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POSITION ON PROPOSED LEGISLATION

BILL: HB 753 Juvenile Court Jurisdiction - Gun Offenses

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/28/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on HB 753.

An effective youth legal system is one that is fair and improves rather than decreases the odds that young people who come into contact with that system will make a successful transition to adulthood. That requires a system that locks up fewer children and relies more on proven, family-focused interventions that create opportunities for positive child development. During the 2022 legislative session, the General Assembly took the first steps of juvenile justice reform to shrink the massive incarceration system and shift resources to focus on data-driven, evidence-based programming for the youth at the highest risk of violence and re-offense in passing four of the five recommendations of the Juvenile Justice Reform Council. With a better understanding of cognitive development, there is a growing awareness around the country that juvenile justice systems that adopt a lighter touch can reduce costs and yield better outcomes with fewer racial disparities. One of those important reforms - raising the age of juvenile court jurisdiction to 13 - brought Maryland in line with international human rights standards. HB 753 would be a step backwards from that important reform.

Prior to last year's bill passage, and in violation of widely accepted international human rights standards, Maryland did not have a minimum age of criminal responsibility. Maryland regularly charged elementary school children – some as young as *six* years old – with delinquent acts.¹ To put these age limits in context, a typical 10 year old will be in either 4th or 5th grade. Maryland law requires that children must be at least 13 years old in order to be responsible enough to babysit.² Under the proposed law, a child too immature to babysit would be deemed

¹ Prior to 1994, Maryland relied on the common-law doctrine of *doli incapax*, which held that from age 7 to 14 children were presumed not to have criminal capacity and required the prosecution to prove criminal capacity beyond a reasonable doubt. The presumption of infancy was removed by the legislature in 1994. *In re Devon T.*, 85 Md. App. 674 (1991); Acts 1994, c. 629, § 1, eff. Oct. 1, 1994.

² Maryland Code Annotated, Family Law Article §8-501.

mature enough to be sent to juvenile court, make decisions about a plea bargain, and comply with court orders.

Maryland continues to funnel thousands of very young, mostly Black children through the juvenile justice system despite extensive research that has demonstrated that children under the age of 13 are statistically unlikely to be competent to stand trial.³ Pre-adolescent children demonstrate poor understanding of trial matters, in addition to poorer reasoning and ability to recognize relevant information for a legal defense. In fact, 1/3 of children under 13 function with impairments at a level comparable with mentally ill adults who have been found incompetent to stand trial.⁴ In 2020, the Maryland Department of Health's Juvenile Forensic Services Office gave a presentation to the State Advisory Board for Juvenile Services which included statistical information about children who were found incompetent to stand trial. In the three year span discussed, between 63% and 74% of the children under 13 years old evaluated were found incompetent to stand trial.

Given the established fact that 1/3 of children under 13 are incompetent to stand trial, failing to raise competency in most cases for very young Respondents would amount to ineffective assistance of counsel. For that reason, defense counsel raises competency in an overwhelming majority of cases involving children under age 13. Evaluating competency is a cost intensive process that can take years to resolve.⁵ The prolonged process of competency attainment for small children means that the youngest children, who are the least culpable, often do not face court intervention until months or years after their alleged misbehavior. In order for rehabilitation to work, children need to be held accountable for wrongdoing in a fair process that promotes healthy moral development.⁶ When children are found incompetent to stand trial they receive no therapeutic or rehabilitative services. A system that penalizes children at a time far removed from the underlying incident leads children to perceive the legal system as unjust. Distrust in the system reinforces delinquent behavior, does not foster prosocial development, and

³ Bath, E., & Gerring, J. (2014). National trends in juvenile competency to stand trial. *Journal of the American Academy of Child & Adolescent Psychiatry*, 53, 265-268, Bonnie, R. J., & Grisso, T. (2000). Adjudicative competence and youthful offenders. In T. Grisso & R. G. Schwartz (Eds.), *Youth on trial: A developmental perspective on juvenile justice* (pp. 73-103). Chicago, IL: University of Chicago Press; Costanza, M. B. (2017). *The development of competency to stand trial-related abilities in a sample of juvenile offenders* (Doctoral dissertation). Retrieved from ProQuest; Grisso, T. (2014). Protections for juveniles in self-incriminating legal contexts, developmentally considered. *The Journal of the American Judges Association*, 50(1), 32-36; Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press; Grisso, T. (2004). *Double jeopardy: Adolescent offenders with mental disorders*. Chicago, IL: University of Chicago Press; Grisso, T., & Kavanaugh, A. (2016). [Prospects for developmental evidence in juvenile sentencing based on Miller v. Alabama](https://doi.org/10.1023/A:1024065015717). *Psychology, Public Policy, and Law*, 22(3), 235-249; Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology (2009).

⁴ Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N. D., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27(4), 333-363. <https://doi.org/10.1023/A:1024065015717>;

⁵ Md. CJ 3-8A-17-17.8

⁶ National Academies of Science, [Reforming Juvenile Justice: A Developmental Approach](https://doi.org/10.17232/reston/pa2013001) (2013) pg 183-210.

increases recidivism.⁷ In other words, if the goal of charging children with criminal acts is to get them treatment, guidance, or rehabilitation, this goal is thwarted by prosecuting them in juvenile court, rather than offering immediate services.

In FY2020, there were 1,469 delinquent complaints for children under the age of 13. Disturbingly, the vast majority of these children were Black (72%). Only 25% of those cases (374) were forwarded for prosecution in juvenile court and only 6 of the 1,469 children under 13 who were charged in Maryland resulted in commitments to the DJS. None of those very young children who were committed was even found guilty of a felony. In fact, four of the children under 13 who were committed to DJS were found facts sustained of property crimes – misdemeanor breaking & entering and malicious destruction of property. The other two children were committed for misdemeanor second degree assault.⁸ More than half of all kids under 13 were charged for misdemeanor second degree assault, misdemeanor theft, or destruction of property.⁹ Despite these facts, 37 children under the age of 13 were incarcerated pending trial. This is not just a problem in population centers. In Somerset County, more than 30% of young people charged in FY20 were under 13 years old. In Dorchester County that number is nearly 25%–3 times the state average.¹⁰ In FY19, 50 children under the age of 13 were held in secure detention in Maryland – a nearly 50% *increase* from FY18 – despite a change in the law that was intended to restrict the use of secure detention for pre-adolescent children.¹¹ In FY20, that number was still 37 children.

The process of charging and processing thousands of pre-adolescent children not only does damage to those kids, but it is also a huge waste of resources. Executive functioning refers to the cognitive processes that direct, coordinate, and control other cognitive functions and behavior. They include processes of inhibition, attention, and self-directed execution of actions. Much research has been conducted about adolescent executive functioning as it relates to youth justice policy; but because so few places prosecute very young kids, comparatively little research

⁷ National Research Council 2014. *Implementing Juvenile Justice Reform: The Federal Role*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/18753> at 17.

⁸ Maryland Department of Juvenile Services, 2020 DJS Data Resource Guide, at 26-27.

<https://djs.maryland.gov/Pages/Data-Resource-Guides.aspx>

⁹ *Id.* At 27.

¹⁰ In Baltimore City, DJS started the Under-13 Initiative in 2013. It is a school-based intervention for youth ages 12 years and younger that are brought to Department of Juvenile Services' intake offices. It is a collaborative project between Department of Juvenile Services, local Department of Social Services (DSS) and the local school system. The Under-13 Initiative is based on the premise that if a child is being arrested at such a young age that there are usually problems at home; thus the focus is on both the child and his/her family. The goal is to provide the youth and family the opportunity to receive services and support so the youth can avoid going deeper into the juvenile justice system. The meetings are coordinated by the local school system and are held in a local school. Currently, Baltimore City is the only jurisdiction to have this program in place, although there are plans to start it in Prince George's County as well. See, Maryland Department of Juvenile Services, Initiatives, Under-13 <https://djs.maryland.gov/Pages/Initiatives.aspx>.

¹¹ DJS Data Resource Guide, FY19 at 112. This increase is especially distressing as the law changed in FY19 to limit the detention of children under the age of 12. See, 2019 Maryland Laws Ch. 560 (H.B. 659.)

has been done about *pre*-adolescent children in the youth justice systems.¹² Most research about the executive functioning in pre-adolescents has been done with a focus on implications for education and occupational therapy. It is clear that the level of executive functioning of an elementary and middle school-aged child is vastly different than that of high school students.¹³ Studies of working memory of children show that it continues to develop until children reach about 15 years old.

For the first time, Maryland’s juvenile justice system is focused on aligning the laws that impact children with the established science of adolescent development. Children need to be held accountable for wrongdoing in a developmentally appropriate, fair process that promotes healthy moral development. A system that penalizes children, particularly if they penalize children with severe sanctions like removing them from their home and family, can lead children to perceive the legal system as unjust. Distrust in the system reinforces delinquent behavior, does not foster prosocial development, and increases recidivism.¹⁴ Charging children who - through negligent or reckless behavior by adults - access weapons in the juvenile court system would only delay the services these children may need. If we want a truly rehabilitation juvenile justice system in Maryland – we must keep the minimum age of jurisdiction to 13 and not fall victim to carveouts for crimes that are better dealt with through systems such as CINS, CINA, and through services provided by community resources such as Local Care Teams.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 753.

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¹² *Supra*, note 21.

¹³ *Id.*

¹⁴ National Research Council 2014. Implementing Juvenile Justice Reform: The Federal Role. Washington, DC: The National Academies Press. <https://doi.org/10.17226/18753> at 17.