

RAISE THE MINIMUM AGE



KEY TAKEAWAYS

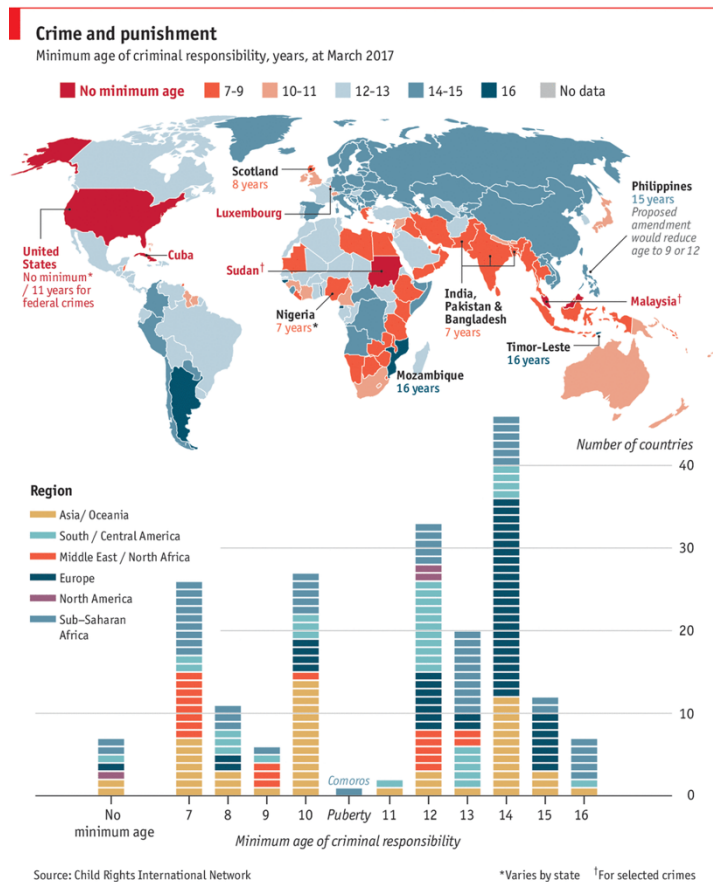
Maryland currently has no minimum age of juvenile court jurisdiction and in recent years children as young as 6 have been arrested and charged. Until 1995, Maryland relied on the common-law doctrine of *doli incapax* which holds that children under 7 have no criminal capacity. For children aged 7-13 the law required a presumption that the child did not have criminal capacity and the prosecution must overcome that burden beyond a reasonable doubt. As a part of the 1994 crime bill, Maryland eliminated the common-law presumption of infancy for young people ages 7 to 13 and, inadvertently, removed the existing minimum age of jurisdiction.¹

Maryland arrests an inordinate amount of pre-adolescent children to the juvenile justice system. In FY19 alone DJS received 1,882 complaints for children under the age of 13.² Compare that to California, who prior to establishing a new minimum age in 2018, referred just 687 children under 12 to the juvenile system.³ California has a population that is more than 6x that of Maryland. Disturbingly, most of the young kids arrested in Maryland – 65% – are Black.⁴

Prosecuting pre-adolescent children violates internationally norms. The United Nations Convention on the Rights of the Child (of which the U.S. is a signatory but not party) requires members to set the minimum age of criminal responsibility (MACR) at 12 years and to commit to continue to raise the age.⁵ The majority of U.S. states which have established a statutory age minimum require a child to be at least ten (10) years old before they can be prosecuted and the federal minimum is 11 years old.⁶

A plurality of countries (78) have set a minimum age of criminal responsibility of 14 or higher, including North Korea (14), Azerbaijan (14), Chile (14), China (14), Bahrain (15), Poland (15), Sweden (15), Argentina (16), and Cape Verde (16). By contrast, only 4 countries set no minimum age and only 29 countries allow children as young as 7 to be charged including Iraq (7), Syria (7), and Brunei (7).

Thousands of very young children are being put into the system despite numerous scientific studies, court decisions, and lived experience that demonstrate children are less culpable





than adults for the same acts, and are less able to meaningfully navigate justice system processes, including working with their own attorneys. The largest ever study of young people's competency to stand trial found children under 13 years of age demonstrate significantly poorer understanding of trial matters, in addition to poorer reasoning and ability to recognize relevant information for a legal defense.⁷ One-third of children under 13 function with impairments at a level comparable with mentally ill adults who have been found incompetent to stand trial.⁸

System involvement can have lasting and negative psychological and health impacts on children. Ultimately, the needs underlying their alleged offenses are better addressed through alternatives to prosecution, including through child welfare, education, health care, or human services.

Of the children under age 13 who are put through the trauma of arrest and charging in Maryland, only one quarter (448) of those cases were formalized in FY19. Less than 5% of those young people were found guilty and placed on probation (103.) Less than half of 1% of children under 13 who were arrested ended up being committed to DJS (9)⁹ More than 3/4 of young people under 13 who are put on probation or committed to DJS have committed only minor misdemeanors like second degree assault, theft, or malicious destruction.¹⁰ In the past three years no child under 13 was charged with murder or manslaughter.

WHAT WE KNOW ABOUT PRE-ADOLESCENT CHILDREN

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's executive functioning as it relates to youth justice policy; comparatively little research has been done about pre-adolescent children in the youth justice systems. Most research about the executive functioning in pre-adolescents has been done with a focus on implications for education and occupational therapy. However 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. Studies of working memory of children show that it continues to develop until children reach about 15 years old. The average 13-year-old child demonstrates significantly poorer understanding of trial matters, in addition to poorer reasoning and ability to recognize relevant information for a legal defense. In fact, about one-third of children under 13 function with impairments at a level comparable with mentally ill adults who have been found incompetent to stand trial.¹¹

WHAT WORKS?

Children need to be held accountable for wrongdoing in a fair process that promotes healthy moral development. Children who are 13 and younger do not belong in the juvenile justice system. Punitive policies and programs, particularly if they penalizing children with severe sanctions in a process that is misunderstood due to developmental immaturity and thus perceived to be unfair, reinforces delinquent behavior and does not foster prosocial development and fails to reduce recidivism.¹² Maryland must treat kids like kids and raise the minimum age of juvenile jurisdiction to 14.

RECOMMENDATIONS

1. Raise the minimum age of juvenile court jurisdiction to 14 using the following language:

[Proposed new text]

§ 3-8A-03. Jurisdiction of court Exclusive original jurisdiction over delinquent children or children in need of supervision

(a) In addition to the jurisdiction specified in Subtitle 8 of this title, the court has exclusive original jurisdiction over:

- (1) A child [at least 14 years old] alleged to be delinquent or in need of supervision or who has received a citation for a violation;
- (2) Except as provided in subsection (d)(6) of this section, a peace order proceeding in which the respondent is a child; and
- (3) Proceedings arising under the Interstate Compact on Juveniles.

2. Establish a new standard of competency and a mandatory evaluation for all children 14 and under, including an automatic referral for educational assessments for children charged with delinquent acts.

§ 3-8A-17. Investigation of child

[Definitions

As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- a. "Developmental immaturity" means a condition based on a juvenile's chronological age or significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation.
- b. "Mental illness" means any diagnosable mental impairment supported by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.
- c. "Intellectual disability" means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

Competency to proceed in a juvenile proceeding.

d. A juvenile is competent to proceed in a juvenile proceeding if the juvenile has:

1. A rational as well as a factual understanding of the proceedings against the juvenile; and
2. A sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding.]

3-8A-17.2. Conditions for examination and detention of child

Conditions for examination

(a) [For all children 14 and under or if the Juvenile Court determines that a competency determination is necessary, it shall order that a juvenile be examined by the State Forensic Service to evaluate the juvenile's competency to proceed. The examination must take place within 21 days of the court's order.] The court shall set and may change the conditions under which the examination is to be conducted.

LITERATURE REVIEW

Brief for the Brief for the American Psychological Association, et al. (APA Brief), et al. as Amicus Curiae, p. 68, *Graham v. Florida*, 560 U.S. 48 (2010.)

Brief for the American Medical Association (AMA Brief), et al. as Amicus Curiae, p. 68, *Graham v. Florida*, 560 U.S. 48 (2010.)

Casey, B.J., & Caudle, K. (2013). The teenage brain: Self-control. *Current Directions in Psychological Science*, 22, 82-87.

Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.
www.ohchr.org/en/professionalinterest/pages/crc.aspx

Phillip Atiba Goff, et. al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106-4 J. OF PERSONALITY AND SOC. PSYCHOL. 526 (2014)

Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROC. NAT'L ACAD. SCI. 8174, 8177 (2004.)

In re Davis, 17 Md. App. 98, 299 A.2d 856 (1973.)
www.courtlistener.com/opinion/2322545/matter-of-davis/

In re Devon T., 85 Md. App. 674, 680 (1991.)
www.leagle.com/decision/199175985mdapp6741717

Kirwan Institute, *State of the Science: Implicit Bias Review 2013*, Ohio State University (2013)

Ben Mathews, *Children's Criminal Responsibility In Australia: Some Legal, Psychological And Human Rights Issues*, 5(2) *Australia & New Zealand Journal of Law & Education* (2000.)

National Research Council, *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press (2013.)

Poythress, N., Monahan, J., Bonnie, R., Otto, R.K., & Hoge, S.K. (2002). *Adjudicative competence: The MacArthur Studies*. New York: Kluwer/Plenum.
https://macarthur.virginia.edu/adjudicate.html#N_1

UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 Paragraph 32.
<https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

Woolard, Jennifer L., *Adolescent Development and Juvenile Justice*, (July 2015).

ENDNOTES

¹ 1994 Maryland Laws Ch. 629 (H.B. 1020). See also *In re Devon T.*, 85 Md. App. 674, 680 (1991); *In re Davis*, 17 Md. App. 98, 299 A.2d 856 (1973).

² DJS Data Resource Guide (DRG) , FY2019, at 26. <https://djs.maryland.gov/Pages/Data-Resource-Guides.aspx>.

³ SB439 Fact Sheet, https://youthlaw.org/wp-content/uploads/2017/04/SB-439-MinAgeFactSheet_June20-1.pdf.

⁴ *Supra*, note 2.

⁵ *Convention on the Rights of the Child*, Nov. 20, 1989, 1577 U.N.T.S. 3; UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 Paragraph 32. A full list of the minimum age of criminal responsibility (MACR) for every country in the world is available at <https://www.youthpolicy.org/factsheets/>.

⁶ Juvenile Justice Geography, Policy, Practice and Statistics, Jurisdictional Boundaries, Delinquency Age Boundaries <http://www.jjgps.org/jurisdictional-boundaries#transfer-discretion>

⁷ Poythress, N., Monahan, J., Bonnie, R., Otto, R.K., & Hoge, S.K. (2002). *Adjudicative competence: The MacArthur Studies*. New York: Kluwer/Plenum. https://macarthur.virginia.edu/adjudicate.html#N_1.

⁸ Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology (2009).

⁹ *Supra*, note 2.

¹⁰ *Id.* At 27.

¹¹ Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology (2009).

¹² 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.