

Senate Bill 93  
Juvenile Court – Jurisdiction (Youth Equity & Safety Act)  
Ending Automatic Charging of Youth as Adults  
February 16, 2023  
**Support**

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee:

We are the leadership team of the Juvenile Justice Research and Reform (JJR&R) Lab in the Department of Psychological and Brain Sciences at Drexel University. Our Lab works to promote best practices in the juvenile justice system by conducting research and using empirical findings to help system stakeholders more closely align justice system policies, procedures, and practices with adolescents' developmental capacities.

We submit this testimony to provide a social science research perspective **in support of SB93, the Youth Equity and Safety (YES) Act**, which would make the justice system in Maryland more equitable and aligned with adolescent developmental science by ensuring that all youth cases begin in the juvenile court system. Currently, in Maryland, youth as young as 14 can be tried in criminal court depending on the nature of their charges. During ongoing and future deliberations, we encourage the Committee to consider the research findings we describe below, **which all support passage of SB93, the YES Act**.

**Social Science Research: Youths' Capacities Relevant to Criminal Court Jurisdiction**

During adolescence and into young adulthood, youth brains undergo a substantial maturation process, resulting in considerable biological, cognitive, and psychosocial development. However, this maturation occurs gradually and unevenly, and growth in one system (e.g., the areas responsible for sensitivity to rewards) can often overpower more slowly developing systems (e.g., the areas responsible for impulse control). As a result, adolescents are more prone than adults to risk-taking behaviors and to acting without considering the long-term consequences of their actions. Thus, as the Supreme Court has repeatedly recognized,<sup>1</sup> adolescents should be considered less culpable than adults for their actions *and* more amenable to change. The adult criminal justice system is not designed with these youth characteristics in mind and, therefore, should not be the default venue for legally involved youth—especially given the fact that trying youth in criminal court appears to *increase* their risk for future recidivism.

**Adolescents Often Lack Cognitive Capacities to Understand and Appreciate Legal Rights and Court Procedures and to Make Informed Decisions**

Youths' age and developmental immaturity influence their cognitive abilities, suggestibility, compliance with authority, and overall decision-making processes. Because most juvenile defendants have below-average IQ scores and poor academic abilities, they are at a disadvantage when asked to engage in complicated decision-making processes.<sup>2</sup> This disadvantage is then exacerbated by the psychosocial factors of adolescence which make it difficult to balance long-term consequences with the short-term benefits of particular decisions (e.g.,

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<sup>1</sup> See *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *J.D.B. v. North Carolina*, 564 U.S. 261, 269, 273 n.5 (2011); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005).

<sup>2</sup> See Erini Flouri et al., *The role of intelligence in decision-making in early adolescence*. 37 BRIT. J. DEVELOPMENTAL PSYCHOL. 101 (2019); Elizabeth Cauffman & Jennifer Woolard, *Crime, Competence, and Culpability: Adolescent Judgment in the Justice System*, in *THE DEVELOPMENT OF JUDGMENT AND DECISION MAKING IN CHILDREN AND ADOLESCENTS* 279 (Janis E. Jacobs & Paul A. Klaczynski eds., 2005).

to make intelligent plea decisions), consider situations from multiple perspectives (e.g., to work effectively with an attorney to predict what a witness might say), accurately weigh risks (e.g., to evaluate potential for success at trial), and meaningfully assess and appreciate time (e.g., to evaluate a plea bargain that would result in release at age 30 versus a trial that might result in incarceration until age 50). Stressful situations, such as police interrogation or threat of adult incarceration, can further compromise youth reasoning.

In fact, empirical research has found that young adolescents have a significantly greater risk than young adults of failing to meet thresholds of competence to participate in legal proceedings, as they often misinterpret their rights, misunderstand the role of defense attorneys, and fail to recognize legally relevant information and apply it to their own situations.<sup>3</sup> That risk is even greater for youth with below average IQ scores—a common characteristic of legally involved young people. Further, adolescents are more likely than young adults to make choices to comply with authority figures (e.g., agreeing with what they think an authority figure wants to hear regardless of their desire about how to proceed with a case) and less likely to identify the potential long-term negative consequences associated with their legal decisions (e.g., declining a plea bargain because they underestimate the risk and discount the consequences of a guilty verdict at trial). Taken together, these characteristics and risks call into serious question the appropriateness of charging adolescents as adults in a system that requires them to be able to make complicated, high-stakes decisions that will affect them into their distant futures—and in which court personnel (e.g., defense attorneys, prosecutors, judges) have less training and experience working with youth and identifying and addressing their unique needs and limitations.

### **Youth Typically Desist from Offending Behavior and are More Capable of Reform**

Although not all young people engage in antisocial behavior, some experts consider deviant, rule-breaking behavior—and even some instances of delinquency—normative for adolescents.<sup>4</sup> Over time, as individuals develop the executive functioning skills required to control their emotional impulses, they become less likely to engage in these types of behavior.<sup>5</sup> In fact, research suggests that more than 90% of justice-involved youth will no longer engage in criminal behavior by the time they reach their mid-20s.<sup>6</sup> These patterns of desistance are observed even among young people who engage in serious offenses,<sup>7</sup> and, as a result, even the commission of a heinous crime cannot be seen as evidence of an “irretrievably depraved character.”<sup>8</sup> Instead, youth should be viewed for their *potential for growth* and provided the proper supports.

Broadly speaking, juvenile justice systems in the United States emphasize rehabilitation over punishment. As an example, Maryland’s Department of Juvenile Services reports goals that include “ensur[ing] a continuum of care for justice-involved youth that is age- and developmentally appropriate” and “improv[ing] positive outcomes for justice-involved youth.”<sup>9</sup> In juvenile legal systems, youth must have access to educational services and, often, additional services tailored to their unique needs. In contrast, criminal systems have limited access to beneficial services for youth and present as much more punishment oriented. Further, youth confined in adult facilities are at increased risk of physical and sexual abuse and at greater risk for solitary

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<sup>3</sup> See, e.g., Heather Zelle et al., *Juveniles’ Miranda Comprehension: Understanding, Appreciation, and Totality of Circumstances Factors*, 39 LAW & HUM. BEHAV. 281 (2015).

<sup>4</sup> See, e.g., Baptiste Barbot & Scott R. Hunter, *Developmental Changes in Adolescence and Risks for Delinquency*, in HANDBOOK OF JUVENILE FORENSIC PSYCHOLOGY AND PSYCHIATRY 11 (Elena L. Grigorenko ed., 2012); Melanie Taylor et al., *Examining the Presenting Characteristics, Short-Term Effects, and Long-Term Outcomes Associated with System-Involved Youths*, in 3 ADVANCES IN PSYCHOLOGY AND LAW 211 (Monica K. Miller & Brian H. Bornstein eds., 2018).

<sup>5</sup> Kathryn C. Monahan et al., *Trajectories of Antisocial Behavior and Psychosocial Maturity from Adolescence to Young Adulthood*, 45 DEVELOPMENTAL PSYCHOL., 1654 (2009); Laurence Steinberg et al., *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78 (2008).

<sup>6</sup> ELIZABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 52-53 (2008).

<sup>7</sup> E.g., Edward P. Mulvey et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 DEVELOPMENT & PSYCHOPATHOLOGY 453 (2010).

<sup>8</sup> *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

<sup>9</sup> *About Us*, MD. DEP’T OF JUV. SERVICES <https://djs.maryland.gov/Pages/about-us/About.aspx> (last visited Feb. 13, 2023).

confinement compared to those held in juvenile facilities.<sup>10</sup> Such experiences inflict additional trauma and psychological harm on young people who frequently already have significant trauma histories, likely contributing to the staggering increase in risk for suicide among youth in adult correctional facilities.<sup>11</sup>

### **Starting All Juvenile Cases in Juvenile Court May Address a Point of Racial Inequity**

There are documented racial disparities throughout the justice system across the United States and in Maryland. Youth of color are more likely to be processed as adults than white youth, even when charged with similar crimes. In Maryland, between 2017 and 2019, 93% of juveniles processed as adults were youth of color; 80% were Black.<sup>12</sup> Adult criminal processing of juveniles has a disproportionate and negative impact on youth and communities of color, and SB93 would advance equity by ensuring that all youth, regardless of race, begin their cases in juvenile court.

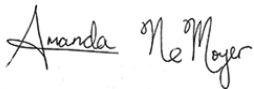
### **Charging More Youth in Criminal Court Fails to Keep Communities Safe**

In addition to producing more harm to individual youth, policies that promote processing youth in criminal court do not appear to achieve purported public safety goals. Specifically, a robust research literature has demonstrated that youth processed as adults demonstrate *higher* rates of subsequent rearrest than youth processed for similar offenses in juvenile court.<sup>13</sup>

**Given the social science research described above and elsewhere, we respectfully urge this committee to return a favorable report on SB93.**



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<sup>10</sup> EDWARD P. MULVEY & CAROL SCHUBERT, TRANSFER OF JUVENILES TO ADULT COURT: EFFECTS OF A BROAD POLICY IN ONE COURT (2012), available at <https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/232932.pdf>; AM. CIVIL LIBERTIES UNION, BRIEFING PAPER: YOUTH IN SOLITARY CONFINEMENT IN ADULT FACILITIES (2013), available at [https://www.aclu.org/sites/default/files/field\\_document/toolkit\\_juvenile\\_solitary\\_briefing\\_paper\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/toolkit_juvenile_solitary_briefing_paper_final.pdf)

<sup>11</sup> CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 4 (2007) (“Youth are ... 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.”).

<sup>12</sup> VERA INST., PRELIMINARY FINDINGS: YOUTH CHARGED AS ADULTS IN MARYLAND (2020), available at <https://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnJuvRefCncl/Preliminary-Findings-Youth-Charged-as-Adults.pdf>

<sup>13</sup> Robert Hahn et al., *Effects on violence of laws and policies facilitating the transfer of youth from the juvenile to the adult justice system* 56(RR-9) MMWR RECOMMENDATIONS AND REPORTS 1 (2007). (“To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.”).