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POSITION ON PROPOSED LEGISLATION

BILL: HB 134, 483, 814 & Senate Bill 744 —Juvenile Court Jurisdiction — Age of Child

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 02/06/2024

The Maryland Office of the Public Defender asks this Committee to issue an unfavorable report on House Bills 134, 483, 814, and Senate Bill 744, which seek to lower the minimum age of juvenile court jurisdiction and expand the number of offenses with which ten- to twelve-year-old children may be charged in juvenile court.

During my four and a half years at the Maryland Office of the Public Defender, I have focused my practice on representing children. The youngest child that I represented was eight years old. He was found incompetent and incapable of attaining competency before his case could proceed to adjudication.

Following the enactment of the Juvenile Justice Reform Act (JJRA) on June 1, 2022, I have represented several children between the ages of ten and twelve, whose appellate arguments have focused on whether the children should be in juvenile court under the new jurisdictional age limit.

One of my clients was twelve when he pushed a classmate twice on the playground at his middle school, resulting in the classmate's broken arm. My client immediately apologized and said he did not mean to hurt the other child. A police report recommended charging my client with second-degree assault. The State instead used its discretion to charge him with first-degree assault, which under the JJRA established juvenile court jurisdiction over my twelve-year-old client for a common playground incident. He ultimately pled guilty to the lesser offense of second-degree assault, and the State nol prossed the first-degree assault.

As we litigated whether my client was properly in juvenile court, my client volunteered to complete the probation terms recommended by the Department of Juvenile Services (DJS) and successfully completed them. He has not gotten himself into any more trouble. He is still attending school, participating in sports, and playing the saxophone.

These are the types of cases that come to juvenile court when ten- to twelve-year-old children are charged: middle school playground incidents. They should not be charged at all.

I am the only lawyer in my family, let alone the only public defender. When they asked me about my cases over the holidays, I talked about this case, and they—men and women, old and young, Democrats and Republicans—were universally horrified. Why would the State have an interest in prosecuting this child? Why would the law allow it?

I saw a man with whom I'd grown up visibly tense at the discussion and remembered the times he'd landed himself in detention because he—a big and clumsy boy—had knocked someone over on the middle school playground. Perhaps because he attended a school without school resource officers, perhaps because he attended school in another state, perhaps because he is white, he was never charged in juvenile court. *See* S.B. 691 (2022), Dep't of Legislative Servs., Racial Equity Impact Note, 7-8 (“Black juveniles under age 13 will benefit to the greatest extent under the bill [the JJRA] given that they are disproportionately and disparately impacted by DJS intakes, dispositions, and placements.”). It was not because he'd never injured a classmate on the playground.

The fact that ten- to twelve-year-olds in Maryland can be brought into juvenile court in this way should concern anyone with a son, a brother, a boy in their lives.

The jurisdictional age limits to juvenile court—established by the JJRA which passed with broad and strong support in the House (forty-three favorable testimonies, one informational, three unfavorable) and Senate (twenty-six favorable testimonies, one informational, three unfavorable)—are a step in the right direction. Even with these age limits, cases like my twelve-year-old client's continue to be brought into juvenile court.

Expanding the number of offenses with which ten- to twelve-year-olds can be charged will encourage prosecutors to do what the prosecutor did in that case: to overcharge, to stretch the facts

to bring more children into juvenile court jurisdiction, at great cost to the child and our community. This cost would be incurred without an increase in public safety because there's simply no evidence that charging ten- to twelve-year-old children leads to better outcomes for the alleged offenders or deters other children from misbehaving.

In fact, the Juvenile Justice Reform Council (JJRC) found the opposite to be true: that it is less court involvement for young children (not more) that increases public safety. *See* Md. Dep't of Juvenile Justice Servs., "Juvenile Justice Reform Council," <https://djs.maryland.gov/Pages/Juvenile-Justice-Reform-Council.aspx> (noting the legislature charged the JJRC with, among other things, "using a data-driven approach to develop a statewide framework of policies to invest in strategies to increase public safety and reduce recidivism of youth offenders"); Md. Juvenile Justice Reform Council, Final Report, 24, 33 (Jan. 2021), <http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/JJRC-Final-Report.pdf> (finding for most children interventions through the delinquency system can cause more harm than good and increase recidivism).

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bills 134, 483, 814, and Senate Bill 744.

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

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