



HUMAN RIGHTS
for KIDS

**TESTIMONY IN OPPOSITION TO SB 744 BEFORE
THE MARYLAND SENATE JUDICIAL PROCEEDINGS
COMMITTEE**

February 9, 2024

Dear Chairman Smith and Members of the Maryland Senate Judicial Proceedings Committee:

Thank you for the opportunity to share our concerns with you regarding SB 744. While we share many of the concerns shared with you by other youth justice advocates and organizations, we want to draw your attention specifically to one portion of the bill that is of particular concern to us.

With the passage of the Juvenile Justice Reform Act (JJRA) in 2022, the General Assembly drew a bright line by ending the prosecution of children under the age of 10. However, the new language in SB 744 on page 7, lines 17 through 20, **would negate the minimum age of prosecution Maryland set less than two years ago** by allowing the filing of a delinquency petition against a child under the age of 13 for an act that results in the death of a victim. This new language does not maintain the current age of 10 as the minimum age of prosecution regardless of the act committed.

In the 2022 edition of our State Ratings Report, HRFK honored Maryland as the “most improved state” after the General Assembly’s passage of important juvenile justice reform measures, including the Juvenile Justice Reform Act. If SB 744 is passed and signed by the Governor in its current form, Maryland would take a step backwards and lose credit in HRFK’s State Ratings Report because of the rollback of protections against prosecuting young children.

Protecting Young Children from Prosecution is a Human Rights Issue

Human Rights for Kids, through our State Ratings Report and Model Legislation, is rooted in international human rights standards. Specifically, we are informed by the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. One of the

central pillars of human rights protections for children in the justice system is the establishment of a minimum age of culpability.

Even for young children who commit acts that could be prosecuted as serious crimes, **international human rights standards call for the establishment of a minimum age of prosecution without exceptions.** In 2019, the United Nations Committee on the Rights of the Child issued a general comment stating:

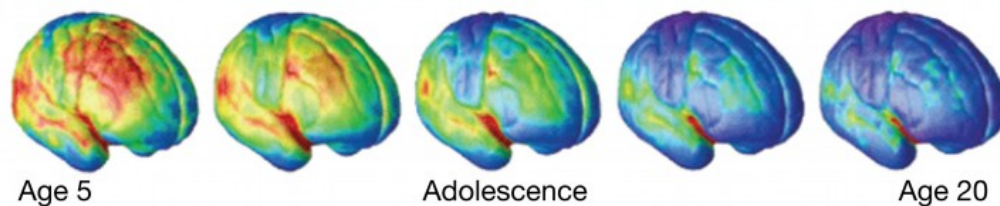
*“The Committee wishes to express its concern about the practice of allowing exceptions to a minimum age of criminal responsibility, which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. **The Committee strongly recommends that States parties set a minimum age of criminal responsibility that does not allow, by way of exception, the use of a lower age.**”*

Child Brain & Behavioral Development Science

This committee is well aware of the brain science surrounding the development of children, but it bears repeating here because of SB 744’s impact on the prosecution of young children.

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. 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. This is especially true for young children under the age of 10 who often lack a basic understanding of the legal process and are too young to be held criminally liable for their actions.

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.

Adverse Childhood Experiences – We Must Address Childhood Trauma

In the vast majority of 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 at least 4 ACEs.

Young children who engage in behavior that leads to involvement in the criminal justice system simply are not well served by punishment, and neither is the public. The best outcomes for children under the age of 10 involve treatment and services to address and overcome childhood trauma, not incarceration.

It is important to note that children under the age of 10 who commit an act that leads to the death of a victim could still be deemed a Child in Need of Supervision (CINS) without the filing of a delinquency petition. The CINS process could address the needs of the child in a developmentally appropriate, trauma-informed way, while also preventing further involvement with the criminal justice system.

Bi-partisan Support and National Momentum

In 2018, the American Legislative Exchange Council (ALEC) passed a resolution encouraging states to establish a minimum age of at least 10 before a child could be adjudicated delinquent. Several states across the country, liberal and conservative, have set a minimum age of at least 10 years old with no exceptions, including **Colorado, Connecticut, Kansas, Louisiana, Massachusetts, Minnesota, Mississippi, Nebraska, North Dakota, Pennsylvania, South Dakota, Texas, and Wisconsin**. While the protection against prosecuting children under 10 was an important step taken by Maryland through the JJRA, it is by no means an outlier when compared to other states around the country.

Conclusion

When children under the age of 10 commit serious crimes, a response is needed. However, that response, if its intent is to rehabilitate the child and improve public safety, should not be rooted in a punitive system. Because children under the age of 10 are too young to form the criminal intent to be prosecuted, responses from the state should be rooted in developmentally appropriate, trauma-informed measures. **Children under the age of 10 simply cannot understand the consequences of their actions, cannot assist in their own defense, and would not be well-served by a punitive system that was not built to serve children who are young enough to still believe in Santa Claus.**

Submitted by:

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Proposed Amendments

SB 744 – Juvenile Law – Reform

AMENDMENT No. 1

On page 7, line 18 after “CHILD” insert “AT LEAST 10 YEARS OF AGE BUT”

AMENDMENT No. 2

On Page 8, line 30 after “SUBTITLE” insert “EXCEPT THAT THE OFFICER MAY ELECT TO DIVERT THE CHILD TO A LAW ENFORCEMENT LED DIVERSION PROGRAM AT THEIR DISCRETION.”