Lee and Del. Lesley Lopez will require judges to consider child status, trauma history, and how children are different from adult offenders prior to sentencing. Their legislation will also create a presumption that judges should send cases involving child sex crime victims in situations like mine back to juvenile court for adjudication if they're convicted as adults. Such protections are known as Sara's Law, which is an initiative I started with the non-profit organization Human Rights for Kids.

I can think of no better way for the Maryland Legislature to show solidarity and support to child victims everywhere during Human Trafficking Prevention Month than by passing these reforms to ensure that what happened to me doesn't happen to any child in Maryland. Our children deserve care, not cages.

Source: <https://www.marylandmatters.org/2022/01/26/opinion-md-must-protect-child-trafficking-and-sex-crime-victims-in-the-legal-system/>

# 19-year-old Chrystul Kizer faces life in prison for killing accused pedophile who allegedly abused her

*Chrystul Kizer killed Randall Volar at his home after he allegedly raped her.*

By Karma Allen

December 18, 2019, 9:40 PM

A Wisconsin teenager is facing life in prison after admitting to killing an accused pedophile who [allegedly abused her and sold her to other men for sex](#).

Chrystul Kizer, now 19, admitted to killing 34-year-old Randall Volar at his home last year after she says he raped her, according to her attorneys.

The gruesome incident unfolded in Kenosha, Wisconsin, about 40 miles south of Milwaukee, in June 2018. Kizer allegedly shot Volar twice in the head, set his home on fire and then stole his luxury vehicle, authorities said.



*Chrystul Kizer is pictured during a hearing in the Kenosha County Courthouse, Nov. 15, 2019, in Kenosha, Wisc.*

Chrystul Kizer is pictured during a hearing in the Kenosha County Courthouse, Nov. 15, 2019, in Kenosha, Wisc.

When confronted by police, Kizer, who was 17 at the time, allegedly confessed to killing him because she was tired of him sexually assaulting her. She also alleged that he sold

her to other men for sex, which is why her attorneys say she should be protected under sex trafficking victim laws.

However, prosecutors said the law that protects those who are sex trafficked doesn't apply wholly in this case. They said they do not believe she was engaged in prostitution at the time of the crime and they don't believe her life was in danger at the moment.

Prosecutors also said they have evidence, including communications with Kizer's boyfriend and others, indicating that she plotted and planned the murder ahead of time.



*Chrystul Kizer is pictured during a hearing in the Kenosha County Courthouse, Nov. 15, 2019, in Kenosha, Wisc.*

Chrystul Kizer is pictured during a hearing in the Kenosha County Courthouse, Nov. 15, 2019, in Kenosha, Wisc.

She apparently even researched how to hide evidence and talked to some of the people around her about what she planned to do, prosecutors said.

Volar had been arrested and released four months before he was killed, court records show. At the time of his death, authorities were investigating Volar on child sex trafficking allegations and her attorneys said Kizer was one of his victims.

Kizer faces multiple felony charges, including first-degree intentional homicide, possession of a firearm and arson, court records show. She is currently being held on \$1 million bail.

The case is slated to go to trial in February. Kizer faces life in prison if convicted as charged.

Source: <https://abcnews.go.com/US/chrystul-kizer-19-faces-life-prison-killing-accused/story?id=67805720>

# The Boy Who Killed His Molester



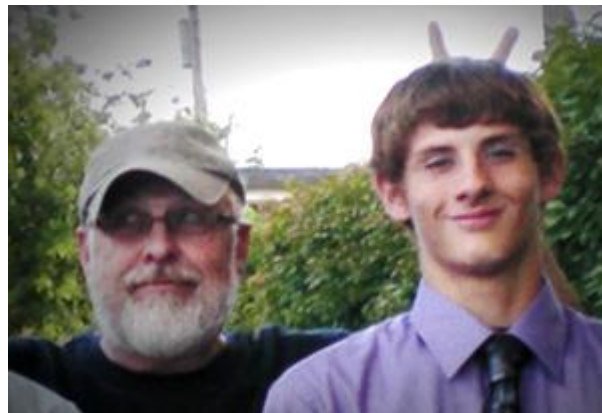
Published 10/18/2010

January 22, 2010, started off as a typical Friday for 16-year-old [Daniel Kovarbasich](#). That morning, his father drove his mother to work, dropping off Daniel at the home of close family friend Duane Hurley, who was supposed to take Daniel to school.

Thirty minutes later, Duane was dead. Daniel had stabbed him 55 times.

Immediately after the stabbing, Daniel frantically called his father, Terry. Terry raced to meet Daniel and found him standing on the street, his hands caked in blood. Inside the house, the scene was gruesome. Duane lay lifeless at the top of the stairs with blood splattered across his body, floor and walls.

Daniel claimed that Duane had attacked him, but that wasn't true. The real story would unfold over the next several months, revealing a horrifying secret: Daniel alleged that Duane had been grooming and sexually abusing him for more than three years—and no one had a clue.



Daniel was 12 when 52-year-old Duane Hurley first approached him outside a local elementary school. Daniel was charmed by Duane's dog, and when Duane returned a few days later asking if Daniel would watch the dog for a moment, he agreed. Five minutes later, Daniel says Duane returned and paid him \$30 for his help.

This was the start of the "grooming process," a calculated behavior that helps child molesters gain the trust of potential victims and, oftentimes, victims' families.

Initially, Daniel and his parents, Terry and Donna, were suspicious. "We got the information off the dog tag to go look [Duane] up online to see if he was a sex offender," Daniel says. "We didn't find anything."

So, when Duane began inviting Daniel over to his house to do odd jobs for money, his parents agreed—but they went to Duane's house with their son. "Duane welcomed us into his home and seemed very genuine," Terry says.

For the next year, both Terry and Donna accompanied Daniel on his visits to Duane's home. Over time, they began to treat Duane like part of the family. That's when things allegedly took a very dark turn.



Unbeknownst to the Kovarbasichs, Duane was skillfully grooming Daniel, as well as his parents.

"He'd buy me stuff," Donna says. "I'd say that I'm out of laundry detergent and have to wait until I get paid to get detergent. He would go out and buy detergent and bring it to me. I mean, he was a great guy. Who wouldn't like someone like this?"

Once the family was comfortable with him, Duane moved on to the next stage of the grooming process: lowering Daniel's inhibitions.

"He'd say stuff like, 'How many different ways can you say the word 'penis'?' " Daniel says. "[And] while I'd be using the bathroom, he'd walk by and open the door. He would also pee with the door open."

That's not all Duane did. He also let Daniel—who was too young to get a license—drive his sedan. To get the keys, Daniel says Duane asked him to expose his genitals. Then Daniel says Duane wanted to touch his penis. "After the touching," Daniel says, "I wanted to drive the Corvette. He [said], 'Bigger toys, bigger things.'"



After hearing about his sexual encounters with Duane, Oprah asks Daniel why he kept going back.

"I felt like I had to. Like I couldn't get away from him," Daniel says. "It was like it was my fault. I was the one who showed him my genitals, which started it, and he kept using that against me. ... If I didn't [go over to Duane's house], he'd come find me. If I tell him no, then he was going to say something."

Duane continued to sexually abuse Daniel, even though the teen says he told Duane to stop. Then, the abuse began to escalate.

Two weeks before he murdered Duane, Daniel fell asleep on Duane's couch. "He anally penetrated me that night," Daniel says. "I acted like I didn't know."

That's when Daniel says the rage and hate started to surface.



The last straw for Daniel came just before the murder, around the time he was planning a romantic anniversary celebration with his girlfriend. Duane saw another opportunity to seduce his young victim.

That Friday when Daniel came over to Duane's house before school, the two talked about the upcoming anniversary. "So all this [anniversary] stuff's going to cost...what?" Daniel says Duane asked.

"\$80," Daniel answered.

Then, Daniel says Duane responded. "You know this stuff isn't free, right?"

Daniel says he knew Duane wanted to have sex, and at that moment, he realized that the molestation was not going to stop.

"I just snapped," he says.



After Daniel snapped, he says he walked over to Duane picked up a nearby pickle jar and smashed him in the head. Then, he admits to stabbing Duane 55 times.

"Did you realize you had stabbed him that many times?" Oprah asks.

"No," Daniel says. "I had no idea."

A judge found Daniel guilty of voluntary manslaughter and aggravated assault. He was sentenced to five years probation and was ordered to stay in jail until the court finds him a therapy-based treatment facility.

At the sentencing, the judge read a quote from forensic psychologist Dr. Michael Welner: "A skillful groomer, a skillful abuser, gets into the child's DNA and becomes a part of the child, and the child can't cast him off regardless of the age."

Daniel could have spent a minimum of 15 years in prison if convicted of the original charge—murder. There are some people who feel the judge went too easy on the teen, but Daniel feels differently.

"Do you feel that the sentence was fair?" Oprah asks.

"I feel it was fair," Daniel says.





When Daniel finally came forward and accused Duane of molesting him, his parents were devastated.

"I was shocked that someone could get past my radar like that," Terry says. "And I was angry that this person deceived my whole family. He literally just took our innocence away."

"I was very upset," Donna says. "In my head, [Duane] was such a nice person, but he knew what he was doing."

Oprah asks Daniel what he'd say to other abused children who are feeling the same shame, guilt and rage that he felt. "You need to come out and say something, because it's not your fault," Daniel says. "No one is going to blame you. Man up."

Terry also has advice for children. "When anybody is giving you stuff that your parents don't want you to have and you think: 'Hey, this person's cool. He's giving me alcohol. He's letting me drive his car. He's the cool guy. My parents suck,' listen. Something's wrong."

Read more: <http://www.oprah.com/oprahshow/the-16-year-old-boy-who-killed-his-molester/all#ixzz5hDRQyl2r>

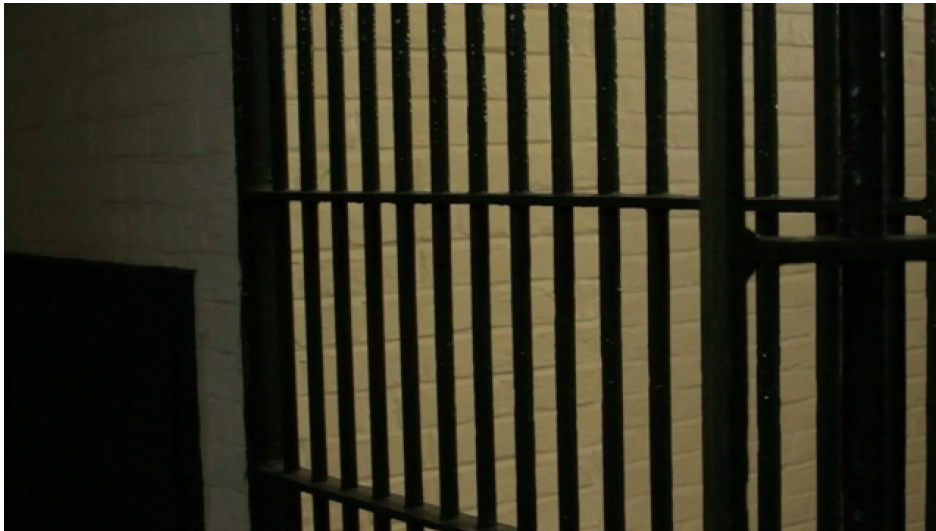
# Should 'forced sex slave' get a break in her pimp's death?

Man was killed during robbery 5 years ago

**Posted:** 12:23 PM, May 06, 2018

**Updated:** 12:23 PM, May 06, 2018

**By:** Andrew Welsh-Huggins | Associated Press



COLUMBUS, Ohio -- No one disputes that a 15-year-old Ohio girl involved in the slaying of a man during a robbery five years ago was at one time, in the words of the state's Supreme Court chief justice, "a forced sex slave." What is up for debate before the Ohio Supreme Court is the impact of the girl's prostitution on her role in that killing.

The defendant, Alexis Martin, and her attorney argue that a juvenile judge made a mistake when Martin's history of sex trafficking wasn't adequately explored at a hearing that determined whether the girl should be charged as an adult.

The Associated Press doesn't normally identify victims of sexual assault or juveniles charged with crimes. In this case, Martin has been frequently identified in the media and court documents and doesn't have a problem with being named, her attorney said.

Investigators say Martin and a female friend came up with the robbery plan with two other men. The victims were Martin's pimp and his brother. The girls were having sex with the victims to distract them when the robbers entered a house and the victims were shot, according to court documents. Martin is not accused of firing a gun.

Martin's lawyer, Jennifer Kinsley, says the juvenile court judge should have determined that Martin was covered by a 2012 Ohio law that protects children whose crimes are related to their status as trafficking victims.

Had the judge determined that the so-called Safe Harbor law applied, a court-appointed guardian for the girl could have been named, and that person could have investigated the full extent of the girl's history of prostitution, Kinsley says.

There were plenty of warning signs, including the girl's call to a probation officer when she was 14, saying she'd been kidnapped and taken to Cincinnati and forced to perform exotic dances, Kinsley told justices this year.

The girl "is a crime victim. She was being raped and sold for sex," she said.

Ultimately, the judge determined the girl could not be rehabilitated in the juvenile court system and transferred her to adult court, where she pleaded guilty to murder and other charges. Now 19, she's serving 21 years to life.

Kinsley wants the Supreme Court to order the case back to juvenile court.

The Summit County prosecutor's office is challenging the girl's appeal, saying her activity the day of the robbery is separate from her history as a prostitute.

Neither Martin nor her attorney at the time raised the Safe Harbor law, and Martin's case was properly moved to adult court because of the seriousness of the crime and questions about whether Martin could be properly rehabilitated at the juvenile level, according to Richard Raley, a Summit County assistant prosecutor.

During oral arguments in January, Chief Justice Maureen O'Connor asked Raley to clarify the status of Martin's sexual activity before the crime and the day of.

"She was having sex with one of these men, at the time of the robbery, and that was separate and distinct from her activity of being a forced sex slave?" O'Connor said. Raley said that was the case from the state's perspective.

A court decision isn't expected for weeks.

Several organizations fighting human trafficking have asked the court to side with Martin, including Case Western Reserve University's Human Trafficking Law Clinic; the Ohio State law school's Justice for Children Project; and the Washington, D.C.-based Human Trafficking Pro Bono Legal Center.

Source: <https://www.wcpo.com/news/state/state-ohio/should-forced-sex-slave-get-a-break-in-her-pimps-death>

# **Testimony SB 769 Watts.pdf**

Uploaded by: Kimberlee Watts

Position: FAV



**PAUL DeWOLFE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
DIRECTOR OF POLICY AND DEVELOPMENT

**KRYSTAL WILLIAMS**  
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

**ELIZABETH HILLIARD**  
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 769 (CROSS-FILED WITH HB754)**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable With Amendments**

**DATE: March 2, 2022**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on SB769, as amended by the Sponsor

The U.S. Supreme Court has repeatedly held that “youth is more than a chronological fact” and the most severe penalties should not be “imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”<sup>1</sup> This bill gives judges needed guidance for determining what factors to weigh when examining the diminished culpability of young people.

The hallmark of all children, including early adolescents (age 11-14) and late adolescents (age 14-18), is that their brains are still growing and changing. Those changes continue through late adolescence and into early adulthood.<sup>2</sup> A simple truth most of us recall: adolescence is a time of heightened sensation-seeking and risk-taking behavior where the opinions of our peers has an outsized, heightened importance.<sup>3</sup> Over the past 25 years, neuroscientists have gained a more full understanding of the biological basis for these adolescent behaviors.<sup>4</sup> Specifically the prefrontal

<sup>1</sup> *Roper v. Simmons*, 543 U.S. 551, 570 (2005)

<sup>2</sup> Brief for the American Medical Association and the American Academy of Child and Adolescent Psychiatry as *Amici Curiae* in Support of Neither Party, *Graham v. FL*, Nos. 08-7412, 08-7621 (hereinafter *AMA Graham Brief*), 15, citing B.J. Casey et al., *The Adolescent Brain*, 28 *Developmental Rev.* 62, 68 (2008). See also, Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 *Proc. Nat’l Acad. Sci.* 8174, 8177 (2004); Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 *Nature Neurosci.* 861 (1999); Elizabeth R. Sowell et al., *Development of Cortical and Subcortical Brain Structures in Childhood and Adolescence: A Structural MRI Study*, 44 *Developmental Med. & Child Neurology* 4 (2002); Elizabeth R. Sowell et al., *Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation*, 21 *J. Neurosci.* 8819 (2001); Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 *Nature Neurosci.* 859 (1999).

<sup>3</sup> Need CITE

<sup>4</sup> The biological processes of myelination and gray matter pruning are visible neurologic processes that demonstrates the measurable differences between the brains of adolescents and adults.—Myelination is a process through which myelin (a fatty substance, and the brain’s “white matter”) coats the neuron axons that carry information throughout

cortex, and limbic and paralimbic systems are acting as competing systems during adolescence. The pre-frontal cortex is the part of our brain that enables us to intentionally control our emotional responses, and engage in planning and organization by assessing risk, evaluating potential rewards and consequences, and controlling our impulses.<sup>5</sup> While the cognitive and executive functioning areas of the adolescent brain are weak and underdeveloped; areas of the brain's limbic and paralimbic system associated with impulsivity and emotion are intensely active. For example, the amygdala, which detects and initiates reactions to perceived danger, is often more highly active in children and adolescents, resulting in adolescents engaging in disproportionate fight or flight responses.<sup>6</sup> In other words, at the same time, the adolescent's prefrontal cortex is not developed enough to override and control signals from the amygdala, the amygdala is more actively directing the child to act aggressively than will be the case in adulthood.

I have seen this play out in many of my cases, but most recently in that of my client Andrew Zaragoza. This committee heard some of his testimony on February 10 in support of HB94, but to briefly summarize, when Andrew stood up to his sexually abusive mother and told her he was calling child protective services, she stabbed him. Andrew had never physically fought back when his mother molested him on other occasions, but after years of abuse he could not take it any more. This occasion was different because in his words "I just wanted her to stop and I was afraid she was going to kill me." As an adolescent, his amygdala would have been over-producing the hormones (cortisol and adrenaline) that cause the physical sensations that tell us we are in danger,<sup>7</sup> while his under-developed pre-frontal cortex would have had more difficulty accurately assessing when the danger was over. After his mother stabbed him in the chest, he picked up a hammer laying on a nearby dresser and hit her in the head. Andrew's mother

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the brain and nervous system.—Like an insulated wire, an axon without myelin, can not transmit information reliably and quickly from one part of the brain to another. AMA *Graham* Brief, 23, citing Elkhonon Goldberg, *The Executive Brain: Frontal Lobes & the Civilized Mind* 144 (Oxford Univ. Press, 2001). Gray matter is composed of neurons on the brain's surface that "perform the brain's tasks." AMA *Graham* Brief at 19. Magnetic resonance imaging has vastly improved neuroscientific understanding of the pruning process and its relationship to executive functioning. *Id.* at 20. There is an observable "blossom[ing]" of gray matter during adolescence that then decreases. *Id.*, citing Robert F. McGivern et al., *Cognitive Efficiency on a Match to Sample Task Decreases at the Onset of Puberty in Children*, 50 *Brain & Cognition* 73, 85 (2002); Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 *Nature Neurosci.* (1999). Pruning down gray matter leads to greater efficiency of neural processing and strengthens the brain's ability to reason and consistently exercise good judgment. Robert F. McGivern et al., *Cognitive Efficiency on a Match to Sample Task Decreases at the Onset of Puberty in Children*, 50 *Brain & Cognition* 73 (2002) (subjects of study aged 10 to 22 years); B.J. Casey et al., *Structural and Functional Brain Development and Its Relation to Cognitive Development*, 54 *Biological Psychol.* 241, 241 (2000) ("findings are consistent with the view that increasing cognitive capacity during childhood coincides with a gradual loss rather than formation of new synapses"); see also Daniel J. Siegel, *The Developing Mind: Toward a Neurobiology of Interpersonal Experience* 13-14 (Guilford Press 1999).

<sup>5</sup> Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 *Nature Neurosci.* 859, 860 (1999).

<sup>6</sup> Brief for the American Medical Association and the American Academy of Child and Adolescent Psychiatry as *Amici Curiae* in Support of Neither Party, *Graham v. FL*, Nos. 08-7412, 08-7621, citing, *inter alia*, Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 *J. Am. Acad. Child & Adolescent Psychiatry* 1, 1 (1999); William D.S. Killgore & Deborah Yurgelun-Todd, *Activation of the Amygdala and Anterior Cingulate During Nonconscious Processing of Sad Versus Happy Faces*, 21 *Neuroimage* 1215 (2004).

dropped the knife she used to stab him, and because she was still screaming that she was going to kill him, he picked up that knife and stabbed her. The State's Attorney argued stabbing her was evidence of premeditation. But as a 16 year old, and in that moment of panic, Andrew couldn't see – the way an older person may have - that at that point it might be safe to run. I say might, because none of us ever really knows what it's like to be in a situation like that, and it's impossible to truly know when someone else would, in fact, have been safe- even in hindsight.

The jury found Andrew not guilty of First Degree (premeditated) Murder, but found him guilty of Second Degree Murder (without premeditation or deliberation). Interestingly, one of the questions asked by the jury was whether someone is permitted to use lethal force to defend against a sexual assault. At sentencing the Judge was presented with information about his youth and its attendant characteristics, and sentenced him to serve 15 years (half of the then statutory maximum) and recommended the DOC's Patuxent Youth Program, which is where he is currently housed.

The judge in Andrew's case was not required to specifically consider his youth. This bill would require a judge to examine a child victim who commits a crime capacity for rehabilitation, their ability to appreciate risks and understand the consequences of their actions, their prior exposure to adverse childhood experiences and trauma, and to make a record of how those considerations impacted the sentence imposed.

Although neither peer nor familial pressure were present in Andrew's case, I have represented more children than I can remember for whom this was a factor in the commission of their criminal acts. I have represented children who were breaking into cars in order to steal items that parents would then pawn. I have represented children who sold drugs in order to financially support their parents and siblings because part time minimum wage jobs don't earn enough income. As police often say, drug dealing and guns go hand in hand; and some of those children have shot people when those drug deals have gone awry.

As a juvenile defender, I know the mere presence of peers is a factor in the commission of many criminal acts. For example, I have represented kids who were part of a group when one member of the group decided to demand money, cell phones, and in one instance Pokémon cards, from another kid. In some of those situations the complainant felt surrounded by the group of kids and that fear of being surrounded was enough to make them give up the item in question. In some situations one of the group punched the complainant, or displayed a weapon that some of the other members of the group didn't know he had. When I ask my clients questions like why they didn't do choose a different course of action, stand up to their friend, or simply walk away, the answers are often "I don't know" and "I didn't think of that." Peer influence is a factor in those cases. I say peer influence rather than peer pressure because studies have determined that no actual pressure need to be applied in order for kids to feel the effects of peer pressure. "Strikingly, mere awareness that peers were watching encouraged risky behavior among juveniles, but not adults."<sup>8</sup> Neuroimaging also shows different activation in different brain areas across the experimental variables. Adults showed significantly greater activation in brain regions involved in executive

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<sup>8</sup> *Brief for the American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amici Curiae in Support of Petitioners, Miller v. Alabama*, 567 U.S. 460132 S.Ct. 2455 (2012) (Internal citations omitted).

functions and the regulation of impulses, whether or not they were being observed by peers. By contrast, adolescents showed significantly greater activation in brain areas associated with reward processing when they were told that their peers were watching than when they were not being observed.<sup>9</sup> This is true of even our best and brightest adolescents and young adults- as a study among college students learned.<sup>10</sup>

This means that even our best, most well behaved, and brightest, most-resourced, adolescents will sometimes make bad decisions when with their friends without being able to articulate why they did them or why they didn't do something differently. The majority of children I represent have mental illness, or intellectual disabilities, or experience adverse childhood experiences like living in chaotic homes and under-resourced, over-policed, and unsafe neighborhoods. For those children, the realities of an adolescent brain combined with peer influence is a recipe for poor decision making that can be addressed through rehabilitative services.

The factors outlined in HB754 have real and tangible meaning for children who commit criminal acts. These factors can, and should, be considered by sentencing judges for all children. HB 754 acknowledges that youth, especially those who have been abused and neglected, should be offered treatment and rehabilitation instead of retribution and incarceration. Understanding that long-term results for youth who commit even serious crimes are best achieved in the youth justice system, our support is contingent on amending the bill to remove subsection (C)(3) (page 3, lines 8-15) to match the text of SB769. This amendment would reflect the available research, and would achieve the goals of rehabilitating instead of punishing trauma-exposed youth. Without the amendment, this bill will create a new pathway to incarcerate vulnerable youth in Maryland. Given that imprisoning children makes us all less safe, this is something we should avoid at all costs.

**Submitted by: Government Relations Division of the Maryland Office of the Public**

**Defender.**

**Authored by: Kimberlee D. Watts, Forensic Mental Health Division, 410-767-9855,**

**Kimberlee.watts@maryland.gov**

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<sup>9</sup> Chein J, Albert D, O'Brien L, Uckert K, Steinberg L. Peers increase adolescent risk taking by enhancing activity in the brain's reward circuitry. *Dev Sci.* 2011 Mar;14(2):F1-10. doi: 10.1111/j.1467-7687.2010.01035.x. PMID: 21499511; PMCID: PMC3075496. Smith, A. R., Chein, J., & Steinberg, L. (2014, January 20). Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes Are Known. *Developmental Psychology.*

<sup>10</sup> Jason Chein, *Peers and Adolescent Risk Taking*, Emerging Trends in the Social and Behavioral Sciences. John Wiley and Sons, 2015).



**MAYSB - SB 769 FAV - Minors to Juvenile Court.pdf**

Uploaded by: Liz Park

Position: FAV



*"Being here for Maryland's Children, Youth, and Families"*

**Testimony submitted to Senate Judicial Proceeding Committee**

**March 3, 2022**

**SB 769 - Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court Support**

The Maryland Association of Youth Service Bureaus (MAYSB), which represents a network of Bureaus in the State of Maryland, supports SB 769 Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court with an amendment to delete the section that creates a blended sentence (see below).

Youth Service Bureaus provide prevention, intervention and treatment services to youth and their families. SB 769 will ensure courts determining the sentences for a minor convicted as an adult consider the many factors that may have contributed to the minor's actions and to the level of involvement of the minor in the actions taken. MAYSB believes this bill supports the State's efforts to acknowledge the research on adolescent brain development and that recognition that the brain is not fully developed until age 24 or 25. MAYSB supports a justice system that is developmentally informed and urges a favorable finding with amendment.

This bill will require court to consider factors such as: the age of the minor at the time of the offense, the capacity of the minor for rehabilitation, the minor's family and community environment, the minor's ability to appreciate risks and understand the consequences of actions, the intellectual capacity of the minor, the level of participation of the minor in the offense, the minor's prior exposure to adverse child experiences (ACES), and the trauma history of the minor, etc. The consideration of these factors recognizes that youth are impacted by the environments in which they live and by the trauma they have experienced.

Adolescent brain research findings show that brains are not fully developed until people reach their mid-twenties. The last portion to fully mature is the frontal and temporal lobes of the brain, where the processes of thought and memory are based. This supports the foundation of a justice system highlighting the need for minors to be treated differently from adults when they come into contact with the system and at time of sentencing. We ask for a favorable report.

Respectfully Submitted:

Liz Park, PhD  
MAYSB Chair  
[lpark@greenbeltmd.gov](mailto:lpark@greenbeltmd.gov)

1 Somerville LH, Casey BJ. Developmental Neurobiology of Cognitive Control and Motivational Systems. Sackler Institute for Developmental Psychobiology, Weill Cornell Medical College, NY, USA.

# **OPD Written Statement on SB 769 - Minors Convicted**

Uploaded by: Michal Gross

Position: FAV



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PUBLIC DEFENDER

**KEITH LOTRIDGE**

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ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 769 Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: March 2, 2022**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 769.

Youth charged within the justice system, and especially youth excluded from juvenile court jurisdiction because they have been charged with serious crimes, are likely to have experienced severe trauma. Children who come into conflict with the law often contend with early childhood trauma and unmitigated adverse childhood experiences such as psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who struggle with substance abuse, suffer from mental illness or are suicidal, or are formerly incarcerated.<sup>1</sup> 90% of children in the juvenile justice system have experienced at least two adverse childhood experiences; 28% of boys and 46% of girls have experienced at least five adverse childhood experiences.<sup>2</sup>

Those experiences, when combined with youth, can cause extreme reactions to threats, whether perceived or real.

“Battered children, unlike those children who are not abused, live in an environment where abuse is commonplace and may occur at anytime with or without warning. Battered children, therefore often appear to be what researchers have termed as ‘hypervigilant.’ Such a hypervigilant child is acutely aware of his or her environment and remains on the alert for any signs of danger, events to which the unabused child may not attend. The child’s history of abusive encounters with his or her battering parent leads him or her to be overly cautious and to perceive danger in subtle changes in the parent’s expressions or mannerisms.”<sup>3</sup>

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<sup>1</sup> *Adverse childhood experiences (ACEs)*, Administration for Children and Families, U.S. Department of Health and Human Services, available at <https://www.childwelfare.gov/topics/preventing/overview/framework/aces/#:%7E:text=ACEs%20include%20all%20types%20of,family%20going%20through%20a%20divorce>

<sup>2</sup> Baglivio, Michael T., et al. *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, OJJDP Journal of Juvenile Justice, Volume 3, Issue 2, (Spring 2014).

<sup>3</sup> Steven R. Hicks, *Admissibility of Expert Testimony on the Psychology of the Battered Child*, 11 Law & Psychol. Rev. 103, 103 (1987).

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Elizabeth Hilliard, [elizabeth.hilliard@maryland.gov](mailto:elizabeth.hilliard@maryland.gov) 443-507-8414; or Michal Gross, Assistant Public Defender and subject matter expert, [michal.gross@maryland.gov](mailto:michal.gross@maryland.gov).

That “hypervigilance” means that these children may “perceive an imminent threat of immediate danger” where outside observers would not.<sup>4</sup> Behaviors that seem “relatively benign to others” may nonetheless be recognized by the child as “signal[ing] the imminence of . . . [an] assault.”<sup>5</sup> Rather than being a path to safety, reporting the violence to authority figures, such as police officers or teachers, is perceived by a children exposed to trauma and adverse childhood experiences as a path to escalated abuse; child victims of sex trafficking often “do not seek help or resist intervention from law enforcement or social service organizations because they do not know their rights, they feel ashamed, they are reluctant to admit to victimization, or they fear their traffickers.”<sup>6</sup> In combination, those elements — continuing and escalating abuse, the impossibility of escape, and a feeling of desperation and helplessness — “may lead a battered child to strike back against an abuser in self-defense.”<sup>7</sup>

Confining these traumatized youth in adult prisons and jails puts them at a particular risk for harm. Because adolescents are in a formative developmental stage, their social context is likely to shape the trajectory of their future lives. “Prisons have been characterized as developmentally toxic settings for adolescents; they contain none of the attributes of a social environment that are likely to facilitate youthful progress toward completion of the developmental tasks that are important to functioning as law-abiding adults.”<sup>8</sup> Confining youth in prisons with adults can increase their risks for recidivism; youth are not separated from adult offenders in the Division of Corrections and are subject to a “contagion effect” of deviant behavior that can further exacerbate a delinquent mindset.<sup>9</sup>

Youth incarcerated in the adult correctional system are also at particular risk for further trauma. Congress enacted the Prison Rape Elimination Act specifically to address the high incident of sexual occurring in prisons and jails across the country, with particular concern for detained youth who are especially vulnerable to abuse. “Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities – often within the first 48 hours of incarceration.”<sup>10</sup> Youth make up 7.7% of all victims of substantiated acts of sexual violence in prison and jails carried out by other inmates, even though they made up less than 1% of the total detained and incarcerated population.<sup>11</sup> “[M]ost adult jails or prisons are ill-equipped to meet the needs of children or keep them safe. They are **much more likely to commit suicide** in an adult jail than in a juvenile facility. They are also **five times as likely to be sexually abused or raped** as they would be in a juvenile facility. Some of these youth are confined in facilities along with adults, where they may witness as well as be the target of violence.”<sup>12</sup> These risks are exacerbated when youth are “housed in solitary confinement to protect them from adults....Nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement. A 2002 investigation by the

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<sup>4</sup> *State v. Smullen*, 380 Md. 233, 273 (2004).

<sup>5</sup> Hicks, *supra*, at 142.

<sup>6</sup> *Report of the Attorney General’s National Task Force on Children Exposed to Violence* at 188, available at <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

<sup>7</sup> Hicks, *supra*, at 103

<sup>8</sup> *Reforming Juvenile Justice: A Developmental Approach*, Committee on Assessing Juvenile Justice Reform, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, National Academy of Sciences, available at <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>, at 134 (internal citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> 34 U.S.C. §30301(4)

<sup>11</sup> Nat’l Prison Rape Elimination Comm’n Report at 155-156, available at <https://www.ncjrs.gov/pdffiles1/226680.pdf> at 19.

<sup>12</sup> *Defending Childhood: Protect, Heal, Thrive*, at page 190 (emphasis added) (internal citations omitted).

U.S. Department of Justice showed that juveniles experience symptoms of paranoia, anxiety, and depression even after very short periods of isolation.”<sup>13</sup>

Understanding that youth are at a particularized risk if incarcerated with adults, the report of the Attorney General’s National Task Force on Children Exposed to Violence recommends prosecuting young offenders, especially those who have been exposed to trauma, in the juvenile system instead of transferring their cases to adult courts.

“Too often, these children are labeled as “bad,” “delinquent,” “troublemakers,” or “lacking in character and positive motivation.” Many commit violent acts and enter the criminal justice system. However, enormous strides have been made in developing effective ways of interrupting the cycle of violence ... **We should stop treating juvenile offenders as if they were adults, prosecuting them as adults in adult courts, incarcerating them as adults and sentencing them to harsh punishments that ignore their capacity to grow.** When properly screened, assessed, and provided with trauma-informed care and evidence-based trauma specific treatment, children who have been exposed to violence and are in trouble with the law have the capacity to grow, mature and become productive citizens.”<sup>14</sup>

The federal directive is even clearer when youth have been subjected to sexual trauma: “Help, do not punish, child victims of sex trafficking.”<sup>15</sup>

Research has shown that youth, even when charged with very serious crimes, are receptive to rehabilitative services. “[M]ost violent juvenile offenders could be successfully rehabilitated through intensive treatment in small secure juvenile facilities.”<sup>16</sup> Youth have lower recidivism rates when offered treatment within the youth justice system instead of the punitive approach of the adult correctional system: “Although supporters of the punitive reforms of the 1990s argued that getting tough on juvenile offenders was necessary to protect the public, developmental knowledge indicates that punishing juveniles as adults is not likely to reduce recidivism and is likely to increase the social cost of juvenile crime.”<sup>17</sup>

The National Academy of Sciences, after two years studying the youth justice system and its response to adolescent brain development research, published a Report on Reforming Juvenile Justice. That Report is clear in its directive that youth should be treated different than adults:

“[i]t does not follow, however, that the mechanisms of accountability for juveniles should mimic criminal punishments. Condemnation, control, and lengthy confinement (“serving time”), the identifying attributes of criminal punishment, are not necessary features of accountability for juveniles. The research demonstrates that, if designed and implemented in a developmentally informed way, procedures specifically designed for holding

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 124 (emphasis added)

<sup>15</sup> *Id.* at 23

<sup>16</sup> Fagan, Jeffrey, et al. “System Processing of Violent Juvenile Offenders: An Empirical Assessment,” In Robert A. Mathias, Paul DeMuro, and Richard S. Allinson (eds.) *Juvenile Offenders – An Anthology*. San Francisco: National Council on Crime and Delinquency (1984) pages 117-136

<sup>17</sup> *Reforming Juvenile Justice: A Developmental Approach*, at 134.

adolescents accountable for their offending can promote positive legal socialization, reinforce a prosocial identity and facilitate compliance with the law. However, unduly harsh interventions and negative interaction between youth and justice system officials can undermine respect for the law and legal authority and reinforce a deviant identity and social disaffection.”<sup>18</sup>

The Report goes on to inform that, “[b]oth proportionality and prevention support a policy of retaining youth in the juvenile justice system; adult prosecution and punishment should be uncommon.”<sup>19</sup>

SB 769 acknowledges that youth, especially those exposed to trauma, should be offered treatment and rehabilitation instead of punishment and incarceration. Understanding that long-term results for youth who commit even serious crimes are best achieved in the youth justice system, this bill would achieve the research-driven goals of rehabilitating instead of punishing trauma-exposed youth.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 769.**

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

**Authored by: Michal Gross, [michal.gross@maryland.gov](mailto:michal.gross@maryland.gov)**

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<sup>18</sup> *Reforming Juvenile Justice: A Developmental Approach* at 4-5.

<sup>19</sup> *Id.* at 134

**SB769\_FAV\_Lee\_2022.pdf**

Uploaded by: Susan Lee

Position: FAV



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MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on  
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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

March 3, 2022

Senate Judicial Proceedings Committee

**SB769 - Favorable – Minors Convicted as Adults – Sentencing – Transfer to Juvenile Court**

Senate Bill 769 is a reasonable and thoughtful way to apply justice in circumstances where the law provides punishments that do not fit the crimes when child victims of sex crimes commit serious offenses against their abusers. There is a limit of one year from the time of the abuse, so this is not a green light to hurt your abuser, rather, it provides no protection from adult prosecution. What it does allow for is the mitigating factors of the abuse the youth suffered to be considered for sentencing and have the appropriate standards apply in the sentencing process.

Adverse childhood experiences (ACEs) are more than a catchphrase when it comes to the juvenile justice system, especially concerning victims of sex crimes. Studies have shown that approximately 90% of children in the juvenile justice system have experienced at least 2 ACEs, and 48% have experienced 4 or more. The population we are discussing under this bill, specifically youth victims of sex crimes, is self-evidently above the high end of these broader studies. Consider nationally that 73% of all juvenile justice involved girls have histories of physical and sexual abuse. In combination with traumatic bonding and post-traumatic stress disorder, children with undeveloped brains cannot control their emotions and impulses and cannot evaluate risk the same as adults. These mitigating factors must be considered at sentencing for these specific children for these specific crimes against their abuser.

Senate Bill 769 is not a safe harbor bill, such as the one you will hear next week for non-violent crimes, but this bill does cover the similar population of child victims of sex crimes. Maryland does not have a real duress defense for coercive circumstances, so short of a complete defense,

this bill is asking for the reasonable application of sentencing for youth victims of sex crimes – only for crimes against those who abused them, within one year of that abuse, which has to be proven by clear and convincing evidence.

You will hear from victims of abuse who later were victims of the criminal justice system. They can tell their stories best but the common denominator is that the law is not flexible enough to allow judges and prosecutors to dispense justice, and not just the brutal force of inflexible laws.

The opposition shows little interest in understanding the intent and justice behind this legislation. What incentive do people have to cooperate with police beyond sentencing a victim of child sexual abuse to a harsh penalty? I think there are other motivations that are more important, and the status quo is grossly unjust and ineffective at inducing cooperation. I'm not sure they read the language of the bill as their application only applies against the abuser of sexual abuse of that specific youth victim. Were any of the FOP examples relevant here?

The Judiciary missed the language they reference at (c)(3)(ii) does not even exist in the Senate Bill. We hope they will communicate their revised analysis after the hearing as we are aware they don't provide oral testimony to defend or clarify their written claims.

The intent of this legislation and the actual language contained in this bill simply allow the sentencing judge to consider the mitigating factors of child victims of sex crimes when they commit a crime against their abuser. We can resolve real and perceived technicalities, for these children and for justice generally.

For these reasons I respectfully request a favorable report on SB 769.

**SB 769 - UNFAV - OPP.pdf**

Uploaded by: Gavin Patashnick

Position: UNF



## Maryland State's Attorneys' Association

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Rich Gibson  
President

Steven I. Kroll  
Coordinator

**DATE:**                   **March 3, 2022**

**BILL NUMBER:**       **SB 769**

**POSITION:**           **Oppose**

The Maryland State's Attorney's Association (MSAA) opposes SB 769.

SB 769 adds multiple provisions to Criminal Procedure Article § 6-235 that are confusing, create the possibility of unnecessary litigation, and duplicates established procedures.

Current law under Criminal Procedure Article § 6-235 provides that no juvenile tried in adult court shall be given the sentence of life without parole and allows the Court the discretion not to impose any minimum sentence required. SB 769 creates new criteria of at least thirteen items that the Court shall consider when sentencing a minor in adult court. This procedure adds to an already complex landscape of juvenile transfer laws and is unnecessary.

Pursuant to Criminal Procedure Article § 4-202, a youth has the ability to file for a transfer from adult court jurisdiction to juvenile court jurisdiction. In deciding whether to grant a transfer, a court must consider five statutory factors: (1) the age of the child; (2) the child's physical and mental condition; (3) the child's amenability to treatment in any institution, facility, or programs available to delinquents; (4) the nature of the offense(s); and (5) public safety. To assist in the consideration of these factors, the transfer statute provides for a Court ordered study, usually conducted by the Department of Juvenile Services ("DJS"), that "concern[s] the child, the family of the child, the environment of the child, and other matters concerning the disposition of the case."

Further, if a transfer hearing is denied and a youth is convicted in adult court, they may also have the opportunity to file for **another** transfer under Criminal Procedure Article § 4-202.2, which includes the same factors and standards outlined in Criminal Procedure Article § 4-202. Should a defendant prevail under this statute, the case is sent to juvenile court for disposition.

Conversely, when jurisdiction begins in juvenile court, the State may file a waiver under Courts and Judicial Proceedings Article § 3-8A-06 which involves the movement of jurisdiction from juvenile to adult. A Court must consider the same five statutory factors as in a transfer and a similar study is produced. In waiver hearings, the burden of persuasion falls to the State to prove to a Court by a preponderance that "the child is an unfit subject for rehabilitative measures."

Recently, the Court of Appeals further altered the manner in which courts decide transfer hearings in *Davis v. State*, 474 Md. 439, 255 A.2d 56 (2020) by placing significant weight on the “amenability” factor, noting that: “[t]he five considerations are not in competition with one another. They all must be considered but they are necessarily interrelated and, analytically, they all converge on amenability to treatment.” Guided by this principle, the Court married the factors into an assessment of “amenability” as follows: (1) are there programs available for the specific needs of the defendant; (2) would the defendant benefit from the available programs more than what’s available in the adult system; and (3) whether that would reduce the likelihood of recidivism and make the child a more productive law-abiding person.

In practice, this edict from the Court of Appeals requires intensive studies of the psychological, physical and environmental conditions of the subject defendant/respondent. DJS, recognizing their repeated mention in the *Davis* opinion, responded with a policy that involved the expansion of the Transfer Summary to include an analysis by an “Assessment Staffing Team” that will include a psychological evaluation of the youth prior to the transfer/waiver hearing. The goal is for the Team to answer the “what are the specific needs” and the “what’s available” questions.

In short, SB 769 duplicates already existing procedures and case law that provide a wealth of psychological, environmental and personal information to a court which facilitate decisions and provide pathways to the juvenile justice system. The addition of yet another series of factors complicates established law. Further, SB 769 sets up a dynamic wherein a juvenile could be waived to the adult system and then have an identical hearing following conviction. Such a result is clearly illogical.

# **Minors sentencing Annapolis 2022 SB769.pdf**

Uploaded by: Ryan Massey

Position: UNF

**Bill Number: SB 769**

**Ryan Massey, Former-Homicide Detective, Baltimore County Police**

**Department Opposed**

**WRITTEN TESTIMONY OF RYAN MASSEY**  
**BALTIMORE COUNTY POLICE DEPARTMENT/FOP LODGE 4**  
**IN OPPOSITION OF SENATE BILL 769**  
**MINORS CONVICTED AS ADULTS SENTENCING**  
**TRANSFER TO JUVENILE COURT**

I write in opposition of Senate Bill 769 because it is not cogent with public interest. Juveniles convicted of a crime that was deemed to be dangerous enough that the juvenile was convicted as though they were an adult, should receive the penalty of an adult. With crime raising around the country, this is not the time to lessen the penalty for the most serious crimes committed by juveniles. Having these juveniles sentenced in juvenile court sends the message that there are not substantial penalties for committing serious crimes, as the juvenile court only has jurisdiction of an offender until they turn 21 years old.

The Supreme Court of the United States has ruled that the only sentence that is inappropriate for a juvenile is Life without the possibility of Parole. The court has upheld other sentences, including lengthy ones given to juveniles convicted as adults. Passage of this legislation would incentivize committing the most heinous crimes i.e., Rape, Murder, Robbery, Carjacking, etc. because they would face less jail time than some misdemeanors committed by adults. Additionally, there would be no mechanism to place the juvenile on Parole or Probation upon release as I indicted previously, the jurisdiction of Juvenile Court ends when the juvenile turns 21.

The following are cases that the Baltimore County Police Department has investigated. The following examples illustrate why I am opposed to this bill:

- On 7/2/07, Carl Lackl who was a witness to a murder in Baltimore City was shot and killed in Baltimore County. An extensive investigation was completed, and Jonathan Cornish (16-year-old) was arrested for killing Mr. Lackl. Cornish was targeted to murder Lackl because he was a juvenile and was seeking membership into a gang (Bloods). Five other people were charged with murder and related charges. Is it reasonable that Cornish's maximum punishment for 1<sup>st</sup> degree murder would be 5 years with no period of probation? Cornish was joining a gang and killing a witness. What incentive does the public have to cooperate with investigators to help solve crimes? Is it responsible when such extensive planning went into murdering Mr. Lackl? Will others target more juveniles to commit murder when the punishment is so low?
- On 05/14/08, Lewin Powell (16-year-old) beat his mother to death and then waited for his father to return home and beat him with a baseball bat. He was caught by officers fleeing the family home. Is it at all reasonable to sentence Powell to a maximum of 5 years in prison for a murder and attempted murder of his parents?

- On 02/02/08, Nicholas Browning (15-year-old) shot his mother, father and two brothers to death and then tossed the gun on the side of a nearby road. Browning murdered four people. Is 1 ½ years in jail for each murder, totaling 6 years appropriate?
- On 8/27/12, Daneil Borowy was shot at Perry Hall High School during a “school shooting”. The suspect Robert Gladden (15-year-old) was arrested at the scene. In an age of Mass Shootings, what message is being sent if Gladden can on receive 6 years? The 6-year sentence would be regardless if one person or more were critically injured or killed.
- On 05/21/18, four juveniles went on a burglary spree, utilizing a stolen vehicle from a burglary on a previous date. During the course of one of those burglaries, one of the juveniles killed Baltimore County Police Officer Amy Caprio with the stolen vehicle. That driver, Dawtna Harris (15-year-old), was arrested while trying to flee the neighborhood. The other three juveniles were able to flee the area on foot after stealing a handgun during that burglary, which resulted in several nearby schools to be placed on a lock down status for several hours. A police officer was killed in the performance of her duty. Is it appropriate that Harris who had already been charged with multiple crimes that didn’t place him in the jurisdiction of adult court nor placement in juvenile court, be sentenced in juvenile court again with a 6-year maximum sentence for brutally murdering a police officer?
- On 2-8-22 two juveniles were charged as adults with attempted murder in the shooting of another student at Catonsville High School. The investigation is ongoing and is likely to lead to the arrest of a third juvenile. What message would be perceived by the thousands of students that attend Maryland Schools each day, the potential victims?

These are just a few examples from Baltimore County. There are other examples of juvenile violence in other jurisdictions (Montgomery County had a school shooting where a juvenile was charged as an adult with attempted murder this year and a 16-year-old juvenile was charged last week in Baltimore City for the murder of a women working for Door Dash). The Maryland General Assembly is currently looking at legislation to help curb violent crime committed around the state. This legislation would be a contradiction to what the General Assembly trying to accomplish by making the state safer from the most violent offenders.

These are just a few examples of why Senate Bill 769 should be opposed.



**sb769.pdf**

Uploaded by: Sara Elalamy

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Joseph M. Getty  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 769  
Minors Convicted as Adults – Sentencing – Transfer to Juvenile  
Court  
**DATE:** February 9, 2022  
(3/3)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 769. This bill would amend Criminal Procedure § 6–235, addressing the sentencing of a minor who is convicted as an adult.

The Judiciary recognizes both the appropriateness of transferring certain criminal cases involving a minor to the juvenile court for sentencing and the appropriateness of considering a range of factors in determining the sentencing of an individual. The Judiciary also agrees that for some juveniles, especially those who are older and for whom there often are less available treatment and service options, making available some service/treatment options not generally available to the juvenile court may be of use. But the Judiciary also notes several concerns about this bill.

The bill would permit the juvenile court to impose an adult sentence. Imposition of an adult sentence on a minor is outside of the jurisdiction of the juvenile court under Courts and Judicial Proceedings Title 3, Subtitle 8A. An adult sentence also is outside of the purposes of the juvenile court as set out in § 3-8A-02. Issues raised by the imposition of an adult sentence include issues around confidentiality. Juvenile records are confidential under Courts and Judicial Proceedings § 3-8A-27; this bill does not address confidentiality and may be read to make public the adult sentencing portions of a juvenile case.

The bill also would require the court to consider certain factors. The bill does not address whether that consideration must be on the record. Regarding specific factors, factor (xi), requiring the court to consider the minor’s “faith . . . involvement” may raise constitutional issues. Factor (xii), addressing a “comprehensive mental health evaluation of the minor . . . by a mental health professional licensed in the state to treat adolescents” may raise implementation issues as there do not appear to be state “mental health professional” licenses issued specifically to treat adolescents.

Further, Criminal Procedure § 4-202.2 addresses the transfer of a case of a juvenile tried as an adult to the juvenile court for sentencing. It is unclear how that statute and this bill would be read and applied together.

In addition, Criminal Procedure § 6-235(b)(2) of the bill prohibits courts from requiring comprehensive mental health evaluations for minors. While such evaluations are ordered relatively rarely, the Judiciary believes that courts should have the discretion to order such evaluations when appropriate. Next, § 6-235(c)(3)(ii) of the bill states that courts “shall” vacate adult sentences when a minor successfully completes the terms of a juvenile disposition. The Judiciary believes courts should have discretion to decide whether adult sentences should be vacated in such instances.

cc. Hon. Susan Lee  
Judicial Council  
Legislative Committee  
Kelley O’Connor

# **SB0769 UNF opposed mcavoy.pdf**

Uploaded by: vince mcavoy

Position: UNF

## **UNFAVORABLE on SB 769**

vince mcavoy baltimore maryland

In testimony in the House Judiciary, upon looking at a House version of this type of bill, the issue of fatherlessness has arisen.

The societal pathologies caused by fatherlessness will not be diminished or ameliorated by letting criminals go unpunished or by letting criminals out of their sentences early.

The crimes in question are the 0.01% which should result in serious and longer-lasting consequences due to the loss by victims, the harm or death that they've precipitated and by the societal discord they have caused.

I urge an unfavorable on these bills and to look more closely at preventing these crimes from happening in the first place.