



## **Testimony of Josh Rovner**

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**In support of SB93, The Youth Equity and Safety Act**  
Before the Maryland Senate Committee on Judicial Proceedings  
Feb. 16, 2023

Established in 1986, The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.

We are grateful for this opportunity to submit testimony endorsing SB93, a bill to end the automatic charging of Maryland's youth as if they were adults.

We support this bill for three reasons:

1. Charging youth as if they were adults does not enhance public safety.
2. Starting all youth cases in juvenile court is more sensible and efficient than current practice.
3. Maryland's automatic transfer law is unusually harsh and unjust, particularly for Black youth.

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### ***Charging youth as if they were adults does not enhance public safety***

Sending youth to the adult criminal justice system, for any offense, has generally been found to harm public safety. Most relevant studies have found transfer harmful, showing youth in the adult system are more likely to commit future offenses, and particularly more likely to commit the most violent offenses, when compared with peers in the juvenile system.<sup>1</sup> Howell, et al., note that "research consistently shows lower recidivism rates in the juvenile justice system than in the criminal justice system."<sup>2</sup>

For decades, studies have generally shown automatically charging youth as if they were adults harms public safety:

- After New York State passed automatic waiver in 1978, serious offending for the target population held steady while it fell in nearby Philadelphia.<sup>3</sup>
- After Idaho passed automatic waiver in 1981, its juvenile violent crime rate increased while neighboring Montana and Wyoming's respective juvenile violent crime rates dropped.<sup>4</sup>
- An examination of the effect of enhanced transfer laws passed in 14 states (through 2003), found juvenile crime held steady or increased in 13.<sup>5</sup>

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<sup>1</sup> Redding, R. (2008). Juvenile Transfer Laws: An Effective Deterrent to Delinquency?. *Juvenile Justice Bulletin*.

<sup>2</sup> Howell, J. C., Feld, B. C., Mears, D. P., Petechuk, D., Farrington, D. P. and Loeber, R. (2013) Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: What Happens, What Should Happen, and What We Need to Know. Washington, D.C.: U.S. National Institute of Justice (NCJ 242935), p. 4, 10-11.

<sup>3</sup>Singer, S.I., & McDowall, D. (1988). Criminalizing delinquency: The deterrent effects of the New York juvenile offender law. *Law & Society Review*, 22, 521-536.

<sup>4</sup> Jensen, E. L., & Metsger, L. K. (1994). A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime. *Crime & Delinquency*, 40(1), 96-104.

<sup>5</sup> Steiner, B., and Wright, E., Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance, 96 *J. Crim. L. & Criminology* 1451 (2005-2006)

- A 1996 Florida study matched 2,738 youth who were transferred to adult court to those who were not, and found greater reoffending among the transferred youth.<sup>6</sup>
- A comparison of juvenile arrest rates for robbery and burglary (among the most common serious offenses committed by youth) in Northern New Jersey (where transfer laws were more lenient) versus those in New York City, found significantly higher arrest rates in New York for robbery and equivalent rates for burglary.<sup>7</sup>
- Another study comparing Northern New Jersey to New York City found youth charged with violent offenses and prosecuted in the criminal courts were likely to be rearrested more quickly and more often for violent, property, and weapons offenses.<sup>8</sup>
- A 2013 study in Washington state found higher reoffending rates among transferred youth.<sup>9</sup>

**In 2007, the CDC’s Task Force on Community Preventive Services reviewed decades of literature (such as the studies above) and concluded that sending a youth to the adult system generally increases rates of violence among youth.**<sup>10</sup> And Maryland’s process of automatically transferring children and adolescents accused of a lengthy but still specific list of offenses in the name of deterrence or public safety also contradicts findings from the National Research Council, which supports “a policy of retaining youth in the juvenile justice system” both to keep punishments proportional with the age of offenders and to prevent additional offending.<sup>11</sup>

In 2018, looking back at decades of this failed experiment, nationally renowned criminologist Barry Feld concluded, “Despite efforts to get tough, transfer laws failed to achieve their legislative goals and exacerbated racial disparities.”<sup>12</sup>

### ***Starting all youth cases in juvenile court is more sensible and efficient than current practice***

Maryland law, sensibly, allows for reverse waivers as one safety valve for the state’s aggressive and unusual list of charges that must be filed in adult courts. When a young person has their case automatically sent to criminal court, criminal court judges are then tasked with determining whether their courtrooms, or those of juvenile court judges, are the appropriate venue to proceed.

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<sup>6</sup> Bishop, D. M., Frazier, C. E., Lanza-Kaduce, L., & Winner, L. (1996). The Transfer of Juveniles to Criminal Court: Does it Make a Difference? *Crime & Delinquency*, 42(2), 171–191.

<sup>7</sup> Fagan, J.A. 1996. The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. *Law and Policy* 18:77–113.

<sup>8</sup> Fagan, J., Kupchik, A. and Liberman, A. (July 2007). Be Careful What You Wish for: Legal Sanctions and Public Safety Among Adolescent Offenders in Juvenile and Criminal Court Columbia Law School, Pub. Law Research Paper No. 03-61.

<sup>9</sup> Drake, E. (2013). The effectiveness of declining juvenile court jurisdiction of youthful offenders (Doc. No. 13121902). Olympia: Washington State Institute for Public Policy

<sup>10</sup> The Community Preventive Services Task Force (2010, Aug. 26). Violence Prevention: Policies Facilitating the Transfer of Juveniles to Adult Justice Systems.

<sup>11</sup> National Research Council (2013). *Reforming Juvenile Justice: A Developmental Approach*. Washington, DC: The National Academies Press, p. 134.

<sup>12</sup> Feld, B.C. (2018). Punishing Kids in Juvenile and Criminal Courts. *Crime and Justice*, 47, 417 - 474.

Those youths whose cases begin in adult court are not typically sentenced there. In fact, **roughly 85 percent of youth automatically sent to the adult justice system either have their case dismissed or sent back to the juvenile system.** This process typically takes roughly six months, during which time a similarly situated teenager in the juvenile courts will already be connected to needed treatment.

Clearly, too many young people begin their cases in adult courts under current law. A reasonable compromise, one offered under SB93, allows State's Attorneys to request a waiver to adult court on individual cases. The YES Act does not prevent children and adolescents from being charged and sentenced as if they were adults. It only changes where the case starts.

In short, the status quo sends hundreds of teenagers into adult courts to wait for a process that will dismiss the charge entirely or waive the youth back into the juvenile court more than 85 percent of the time. This is an astonishingly inefficient system likely to coerce guilty pleas from teenagers.

### ***Maryland's automatic transfer law is unusually harsh and unjust.***

Maryland has long been an outlier in its statutory exclusion laws. On the backs of this misbegotten history, no state other than Alabama sends more of its children per capita and adolescents into adult court based on the initial charge than Maryland.<sup>13</sup>

The first specialized juvenile courts were created in Chicago in 1899, concurrent with developments in psychology that recognized the uniqueness of adolescence as a stage in human development. (G. Stanley Hall, the first president of the American Psychological Association, published *Adolescence* in 1904.<sup>14</sup>) Youth were not well served by adult courts' procedures or adult courts' punishments, so juvenile courts spread to almost every state by 1925.

In 1933, Pennsylvania became the first state to open a direct pathway to adult court for children charged with murder. Maryland was the second, in 1945, and Mississippi was the third, in 1946. No states followed suit in the 1950s or 1960s.<sup>15</sup>

The political winds shifted in the 1970s and accelerated through the 1980s and 1990s. In 1979, 14 states had automatic waiver provisions.<sup>16</sup> Thirty-three states, including Maryland, enhanced their automatic transfer provisions between 1992 and 1995 alone.<sup>17</sup> After some states rolled back these

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<sup>13</sup> Mistrett, M. (2021, July 20). National Trends in Charging Children as Adults. Testimony before the Juvenile Justice Reform Council.

<sup>14</sup> Hall, G. S. (1904). *Adolescence: Its psychology and its relations to physiology, anthropology, sociology, sex, crime, religion and education*, Vol. 1. D Appleton & Company. <https://doi.org/10.1037/10616-000>

<sup>15</sup> Feld B. 1987. The Juvenile Court Meets the Principle of the Offense: Legislative Changes to Juvenile Waiver Statutes, *Journal of Criminal Law and Criminology* 78(3): 471-533, at 512-513.

<sup>16</sup> Redding, R.E. (2008), Juvenile Transfer Laws: An Effective Deterrent to Delinquency?. *Juvenile Justice Bulletin*..

<sup>17</sup> Torbet, P., Gable, R., Hurst, I., IV, Montgomery, L., Szymanski, L., and Thomas, D. (1996) State Responses to Serious and Violent Juvenile Crime. Washington, DC: US Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Pg. 6.

laws, such laws now exist in 42 states. (In other words, eight states start all juvenile cases in juvenile courts.) States added more offenses to their lists, essentially matching where Maryland already sat in 1979. Maryland, with its 50-year head start, added more and more offenses, compiling a list that now totals 33 unique offenses.

State-by-state comparisons are difficult, but consider the fact that Virginia's automatic charging statute, passed in 1995, consists of two charges -- murder (separated into four categories) and aggravated malicious wounding.<sup>18</sup> And in 2020, Virginia raised the age at which its youth must be charged as if they are adults,<sup>19</sup> one of dozens of states to roll back its pathways into adult court.<sup>20</sup>

Passing SB93 would help make Maryland a leader in youth justice, but hardly an outlier. **Eight states start all youth cases in juvenile court, as envisioned by the YES Act: California, Hawaii, Kansas, Kentucky, Missouri, Oregon, Tennessee, and Texas.** Kentucky became the most recent state added to this list in 2021, passing SB 36 95-0 in its House of Representatives and 26-3 in its Senate.<sup>21</sup>

Moreover, this is a matter of racial justice: more than 80 percent of youth charged as if they were adults are Black.<sup>22</sup> The appropriate remedy is to start all cases in juvenile court, wherein a juvenile court judge can consider multiple factors before determining the correct venue to proceed with the case.

***The Sentencing Project endorses SB93, The Youth Equity and Safety Act, and is eager to see it advance in this legislative session.***

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<sup>18</sup> Steiner, B., and Hemmens, C. 2003 (spring). Juvenile waiver 2003: What are we now? *Juvenile and Family Court Journal* 54(2):1-24 at 24.

<sup>19</sup> Virginia HB 477 (2020).

<sup>20</sup> Evans, B. (2020). *Winning the Campaign: State Trends in Fighting the Treatment of Children as Adults in the Criminal Justice System (2018-2020)*. Washington, DC: Campaign for Youth Justice.

<sup>21</sup> Kentucky SB 36 (2021).

<sup>22</sup> Aanensson, K. (2023, Jan. 24). "Automatic Charging of Youth," Briefing before the Judicial Proceedings Committee: Department of Juvenile Services.