

NATIONAL
JUVENILE JUSTICE
NETWORK

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National Juvenile Justice Network
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FAVORABLE

House Bill 459
Juvenile Justice Reform

Dear Chairman Clippinger and Members of the House Judiciary Committee:

My name is Melissa Coretz Goemann and I am submitting this testimony in support of HB 459 on behalf of the National Juvenile Justice Network (NJJN). I am the Senior Policy Counsel for NJJN and am also a resident of Silver Spring, Maryland. NJJN leads a membership community of 60 state-based organizations and numerous individuals across 42 states and D.C., including Maryland. We all seek to shrink our youth justice systems and transform the remainder into systems that treat youth and families with dignity and humanity.

The lack of a humane and rational minimum age for prosecuting children puts them at risk of experiencing the trauma and collateral consequences associated with arrest and police involvement. Legal experts and social scientists have also voiced significant concerns regarding young children's competency to understand and exercise their legal rights in any meaningful way.¹ A 2003 study found that "juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding."² They further found that in terms of capacities relevant to competence, approximately one-third of 11 to 13-year-olds and one-fifth of 14 to 15-year-olds were "as impaired . . . as are seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts."³

Accordingly, young children are very likely to be found incompetent to stand trial. Setting a reasonable minimum age for juvenile court means Maryland can avoid expensive and unnecessary competency proceedings and restoration services that don't provide children with services that address their underlying needs. It would also establish uniformity across the state in handling young children.

Disturbingly, in Maryland, as is the case nationally, young Black children are significantly overrepresented in the justice system. In Fiscal Year 2021, 59.6 percent of Maryland's intake

¹ Commission on Youth Public Safety and Justice, *Final Report of the Governor's Commission on Youth, Public Safety and Justice*, 37.

² Thomas Grisso, Laurence Steinberg, Jennifer Woolard Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Repucci, and Robert Schwartz, "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior* 27(4) (2003): 333-63, 356, <https://bit.ly/3aTun7A>.

³ Ibid.

complaints were for Black children under age 13,⁴ even though Black children only comprised approximately 35 percent of Maryland's under 13 population in 2020.⁵

Prohibiting the arrest of young children through establishing a reasonable minimum age of prosecution would help to disrupt these justice system disparities and would also prevent large numbers of children from being arrested in school and sent through the school-to-prison pipeline. Rather than prosecuting young children, Maryland would do better to focus efforts on children's academic achievement and attachment to school, both of which are protective factors against problem behaviors, whereas processing children at a young age in the justice system can actually **increase** the chance they will commit a future offense.⁶

The United States is an outlier throughout the world in the practice of trying young children in court. In 2019, the United Nations Committee on the Rights of the Child urged nations to set their minimum age of criminal responsibility to at least 14-years-old without allowing any exceptions to be carved out to this minimum age.⁷ The United Nations Global Study on Children Deprived of Liberty also called on countries to set the minimum age of prosecution in juvenile court at 14-years-old.⁸ As the United Nations Global Study stated, "depriving children of liberty is depriving them of their childhood."⁹

Momentum has been growing across the country to establish and raise the age of juvenile court jurisdiction. In the past few years, California, Delaware, Massachusetts, New York, and Utah have all raised their minimum age for prosecuting children to 12-years-old and New Hampshire raised their age to 13-years-old last year. In the last year alone, seven states passed bills raising the age of juvenile jurisdiction or confinement and many more are working on it this year.

We encourage Maryland to join this movement and pass HB 459 establishing a humane and rationale minimum age for prosecuting children. We also urge you to remove the carve-out provisions included in the bill for various offenses. A child's competency is not determined by offense but by age and brain development, and prosecuting them at young ages for certain select offenses will still serve to harm them and to increase the possibility of future offenses.

Respectfully submitted,
Melissa Coretz Goemann

⁴ Of the youth under age 13 in FY21, 59.6 % were Black, 5.6% were Hispanic/other, and 34.8% were white. Maryland Department of Juvenile Services (DJS), *Data Resource Guide Fiscal Year 2021* (DJS, December 2021): 32, https://djs.maryland.gov/Documents/DRG/Data_Resource_Guide_FY2021.pdf.

⁵ Puzzanhera, C., Sladky, A. and Kang, W. (2021), "Easy Access to Juvenile Populations: 1990-2020," Online, accessed January 23, 2022, <https://www.ojjdp.gov/ojstatbb/ezapop/>.

⁶ Development Services Group, Inc., "Protective Factors Against Delinquency" (Washington, DC: Office of Juvenile Justice and Delinquency Prevention (OJJDP), December 2015): 7, <https://bit.ly/39qY8eD>; Elizabeth S. Barnert, Laura S. Abrams, Cheryl Maxson, Lauren Gase, Patricia Soung, Paul Carroll, and Eraka Bath, "Setting a minimum age for juvenile justice jurisdiction in California," *International Journal of Prisoner Health*, Vol. 13 Iss 1 (2017): 52, <http://dx.doi.org/10.1108/IJPH-07-2016-0030>.

⁷ United Nations Convention on the Rights of the Child (CRC), Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System* (2019): 6, CRC/C/GC/24, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?DocTypeID=11&Lang=en&TreatyID=5

⁸ United Nations, General Assembly, "Global Study on Children Deprived of Liberty: report of the Independent Expert," A/74/136 (11 July 2019): 20, available at <https://undocs.org/en/A/74/136>.

⁹ *Ibid.*, 4.