

SB 792 Fav.pdf

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Position: FAV

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Judicial Proceedings Committee



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 28th, 2024

The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 792: *Juvenile Law - Juvenile Justice Reform - Juvenile Court Jurisdiction*

Dear Chairman Smith and Members of the Committee,

Under current Maryland law, juvenile courts have exclusive jurisdiction over youth who are 10, 11 and 12 who commit certain violent crimes. Senate Bill 792 would expand the court's jurisdiction to include youth who are 10, 11 or 12 and who are accused of use or possession of a firearm, as well as youth who are 10, 11 or 12 who are accused of any crime so long as they have been arrested two times before.

Senate Bill 792 is necessary legislation.

First, let's deal with youth who commit crimes involving the use or possession of firearms. These are by definition not petty crimes. Using a gun in the commission of a crime risks serious injury or death to the victims of the crime or to other innocent bystanders. A juvenile not yet 13 years old who commits a crime with a gun is in desperate need of help. The juvenile courts are capable of requiring such an offender to accept services designed to put the offender back on the right track. The alternative to such an offender going before a juvenile court is to simply send the offender home without any accountability for his crime. That is just unacceptable and will only facilitate repeat offenses by the juvenile.

Now let's turn our attention to youth who have been arrested on two prior occasions and now are arrested a third time. This Committee has heard extended testimony about the recent uptick in youth under 13 running drugs and committing crimes on behalf of older criminals. It's no surprise that this is occurring because currently there are no real repercussions for someone under 13 who commits these acts. Why would the older criminals take the risk of getting caught, prosecuted, convicted and imprisoned when they can outsource the crime to someone under 13 years old who is practically immune? This bill accords to the juvenile two arrests without consequence, but the third time the youth is arrested, there needs to be a serious attempt to turn the offender around by giving him the sort of services that a juvenile court can require.

I need to emphasize that this bill is not intended to put youths under 13 years of age into incarceration. The purpose of singling out kids who use guns to commit crimes or who

repeatedly commit crimes and making them subject to the jurisdiction of the juvenile court is to ensure that these wayward young people get the services that they so badly need and that the juvenile court can require.

As this Committee is aware, just last week, I introduced a bill to set up a task force to study the sort of services that are assigned by our juvenile courts and to determine how to make sure that these services are effective. This bill is therefore a complement to last week's bill. We not only need to be in a position to render effective services to youthful offenders, we need to identify the young people whose lives are going off track and enable the juvenile courts to make sure that they are given the necessary services. This bill should thus be seen as a complement to my other juvenile bill in order to not only prevent but preempt juvenile criminality.

I appreciate the Committee's consideration of Senate Bill 792 and will be happy to answer any questions the Committee may have.

SB 792 - MSAA FWA.pdf

Uploaded by: Patrick Gilbert

Position: FWA



Maryland State's Attorneys' Association

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Rich Gibson
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DATE: February 28, 2024

BILL NUMBER: SB 792

POSITION: Favorable with Amendment

The Maryland State's Attorneys' Association (MSAA) supports Senate Bill 792 with the inclusion of a minor amendment to the bill's language that would ensure its uniform application across the state.

Building a better world is an iterative process, and SB 792 refines the juvenile reforms based on our experience with their implementation over the past almost-two years. The bill excludes children aged 10 from the jurisdiction of the juvenile court entirely while expanding the juvenile court's jurisdiction over children aged 11 and 12 to include instances where the child is alleged to have committed a crime involving a firearm, or any crime if the child has been arrested twice before.

These modest adjustments recognize that public safety demands at least the possibility of the involvement of the formal structure of the juvenile court system when a child is illegally carrying a firearm and that, when a child has been arrested on numerous occasions previously, the existing, non-juvenile court measures are evidently inadequate to help correct the child's behavior and set them on the path to successful adolescence and adulthood.

We are not helping children when we fail to give them a constructive and meaningful path forward, and until the effectiveness of non-juvenile court measures increases, it is appropriate to permit juvenile court involvement when children aged 11 and 12 continue to engage in delinquent conduct. In practice, though, some law enforcement agencies will not arrest children that are outside of the jurisdiction of the juvenile court – a child under the age of 13 engaged in repeated criminal conduct that does not qualify for prosecution under MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03(a)(1) might never be arrested, eluding the jurisdiction of the juvenile court entirely based on local law enforcement practice. Pinning the juvenile court's jurisdiction instead to whether there exists probable cause to believe a child of age 11 or 12 has committed two separate acts previously that would constitute a crime if committed by an adult would solve this issue and ensure the statewide effectiveness of SB 792 regardless of local law enforcement practice.

SB0792 - Juvenile Law - Juvenile Justice Reform -

Uploaded by: Jeremy Zacker

Position: UNF



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POSITION ON PROPOSED LEGISLATION

BILL: SB792 Juvenile Law - Juvenile Justice Reform - Juvenile Court Jurisdiction

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 27, 2024

The Maryland Office of the Public Defender respectfully submits this testimony and asks for an unfavorable report from the committee.

Senate Bill 762 expands the types of offenses for which 10-12 year olds can be charged in the juvenile justice system. Senate Bill 762 lacks investment in front-end proactive solutions and is centered on punitive measures that have been proven ineffective and are contradicted by best practices, research and data. “A growing body of evidence has found that pre-teens have diminished neurocognitive capacity to be held culpable for their actions; likewise they have little ability to understand delinquency charges against them, their rights and role in an adversarial system, and the role of adults in this system.” Juvenile Justice Reform Council Final Report (2021) at 17, <https://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/JJRC-Final-Report.pdf>.

Senate Bill 762 the charging of 10-12 year olds merely because they have been arrested at least twice, regardless of whether the child was ultimately charged with an offense, and regardless of whether the child committed the offense for which they were arrested. Such a standard encourages and incentives law enforcement to make frivolous and unconstitutional arrests.

Moreover, the term ‘arrest’ is not defined in the bill and may cause confusion in the courts. In Maryland, “[i]t is generally recognized that an arrest is the taking, seizing, or detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest.” *Williams v. State*, 212 Md. App. 396, 418 (2013). Thus, even a temporary handcuffing of a child could be considered an ‘arrest’ under Senate Bill 762. Even if a law enforcement officer has no intention of charging a child, the child may still be legally under arrest triggering the proposals in Senate Bill 762.

Senate Bill 762 implements antiquated and dangerous practices of ensnaring 10-12 year olds into the legal system for additional offenses, rather than mandating immediate service referrals.

Maryland should abandon charging pre-teens with juvenile offenses and focus on evidence-based solutions which support our youth and our communities.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 792.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Jeremy Zacker, Assistant Public Defender.

2024 sb 792 juvenile reform testimony in oppositi

Uploaded by: Ken Phelps Jr

Position: UNF



TESTIMONY IN OPPOSITION TO SB0792

Juvenile Law - Juvenile Justice Reform - Juvenile Court Jurisdiction

**** OPPOSE****

February 28, 2024

TO: Senator William C. Smith, Chair, Senator Jeff Waldstreicher, Co- Chair and the members of the House Judiciary Committee

FROM: Rev. Linda K. Boyd., Co-Chair, Maryland Episcopal Public Policy Network, Diocese of Maryland

DATE: February 28, 2024

The Episcopal Church at large and the Diocese of Maryland in particular have embraced the concept of reparations, a concept not limited to financial considerations but to a leveling of the playing field across a broad spectrum of issues, including juvenile justice. Research shows that juveniles who are incarcerated make them more likely to be arrested for new offenses. Because Black and brown children are more likely to be incarcerated, this Bill will exacerbate the serious racial disparities in Maryland's juvenile justice system. We believe that placing the burden on the juvenile without addressing the underlying causes of racial disparities cannot be tolerated. Addressing the underlying causes is long overdue. Every ten years or so, there is a push for "law and order" that is a band aid only and does not try to remedy or repair that damage done by years of slavery, Jim Crow, red-lining, etc.

Rather than putting the burden on the child, addressing the underlying causes would be a step in repairing (reparations) the damage done by a decades long policy of mass incarcerations.

The Diocese of Maryland requests an unfavorable report.

SB 792 West Age Jurisdiction testimony.pdf

Uploaded by: Kimberlee Watts

Position: UNF



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POSITION ON PROPOSED LEGISLATION

**BILL: Senate Bill 792 Juvenile Law- Juvenile Justice Reform-
Juvenile Court Jurisdiction**

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 27, 2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 792 which would reduce the age of jurisdiction to 10 years of age for crimes involving weapons, crimes involving the use or possession of a firearm, motor vehicle theft and unauthorized use of a motor vehicle.

Background. The 2022 General Assembly implemented evidence-based reforms to the juvenile justice system in efforts to limit youth incarceration and reallocate resources towards data-driven, evidence-based programming for at-risk youth. Despite growing fears of juvenile delinquency, there is also a growing awareness around the country that juvenile justice systems which focus on community resources can reduce costs and yield better outcomes with fewer racial disparities.

Maryland's success in raising the age of juvenile court jurisdiction to 13 brought Maryland in line with international human rights standards. House Bill 319 would be a critical misstep for Marylanders and places their youngest at risk.

As the Committee is aware, until 2022, Maryland did not have a minimum age of criminal responsibility, in violation of widely accepted international human rights standards. Prior to passing a minimum age, 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 the 4th or the 5th grade. As such, Maryland law requires that children must be at least 13 years old in order to be responsible enough to babysit.²

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.

House Bill 319 openly flouts this progress the 2022 General Assembly made in raising the age of juvenile court jurisdiction. Under the proposed law, a child of age 10, 11, or 12, who is too immature to babysit, would be deemed mature enough to be responsible for possession of a firearm or handgun, and can be brought to court if they are merely **arrested** for two or more incidents. This law presents numerous issues of moral and legal significance and carries the potential to lead to untenable and counterproductive results.

Executive Functioning and Felonious Intent. The proposed legislation harms children ages 10-12 if they are **alleged** to have committed a crime involving the use or possession of a firearm, or if the child is **arrested** for **any crime** on two prior occasions. These proposed amendments in House Bill 319 subject very young children in their pre-teenage years to the judicial system, despite the opinions of scientists and the United States Supreme Court that age is inextricably linked to culpability.³

Executive functioning refers to the cognitive processes that direct, coordinate, and control other cognitive functions and behavior, including inhibition, attention, and self-directed execution of actions. While there is ample research related to adolescent executive functioning and youth justice policy, but because *so few places prosecute very young kids*, there is comparatively little research about *pre-adolescent* children in the youth justice systems. The majority of research regarding executive functioning in pre-adolescents has focused on implications for education and occupational therapy. However, it would be nonsensical to ignore that the executive functioning of an elementary or middle school-aged child is vastly different than that of a high school student. Discussions of executive functioning, while scientific, are critical to understanding the legal concept of felonious intent.

Two-Thirds of Children Under Thirteen Are Incompetent to Stand Trial. Compounding this error, children under the age of 13 are statistically unlikely to be competent to stand trial.⁴ 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

³ Roper v. Simmons, 543 U.S. 551 (2005), Graham v. Florida, 560 U.S. 48 (2010), J.D.B. v. North Carolina, 564 U.S. 261.

⁴ 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](#). *Psychology, Public Policy, and Law*, 22(3), 235-249; Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology (2009).

found incompetent to stand trial.⁵ 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 who were evaluated were found incompetent to stand trial.⁶ Given the established fact that 1/3 of children under 13 are likely incompetent to stand trial, failing to raise competency in most cases for very young Respondents would amount to ineffective assistance of counsel. Evaluating competency is a cost intensive process that can take years to resolve.⁷ As a result, the youngest children to be prosecuted in our system—who are the least culpable—often do not face court intervention until months or years after their alleged misbehavior.

Prosecuting a population of children who statistically are less likely to be competent to stand trial would be a dire mistake. When children are found incompetent to stand trial the case itself is on hold, and no therapeutic or rehabilitative services are implemented until the child either attains competency or the case is dismissed. This means that these children get none of the services they need, and which they could access through either the Department of Social Services or DJS through either Child in Need of Assistance (CINA) or Child in Need of Services (CINS) proceedings. In order for rehabilitation to work, children need to be held accountable for wrongdoing in a fair process that promotes healthy moral development.⁸ This process results in children being prosecuted and penalized long after the underlying incident, and leads children to perceive the legal system as unjust. Distrust in the system reinforces delinquent behavior, does not foster prosocial development, and increases recidivism.⁹ This directly thwarts the goals of treatment, guidance, and rehabilitation which are the goals of the juvenile court system, and places children at greater risk because they are being prosecuted rather than treated in other systems.

Ethics and Equal Protection for Children Ages 10-12. Requiring that a child specifically within the ages of 10-12 come within the Juvenile Court Jurisdiction for two or more arrests, and for ***any*** crime, is an ethical and equal protection issue. There is no rational basis for treating younger children more harshly than older adolescents. If a youth is displaying behavior that requires the attention of the police at the age of 10, 11, 12 years old, the rational response is to assess what needs the child has that are not being met within the community—through the CINS Petition Process, Diversion, School-Based or Community Programming, among others—not to

⁵ 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>;

⁶ “A Presentation to the State Advisory Board for Juvenile Services”, MDH Juvenile Forensic Services, Michael T. Guilbault, PhD, October 20, 2020. Slide 2. https://djs.maryland.gov/Documents/about/MDH-Juvenile-Forensics-Presentation-DJS-State-Advisory-Board_10-20-20.pdf

⁷ Md. CJ 3-8A-17-17.8

⁸ National Academies of Science, *Reforming Juvenile Justice: A Developmental Approach* (2013) pg 183-210.

⁹ 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.

require they be charged with delinquency and appear in a court system they statistically do not understand.

Proponents are urging higher penalties for children under the age of 13 who are arrested on multiple occasions, but to what end? Moreover, under the current Juvenile Causes Act, if a youth is found to have committed a firearm or gun-related offense, the Court has the discretion to impose the highest penalties available in the juvenile system: commitment to the Department of Juvenile Services until age 21.¹⁰ This outcome is true regardless of the age of the child, and the Juvenile Courts currently have jurisdiction over children ages 10-12 who commit crimes of violence, which include crimes involving the use of a handgun or firearm.¹¹ If a youth is suspected of possession of a firearm, the needs of that child can more swiftly be addressed outside of a court system that would require their attorney to assess for competency and delay the process of providing services to that child and their family.

Legal scholars have long recognized that laws must be coherent, clear, stable, and practicable for the Rule of Law to be sustained.¹² A system that more severely penalizes the youngest children in our system and subjects them to potential removal from their homes and families, could lead children to perceive the legal system as unjust. Such distrust reinforces delinquent behavior, detracts from prosocial development, and increases recidivism.¹³ Likewise, while it is dangerous for a young child to have access to firearms, distrust in the system is also dangerous. Charging children who—through negligent or reckless behavior by adults—gain access to weapons in the juvenile court system would only delay the services these children may need. Furthermore, charging a younger child based upon arrest rates presents due process issues, equal protection and racial inequality issues, and would emphatically increase distrust. This provision would also likely deter families from looking to the police and the Department of Juvenile Services for help when it is needed.

Conclusion. With the current laws as they stand, 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 way that promotes healthy moral growth. An effective youth legal system is a fair legal system, with laws that improve the odds that young children who come into contact with the justice system will successfully and safely transition to adulthood. A law that removes protections and imposes higher standards on the youngest children in our system does not accomplish this goal.

¹⁰ Courts & Judicial Proceedings §3-8A-19.

¹¹ Courts & Judicial Proceedings §3-8A-3.

¹² Lon Fuller, *The Morality of Law*, YALE UNIVERSITY PRESS (1964).

¹³ 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.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 792.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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