

# DUE PROCESS FOR CHILDREN IN THE LEGAL JUSTICE SYSTEM



**BILLS SB 136 & HB 315**

Every day in Maryland, children entangled in the legal justice system are questioned without a parent or attorney present. As a result, they face criminal charges, prosecution, and incarceration without the basic due process rights that adults are entitled to. This is particularly dire for Black and Brown children, who are overpoliced.

## WHAT IS DUE PROCESS?

Due Process is the legal requirement that the state must respect a child's right to remain silent and right to counsel.

## MARYLAND'S CHILDREN DESERVE DUE PROCESS

The right to counsel for children was established in 1967 with the landmark case *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428 (1967). The Supreme Court held in *Gault* that children have the right to remain silent and that no child can be convicted unless compelling evidence is presented in court, under the due process clause of the 14<sup>th</sup> amendment. Yet, in Maryland, law enforcement is not required to call parents or attorneys before a child is interrogated.

Maryland has no uniform process to appoint public defenders and no eligibility criteria for indigency. Parents with low income who need public defender services for a child face confusing procedures that vary from county to county. Parents may not have the required financial documentation or \$25 intake fee to apply for services immediately, or may not be aware that they must apply within a certain time period.

## Black and Brown Children are the Most Harmed

- 90% of all children arrested in Baltimore are Black. However, only 64% of the city's children are Black.<sup>2</sup>
- Black children are overpoliced. Of the 14,000 complaints made against youth of color, 90% of complaints against Black children were filed by the police (including school police and school resource officers).<sup>3</sup>

## Children with Disabilities Fare Worse in Our Legal System

- Students with disabilities were referred to law enforcement 16% more often than students without disabilities.<sup>4</sup>
- In 2018-2019, Maryland students with disabilities made up 12% of the student population, but receive 23% of school-related arrests.<sup>5</sup>

## Young Children are the Most Vulnerable

- Over 30,000 children under age 10 have been arrested in the US from 2014 to 2018.<sup>6</sup>
- In Maryland, children as young as seven years old can be ensnared in the legal justice system.<sup>7</sup>

## Children Make Better Decisions with Legal Support

- In a 2013 study of Maryland counties, in one-third of the counties visited in the study, 40% to 58% of children routinely waived their right to counsel.<sup>8</sup>
- Studies show that children waive their Miranda rights at a rate of 90% and make false confessions at a higher rate than adults.<sup>9</sup>

Support our  
children's  
legal rights!

MARYLAND'S CHILDREN  
DESERVE BETTER

## Legal Support for Children Can Help End the School-to-Prison Pipeline

- Over 3,100 arrests were made in Maryland schools in the 2018-2019 school year.<sup>10</sup>
- In 2015-2016, school-based arrests in Maryland were more than double the national average.<sup>11</sup>
- Every school-based arrest creates a risk that children will be further entangled in the legal justice system by not getting legal counsel.
- In Maryland, Black students are more likely to be arrested in school than all other racial or ethnic groups combined!<sup>12</sup>

<sup>1</sup><https://www.ncjrs.gov/pdffiles1/ojjdp/204063.pdf>

<sup>2</sup><https://www.baltimoresun.com/news/crime/bs-md-ci-youth-assessment-20190417-story.html>

<sup>3</sup><https://djs.maryland.gov/Documents/DRG/Youth-of-Color.pdf>

<sup>4</sup><https://www.gao.gov/assets/700/690828.pdf>

<sup>5</sup><http://marylandpublicschools.org/stateboard/Documents/2020/0623/MarylandPublicSchoolsArrestData20182019.pdf>

<sup>6</sup>[https://www.ojjdp.gov/ojstatbb/structure\\_process/qa04102.asp?qaDate=2016](https://www.ojjdp.gov/ojstatbb/structure_process/qa04102.asp?qaDate=2016)

<sup>7</sup><https://njdc.info/wp-content/uploads/2013/11/Final-Maryland-Assessment-Report.pdf>

<sup>8</sup><https://jlc.org/issues/youth-interrogations>

<sup>9</sup><https://abcnews.go.com/US/30000-children-age-10-arrested-us-2013-fbi/story?id=65798787>

<sup>10</sup><http://marylandpublicschools.org/stateboard/Documents/2020/0623/MarylandPublicSchoolsArrestData20182019.pdf>

<sup>11</sup><https://education.umd.edu/research/centers/mep/research/k-12-education/when-law-enforcement-meets-school-discipline-school> (Maryland reported 2,759 school-related arrests in the 2015-16 school year. With a statewide enrollment of 879,196, the arrest rate was 3.1 arrests for every 1000 Maryland K-12 public school students. Comparatively, in 2015-16 the national school-related arrest rate was 1.2 per 1000 students)

<sup>12</sup><http://www.marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestDataSY20172018.pdf>