

NATIONAL JUVENILE JUSTICE NETWORK

February 7, 2022

National Juvenile Justice Network Testimony in Support of: HB 1248 Juveniles; adjudication of delinquency.

To Whom It May Concern:

On behalf of the National Juvenile Justice Network (NJJN), I am writing to ask the committee to support HB 1248 which would raise the age of juvenile delinquency to 11 years old.

NJJN leads a movement of 60 state-based youth justice reform organizations and alumni of its Youth Justice Leadership Institute in 44 states in DC. Together we work to advocate for policies and practices that treat youth in trouble with the law with dignity and humanity. As states look to improve outcomes for youth, we have seen a growing movement to right size their juvenile justice systems to reflect brain science and public safety data. We firmly believe, that raising the age of juvenile delinquency would better serve youth and public safety.

Adults know, kids are still developing. Imagine a 4th of 5th grader in your life. Maybe you imagine the two of you reading “Diary of a Wimpy Kid” together. You might also imagine a scenario in which the youth acts out or misbehaves. But it’s unlikely that you’re imagining that 4th grader being handcuffed and brought into a courtroom for his or her misbehavior. We know that children are still learning and growing; it is our responsibility as adults to guide them in the right direction.

The United States is an outlier throughout the world in the practice of trying young children in court. In 2019, the United Nations Committee on the Rights of the Child issued General Comment No. 24 in which they stated that 14 is the most common minimum age of criminal responsibility internationally, urged nations to set their minimum age of criminal responsibility to at least 14-years- old, and urged nations not to allow exceptions to be carved out to this minimum age.¹ The United Nations Global Study on Children Deprived of Liberty also called on countries to set the minimum age of prosecution in juvenile court at 14-years-old.²

As the United Nations Global Study stated, “depriving children of liberty is depriving them of their childhood.”³ A growing number of states have recognized this fact and momentum has been growing

¹ United Nations Convention on the Rights of the Child (CRC), Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children’s Rights in the Child Justice System* (2019): 6, CRC/C/GC/24,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?DocTypeID=11&Lang=en&TreatyID=5

² United Nations, General Assembly, “Global Study on Children Deprived of Liberty: report of the Independent Expert,” A/74/136 (11 July 2019): 20, available at <https://undocs.org/en/A/74/136>.

³ *Ibid.*, 4.

across the country to establish and raise the age of juvenile court jurisdiction. In the past few years, California, Delaware, Massachusetts, New York, and Utah have all raised their minimum age for prosecuting children to 12-years-old with New Hampshire raising the age to 13 years old.⁴

Research has also demonstrated that there are negative impacts from both formal juvenile justice system processing and juvenile justice confinement. Rather than providing a public safety benefit, formal system processing often has “a negative effect”.⁵ Other systems can better serve youth without the harmful effects of involvement in the justice system. For example, the children’s behavioral health system can provide psychiatric treatment, counseling, intensive home and/or community-based services in order to address the treatment needs of children with mental health issues. For those youth that remain in the juvenile justice system, community-based alternatives rooted in adolescent development can provide youth with a foundation for success and are much more cost-effective than youth jails; community-based programs yield net benefits from \$3,600 to over \$67,000 per child.⁶

Prosecuting the youngest children runs contrary to scientific research and recent United States Supreme Court decisions that have recognized children are inherently less culpable than adults. Legal experts and social scientists have also voiced significant concerns regarding young children’s competency to understand and exercise their legal rights in any meaningful way.⁷ A 2003 study found that “juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.”⁸

Accordingly, young children are very likely to be found incompetent to stand trial. Setting a reasonable minimum age for juvenile court means Virginia can avoid expensive and unnecessary competency proceedings and restoration services that don’t provide children with services that address their underlying needs. It would also establish uniformity across the state in handling young children.

Nationally, justice system processing is a treatment that is disproportionately used for children of color, enhancing the racial and ethnic disparities in the youth justice system.⁹ By prohibiting the arrest of young children through establishing a reasonable minimum age of prosecution, it would help to disrupt

⁴ National Juvenile Justice Network. “Raising the Minimum Age of Prosecuting Children. Feb. 2020. <https://www.njjn.org/our-work/raising-the-minimum-age-for-prosecuting-children>

⁵ Juvenile Justice Resource Hub, “Community-Based Alternatives: Key Issues,” accessed April , 2016, http://jjie.org/hub/community-based-alternatives/key-issues/#_edn6; citing Anthony Petrosino, Carolyn Turpin- Petrosino, and Sarah Guckenbug, “Formal System Processing of Juveniles: Effects on Delinquency,” Campbell Systematic Reviews (January 29, 2010), 38. Available at <http://bit.ly/1njRFEX>. One finding in this report required further study: three studies with participants who had committed first-time offenses reported positive results for system processing. Also see National Juvenile Justice Network, “Emerging Findings and Policy Implications from the Pathways to Desistance Study,” (Washington, DC: 2012). <http://bit.ly/14jXkQl>.

⁶ Benjamin Chambers and Annie Balck, “Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System” (Chicago, IL: Catherine T. and John D. MacArthur Foundation, Models for Change, Dec. 2014): 7, <http://bit.ly/kids-are-different>.

⁷ Commission on Youth Public Safety and Justice, *Final Report of the Governor’s Commission on Youth, Public Safety and Justice*, 37.

⁸ Thomas Grisso, Laurence Steinberg, Jennifer Woolard Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz, “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants,” *Law and Human Behavior* 27(4) (2003): 333–63, 356, <https://bit.ly/3aTun7A>.

⁹ M. Sickmund, A. Sladky, and W. Kang, “Easy Access to Juvenile Court Statistics: 1985-2018,” (National Center for Juvenile Justice, 2020), <https://www.ojjdp.gov/ojstatbb/ezajcs/asp/demo.asp>.

disparities and prevent large numbers of children from being arrested in school and sent through the school-to-prison pipeline.

In addition to concerns about young people's vulnerabilities in navigating the justice system, research shows that contact with the juvenile justice system can have lasting and negative psychological and health impacts on anyone – but can be especially traumatic for a child. Rather than exacerbate these traumas through incarceration and commitment, recognizing that these needs are better addressed through alternatives to the justice system – such as through child welfare, education, health care or human services – in the context of family and community better serves youth.

It is for these reasons, that the National Juvenile Justice Network supports raising setting a high minimum age of youth prosecution. We appreciate the committees consideration of HB 1248 and are available to answer any questions.