



AMERICAN CIVIL LIBERTIES UNION

Maine

TESTIMONY OF ALICIA REA, ESQ.

LD 1849 – Ought to Pass

**An Act to Establish a Minimum Age at Which a  
Juvenile May Be Adjudicated**

Joint Standing Committee on  
Criminal Justice & Public Safety

May 5, 2025

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Senator Beebe-Center, Representative Hasenfus, and distinguished members of the Joint Standing Committee on Criminal Justice & Public Safety, greetings. My name is Alicia Rea, and I am a policy fellow at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 1849.

“When is a child too young to be prosecuted by the State? While they still believe in Santa Claus? Before they learn to read or write their name? Before they get their first adult tooth? In Maine, the answer is: never.”<sup>1</sup>

This committee is charged with creating policy that best promotes public safety and public accountability. In the context of crime committed by youth, evidence has increasingly shown that adolescent brain development is a key reason that youth engage in behavior that harms others. A long line of United States Supreme Court cases address juvenile development in the context of crime and punishment, leading the court to observe that: “as any parent knows and as the sociological studies . . . tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”<sup>2</sup>

Because of their lesser culpability than adults, and the growing body of science showing just how harmful incarceration is to a developing child,<sup>3</sup> Maine and other states have made increased efforts to divert children out of the criminal legal system while teaching accountability and providing treatment for behavioral health or problematic substance use.

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<sup>1</sup> Allie Smith, *Just Kids: Establishing a Minimum Age of Jurisdiction in Maine’s Juvenile Court*, 77 Me. L. Rev. 137 (2025).

<sup>2</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993); *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)).

<sup>3</sup> Richard Mendel, *Protect and Redirect: America’s Growing Movement to Divert Youth Out of the Justice System* (Mar. 2024), available at <https://www.sentencingproject.org/publications/protect-and-redirect-americas-growing-movement-to-divert-youth-out-of-the-justice-system/>.

This bill, by establishing a minimum age for juvenile prosecution, represents an important step in this direction.

Layered onto this issue is how race, and our perceptions of race, affect children. The Children's Center on Law and Policy found that 23 percent of kids who were detained at Long Creek in a year were Black or African American.<sup>4</sup> This is likely, in part, because of how society views Black and white children differently. Studies show that Black boys as young as 10 years old are perceived as "responsible for their actions at an age when white boys still benefit from the assumption that children are essentially innocent."<sup>5</sup>

The constitutional requirement that youth are necessarily different from adults empowers this committee to make categorical rules establishing which young children are so young, so underdeveloped, that criminal charges and imprisonment are inappropriate responses when they do harm.

While we support the establishment of an age floor for juvenile prosecution, we encourage this committee to think about excluding more children from the harms of the criminal justice system. Under current Maine law, children under the age of 14 are presumed to be incompetent to stand trial based on age-related developmental limitations.<sup>6</sup> And, charges against children who are found not competent are generally dismissed.<sup>7</sup> This begs the question—why not set the minimum age for prosecution to align with the presumption of competence?

A child who is not competent to stand trial cannot understand the juvenile delinquency process. By definition, they cannot understand the roles of the prosecutor, the judge, or the juvenile community corrections officer (JCCO). They cannot appreciate the nuances of the juvenile court system. Importantly, they cannot understand the impact of their actions on others or why the consequences for their actions may be different from other children. Therefore, we would recommend a higher age of 14 as the floor for juvenile prosecution.

Thank you for your time and consideration.

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<sup>4</sup> Children's Center on Law and Policy, et al., *Maine Juvenile Justice System Assessment*, Feb. 2020, at p. 33, available at <https://www.mainejjtaskforce.org/>.

<sup>5</sup> See American Psychological Association, *Black Boys Viewed as Older, Less Innocent Than Whites, Study Shows*, Mar. 6, 2014, available at <https://www.apa.org/news/press/releases/2014/03/black-boys-older>.

<sup>6</sup> See 15 M.R.S. §§ 3318-A(5), 3318-B(1).

<sup>7</sup> *Id.*