

HOUSE JUDICIARY COMMITTEE
TESTIMONY OF DISABILITY RIGHTS MARYLAND
HOUSE BILL 459- Juvenile Justice Reform Council (JJRC) Omnibus

February 10, 2022

Position: Support

Disability Rights Maryland (DRM), a non-profit legal advocacy organization, is the federally-mandated Protection and Advocacy agency for the State of Maryland, charged with defending and advancing the rights of persons with disabilities. We have been serving children, youth, and adults with disabilities in our state for over 40 years. DRM is a leader in Maryland's educational advocacy community, working on issues such as school discipline, restraint and seclusion, juvenile justice, and enforcing the rights of students with disabilities. DRM has significant experience representing students with disabilities statewide who have been suspended or expelled from school, or are involved in the juvenile justice system.

DRM supports HB 459. By raising the minimum age for children to be subject to court jurisdiction, placing developmentally appropriate time limitations on probation, removing barriers to diversion to allow for more restorative measures, and banning child incarceration for low-level offenses, HB 459 will move Maryland closer to our vision for youth justice and align Maryland's laws that impact children with established adolescent development science.

Nationally, students with disabilities are overrepresented in the juvenile justice system by a percentage between 30% and 60%, with some estimates citing even higher percentages.¹ As a result of this overrepresentation, a staggering number of incarcerated students, 65-70 percent of youth in the justice system, meet the criteria for a disability, a rate more than three times higher than that of the general population.² When it comes to mental health in particular, researchers estimate that over 67% of detained and adjudicated youth meet criteria for at least one mental health diagnosis, and almost 50% meet criteria for two or more comorbid psychiatric disorders.³

¹ Mary Magee Quinn et al., Youth with Disabilities in Juvenile Corrections: A National Survey, Council for Exceptional Children, Vol. 71, No. 3, 339-45, 340 (2005), <https://neglected-delinquent.ed.gov/sites/default/files/docs/mquinn0305.pdf> (last visited August 16, 2021); see also Daniel Losen et al., Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies 24 (March 23, 2021), <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies>

² Skowrya & Coccozza, Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System, National Center for Mental Health and Juvenile Justice, (May, 2015), available at http://www.ncmhjj.com/wpcontent/uploads/2013/07/2007_Blueprint-for-Change-Full-Report.pdf; Better Solutions for Youth with Mental Health Needs in the Juvenile Justice System, The Mental Health and Juvenile Justice Collaborative for Change, 17 (2014), available at: <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-MentalHealth-FINAL.pdf>.

³ Desai, S.R. Urban Rev, "Hurt People, Hurt People": The Trauma of Juvenile Incarceration, 51 Urban Review 1, 1-21 (2019)

Like overall disability rates, this prevalence of mental health disorders amongst system-involved youth is more frequent than in the general adolescent population⁴. The juvenile justice system has become the default system for youth who do not receive the proper supports, including mental health care, in the community. Further, involvement in the juvenile justice system carries considerable detrimental collateral consequences, including increased risk of dropping out of school, increased mental health issues, lower college acceptance, diminished job prospects, and a higher likelihood of becoming involved in the adult criminal system.⁵ Our current juvenile justice model does not provide rehabilitation or prevent recidivism- it does the opposite- and it is not serving youth or the community.

HB 459 targets four areas that will improve youth justice outcomes and as a result will better serve youth with disabilities and in doing so, will prevent recidivism:

1. Raising the minimum age for court jurisdiction:

The juvenile justice system must consider child and adolescent development in its practices and policies in order to achieve its aims of accountability, prevention of re-offending, and fairness and equitable treatment.⁶ Advancing medical technology in neuroimaging methodologies has demonstrated that “[b]efore the pre-frontal cortex of the brain, the part that controls impulse and reasoning, fully matures, youth are likely to engage in risky behaviors, be easily influenced by peer pressure, be apt to forego contemplation of long-term consequences for short term rationales, and be prone to poor decision-making.”⁷

In recent years, courts have relied upon the growing body of research on adolescent development to find that *adolescents* are affected by immaturity in their high order executive functions, in particular, impulse control, planning ahead, and risk avoidance.⁸ In spite of this national practice recognizing the immaturity of the adolescent brain, Maryland still has no minimum age for arrest. While courts nationwide are recognizing the impact of the underdeveloped *adolescent* brain, Maryland is still allowing children as young as six to be arrested. It is in the nature of youth to make mistakes and to be immature, especially in the context of peer group settings. Such conduct must not automatically threaten their liberty and their life with family and community. The social costs are too great as demonstrated by our mass incarceration of persons with disabilities and of color. DRM supports HB 459 changes to the minimum age of juvenile court jurisdiction

⁴ *Id.*

⁵ Jason Nance, Students, Police and the School to Prison Pipeline, *Washington University Law Review* 919, 954-56 (2016)

⁶ John A. Tuell, et al., Translating the Science of Adolescent Development to Sustainable Best Practice. Children’s Action Corps 1, https://rfknrcjj.org/wp-content/uploads/2017/09/Developmental_Reform_in_Juvenile_Justice_RFKNRCJJ.pdf

⁷ Chazz Arnett, Virtual Shackles: Electronic Surveillance and the Adulthoodification of Juvenile Courts, 108 *Journal of Criminal Law and Criminology* 399,408-09 (Summer 2018), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7631&context=jclc>.

⁸ See e.g. *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012).

2. Developmentally appropriate limitations on probation:

For youth with disabilities and youth of color, the “enduring disproportionate exposure to punitive measures has become normalized in juvenile justice and has paved the way for policies and practices that continue to be more reflective of adult correctional aims than genuine rehabilitative efforts.”⁹ For young people to be successful on probation, they need finite goals and timelines to help them work toward success. Experts recommend that youth be placed on a period of six to nine months of probation, if they need to be placed on probation at all.¹⁰ Maryland’s system of indefinite probation defies these expert recommendations. When youth are placed on indefinite periods of probation, doing well on probation does not bring them closer to a light at the end of the tunnel, yet doing poorly can quickly land a youth in detention. HB 459 would help to remedy this problem by placing developmentally appropriate limitations on probation. By doing so, it would reduce “technical violations” that result in youth-disproportionately youth with disabilities and youth of color- becoming enmeshed in the system.

3. Removing barriers to diversion:

Research shows that rather than a positive impact, “responding to common youth behavior with criminalization exacerbates undesirable behavior and causes children to fall behind academically, placing students further at risk.”¹¹ As noted above, youth with disabilities are disproportionately being served by our juvenile justice system. These students can be better served by the provision of special education services and behavioral interventions at school and through evaluations, therapy, medication prescription services, and medication management in the community than by incarceration.

HB 459 will promote a system of restorative justice by removing barriers to diversion and providing students access to substance abuse rehabilitation, mental health treatment, mentoring programs, job training, mediation and community service and other restitution measures outside of incarceration and fines. This in turn will result in less recidivism by youth, both for the remainder of their youth as well as into adulthood.

4. Banning child incarceration for low level offenses:

Incarceration does not benefit youth, is expensive, and does not produce better outcomes.¹² Once incarcerated, youth often leave facilities worse, not better off, and often experience short-term and life-long adverse consequences. Limiting incarceration of youth alleged to have committed a misdemeanor or technical violation of probation will allow DJS to better leverage its resources to provide focused programming for those young people who face the most serious charges and are at the highest risk of re-offense.

⁹ Arnett, *supra* note 7, at 426.

¹⁰ Annie E. Casey, *Transforming Probation: A Vision for Getting it Right*, 2018. www.aecf.org/resources/transforming-juvenile-probation/

¹¹ ACLU, *Cops and no Counselors: How the Lack of School Mental Health Staff is Harming Students*, available at: https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf.

¹² Re-Examining Juvenile Incarceration: High Cost, Poor Outcomes Spark Shift to Alternatives, PEW Charitable Trusts, (April, 2015) <http://www.pewtrusts.org/en/research-and-analysis/issuebriefs/2015/04/reexamining-juvenile-incarceration>.



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Youth incarceration exacerbates systemic patterns of disparate treatment and solves very little when compared to diversion programs tailored to the child, which provide them the assistance they often need to thrive. HB 459 provides us an opportunity not only to course correct, but also to leverage system reductions related to COVID-19 and transform our youth justice system into one that benefits more young people, families, and communities. These reforms will ensure that as many children as possible are treated with community-based services that lead to better public safety outcomes at a fraction of the cost of deep end interventions.

For the reasons stated above, Disability Rights Maryland supports [HB 459].

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