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Testimony from:  
Maya Szilak, Resident Fellow, Criminal Justice and Civil Liberties, R Street Institute

in SUPPORT of HB 459

February 10, 2022

House Judiciary Committee Proceedings

Chairman Clippinger and Honorable Members of the House Judiciary Committee:

R Street Institute (RSI) is a nonprofit, non-partisan public policy research organization focused on advancing limited government and effective free-market policy at the state and federal level. As part of this mission, the Criminal Justice and Civil Liberties team at RSI evaluates policies related to the justice system, and proposes changes to law that would improve outcomes for criminal justice stakeholders and the public. Because HB 459 would scale back unproductive juvenile justice interventions in young people's lives with an eye toward promoting youth wellbeing, public safety and fiscal responsibility, RSI encourages its **favorable report**.

Recognizing the need for change, in 2019 the Maryland General Assembly created the Juvenile Justice Reform Council (JJRC), a group of diverse, bipartisan stakeholders who researched best practices and made recommendations to improve public safety and reduce risk factors that contribute to juvenile crime and entrenchment of young people in the criminal and juvenile justice systems<sup>1</sup>. HB 459 encompasses many of JJRC's recommendations. Specifically, HB 459, in line with other states, would adopt best practices that: 1) establish a minimum age of juvenile court jurisdiction at 13 years, except in very serious cases in which jurisdiction begins at 10 years' old; 2) expand opportunities for informal adjustment and diversion from juvenile court involvement; 3) institute limits on the length of youth probation; and 4) prevent youth charged with a misdemeanor or technical violation of probation from being placed in juvenile detention or correctional facilities, among other things.

As it currently stands, there is no minimum age for adjudicating a child delinquent in Maryland. Once a child reaches the age of seven, the legal presumption of infancy; *i.e.*, that the child lacks the capacity to form criminal intent, ceases to apply. On its face, the supposition that 7-year-olds are rational agents with the cognitive maturity to understand the nature and consequences of their actions defies commonsense. Research backs this up, and shows that most juveniles under the age of 13 lack the cognitive capacity even to understand juvenile proceedings.<sup>2</sup> Studies further show that diverting children under 13 from the juvenile courts to community treatment is more effective in reducing recidivism, strengthening families and enhancing public safety.<sup>3</sup>

Research also shows that keeping youth who commit low-level offenses out of detention and correctional facilities, limiting lengths of juvenile probation, and diverting youth from the juvenile justice system to community treatment and services work to enhance youth rehabilitation and reduce the



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likelihood of recidivism.<sup>4</sup> Many reforms to this effect have already been successfully tried and tested in other states. For instance, as of 2020, states like Arkansas, Pennsylvania, Kansas, Louisiana, Mississippi, Nebraska and Massachusetts set their age of juvenile court jurisdiction at 10 years old, recognizing that processing very young children through the justice system is actively harmful.<sup>5</sup>

Likewise, in 2017, Utah passed comprehensive juvenile justice reform legislation that, among other things, removed truancy, disorderly conduct and other low-level misdemeanors occurring on school grounds from juvenile court jurisdiction; required pre-court diversion for youth referred for minor infractions, status offenses and misdemeanors; limited youth confinement; and placed a 4-to-6-month time limit on probation. As a result, between 2017 and 2019, the rate of juvenile referrals dropped by roughly 15 percent, detention admissions dropped by 44 percent and nonjudicial diversion of youth increased by 56 percent. Consequently, Utah was able to close several facilities, save millions of dollars and invest more resources in front-end delinquency prevention services like family functional therapy.<sup>6</sup> Along the same lines, Kentucky enacted reform legislation in 2014, requiring that all youth referred to intake for first-time misdemeanors be given the opportunity for diversion, and allowing some youth referred for first-time felonies or three or less prior misdemeanors to opt for diversion as well. Subsequent evaluation found that rates of juvenile recidivism did not increase, despite dramatic increases in the state's use of diversion.<sup>7</sup>

Following in the footsteps of these states and accordance with best practices proven to enhance youth welfare and public safety, RSI strongly supports passage of HB 459.

Respectfully submitted,

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<sup>1</sup> Department of Juvenile Services, *Final Report*, Maryland Juvenile Justice Reform Council, January 2021. <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/024900/024904/20210048e.pdf>.

<sup>2</sup> "Age Boundaries in the Juvenile Justice System," National Governor's Association, Aug. 12, 2021. <https://www.nga.org/center/publications/age-boundaries-in-juvenile-justice-systems>.

<sup>3</sup> *Raise the Minimum Age for Trying Children in Juvenile Court*, National Juvenile Justice Network, December 2020. [https://www.njjn.org/uploads/digital-library/NJJN%20Policy%20Platform\\_RaiseTheMinimumAge\\_UPDATEDFebruary%202021\\_1.pdf](https://www.njjn.org/uploads/digital-library/NJJN%20Policy%20Platform_RaiseTheMinimumAge_UPDATEDFebruary%202021_1.pdf).

<sup>4</sup> Office of Juvenile Justice and Delinquency Prevention, *Alternatives to Detention and Confinement*, U.S. Department of Justice, August 2014. <https://ojjdp.ojp.gov/mpg/literature-review/alternatives-to-detention-and-confinement.pdf>; Samantha Harvell et al., *Transforming Juvenile Probation*, Urban Institute Justice Policy Center, April 2021. [https://www.urban.org/sites/default/files/publication/104093/transforming-juvenile-probation\\_0.pdf](https://www.urban.org/sites/default/files/publication/104093/transforming-juvenile-probation_0.pdf); Holly A. Wilson and Robert D. Hoge, "The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic



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Review,” National Institute of Corrections *Criminal Justice and Behavior Series* (2013). <https://nicic.gov/effect-youth-diversion-programs-recidivism-meta-analytic-review>.

<sup>5</sup> Department of Juvenile Services, *Final Report*, (2021), p. 18.

<http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/JJRC-Final-Report.pdf>.

<sup>6</sup> Noah Bein et al., “Utah’s 2017 Juvenile Justice Reforms Shows Early Promise,” Pew Charitable Trusts, May 20, 2019. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/05/utahs-2017-juvenile-justice-reform-shows-early-promise>; Juvenile Justice Oversight Committee, *System Trends*, Utah Commission on Criminal and Juvenile Justice, 2020. [https://justice.utah.gov/wp-content/uploads/FY\\_2019\\_Update\\_Van2.html#system-trends](https://justice.utah.gov/wp-content/uploads/FY_2019_Update_Van2.html#system-trends).

<sup>7</sup> Samantha Harvell et al., “Assessing Juvenile Justice Reforms in Kentucky,” Urban Institute Justice Policy Center, Sept. 17, 2020, pp. 2-4. [https://www.urban.org/research/publication/assessing-juvenile-diversion-reforms-kentucky/view/full\\_report](https://www.urban.org/research/publication/assessing-juvenile-diversion-reforms-kentucky/view/full_report).