

IN THE SUPREME COURT OF MARYLAND

**No. SCM-REG-0003-2023
September Term, 2023**

IN RE: M.P.

On Appeal from the Circuit Court for Prince George's County
Sitting as a Juvenile Court
(The Honorable Peter Killough, Presiding)

BRIEF OF *AMICI CURIAE*

**THE PUBLIC JUSTICE CENTER,
AMERICAN CIVIL LIBERTIES UNION OF MARYLAND,
THE BALTIMORE ACTION LEGAL TEAM,
THE CENTER FOR CHILDREN'S LAW AND POLICY,
THE GAULT CENTER, AND
JUVENILE LAW CENTER**

IN SUPPORT OF PETITIONER, BY WRITTEN CONSENT

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Statements of Interest

The Public Justice Center (“PJC”) is a non-profit civil rights and anti-poverty legal organization established in 1985. Adopting a race equity lens, PJC uses impact litigation, public education, and legislative advocacy to reform the law for its clients. Its Appellate Advocacy Project expands and improves representation of disadvantaged persons and civil rights issues before the Maryland and federal appellate courts. The PJC has a demonstrated commitment to upholding the rights of individuals facing detention or incarceration, including youth, and to opposing institutionalized racism and pursuing racial equity in the judicial system. *See, e.g., Belton v. State*, COA-REG-00082-2022, 2023 WL 3734780 (Md. 2023) (*amicus*); *Washington v. State*, 482 Md. 395 (2022) (*amicus*); *In re S.F.*, 477 Md. 296 (2022) (*amicus*); *Smith v. State*, 481 Md. 368 (2022) (*amicus*); *In re J.B.*, 468 Md. 219 (2019) (*amicus*).

American Civil Liberties Union of Maryland (ACLU) is the state affiliate of the ACLU, a nationwide, nonprofit organization dedicated to the principles of liberty and equality embodied in the Constitution and this nation’s civil rights laws. Since its founding in 1931, the ACLU of Maryland has appeared before courts and administrative bodies in numerous civil rights cases, including dozens of cases concerning race discrimination impacting police practices, voting rights, education, children's rights and the justice system. This case is of particular interest to the ACLU given our extensive legal advocacy and strong commitment to ensuring that the justice system treats children like children, irrespective of race.

The Baltimore Action Legal Team (“BALT”) is a community lawyering organization that formed in April 2015 in response to a call from community organizations for legal assistance. BALT transitioned from providing emergency response services during the Baltimore Uprising to working towards addressing structural causes of its symptoms. This work includes close partnerships with community organizations in presenting legal education, policy advocacy, and legal representation. BALT operates under 501c3 status. BALT has an interest in this case because of its commitment to ensuring fairness in the justice system and eliminating racism from Maryland’s courts.

The Gault Center, formerly the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in the defense of youth in delinquency proceedings. Through systemic reform efforts, the Gault Center seeks to disrupt the harmful impacts of the legal system on children, families, and communities; decriminalize adolescence, particularly where youth of color are treated disparately; and ensure the constitutional protections of counsel for all young people in court. The Gault Center advocates to shield children from the harms and lifelong consequences of juvenile legal system involvement through various legal and policy mechanisms and encourages states to set 14 as the minimum age of prosecution. In 2019, the Gault Center published *The Criminalization of Childhood*, a survey of national trends to support states' efforts to set or raise a minimum age of prosecution, and has since provided testimony and letters of support to state legislatures working to do so. The Gault Center (as the

National Juvenile Defender Center) has participated as *amicus curiae* before the United States Supreme Court and federal and state courts across the country.

The Center for Children’s Law and Policy (CCLP) is a nonprofit law and policy organization based in Washington, DC. CCLP works with jurisdictions across the country to reform juvenile justice and related systems that impact children by promoting effective alternatives to involvement with the legal system, promoting racial equity, reducing the unnecessary incarceration of children, and improving conditions in facilities that house youth.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center’s legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children’s unique developmental characteristics and human dignity.

Introduction

In 2022, the General Assembly enacted sweeping reforms to Maryland’s juvenile justice system by passing the Juvenile Justice Reform Act (JJRA), which “generally

establishe[d] that a child younger than age 13 is not subject to the jurisdiction of the juvenile court for delinquency proceedings and may not be charged with a crime.” Md. Fisc. Note, 2022 Sess. H.B. 459 (June 21, 2022). These changes followed the legislature’s creation of the Juvenile Justice Reform Commission (JJRC) in 2019 to study and propose reforms. *See* Maryland Juvenile Justice Reform Council, *Final Report*, 12 (Jan. 2021), available at <https://tinyurl.com/a6yj8rrv>. In turn, the Commission met and heard presentations, including quantitative and qualitative studies of Maryland’s juvenile justice system by the Vera Institute, *see, e.g.*, Celina Cuevas, PhD., *Demographic and Geographic Characteristics, Charges, and Court Outcomes for Youth under 13 in Maryland*, Vera Institute (Sept. 3, 2020), among others. Additional speakers included individuals with lived experience in the juvenile justice system, such as Reginald D. Betts, Michael Singleton, and Terri Blunt; researchers familiar with the national landscape of youth justice, like Marcy Mistrett of the Sentencing Project and Marc A. Levin of the Council on Criminal Justice; and experts from sister states, such as Mike Zabel, co-chair of Pennsylvania’s Juvenile Justice Task Force. *See* JJRC Agenda: July 20, 2021 Virtual Meeting, available at <https://tinyurl.com/47c32h9d>. The Commission then used this research and testimony to formulate policy recommendations for the General Assembly. Through these reforms, supporters of the Act aimed to “‘treat children as children.’” Lea Skene & Darcy Costello, *Juvenile justice reform bills seeking to ‘treat children as children’ could mean big changes for Maryland’s youth*, Balt. Sun (Mar. 31, 2022), available at <https://tinyurl.com/48a6deaf> (quoting Melissa Goemann,

policy counsel for the National Juvenile Justice Network). Since then, other involved parties—including Maryland’s Department of Juvenile Services (DJS)—have lauded the Act, crediting its passage with recent positive developments in the juvenile justice system. *See* David Collins, *DJS: Maryland juvenile justice reform law having positive impact*, WBALTV.com (Jan. 26, 2023), available at <https://tinyurl.com/42ym8v4t>.

As set forth in Petitioner’s opening brief, the provision’s plain language and this Court’s precedent require retroactive application of the jurisdictional limit. Practical considerations reinforce this conclusion. “In the interest of completeness . . . [this Court] may look at the purpose of the statute and compare the result obtained by use of its plain language with that which results when the purpose of the statute is taken into account.” *Smith v. State*, 399 Md. 565, 578 (2007) (internal citation and quotation marks omitted). Legislative history, the approach of sister states, extensive research on adolescent development and the impacts of the juvenile court system on children, and racial and gender equity considerations confirm that retroactive application of the jurisdictional floor is necessary to effectuate legislative intent.

This intent was simple: to treat children like children by depriving the juvenile courts of jurisdiction over very young children alleged to commit delinquent acts. In this way, the jurisdictional provision constitutes a remedy. *See Remedy*, Black’s Law Dictionary (11th ed. 2019) (defining a “remedy” as “[t]he means of enforcing a right or preventing or redressing a wrong”). Here, the “wrong” the General Assembly sought to redress was subjecting a child younger than 13 to delinquency proceedings in the juvenile

court. *See* Md. Fisc. Note, 2022 Sess. H.B. 459 (June 21, 2022). And the “remedy” was the deprivation of juvenile courts’ jurisdiction over children under 13, with limited exceptions, in the first instance. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(f). The jurisdictional provision therefore constitutes a change in remedial law warranting retroactive application. *See Roth v. Dimensions Health Corp.*, 332 Md. 627, 636 (1993) (“Notwithstanding this presumption [against retroactivity], if the statute contains a clear expression of intent that operates retrospectively, or the statute affects only procedures *or remedies*, it *will* be given retroactive application.”) (internal quotation marks and citations omitted) (emphasis added). Thus, this Court should hold that the juvenile court lacks jurisdiction over M.P.—and any other children who fall under the ambit of Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(f)—and reverse the juvenile court’s denial of M.P.’s motion to dismiss.

Argument

I. The JJRC recommended a minimum age of juvenile jurisdiction because it recognized that the juvenile justice system is a developmentally inappropriate response to alleged misbehavior by young children

At the recommendation of the JJRC, in 2022 the General Assembly passed the Juvenile Justice Reform Bill, “limit[ing] the circumstances under which a child younger than age 13 is subject to the jurisdiction of the juvenile court.” Md. Fisc. Note, 2022 Sess. H.B. 459 (June 21, 2022). The “minimum age of juvenile court jurisdiction,” which refers to “the minimum age a child may be subjected to formal prosecution and court

processes,” constituted “a predominate topic in nearly all of the statewide listening sessions” of the JJRC. *Final Report, supra*, at 17.

During the JJRC’s meetings, members thoughtfully considered the minimum age at which to set juvenile court jurisdiction. Discussion during the September 17, 2020 JJRC meeting is illustrative. There, Nate Balis of the Annie E. Casey Foundation spoke of the “strong case made in the last meeting and this one that there are better agencies positioned to serve young people at 12, 13 years old than the juvenile justice system.” JJRC Sept. 17, 2020 Meeting, YouTube (Sept. 17, 2020), at 31:35-31:45, https://www.youtube.com/watch?v=sq5lUt2b_G4. When Senator Chris West expressed concern about potentially setting the age at 14, contending it would mark Maryland as “an outlier” because many states set the jurisdictional age at 12, not 14, *id.* at 33:07-33:10, Dr. Melissa Sickmund, Director of the National Center for Juvenile Justice, responded that such a move would make Maryland “a leader,” as the lack of a minimum age of jurisdiction distinguished Maryland as “an outlier in the world,” *id.* at 33:11. Betsy Fox-Tolentino, Assistant Secretary of Community Operations of the Maryland Department of Juvenile Services, emphasized that Maryland’s Child In Need of Supervision and Child in Need of Assistance (CINA) systems, alongside local care teams, provide more appropriate forms of support and intervention for young children than the juvenile justice system. *Id.* at 41:23-43:48. In further support of establishing a minimum age of jurisdiction, Office of the Public Defender representative Jenny Egan powerfully

described how the juvenile justice system is not built for nine- and ten-year-olds, stressing that:

The severity of a crime does not necessarily reflect the severity of need for a child . . . Young children can do things very impulsively that . . . have very significant impacts on people. That doesn't mean that they have the same culpability [as an older youth or adult]. That doesn't mean that they have the same understanding. And it certainly doesn't mean that they should be dealt with in a system that . . . is punitive and has some real harm and consequences for young children.

Id. at 57:56-58:25.

Social science literature reinforced the need for the legislature to set a minimum age of juvenile court jurisdiction. Specifically, studies have found that lack of a minimum age requirement leads to inconsistent treatment of children involved with the juvenile justice system, heightening racial disparities; costly and ineffective reliance on incompetency laws, leading to the unfair and expensive commitment of children awaiting adjudication; disproportionate criminalization of Black children; and the perpetuation of the school-to-prison pipeline, among other grievous consequences. *See NJJN Policy Platform: Raise the Minimum Age for Trying Children in Juvenile Court*, National Juvenile Justice Network, at 10-12 (Dec. 2020), available at <https://tinyurl.com/4s7ubf2d>. Further, “[r]esearch has also found that incarceration at a young age (7 to 13-years-old) is associated with the highest rates of poor adult health outcomes for physical and mental health—including worse adult general health, functional limitations, depressive symptoms, and suicidality, compared to youth first incarcerated at older ages and youth never incarcerated.” *Id.* at 14 (citing Elizabeth S. Barnert, et al., *Child Incarceration and*

Long-term Adult Health Outcomes: A Longitudinal Study, 14 *Internat'l J. Prisoner Health* 23-33 (2018), available at <https://pubmed.ncbi.nlm.nih.gov/29480767/>).

The JJRC's final set of recommendations and the enacted statutory language reflect these considerations. By specifying that “[a] child under the age of 13 years may not be charged with a crime,” § 3-8A-03(f), except in very limited circumstances, *see id.* (a)(ii), and establishing the Commission to “research culturally competent,¹ evidence-based, research-based, and promising practices relating to child welfare; juvenile rehabilitation; mental health services for children; and prevention and intervention services for juveniles;” Md. Fisc. Note, 2022 Sess. H.B. 459 (June 21, 2022), the General Assembly evidenced its desire to follow the social science, *see infra* Part III, and approach of sister states, *see infra* Part II, and treat children alleged to have engaged in misconduct with developmentally appropriate supports, not counterproductive and costly juvenile adjudication and punishment.

¹ “Cultural competence” refers to “a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enable that system, agency, or those professionals to work effectively in cross-cultural situations.” Terry L. Cross, *Towards a Culturally Competent System of Care* 13 (1989), available at <https://tinyurl.com/3nz6hu9p>. In the context of juvenile justice, “cultural competence of services” serves “to address the need to reduce disproportionate minority contact” with the juvenile justice system. Andrew T. Vergara, et al., *Effectiveness of Culturally Appropriate Adaptations to Juvenile Justice Services*, 5 *J. Juv. Just.* 85, 85 (2015), available at <https://tinyurl.com/4mnm58f6>.

II. The approach of sister states reflects the national trend of setting a statutory minimum age of juvenile jurisdiction

“States are increasingly setting a minimum age at which youth and young adults can be processed through juvenile courts.” *Age Boundaries in Juvenile Justice Systems*, Nat’l Governors’ Ass’n, at 3 (Aug. 5, 2021), available at [ps://www.nga.org/wp-content/uploads/2021/08/Raise-the-Age-Brief_5Aug2021.pdf](https://www.nga.org/wp-content/uploads/2021/08/Raise-the-Age-Brief_5Aug2021.pdf). As of July 2019, 29 states, including Maryland, had no minimum age of juvenile court jurisdiction. *See The Criminalization of Childhood*, National Juvenile Defender Center (July 2019), available at <https://njdc.info/wp-content/uploads/Criminalization-of-Childhood-WEB.pdf>. As of the same time, “some states ha[d] raised their minimum age of juvenile court jurisdiction and prosecuted fewer children under 14.” *Id.* Indeed, just prior to the General Assembly’s amendment to the minimum age of juvenile jurisdiction, four states—Utah, Massachusetts, California, and Nebraska—raised the floor for juvenile jurisdiction. *See Final Report, supra*, at 17. This movement continues today, with states continuing to introduce legislation to raise or establish a minimum age of jurisdiction. *See* Dana DiFilippo, *Lawmakers propose 14 as minimum age for juvenile delinquency*, New Jersey Monitor (June 12, 2023), <https://tinyurl.com/hnwnbajy>; Faith Miller, *Kids being kids? Task force to study raising minimum age for juvenile court*, Colorado Newslines (July 18, 2022), available at <https://tinyurl.com/4bcdtu7d>; Nat’l Juvenile Justice Network, *Raising the Minimum Age for Prosecuting Children*, <https://tinyurl.com/mrusmujn> (updated June 2023)(compiling state laws on age limits for juvenile court jurisdiction). Such moves

contributed to the drop in prosecutions of children under 14 years old from 313,000 cases in 2005 to 138,000 cases in 2017. *See The Criminalization of Childhood, supra.*

Practical considerations reinforce the need to make judicious use of the juvenile justice system. A recent 50-state study found “that most states don’t dedicate the time, attention, and support to judges who handle these [juvenile] cases in ways that are commensurate with the difficult or important nature of this work.” Josh Weber, *Courting Judicial Excellence in Juvenile Justice: A 50-State Survey*, Nat’l Council of Juvenile and Family Court Judges, at 25 (May 2022), available at <https://csgjusticecenter.org/wp-content/uploads/2022/04/Courting-Judicial-Excellence-in-Juvenile-Justice-A-50-State-Study-2.pdf>. Decreased reliance on the juvenile justice system is therefore necessary to promote justice, efficiency, and fairness.

The JJRC expressly considered the approaches of other states when formulating its own recommendation regarding Maryland’s minimum age of juvenile jurisdiction. *See* JJRC Sept. 17, 2020 Meeting, YouTube (Sept. 17, 2020), at 34:00, https://www.youtube.com/watch?v=sq5lUt2b_G4; *Final Report, supra*, at 17 (“Recognizing this developmental science [indicating “that pre-teens have diminished neurocognitive capacity to be held culpable for their actions”], as well as recognizing the damage inflicted by putting relatively young children into the juvenile justice system, several states have recently moved to create a minimum age of juvenile court jurisdiction.”). Failure to retroactively apply the jurisdictional limits to children such as M.P., who are charged with alleged delinquencies, but not yet adjudicated as delinquent,

would frustrate the General Assembly’s intent to join sister states in safeguarding young children from contact with the juvenile justice system.

III. Psychological research underscores the inappropriateness of subjecting young children to juvenile courts’ jurisdiction

A. Any contact with the juvenile justice system can irreparably harm children

Recent juvenile justice reforms “rest heavily on expanded neurological and psychological research which, as the [United States] Supreme Court found, reinforces the conventional wisdom that adolescents are different from adults in ways that affect their criminal conduct.” Josh Gupta-Kagan, *Beyond “Children are Different”: The Revolution of Juvenile Intake and Sentencing*, 96 Wash. L. Rev. 425, 445 (2021) (internal quotation marks and citation omitted). This trend parallels the United States Supreme Court’s recognition “that children under eighteen are categorically less culpable than adults who commit the same crimes because children are less mature, more impulsive, more susceptible to negative familial and peer pressure, and more amenable to rehabilitation.” *Id.* (citing *Miller v. Alabama*, 567 U.S. 460, 471 (2012)).

Research demonstrates that young children’s impulsivity is a feature of developmental psychology, not culpability. “Scientists have confirmed that the brain does not fully mature until 25, and this lack of brain maturity makes lawbreaking and other risky behaviors more common during adolescence.” *Why Youth Incarceration Fails: An Updated Review of the Evidence*, The Sentencing Project 5 (December 2022), available at <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth->

Incarceration-Fails.pdf. “Youth and young adults also are more likely to engage in risky behavior because their prefrontal cortex, which governs executive functions, reasoning and impulse-control, is not fully developed.” *Age Boundaries in Juvenile Justice Systems, supra*, at 1 (Aug. 5, 2021), available at https://www.nga.org/wp-content/uploads/2021/08/Raise-the-Age-Brief_5Aug2021.pdf. Indeed, “[m]ost youth (63%) who enter the justice system for delinquency never return to court on delinquency charges.” *Why Youth Incarceration Fails, supra*, at 20 (citing Charles Puzanchera & Sarah Hockenberry, *Patterns of Juvenile Court Referrals of Youth Born in 2000*, Juvenile Justice Statistics: Nat’l Report Series Bulletin (2022)).

On the other hand, involvement with the juvenile justice system stymies healthy adolescent development. Specifically, “incarcerating adolescents impedes their ability to mature psychologically,” as “youth who are incarcerated in correctional facilities develop psychosocial maturity at far slower rates than comparable peers who remain at home in the community.” *Why Youth Incarceration Fails, supra*, at 20 (citing Shelly Schaeffer & Gina Erickson, *Context matters: juvenile correctional confinement and psychosocial development*, 9 J. Crim. Psych. 44-59 (2019); Julia Dmitrieva, Kathryn C. Monahan, Elizabeth Cauffman, & Laurence Steinberg, *Arrested development: The effects of incarceration on the development of psychosocial maturity*, 24 Development and Psychopathology 1073, 1090 (2012)). As observed by one legal scholar, “[b]ecause most offenders offend only in their youth, and a portion of those who continue to offend into adulthood do so because the state has thwarted their development in response to their

juvenile offending,” in light of prevailing insights from adolescent psychology, “young people’s psychosocial immaturity and the associated incomplete brain development justify a transformed response to their offending that largely, if not exclusively, keeps them out of jail and holds them accountable in ways that encourage, rather than undermine, their healthy development and desistance from crimes.” Emily Buss, *Kids are Not So Different: The Path from Juvenile Exceptionalism to Prison Abolition*, 89 U. Chi. L. Rev. 843, 888 (2022).

Health and safety concerns support limiting juvenile courts’ jurisdiction over young children alleged to have committed delinquent acts. Young children, particularly very young children, subjected to the juvenile justice system often face adverse health risks. Indeed, “[y]ounger children are at the greatest risk of being victims of violence when in custody – more than one-quarter of youth under 13 years old were victims of some type of violence while confined, compared to nine percent of 20-year-olds.” *NJJN Policy Platform, supra*, at 2 (citing Melissa Sickmund & Charles Puzanchera (eds.), *Juvenile Offenders and Victims: 2014 National Report*, National Center for Juvenile Justice 216 (2014), available at <https://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf>). The best way to prevent such harmful consequences is to limit children’s contact with the juvenile justice system in the first instance.

Competency proceedings, whereby a child charged with a delinquent act can seek dismissal of the action due to incompetency to proceed, *see* Md. Code Ann., Cts. & Jud.

Proc. § 3-8A-17.1(a)(1), in part reflect the findings discussed above and why particularly young children should be excluded from the juvenile court’s jurisdiction. When competency is raised, an expert must determine whether the child is competent to proceed based on the following factors:

- (i) The child’s age, maturity level, developmental stage, and decision making abilities;
- (ii) The capacity of the child to:
 1. Appreciate the allegations against the child;
 2. Appreciate the range and nature of allowable disposition that may be imposed in the proceedings against the child;
 3. Understand the roles of participants and the adversary nature of the legal process;
 4. Disclose to counsel facts pertinent to the proceedings at issue;
 5. Display appropriate courtroom behavior;
 6. Testify relevantly; and
- (iii) Any other factors that the qualified expert deems to be relevant.

Md. Code Ann., Cts. & Jud. Proc. § 3-8A-17.3 (a)(3). “Researchers [have] found that children fifteen years old 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,” meaning that “children under the age of fifteen are more likely to be incompetent to stand trial.” Kaitlin O’Dowd, *A Review of Maryland’s Juvenile Justice System: Are the Adjudicative Competency Standards and Procedures Incompetent?*, 52 U. Balt. L. Rev. 177, 186 (2022). Young children’s increased likeliness of incompetency to stand trial is yet another reason that juvenile court is an inappropriate space to address their needs. Thus, Maryland law appropriately excludes them from the juvenile court’s jurisdiction in the first instance.

B. Application of the collateral order doctrine is appropriate to avoid inflicting such irreparable harm on M.P. and similarly situated children

In light of the foregoing research, and consonant with legislative intent, this Court should apply the collateral order doctrine because of the irreparable harm that the juvenile justice process imposes, even absent an adjudication of delinquency. “The collateral order doctrine treats as final and appealable a limited class of orders which do not terminate the litigation in the trial court.” *In re Foley*, 373 Md. 627, 633 (2003) (internal quotation marks and citations omitted). The doctrine “permits the prosecution of an appeal from certain interlocutory orders.” *Jackson v. State*, 358 Md. 259, 266 (2000). Because of the irreversible damage that the juvenile justice system imposes, this case, as well as the cases of similarly situated children, qualifies for direct review under the collateral order doctrine.

Social science literature underscores that the juvenile justice system inflicts irreparable harm on children. It is well-established that children who come in contact with the juvenile justice system experience higher rates of trauma than the general population. *See, e.g.*, Karen M. Abram et al., U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention, *PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth 1* (2013), available at <https://tinyurl.com/3ka8uv2c> (reporting that among juveniles detained at Cook County Juvenile Temporary Detention Center in Chicago, Illinois, “92.5 percent of youth had experienced at least one trauma, 84 percent had experienced more than one trauma, and 56.8 percent were exposed to trauma six or

more times”); *see also* Yael Cannon & Dr. Andrew His, *Disrupting the Path from Childhood Trauma to Juvenile Justice: An Upstream Health and Justice Approach*, 43 *Fordham Urb. L.J.* 448, 449-50 (2016) (discussing the heightened risk of various forms of trauma faced by justice-involved youth). And “[b]eing in the [juvenile justice] system itself can also be a traumatic experience.” *A Trauma-Informed Approach to Juvenile Justice*, The Institute of Human Development and Social Change (2023), available at <https://tinyurl.com/yh35vy2a>. “[T]he effects of trauma do not end at arrest.” Sue Burrell, *Trauma and the Environment of Care in Juvenile Institutions*, Nat’l Center for Child Traumatic Stress 1 (2013), <https://tinyurl.com/4xdvzban>. Rather, following initial contact with the juvenile justice system, “[t]rauma continues to affect behavior in day-to-day interactions, as youth respond to painful experiences and loss, exhibited in depression, fear, and anxiety; low self-esteem; self-destructive behavior; combative self-preservation; mistrust of adults; perceptions of unfairness; uncontrolled anger; deep sadness; and extreme sensitivity to rejection.” *Id.* (citing Marty Beyer, *A Developmental View of Youth in the Juvenile Justice System*, in *Juvenile Justice: Advancing Research and Practices* (Francine Sherman & Francine Jacobs eds., 1991)). Further, “[c]ourt hearings, detention, and incarceration are inherently stressful, and stressful experiences that are not traumatic *per se* can exacerbate trauma symptoms.” Julian D. Ford, et al., *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions*, Nat’l Center for Mental Health and Juvenile Justice 3 (2007), <https://tinyurl.com/yckf7vyf>. Thus, allowing children to challenge the juvenile court’s jurisdiction at the onset of

proceedings is critical to avoid the irrevocable harms that flow from involvement with the juvenile justice system, including those experienced while awaiting adjudication proceedings.

Another major JJRA reform limits the length of probation to 6 months for a misdemeanor and one year for a felony, *see* Md. Code Ann., Cts. & Jud. Proc. § 3-8A - 19.6(d)(1) and (e)(1), subject to limited extensions, *see id.* (d)(2)-(3) and (e)(2)-(3). Yet, probation itself is a form of court involvement that negatively impacts youth, for, as discussed above, *see supra* Part III.A., “[j]ustice system involvement of any kind negatively impacts youth.” Samantha Harvell, Leah Sakala, & Andreea Matei, Urban Institute, *Transforming Juvenile Probation: Restructuring Probation Terms to Promote Success*, at 2 (2021), available at <https://tinyurl.com/2wwstky7>. And “probation supervision in particular is a form of correctional control that imposes onerous requirements on youth and families that can include frequent meetings and costly fines and fees.” *Id.* Probation can also often lead to detention. “[T]raditional probation models that focus on surveillance and compliance put youth at risk of revocation and deeper system involvement, pushing them into out-of-home placements and contributing to the overincarceration of young people across the country,” and “administrative or informal probation . . . exposes youth to risk of additional justice system contact, including risk of revocations.” *Id.* The consequences of probation are therefore often equally adverse—and irreversible. Failure to apply the collateral order doctrine means

that youth on probation will experience all of these harms before the case is even considered on appeal because of the length of appeals.

Finally, for young legally-incompetent children, unnecessary exposure to the juvenile justice system can further impact the child's competency by exacerbating symptoms of trauma. *See O'Dowd, supra*, at 187-88. More specifically, "[t]rauma can affect competency because it impacts a child's ability to think clearly, reason, and problem-solve." *Id.* at 188. Unfortunately, "[b]y the time the child is able to [raise competency], the child may have already been through several stages of the juvenile justice system, and often, the harm has already been done." Travis Watson, *From the Playhouse to the Courthouse: Indiana's Need for a Statutory Minimum Age for Juvenile Delinquency Adjudication*, 53 *Ind. L. Rev.* 433, 455 (2020). Failure to apply the collateral order doctrine to young, legally-incompetent children—who the legislature excluded from the juvenile court's jurisdiction for the same reasons they are incompetent—subjects these children to the unnecessary harms of the juvenile justice system and will likely only exacerbate their incompetence, not promote rehabilitation or accountability.

These realities reinforce the detrimental impacts of the juvenile justice system on children who are not meant to be served by it. "About fifty percent of youth in the juvenile justice system do not recover and instead suffer the effects of chronic and lasting trauma-related impairments." Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 *Am. Crim. L. Rev.* 641, 663 (2016). Further, "[f]ailure to treat trauma as soon as

possible” affects most every aspect of a child’s life, as it “implicates brain development issues, substance abuse issues, relationship issues, the reliance on destructive coping mechanisms such as hypervigilance, and early mortality.” *Id.* at 668-669. Therefore, *any* contact with the juvenile justice system can inflict irreversible damage on children.

The General Assembly’s imposition of a minimum age of juvenile court jurisdiction helps avoid this permanent harm. *See State Strategies to Address the Needs of Justice-Involved Youth Impacted by Collateral Consequences*, Nat’l Governors Ass’n, (Feb. 23, 2023), <https://tinyurl.com/36ateebk> (compiling research and detailing the harms children encounter in the juvenile justice, including trauma and continued stigma, among others); *see also Final Report, supra*, at 24 (noting that “[n]ational practice increasingly recognizes that young people should be held in the least restrictive setting while their case is pending” and “[d]etained youth show greater trauma and markers for severe mental health issues such as suicidal ideation . . . than in the general population”). Maryland’s minimum age of jurisdiction reflects this understanding. Hence, application of the collateral order doctrine to grant relief to M.P., and other children facing competency, probation, or other juvenile justice proceedings, furthers this legislative purpose, one grounded in social science literature.

IV. Racial and gender equity considerations reinforce the need for retroactive application of the jurisdictional limit

The JJRC expressly considered racial equity considerations in formulating its recommendations. Indeed, during the Council’s November 20, 2019, meeting, Lisa M. Garry, Director of the Maryland Department of Juvenile Service’s Office of Equity &

Reform, outlined the persistent racial disparities in Maryland’s juvenile justice system. *See Race Equity for Leaders*, Maryland Department of Juvenile Services (Nov. 20, 2019), available at https://djs.maryland.gov/Documents/JJRC/Race-Equity-for-Leaders-Garry-JJAC_Nov-2019.pdf. Some noted areas of concern included “studies show[ing] that Black boys are not given the protections of childhood equally to their white peers,” *id.* at 2; heightened rates of complaints, authorized formal petitions, and court dispositions filed against youth of color as against white youth, *id.* at 3; higher rates of probation and commitment disposition for youth of color than white youth, *id.* at 3; and that most complaints filed against youth of color were for misdemeanors, not felonies or crimes of violence, *id.* at 4. To address these disparities, Maryland DJS expressly adopted a race equity framework. *See id.* at 25. The JJRC opted to do the same. *See Final Report, supra*, at 13 (“The JJRC voted to include race equity measure when reviewing specific issue areas and to review recommendations through a race impact assessment.”). Thus, to give effect to legislative intent, this Court needs to consider racial equity, which here weighs in favor of retroactivity. *See In re Ryan S.*, 369 Md. 26, 54 (2002) (“In interpreting a statute, our principal goal is to identify and effectuate the legislative intent.”) (internal citations omitted).

Unfortunately, racial disparities in Maryland’s juvenile justice system are consistent with national trends. The criminal legal system in the United States disproportionately criminalizes youth belonging to minority racial groups, particularly Black youth. Today, “Black youth are dehumanized, exploited, and even killed to

establish the boundaries of Whiteness before they reach adulthood and assert their rights and independence.” Kristin Henning, *The Rage of Innocence: How America Criminalizes Black Youth*, xv (2021). Whereas for white children, “impulsivity and mischief are a luxury, and even a rite of passage into adulthood,” for Black children, “adolescent mischief can be a death sentence, or at least an excuse for police harassment and abuse.” *Id.* at 13. “Even when the data shows that [w]hite youth are just as likely as Black youth to use drugs, carry a weapon, drink while driving, and have unprotected sex, Black youth are more likely to be stopped, arrested, and punished for whatever they do.” *Id.* (citing Joshua Rovner, *Racial Disparities in Youth Commitments and Arrests*, Sentencing Project, (April 2016), available at <https://tinyurl.com/5n7wmrd9> (further internal citations omitted)).

The racist process of “adultification”² leads to the over-policing, over-charging, and over-detention of Black youth. Research “suggests that Black children may be viewed as adults as soon as 13, with average overestimations of Black children[’s ages] exceeding four and half years in some cases,” and thus, “although most children are allowed to be innocent until adulthood, Black children may be perceived as innocent only until deemed suspicious.” Phillip Atiba Goff, et al., *The Essence of Innocence:*

² “Adultification” refers to the phenomenon whereby Black children are viewed as “less innocent and more adult-like than their white peers,” leading to disproportionate policing and criminalization of Black youth. Rebecca Epstein, Jamilia J. Blake, Thalia González, *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, *Georgetown Law: Center on Poverty and Inequality* 2 (2017), available at <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.

Consequences of Dehumanizing Black Children, 106 J. Personality & Soc. Psych. 526, 541 (2014), available at <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

This leads to the disproportionate involvement of Black children at every stage of the juvenile justice system. More specifically,

Although Black youth made up only 15 percent of all youth under juvenile court jurisdiction in the United States in 2018, they accounted for more than 51 percent of all youth who were transferred by a judge from juvenile court to a criminal court in that year. These disparities were true even among children who committed similar types of crime.

Id. at 246 (citing Sarah Hockenberry & Charles Puzanchera, *Juvenile Court Statistics 2018*, 21 (Pittsburgh: Nat'l Center for Juvenile Justice, 2020); Melissa Sickmund, Anthony Sladky, and W. Kang, *Easy Access to Juvenile Court Statistics: 1985-2018*, Nat'l Center for Juvenile Justice and the Office of Juvenile Justice and Delinquency Prevention (2020)).

Racial disparities persist throughout the juvenile justice process. “Youth of color who are referred to court on delinquency charges are far more likely than white youth to be placed in detention.” *Why Youth Incarceration Fails, supra*, at 17. For example, “[i]n 2019, Black and Latinx youth were 45% and 55% more likely to be detained, respectively, than non-Hispanic white youth, while Tribal and Asian/ Pacific Islander youth were about 25% more likely to be detained.” *Id.* (citing M. Sickmund, A. Sladky, and W. Kang, *Easy Access to Juvenile Court Statistics: 1985-2019*, U.S. Office of Juvenile Justice and Delinquency Prevention (2021)). Studies also demonstrate that “significant biases against youth of color are most common in decisions regarding arrest,

diversion versus formal processing, and especially detention,” and that “[t]hese disparities in the early stages cause a snowball effect that leads to substantial cumulative disadvantages for youth of color in later decisions around incarceration in correctional facilities.” *Id.* at 18.³

The JJRC noted similar racial disparities in Maryland for fiscal year 2019. Observing that “[y]oung people under the age of 13 accounted for about 10% of all DJS intakes in FY 2019,” the Council emphasized that “[i]n comparison to the full sample, Black youth and girls accounted for a larger percentage of intakes for youth under the age of 13.” Maryland Juvenile Justice Reform Council, *Final Report*, 18. Further, “Black girls accounted for almost a quarter of all intakes for youth under the age of 13.” *Id.* This startling trend is consistent with national data indicating an increased tendency to criminalize young Black girls. *See* Epstein, Blake, González, *supra*, at 1 (reporting on “data showing that adults view Black girls as less innocent and more adult-like than their white peers, especially in the age range of 5-14”) (emphasis omitted).

Research also indicates that “[g]irls may . . . be punished more harshly by the system when their behavior isn’t in line with traditional, heteronormative ideas of how a ‘young lady’ should act.” Susie Armitage, *How the Juvenile Justice System Is Failing Girls*, YR Media (Oct. 16, 2019), <https://tinyurl.com/mr3t4x7z>; *see also id.* (citing a study finding “that 40 percent of girls placed in juvenile justice facilities identify as

³ This further supports the application of the collateral order doctrine to this and similar cases.

lesbian, gay or bisexual, compared to just three percent of boys”). Other alarming gender-based disparities include “girls being almost twice as likely as boys to be detained for status and ‘technical’ offenses (i.e. violating probation) and to receive more severe punishments than boys for those charges,” and the disproportionate arrest of girls “for ‘survival crimes’ . . . that are associated with attempts to escape a maltreating home environment.” Patricia K. Kerig & Julian D. Ford, *Trauma among Girls in the Juvenile Justice System*, Nat’l Child Traumatic Stress Network Juvenile Justice Consortium 4-5 (2014), <https://tinyurl.com/3b7n4c7w>.

Punishment for gender non-conformity disproportionately affects Black girls, contributing to their overrepresentation in the juvenile justice system. See Kimberlé W. Crenshaw, Priscilla Ocen, Jyoti Nanda, *Black Girls Matter: Pushed Out, Overpoliced and Underprotected* 24 (2015), <https://tinyurl.com/kknsahmb> (“One study revealed that teachers sometimes exercised disciplinary measures against Black girls to encourage them to adopt more ‘acceptable’ qualities of femininity, such as being quieter and more passive.”) (citing Jamilia J. Blake, et al., *Unmaking the Inequitable Discipline Experiences of Urban Black Girls: Implications for Urban Educational Stakeholders*, 43 *Urban Rev.* 90-94 (2011)). Because the juvenile justice system disproportionately entraps marginalized children, particularly those holding multiple marginalized identities, equity considerations here weigh in favor of retroactivity to redress these inequities at the earliest possible time.

The JJRC expressly acknowledged “the key role of racial equity in reforming juvenile justice.” *Final Report, supra*, at 12. This Court should do the same. In light of the studies discussed above, ensuring the retroactive application of the statute’s minimum age requirement furthers the JJRC’s racial equity purpose. Thus, as expressly contemplated by the JJRC and the General Assembly, it is critical to addressing racial disparities in Maryland’s juvenile justice system.

Conclusion

Evidenced-based best practices led the JJRC to recommend, and the General Assembly to adopt, a jurisdictional floor for juvenile court involvement. Failure to apply the amended jurisdiction limit to children like M.P., who were younger than 13 at the time of the alleged delinquent act, flies in the face of this research. It also contravenes legislative intent. In passing the Juvenile Justice Reform Act, the legislature clearly signaled its intention to treat children like children and respond to alleged misdeeds with support from social services, not punishment from the juvenile courts. This Court should give full effect to that remedial intent. All of the above justifications for this major reform apply with equal force to children awaiting adjudication on its effective date as to children charged thereafter. For the foregoing reasons, then, this Court should hold that the juvenile court lacks jurisdiction over M.P. and reverse the denial of M.P.'s motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,415 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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/s/ Hayley Hahn
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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on July 10, 2023, the foregoing Brief of *Amici Curiae* was served via the MDEC File and Serve Module, and that, pursuant to Rule 8-502(c), two copies each were mailed, postage prepaid, first-class, to:

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