

MDGA22

Protect Children's Due Process Rights

BILLS SB 53 & HB 269

Every day in Maryland, children entangled in the legal justice system are questioned without a parent, guardian, 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, Indigenous, and Children of Color, who are overpoliced.

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)¹. 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 14th Amendment. Yet, in Maryland, law enforcement is not required to call parents or attorneys before they interrogate a child.

We recognize as a society that children typically have a different view of the world than adults,

due to the human brain not being fully developed until after age 25. This means that children have different social and emotional traits than adults, and when in high stress situations such as police interrogations, are more likely to falsely confess to crimes and waive their rights.

BIPOC Children Are the Most Harmed:

- 90 percent of all children arrested in Baltimore are Black. However, only 64 percent of the city's children are Black.²
- Black children are overpoliced. Of the 14,000 complaints made against Children of Color, 90 percent of complaints against Black children were filed by the police (including school police and school resource officers).³

Children with Disabilities Fare Worse in Our Legal System:

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



WHAT IS DUE PROCESS FOR CHILDREN?

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

Young Children Are the Most Vulnerable:

- Over 30,000 children under age 10 were arrested in the US from 2014 to 2018.⁶
- In Maryland, children as young as seven years old can be ensnared in the legal justice system.⁷

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 percent of children routinely waived their right to counsel.⁸
- Studies show that children waive their Miranda rights at a rate of 90 percent and make false confessions at a higher rate than adults.⁹

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.¹⁰
- In 2015-2016, school-based arrests in Maryland were more than double the national average.¹¹
- 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.¹²

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

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

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

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

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

⁶https://www.ojdp.gov/ojstatbb/structure_process/qa04102.asp?qaDate=2016

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

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

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

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

¹¹<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)

¹²<http://www.marylandpublicschools.org/about/Documents/DSFSS/SSSP/StudentArrest/MarylandPublicSchoolsArrestData-SY20172018.pdf>